

# SECURITIES AND EXCHANGE COMMISSION

## FORM 8-K

Current report filing

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### FILER

#### **Sunstone Hotel Investors, Inc.**

CIK: [1295810](#) | IRS No.: **201296886** | State of Incorp.: **MD** | Fiscal Year End: **1231**  
Type: **8-K** | Act: **34** | File No.: [001-32319](#) | Film No.: **201034068**  
SIC: **7011** Hotels & motels

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(949) 330-4000*

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

**FORM 8-K**

**CURRENT REPORT**  
**PURSUANT TO SECTION 13 OR 15(d) OF THE**  
**SECURITIES EXCHANGE ACT OF 1934**  
**Date of Report (Date of earliest event reported): July 15, 2020**

**Sunstone Hotel Investors, Inc.**  
(Exact Name of Registrant as Specified in Its Charter)

**Maryland**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**001-32319**  
(Commission File Number)

**20-1296886**  
(I.R.S. Employer  
Identification Number)

**200 Spectrum Center Drive, 21<sup>st</sup> Floor**  
**Irvine, California**  
(Address of Principal Executive Offices)

**92618**  
(Zip Code)

**(949) 330-4000**  
(Registrant's telephone number including area code)  
**N/A**  
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

Title of Each Class	Trading Symbol(s)	Name of Each Exchange on Which Registered
Common Stock, \$0.01 par value	SHO	New York Stock Exchange
Series E Cumulative Redeemable Preferred Stock, \$0.01 par value	SHO.PRE	New York Stock Exchange

Series F Cumulative Redeemable Preferred Stock, \$0.01 par  
value

SHO.PRF

New York Stock Exchange

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

Emerging growth  
company ☐

If an emerging growth company, indicate by checkmark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards pursuant to Section 13(1) of the Exchange Act. ☐

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## Item 1.01 ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT

On July 15, 2020, Sunstone Hotel Investors, Inc. (the “Company”), as parent guarantor, Sunstone Hotels Investors, LLC, as borrower and issuer (the “Operating Partnership”) and certain subsidiaries of the Operating Partnership as guarantors, amended the Operating Partnership’s term and revolving credit agreement and note purchase and guarantee agreement. The amendments and their changes to material terms of the agreements are described below.

### *Amendment to the Credit Agreement*

On July 15, 2020, the Company, as parent guarantor, the Operating Partnership, as borrower, and certain subsidiaries of the Operating Partnership as guarantors, entered into a First Amendment to Amended and Restated Credit Agreement (as so amended, the “Amended Credit Agreement”) with Wells Fargo Bank, National Association, Bank of America, N.A., JPMorgan Chase Bank, N.A., PNC Bank, National Association, U.S. Bank National Association and certain other lenders named therein. Wells Fargo Securities, LLC, BofA Securities, Inc., JPMorgan Chase Bank, N.A., PNC Capital Markets LLC and U.S. Bank National Association are joint lead arrangers, Wells Fargo Securities, LLC, BofA Securities, Inc. and JPMorgan Chase Bank, N.A. are joint bookrunners, Bank of America, N.A. and JPMorgan Chase Bank, N.A. are syndications agents and Citibank, N.A., PNC Bank, National Association and U.S. Bank National Association are documentation agents of the Amended Credit Agreement.

As previously disclosed, the Amended Credit Agreement provides for a \$500 million unsecured revolving credit facility, which matures on April 14, 2023, and establishes covenants for an \$85 million unsecured term loan, which matures on September 3, 2022 and a \$100 million unsecured term loan that matures January 31, 2023 (collectively the “Amended Term Loans”). The Company may extend the maturity date of the unsecured revolving credit facility, exercisable two times, by six (6) months for each extension, to April 2024, upon the payment of applicable fees and satisfaction of certain customary conditions.

The Amended Credit Agreement suspends all existing financial covenants, including those applicable to the Amended Term Loans, from June 30, 2020 through the required financial statement reporting date for the first quarter 2021, with the first required financial covenant test for the period ended June 30, 2021 (“Covenant Relief Period”). Following the Covenant Relief Period, existing financial covenants will be phased-in over the following three quarters (“Ratio Adjustment Period”). The Amended Credit Agreement may be terminated, at the option of the Operating Partnership, subject to meeting the existing financial covenants at the end of any quarterly measurement period.

During the Covenant Relief Period, (i) the Amended Credit Agreement requires that the net cash proceeds from certain incurrences of indebtedness, equity issuances and asset dispositions will, subject to various exceptions, be applied as a mandatory prepayment of the amounts outstanding under the Amended Credit Agreement, (ii) the Amended Credit Agreement imposes an additional covenant that the Company and its subsidiaries maintain minimum liquidity of at least \$150 million, (iii) the Amended Credit Agreement requires the Operating Partnership to pledge equity interests in certain unencumbered entities provided availability under the credit facility is less than \$350 million or the Company retains less than \$200 million of unrestricted cash, and (iv) the Amended Credit Agreement imposes additional negative covenants that will limit the ability of the Company and its subsidiaries to incur additional indebtedness, pay dividends on common stock (except to the extent required to maintain REIT status), repurchase shares, make voluntary prepayments of other indebtedness, make capital expenditures, conduct asset dispositions or transfers and make investments, in each case subject to various exceptions.

During the Covenant Relief Period, the Company may, subject to certain conditions being met: (i) continue to pay all dividends on outstanding series of cumulative redeemable preferred stock, (ii) issue up to \$200 million of additional preferred stock, (iii) fund future acquisitions with an unlimited amount of proceeds from the issuance of common equity and fund acquisitions through the sale of unencumbered assets, (iv) invest up to \$250 million into acquisitions (in addition to equity funded acquisitions in (iii) above), (v) invest up to \$110 million in capital improvements from May 1, 2020 through the end of the Covenant Relief Period (excluding repairs related to emergencies and life safety).

Following the end of the Covenant Relief Period, the Amended Credit Agreement modifies certain financial covenants until January 1, 2022, unless the Company, subject to meeting the existing financial covenants, elects to terminate the period on an earlier date, as follows:

- Maximum Leverage Ratio (as defined in the Amended Credit Agreement) is increased from 6.5x to 7.0x (reducing by 25 basis points each quarter); and
  - Minimum Unsecured Interest Expense Coverage (as defined in the Amended Credit Agreement) ratio is lowered from 2.0x to 1.5x (increasing by 25 basis points each quarter);
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In addition, the Amended Credit Agreement specifies that during the Ratio Adjustment Period, the various income metrics used to calculate the financial covenants, including Adjusted NOI, Adjusted EBITDA and Fixed Charges (each as defined in the Amended Credit Agreement) will be calculated by annualizing such metrics as more fully set forth in the Amended Credit Agreement for the testing periods commencing April 1, 2021 (or the first testing period if the Covenant Relief Period is terminated early) through December 31, 2021 (or earlier if the Covenant Relief Period is terminated early).

During the Covenant Relief Period, the Amended Credit Agreement also sets the applicable interest rate to the highest leverage-based margin applicable under the credit agreement prior to the amendment, as follows: (i) for all revolving loans outstanding, LIBOR plus a margin of 2.25% per annum, (ii) for the \$85 million term loan outstanding, LIBOR plus a margin of 2.20% per annum, and (iii) for the \$100 million term loan outstanding, LIBOR plus a margin of 2.20%. The Amended Credit Agreement also adds a LIBOR floor of 25 basis points to the variable interest rate calculation.

As of July 15, 2020, \$50 million of borrowings were outstanding under the revolving credit facility and \$185 million of term loans were outstanding under the Amended Credit Agreement.

The foregoing description of the Amended Credit Agreement and Amended Term Loans is qualified in its entirety by the full terms and conditions of the First Amendment to Amended and Restated Credit Agreement which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

#### *Amendment to the Notes Purchase Agreement*

On July 15, 2020, the Company, as parent guarantor, the Operating Partnership, as issuer, and certain subsidiaries of the Operating Partnership as guarantors, entered into the First Amendment of the Note and Guarantee Agreement (as so amended, the “Amended Note Agreement”) with the various purchasers named therein (the “Purchasers”) which provided for the private placement of \$240 million of senior unsecured notes of the Operating Partnership, of which (i) \$120 million are designated as 4.69% Series A Guaranteed Senior Notes due January 10, 2026 (the “Series A Notes”) and (ii) \$120 million are designated as 4.79% Series B Guaranteed Senior Notes due January 10, 2028 (the “Series B Notes” and, together with the Series A Notes, the “Notes”).

The Amended Note Agreement conformed the existing Note and Guarantee Agreement in substantially the same manner as the Amended Credit Agreement, as set forth above, except with respect to certain covenants, interest rate and prepayments.

The Amended Note Agreement provides that, among other things:

- during the Covenant Relief Period, if a mandatory prepayment is required, the Company must offer to repay the Notes in an amount equal to the amount required to be repaid multiplied by the total amount outstanding on the Notes, divided by the total outstanding unsecured debt (inclusive of the Notes, amounts outstanding on the revolving credit facility and the Amended Term Loans). The Purchasers have the right to accept or decline any mandatory prepayment;
- following the end of the Covenant Relief Period, the Maximum Unencumbered Leverage Ratio (as defined in the Amended Note Agreement) is increased from 0.6 to 0.65 (decreasing by 25 basis points each quarter);
- following the end of the Covenant Relief Period, the Maximum Secured Indebtedness Ratio (as defined in the Amended Note Agreement) is increased from 0.45 to 0.50 (decreasing by 25 basis points each quarter);
- from June 30, 2020 to the end of the Covenant Relief Period, the interest rate on the Notes will be increased by 100 basis points; and
- following the Covenant Relief Period until the Company achieves a Leverage Ratio (as defined in the Amended Note Agreement) less than 5.0x, the interest rate on the Notes will be increased by 75 basis points.

The foregoing description of the Amended Notes Agreement is qualified in its entirety by the full terms and conditions of the Amended Notes and Guarantee Agreement which is filed as Exhibit 10.2 to this Current Report on Form 8-K and incorporated herein by reference.

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**Item 2.03            CREATION OF A DIRECT FINANCIAL OBLIGATION OR AN OBLIGATION  
UNDER AN OFF-BALANCE SHEET ARRANGEMENT OF A REGISTRANT.**

The information set forth under Item 1.01 of this Current Report on Form 8-K is hereby incorporated by reference into this Item 2.03.

**ITEM 7.01            REGULATION FD DISCLOSURE.**

On July 16, 2020, the Company issued a press release announcing the entry into the First Amendment to Amended and Restated Credit Agreement and the First Amendment to Notes and Guarantee Agreement. A copy of that press release is furnished as Exhibit 99.1 to this report.

The information contained in the press release attached as Exhibit 99.1 to this report shall not be deemed “filed” for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to the liabilities of that section. Furthermore, the information contained in the press release attached as Exhibit 99.1 to this report shall not be deemed to be incorporated by reference in the filings of the registrant under the Securities Act of 1933, as amended.

**ITEM 9.01            FINANCIAL STATEMENTS AND EXHIBITS.**

<b>Exhibit No.</b>	<b>Description</b>
10.1	<a href="#"><u>First Amendment to Amended and Restated Credit Agreement, dated July 15, 2020.</u></a>
10.2	<a href="#"><u>First Amendment to Note and Guarantee Agreement dated July 15, 2020.</u></a>
99.1	<a href="#"><u>Press Release, dated July 16, 2020.</u></a>
104	Cover Page Interactive Data File (formatted in Inline XBRL and contained in Exhibit 101).

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## SIGNATURE

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

# Sunstone Hotel Investors, Inc.

Date: July 17, 2020

By: /s/ Bryan A. Giglia  
**Bryan A. Giglia**  
**Principal Financial Officer and Duly Authorized Officer**

FIRST AMENDMENT  
TO AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of July 15, 2020

THIS FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT (this “**Amendment**”) is made as of July 15, 2020 by and among SUNSTONE HOTEL PARTNERSHIP, LLC, a limited liability company formed under the laws of the State of Delaware (the “**Borrower**”), SUNSTONE HOTEL INVESTORS, INC., a corporation formed under the laws of the State of Maryland (the “**Parent**”), each of the entities set forth on Annex VI hereto (together with Parent, collectively the “**Guarantors**”, and the Guarantors, together with the Borrower, collectively the “**Loan Parties**”), each of the Lenders party hereto (collectively, “**Lenders**”) and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent (the “**Administrative Agent**”), under that certain Amended and Restated Credit Agreement dated as of October 17, 2018, by and among the Borrower, the Parent, the Lenders, the Administrative Agent and the other parties thereto (as amended, restated, supplemented or otherwise modified prior to the date hereof, the “**Credit Agreement**”).

WHEREAS, the Borrower has requested that the Lenders and the Administrative Agent agree to certain amendments to the Credit Agreement; and

WHEREAS, the Loan Parties, the Lenders party hereto and the Administrative Agent have so agreed on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Loan Parties, the Lenders party hereto and the Administrative Agent hereby agree as follows:

1. Amendments to the Credit Agreement. Effective as of July 15, 2020 (the “**First Amendment Date**”) but subject to the satisfaction of the conditions precedent set forth in Section 2 below, the parties hereto agree that the Credit Agreement is hereby amended as set forth in the marked terms on Annex I attached hereto (the “**Amended Credit Agreement**”). In Annex I hereto, deletions of text in the Amended Credit Agreement are indicated by struck-through text, and insertions of text are indicated by double-underlined text. Annex II attached hereto sets forth a clean copy of the Amended Credit Agreement, after giving effect to such amendments. As of the First Amendment Date, the parties hereto agree that (a) Schedules 4.1, 7.1(b), 7.1(f), 7.1(g) and 7.1(h) to the Credit Agreement are hereby amended as set forth in Annex III attached hereto, (b) Exhibits A, F, G and M to the Credit Agreement are hereby amended as set forth in Annex IV attached hereto and (c) new Exhibits N and O are hereby inserted to the Credit Agreement in the respective forms set forth in Annex V attached hereto. As so amended, the Credit Agreement shall continue in full force

and effect. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Amended Credit Agreement.

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2. Conditions of Effectiveness. The effectiveness of this Amendment is subject to the satisfaction or waiver of the following conditions precedent:

(a) Execution of Amendment and Loan Documents. Receipt by the Administrative Agent of (i) counterparts of this Amendment duly executed by the Loan Parties, the Lenders and the Administrative Agent and (ii) an Accession Agreement executed by each of Sunstone Holdco 10, LLC, Sunstone Sea Harbor Holdco, LLC and SWW No. 1, LLC.

(b) Amendment to Senior Notes. The Borrower, the Parent and the holders of the Senior Notes shall have entered into an amendment to the Senior Notes Agreement (and, if necessary, the Senior Notes) (the “**Senior Notes Amendment**”) which shall make such amendments to the terms of the Senior Notes as shall be necessary such that the terms of the Senior Notes after the First Amendment Date shall be no more favorable to the holders thereof than the terms of the Amended Credit Agreement than before the First Amendment Date.

(c) Legal Opinion. Receipt by the Administrative Agent of a legal opinion of counsel to the Loan Parties relating to this Amendment and the other Loan Documents executed and delivered in connection herewith and the transactions contemplated herein and therein, in form and substance reasonably acceptable to the Administrative Agent.

(d) Absence of Legal Proceedings. As of the date hereof, no litigation, action, suit, investigation or other arbitral, administrative or judicial proceeding is pending or threatened which could reasonably be expected to (i) result in a Material Adverse Effect or (ii) restrain or enjoin, impose materially burdensome conditions on, or otherwise materially and adversely affect, the ability of the Parent, the Borrower, any other Loan Party or the REIT to fulfill its obligations under this Amendment or the Loan Documents to which it is a party.

(e) Corporate Documents. Receipt by the Administrative Agent of the following (or their equivalent), each (other than with respect to clause (iv)) certified by the Secretary or Assistant Secretary (or other individual performing similar functions) of each Loan Party as of the First Amendment Date to be true and correct and in full force and effect pursuant to a certificate in form reasonably acceptable to the Administrative Agent:

(i) Articles of Incorporation. Copies of the certificate or articles of incorporation or formation, articles of organization, certificate of limited partnership, declaration of trust or other comparable organizational instrument (if any) of each Loan Party certified as of a recent date by the Secretary of State of the state of formation of such Loan Party;

(ii) Resolutions. Copies of all corporate, partnership, member or other necessary action taken by such Loan Party to authorize the execution, delivery and performance of this Amendment and the other Loan Documents executed and delivered in connection herewith to which it is a party;

(iii) Bylaws. Copies of the by-laws of each Loan Party, if a corporation, the operating agreement, if a limited liability company, the partnership agreement, if a limited

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or general partnership, or other comparable document in the case of any other form of legal entity; and

(iv) Good Standing. A certificate of good standing (or certificate of similar meaning) with respect to each Loan Party issued as of a recent date by the Secretary of State of the state of formation of each such Loan Party and certificates of qualification to transact business or other comparable certificates issued as of a recent date by each Secretary of State (and any state department of taxation, as applicable) of each state in which such Loan Party is required to be so qualified and where failure to be so qualified could reasonably be expected to have a Material Adverse Effect .

(f) Collateral Documents. The Administrative Agent shall have received (i) if the Security Trigger Date shall have occurred on the First Amendment Date, each of the items required to be delivered pursuant to Section 8.14 of the Amended Credit Agreement and (ii) if the Security Trigger Date shall not have occurred on the First Amendment Date, a certificate, in form and substance reasonably satisfactory to the Administrative Agent, of a Responsible Officer certifying that the Security Trigger Date has not occurred as of the First Amendment Date.

(g) Officer's Certificate. Receipt by the Administrative Agent of a certificate, in form and substance reasonably satisfactory to it, of a Responsible Officer (x) certifying that as of the First Amendment Date, after giving effect to the transactions contemplated herein, (i) the Borrower and each of the other Loan Parties on a consolidated basis are Solvent, (ii) no Material Adverse Effect exists or would result from the consummation of this Amendment (excluding any event or circumstance resulting from the COVID-19 pandemic to the extent such event or circumstance has been described in the 10-Q publicly filed by Parent on May 11, 2020), (iii) no Default or Event of Default has occurred and is continuing and (iv) the representations set forth in Section 3 below are true and correct, and (y) attaching fully executed copies of the Senior Notes Amendment and all material documents executed in connection therewith.

(h) No Material Adverse Change. Since December 31, 2019, there has been no material adverse change in the business, assets, liabilities, condition (financial or otherwise), results of operations or business prospects of Parent, the Borrower and their Subsidiaries (taken as a whole) (excluding any event or circumstance resulting from the COVID-19 pandemic to the extent such event or circumstance has been described in the 10-Q publicly filed by Parent on May 11, 2020).

(i) Fees. Receipt by the Administrative Agent and the Lenders of all fees and expenses, if any, then owing by the Borrower to the Lenders, the Administrative Agent and the Lead Arrangers.

(j) Know Your Customer Information. The Borrower and each other Loan Party shall have provided all information reasonably requested by the Administrative Agent and each Lender (to the extent requested in writing (which may be by e-mail) at least 3 Business Days prior to the First Amendment Date) in order to comply with applicable "know your customer" and Anti-Money Laundering Laws including without limitation, the Patriot Act.

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(k) Additional Matters. All other documents and legal matters required in connection with the transactions contemplated by this Amendment shall be reasonably satisfactory in form and substance to the Administrative Agent.

For purposes of determining compliance with the conditions specified in this Section 2, each Lender that has signed this Amendment shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required under this Section 2 to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received written notice from such Lender prior to the date of this Amendment specifying its objections.

3. Representations and Warranties of the Loan Parties. The Loan Parties hereby represent and warrant as follows:

(a) The Parent, the Borrower and each other Loan Party has the right and power, and has taken all necessary action to authorize it, to execute, deliver and perform this Amendment in connection herewith in accordance with its respective terms and to consummate the transactions contemplated hereby. This Amendment has been duly executed and delivered by the duly authorized officers of the Parent, the Borrower and each other Loan Party and each is a legal, valid and binding obligation of such Person enforceable against such Person in accordance with its respective terms, except as the same may be limited by bankruptcy, insolvency, and other similar laws affecting the rights of creditors generally and the availability of equitable remedies for the enforcement of certain obligations (other than the payment of principal) contained herein or therein and as may be limited by equitable principles generally.

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

(c) As of the date hereof and after giving effect to the terms of this Amendment, no Default or Event of Default has occurred and is continuing.

(d) The representations and warranties made by the Borrower in the Amended Credit Agreement or any other Loan Document or which are contained in any certificate furnished in connection therewith are true and correct in all material respects (or in the case of a representation or warranty qualified by materiality, true and correct in all respects) on and as of the date hereof as if made on and as of such date (except for those which expressly relate to an earlier date in which case such representations and warranties shall be true and correct as of such earlier date); provided, that the representation set forth in the first sentence of Section 7.1(l) of the Amended



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Credit Agreement shall exclude any event or circumstance resulting from the COVID-19 pandemic to the extent such event or circumstance has been described in the 10-Q publicly filed by the Parent on May 11, 2020.

4. Reaffirmation. (i) Each Guarantor hereby reaffirms its continuing obligations to the Administrative Agent, the Lenders, the Issuing Bank and the Specified Derivatives Providers under the Guaranty and agrees that the transactions contemplated by this Amendment, including the effectiveness of the Amended Credit Agreement, shall not in any way affect the validity and enforceability of the Guaranty, or reduce, impair or discharge the obligations of such Guarantor thereunder; and (ii) each of the Borrower and each Guarantor hereby reaffirms its acceptance of the non-exclusive jurisdiction of the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York and any appellate court from any thereof, as provided in Section 13.4(b) of the Credit Agreement.

5. Lender Consent. Each Lender (including any Lender in its capacity as an Issuing Bank and/or a Specified Derivatives Provider) hereby (a) consents to and approves each and all of the provisions of the Intercreditor Agreement, (b) acknowledges that the exercise of rights and remedies granted to Administrative Agent and Lenders with respect to the Guaranteed Obligations may otherwise be subject to the Intercreditor Agreement and (c) irrevocably authorizes and directs Administrative Agent to execute and deliver the Intercreditor Agreement upon the occurrence of a Security Trigger Date.

6. Reference to and Effect on the Credit Agreement.

(a) Upon the effectiveness hereof, each reference to the Credit Agreement in the Credit Agreement (including any reference to “this Agreement,” “hereunder,” “herein” or words of like import referring thereto) or in any other Loan Document shall mean and be a reference to the Amended Credit Agreement.

(b) Each Loan Document and all other documents, instruments and agreements executed and/or delivered in connection therewith shall remain in full force and effect and are hereby ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or the Lenders, nor constitute a waiver of any provision of the Credit Agreement, the Notes, any of the other Loan Documents or any other documents, instruments and agreements executed and/or delivered in connection therewith or herewith.

(d) This Amendment is a “**Loan Document**” under (and as defined in) the Amended Credit Agreement.

(e) Except as expressly herein amended, the terms and conditions of the Credit Agreement and the other Loan Documents remain in full force and effect. The amendments contained herein shall be deemed to have prospective application only from the date as of which this Amendment is dated.

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7. Expenses. The Loan Parties jointly and severally agree to pay or reimburse the Administrative Agent and the Lead Arrangers for all their reasonable out-of-pocket costs and expenses incurred in connection with the preparation, due diligence, negotiation, printing and execution of, this Amendment, and any other documents prepared in connection herewith, and the consummation and administration of the transactions contemplated hereby and thereby, together with the reasonable fees and disbursements of one outside counsel to the Administrative Agent and the Lead Arrangers.

8. Governing Law. THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS EXECUTED AND DELIVERED IN CONNECTION HERewith AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AMENDMENT AND THE OTHER LOAN DOCUMENTS EXECUTED AND DELIVERED IN CONNECTION HERewith SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

9. Headings. Section and subsection headings herein are intended for convenience only and shall be ignored in construing this Amendment.

10. Release. In consideration of the amendments and agreements contained herein, each Loan Party hereby waives and releases the Administrative Agent, each Lender, the Swingline Lender and the Issuing Bank from any and all claims and defenses, whether known or unknown, with respect to the Credit Agreement and the other Loan Documents and the transactions contemplated thereby to the extent any such claims and defenses have arisen on or prior to the date hereof.

11. Counterparts. This Amendment may be executed by one or more of the parties to this Amendment on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Amendment by facsimile, e-mailed pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed original counterpart of this Amendment.

[remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this First Amendment to Amended and Restated Credit Agreement to be duly executed and delivered as of the date first above written.

**SUNSTONE HOTEL PARTNERSHIP, LLC,**  
a Delaware limited liability company

By: /s/ Bryan A. Giglia  
Name: Bryan A. Giglia  
Title: Chief Financial Officer

**SUNSTONE HOTEL INVESTORS, INC.,**  
a Maryland corporation

By: /s/ John V. Arabia  
Name: John V. Arabia  
Title: President and Chief Executive Officer

[Signatures Continued on Next Page]

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**GUARANTORS:**

SUNSTONE EAST GRAND, LLC  
SUNSTONE ST. CHARLES, LLC  
SUNSTONE SAINT CLAIR, LLC  
WB SUNSTONE-PORTLAND, LLC  
SUNSTONE OCEAN, LLC  
SUNSTONE LA AIRPORT, LLC  
SUNSTONE RED OAK, LLC  
SUNSTONE EC5, LLC  
SUNSTONE HAWAII 3-0, LLC  
SUNSTONE HOLDCO 4, LLC  
SUNSTONE HOLDCO 5, LLC  
SUNSTONE HOLDCO 6, LLC  
SUNSTONE HOLDCO 8, LLC  
SUNSTONE HOLDCO 10, LLC  
BOSTON 1927 OWNER, LLC  
SUNSTONE WHARF, LLC  
SUNSTONE SEA HARBOR, LLC  
KEY WEST 2016, LLC  
SUNSTONE SEA HARBOR HOLDCO, LLC  
SWW NO. 1, LLC

By: /s/ Bryan A. Giglia

Name: Bryan A. Giglia

Title: Chief Financial Officer

[Signatures Continued on Next Page]

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**LENDERS:**

**WELLS FARGO BANK, NATIONAL  
ASSOCIATION,**

individually in its capacities as Administrative Agent,  
as

Swingline Lender, as an Issuing Bank and as a Lender

By: /s/ Mark Fl Monahan

Name: Mark F. Monahan

Title: Senior Vice President

[Signatures Continued on Next Page]

**BANK OF AMERICA, N.A.**, as an Issuing Bank and  
a Lender

By: /s/ Suzanne E. Pickett

Name: Suzanne E. Pickett

Title: Senior Vice President

[Signatures Continued on Next Page]

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**JPMORGAN CHASE BANK, N.A.**, as an Issuing  
Bank and a Lender

By: /s/ Bryce Hy

Name: Bryce Hy

Title: Vice President

[Signatures Continued on Next Page]

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**PNC BANK, NATIONAL ASSOCIATION**, as a  
Lender

By: /s/ David C. Drouillard

Name: David C. Drouillard

Title: Senior Vice President

[Signatures Continued on Next Page]

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**U.S. BANK NATIONAL ASSOCIATION**, as a  
Lender

By: /s/ Michael F. Diemer

Name: Michael F. Diemer

Title: Senior Vice President

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**CITIBANK, N.A.**, as a Lender

By: /s/ Christopher Albano

Name: Christopher Albano

Title: Authorized Signatory

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**BBVA USA**, as a Lender

By: /s/ Don Byerly

Name: Don Byerly

Title: Executive Vice President

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**THE BANK OF NOVA SCOTIA, as a Lender**

By: /s/ Ajit Goswami

Name: Ajit Goswami

Title: Managing Director & Industry Head  
U.S. Real Estate, Gaming & Leisure

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**TRUIST BANK**, f/k/a Branch Banking and Trust  
Company, as a Lender

By: /s/ Karen Cadiente

Name: Karen Cadiente

Title: Assistant Vice President

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ANNEX  
I

MARKED CREDIT  
AGREEMENT

See attached.

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Loan Number: 1013605

Loan Number: 1014896

Loan Number: 1018459



~~EXECUTION VERSION~~  
[NOT A LEGAL DOCUMENT]

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AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of October 17, 2018

by and among

SUNSTONE HOTEL PARTNERSHIP, LLC,  
as Borrower,

SUNSTONE HOTEL INVESTORS, INC.,  
as Parent,

THE FINANCIAL INSTITUTIONS PARTY HERETO  
AND THEIR ASSIGNEES UNDER SECTION 13.5.,  
as Lenders,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Administrative Agent

---

WELLS FARGO SECURITIES, LLC,  
~~MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED,~~  
BOFA SECURITIES, INC.,  
JPMORGAN CHASE BANK, N.A.,  
PNC CAPITAL MARKETS LLC  
and  
U.S. BANK NATIONAL ASSOCIATION,  
as Joint Lead Arrangers,

WELLS FARGO SECURITIES, LLC,  
~~MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED,~~  
BOFA SECURITIES, INC.,  
and  
JPMORGAN CHASE BANK, N.A.,  
as Joint Bookrunners,

BANK OF AMERICA, N.A.  
and  
JPMORGAN CHASE BANK, N.A.,  
as Syndication Agents,

and

CITIBANK, N.A.,  
PNC BANK, NATIONAL ASSOCIATION,

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Loan Number: 1013605

Loan Number: 1014896

Loan Number: 1018459

and  
U.S. BANK NATIONAL ASSOCIATION,  
as Documentation Agents

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THIS AMENDED AND RESTATED CREDIT AGREEMENT (this “Agreement”) dated as of October 16, 2018, by and among SUNSTONE HOTEL PARTNERSHIP, LLC, a limited liability company formed under the laws of the State of Delaware (the “Borrower”), SUNSTONE HOTEL INVESTORS, INC., a corporation formed under the laws of the State of Maryland (the “Parent”), each of the financial institutions initially a signatory hereto together with their successors and assignees under Section 13.5. (the “Lenders”), and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent (the “Administrative Agent”), with each of WELLS FARGO SECURITIES, LLC, ~~MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED~~BOFA SECURITIES, INC. (or any other registered broker-dealer wholly-owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation’s or any of its subsidiaries’ investment banking, commercial lending services or related businesses may be transferred following the date of this Agreement), JPMORGAN CHASE BANK, N.A., PNC CAPITAL MARKETS LLC, and U.S. BANK NATIONAL ASSOCIATION, as joint Lead Arrangers (in such capacities, the “Lead Arrangers”), each of WELLS FARGO SECURITIES, LLC, ~~MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED~~BOFA SECURITIES, INC. (or any other registered broker-dealer wholly-owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation’s or any of its subsidiaries’ investment banking, commercial lending services or related businesses may be transferred following the date of this Agreement) and JPMORGAN CHASE BANK, N.A., as joint Bookrunners (the “Bookrunners”), each of BANK OF AMERICA, N.A. and JPMORGAN CHASE BANK, N.A., as Syndication Agents (the “Syndication Agents”) and CITIBANK, N.A., PNC BANK, NATIONAL ASSOCIATION and U.S. BANK NATIONAL ASSOCIATION, as Documentation Agent (the “Documentation Agent”).

WHEREAS, the Borrower, the Parent, certain of the Lenders and other lenders party thereto (the “Existing Lenders”), the Administrative Agent and certain other parties have entered into that certain Credit Agreement dated as of April 2, 2015 (as amended and supplemented by that certain Term Loan Supplement dated as of September 3, 2015, and as further amended as in effect immediately prior to the date hereof, the “Existing Credit Agreement”); and

WHEREAS, the Borrower, the Parent, the Administrative Agent, the Issuing Banks, the Swingline Lender and the Lenders desire to amend and restate the Existing Credit Agreement, to, among other things, make available to the Borrower a credit facility in the initial amount of \$685,000,000, which will include a \$500,000,000 revolving credit facility with a \$40,000,000 swingline subfacility and a \$30,000,000 letter of credit subfacility, an \$85,000,000 term loan facility and a \$100,000,000 term loan facility, in each case, on the terms and conditions contained herein.

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

## ARTICLE I. DEFINITIONS

### Section 1.1. Definitions.

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

**“42<sup>nd</sup> Street Guaranty” has the meaning given that term in Section 10.5.**

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

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

**“Additional Term 1 Loans”** has the meaning given that term in Section 2.16.

**“Additional Term 2 Loans”** has the meaning given that term in Section 2.16.

**“Additional Term Loans”** has the meaning given that term in Section 2.16.

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

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**“Adjusted NOI”** means, for any Unencumbered Property and for any period (or if no applicable period is stated, the period of twelve consecutive fiscal months then ended), Net Operating Income for such Unencumbered Property for such period minus an imputed franchise fee in the amount of four percent (4.0%) of the gross revenues for such Unencumbered Property for such period; provided, however, for purposes of this definition, no imputed franchise fee shall be deducted from Net Operating Income with respect to any Unencumbered Property that is not subject to a Franchise Agreement. For purposes of this definition (other than for the period commencing on the First Amendment Date and ending January 1, 2022), the Adjusted NOI for any Unencumbered Property shall be reduced by an amount equal to (a) the amount by which the Adjusted NOI of such Unencumbered Property would exceed 30% of the aggregate Adjusted NOI of all Unencumbered Properties and (b) the amount by which the Adjusted NOI of Unencumbered Properties located in the same MSA as such Unencumbered Property would exceed 40% of the aggregate Adjusted NOI of all Unencumbered Properties. In addition to the extent that Adjusted NOI attributable to Unencumbered Properties leased under Ground Leases would exceed 25% of Adjusted NOI, such excess shall be excluded.

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

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

**“Affected Financial Institution” means (a) any EEA Financial Institution or (b) any UK Financial Institution.**

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

**“Affiliate”** means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

**“Agreement”** has the meaning set forth in the introductory paragraph hereof.

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

**“Anti-Corruption Laws”** means all laws, rules, and regulations of any jurisdiction applicable to the 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 and the rules and regulations thereunder and the U.K. Bribery Act 2010 and the rules and regulations thereunder.

**“Anti-Money Laundering Laws”** means any and all laws, statutes, regulations or obligatory government orders, decrees, ordinances or rules applicable to a Loan Party, its Subsidiaries or Affiliates related to terrorism financing or money laundering, including any applicable provision of the Patriot Act and The Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act,” 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

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

**“Applicable Margin” means the following:**

~~**“Applicable Margin” means**~~**(a) Prior to June 30, 2020 and after the end of the Covenant Relief Period**, with respect to a particular Class and Type of Loans, the percentage rate set forth below corresponding to the Leverage Ratio as determined in accordance with Section 10.1.(a):

---

Level	Leverage Ratio	Applicable Margin for Revolving Loans that are LIBOR Loans	Applicable Margin for Revolving Loans that are Base Rate Loans	Applicable Margin for Term Loans that are LIBOR Loans	Applicable Margin for Term Loans that are Base Rate Loans
1	Less than 3.00 to 1.00	1.40%	0.40%	1.35%	0.35%
2	Greater than or equal to 3.00 to 1.00 but less than 3.50 to 1.00	1.45%	0.45%	1.40%	0.40%
3	Greater than or equal to 3.50 to 1.00 but less than 4.00 to 1.00	1.50%	0.50%	1.45%	0.45%
4	Greater than or equal to 4.00 to 1.00 but less than 5.00 to 1.00	1.60%	0.60%	1.55%	0.55%
5	Greater than or equal to 5.00 to 1.00 but less than 5.50 to 1.00	1.80%	0.80%	1.75%	0.75%
6	Greater than or equal to 5.50 to 1.00 but less than 6.00 to 1.00	1.95%	0.95%	1.85%	0.85%
7	Greater than or equal to 6.00 to 1.00	2.25%	1.25%	2.20%	1.20%

The Applicable Margins for Loans shall be determined by the Administrative Agent from time to time, based on the Leverage Ratio as set forth in the Compliance Certificate most recently delivered by the Borrower pursuant to Section 9.3. Any adjustment to the Applicable Margins shall be effective as of the first day of the calendar month immediately following the month during which the Borrower delivers to the Administrative Agent the applicable Compliance Certificate pursuant to Section 9.3. If the Borrower fails to deliver a Compliance Certificate pursuant to Section 9.3., the Applicable Margins shall equal the percentages corresponding to Level 7 until the first day of the calendar month immediately following the month that the required Compliance Certificate is delivered. ~~Notwithstanding the foregoing, for the period from the Effective Date through but excluding the date on which the Administrative Agent first determines the Applicable Margin for Loans as set forth above, the Applicable Margin shall be determined based on Level 1. Thereafter, such Applicable Margins shall be adjusted from time to time as set forth in this definition.~~

(b) During the Covenant Relief Period, (i) the Applicable Margin for Revolving Loans that are LIBOR Loans shall be 2.25% and for Revolving Loans that are Base Rate Loans shall be 1.25% and (ii) the Applicable Margin for Term Loans that are LIBOR Loans shall be 2.20% and for Term Loans that are Base Rate Loans shall be 1.20%.

The provisions of this definition shall be subject to Section 2.5.(c). During the Leverage Ratio Surge Period, any Applicable Margin determined as provided above shall be increased by 0.35%.

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

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**“Asset Sale” means any conveyance, sale, lease, transfer or other disposition (including by way of merger or consolidation and including any sale and leaseback transaction) of any of following (whether owned on June 30, 2020 or thereafter acquired): (i) any Unencumbered Property and (ii) the Equity Interests of any Subsidiary that directly or indirectly owns any Unencumbered Property.**

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

**“Availability” shall mean, as of any date of determination, an amount equal to the Revolving Commitments of all Lenders as of such date (to the extent available to be drawn) minus all outstanding Revolving Loans, Swingline Loans and Letter of Credit Liabilities as of such date.**

**“Average Monthly Liquidity” shall mean, (a) the sum of the following for each day of any calendar month (i) the Unrestricted Cash held in the United States as of such day, plus (ii) an amount equal to Availability as of such day (to the extent available to be drawn in accordance with this Agreement) divided by (b) the number of days in such month; provided, however, with respect to the property-level operating accounts, “Average Monthly Liquidity” shall mean the Unrestricted Cash held in such accounts on the first and last day of each month divided by 2.**

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

**“Bail-In Legislation”** ~~With~~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, regulation, rule 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).

**“Bankruptcy Code”** means the Bankruptcy Code of 1978, as amended.

**“Base Rate”** means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) the LIBOR Market Index Rate plus 1.0%; each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or the LIBOR Market Index Rate (provided that clause (c) shall not be applicable during any period in which LIBOR is unavailable or unascertainable).

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

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

**“Beneficial Ownership Regulation”** means 31 CFR § 1010.230.

**“Benefit Arrangement”** means at any time an employee benefit plan within the meaning of Section 3(3) of ERISA which is not a Plan or a Multiemployer Plan and which is maintained or otherwise contributed to by the Borrower, any other Loan Party or any other Subsidiary.

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

**“Borrower Information”** has the meaning given that term in Section 2.5.(c).

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

**“Capitalized Lease Obligations”** means obligations under a lease (or other arrangement conveying the right to use property) to pay rent or other amounts that are required to be capitalized for financial reporting purposes in accordance with GAAP. The amount of a Capitalized Lease Obligation is the capitalized amount of such obligation as would be required to be reflected on a balance sheet of the applicable Person prepared in accordance with GAAP as of the applicable date. The obligations of (i) Sunstone St. Clair, LLC, a Delaware limited liability company and Subsidiary of the Borrower, under the Hyatt Chicago Capital Lease and (ii) Sunstone OP Properties, L.L.C., a Delaware limited liability company and Subsidiary of the Borrower, under the Courtyard Marriott Los Angeles Capital Lease shall not constitute Capitalized Lease Obligations.

**“CARES Act” means the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act and applicable rules and regulations.**

**“CARES Payroll Costs” means “payroll costs” as defined in 15 U.S.C. 636(a)(36)(A)(viii) (as added to the Small Business Act by Section 1102 of the CARES Act).**

**“CARES Forgivable Uses” means uses of proceeds of Government Assistance Indebtedness that are eligible for forgiveness under Section 1106 of the CARES Act.**

**“Cash Collateralize”** means, to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the applicable Issuing Bank or the Revolving Lenders, as collateral for Letter of Credit Liabilities or obligations of Revolving Lenders to fund participations in respect of Letter of Credit Liabilities, cash or deposit account balances or, if the Administrative Agent and the applicable Issuing Bank shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the applicable Issuing Bank. “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: (a) securities issued, guaranteed or insured by the United States of America or any of its agencies with maturities of not more than one year from the date acquired; (b) certificates of deposit with maturities of not more than one year from the date acquired issued by a United States federal or state chartered commercial bank of recognized standing, or a commercial bank organized under the laws of any other country which is a member of the Organisation for Economic Cooperation and Development, or a political subdivision of any such country, acting through a branch or agency, which bank has capital and unimpaired surplus in excess of \$500,000,000 and which bank or its holding company has a short-term commercial paper rating of at least A-2 or the equivalent by S&P or at least P-2 or the equivalent by Moody’s; and (c) investments in money market funds registered under the Investment Company Act of 1940, as amended, which have net assets of at least \$500,000,000 and at least 85% of whose assets consist of securities and other obligations of the type described in clauses (a) through (c) above.

**“Class”** means (a) when used with respect to a Commitment, refers to whether such Commitment is a Revolving Commitment or Term 2 Loan Commitment, (b) when used with respect to a Loan, refers to whether such Loan is a Revolving Loan, a Term 1 Loan or a Term 2 Loan and (c) when used with respect to a Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments.

“Collateral” means (i) the Equity Interests of each Issuer, Material Debt Receivables, and all products and proceeds thereof and other related interests as more fully described as “Pledged Collateral” in the form of Pledge Agreement attached hereto as Exhibit N and (ii) any other assets required to be pledged to the Collateral Agent or the holders of the Senior Notes to secure the obligations thereunder.

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**“Collateral Agent” means Wells Fargo Bank, National Association in its capacity as “Collateral Agent” under the Pledge Agreement and the Intercreditor Agreement.**

**“Commitment”** means a Revolving Commitment or Term 2 Loan Commitment, as the context may require.

**“Commodity Exchange Act”** means the Commodity Exchange Act (7 U.S.C. § 1 et seq.) as amended from time to time, and any successor statute.

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

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

**“Continue”, “Continuation” and “Continued”** each refers to the continuation of a LIBOR Loan from one Interest Period to another Interest Period pursuant to Section 2.9.

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

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

**“Courtyard Marriott Los Angeles Capital Lease”** means that certain Ground Lease dated August 28, 1997, as amended on September 2, 1997, January 23, 1998, January 26, 2002 and December 1, 2003, between Peacock, LLC, as lessor, and Sunstone OP Properties L.L.C., a Delaware limited liability company, as assignee of Sunstone Hotel Investors, L.P.

**“Covenant Relief Period” means, the period commencing on June 30, 2020 and ending on the date which is the earlier of (i) the date the Borrower has delivered a notice (the “Covenant Relief Termination Notice”) to the Administrative Agent electing to terminate the Covenant Relief Period which notice shall attach calculations demonstrating that the Borrower would have been in compliance with the Financial Covenants (as if the Covenant Relief Period was not in effect and without giving effect to Section 10.1(a)(I) and the proviso in the first sentence of 10.1(e)) for the immediately preceding fiscal quarter for which financial statements have been delivered pursuant to Section 9.1. or 9.2. hereof (which fiscal quarter shall not be prior to the fiscal quarter ending September 30, 2020) and (ii) receipt by the Administrative Agent of the quarterly reporting required pursuant to Section 9.1. hereof (together with the Compliance Certificate required under Section 9.3. for such period) for the fiscal quarter ending June 30, 2021; provided that, for purposes of this clause (ii), the Borrower shall be required to be in compliance with the Financial Covenants for the fiscal quarter ending June 30, 2021 and thereafter.**

**“Covenant Relief Termination Notice” has the meaning given to that term in the definition of “Covenant Relief Period”.**

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

**“Credit Rating”** means the rating assigned by a S&P or Moody’s to the senior unsecured long term Indebtedness of a Person.

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

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

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

**“Derivatives Contract”** means a “swap agreement” as defined in Section 101 of the Bankruptcy Code.

**“Derivatives Termination Value”** means, in respect of any one or more Derivatives Contracts, after taking into account the effect of any legally enforceable netting agreement or provision relating to such Derivatives Contracts, (a) for any date on or after the date such Derivatives Contracts have been terminated or closed out, the termination amount or value(s) determined in accordance therewith, 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 Derivatives Contracts, as determined based upon one or more mid-market or other readily available quotations or estimates provided by any recognized dealer in Derivatives Contracts (which may include the Administrative Agent or any Lender).

**“Development Property”** means, as of any date of determination, any Property on which the existing building or other improvements are undergoing renovation and redevelopment that will either (a) disrupt the occupancy of at least 10% of the rentable rooms of such Property or (b) temporarily reduce the Net Operating Income of such Property by more than 10% as compared to the immediately preceding comparable

prior period. A Property that satisfies the foregoing requirements shall constitute a Development Property unless the Borrower in its discretion notifies the Administrative Agent in writing that such Property shall not constitute a Development Property.

**“Disbursement Instruction Agreement”** means an agreement substantially in the form of Exhibit B to be executed and delivered by the Borrower pursuant to Section 6.1.(a), as the same may be amended, restated or modified from time to

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time with the prior written approval of the Administrative Agent (such approval not to be unreasonably withheld, delayed or conditioned).

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

**“Domestic Subsidiary”** means any Subsidiary that is incorporated or organized under the laws of any state of the United States or the District of Columbia.

**“EBITDA”** means, with respect to a Person for any period (without duplication): (a) net income (loss) of such Person for such period determined on a consolidated basis exclusive of the following (but only to the extent included in determination of such net income (loss)): (i) depreciation and amortization expense; (ii) Interest Expense; (iii) income tax expense; (iv) extraordinary or non-recurring gains, losses, revenues and expenses, including, without limitation, initial costs associated with resuming operations at each Property impacted by COVID-19 as disclosed in the public disclosures of the Parent (“Resuming Operation Costs”); and (v) other non-cash charges including, without limitation, impairment charges (other than non-cash charges that constitute an accrual of a reserve for future cash payments) plus (b) such Person’s Ownership Share of EBITDA of its Unconsolidated Affiliates. EBITDA shall be adjusted to remove any impact from (x) non-cash amortization of stock grants to members of the Parent’s management, (y) straight line rent leveling adjustments required under GAAP and (z) amortization of intangibles pursuant to FASB ASC 805. For purposes of determining compliance with the Leverage Ratio, (x) EBITDA attributable to Properties disposed of by the Borrower or any Subsidiary during the period of four consecutive fiscal quarters most recently ended for which financial statements are required to have been delivered pursuant to Section 9.1. or Section 9.2., or disposed of after such period but on or before the applicable date of determination, shall be excluded and (y) EBITDA attributable to any Property acquired by the Borrower or any Subsidiary during the period of four consecutive fiscal quarters most recently ended for which financial statements are required to have been delivered pursuant to Section 9.1. or Section 9.2., or acquired after such period but on or before the applicable date of determination, shall be utilized regardless of the date such Property was acquired by the Borrower or such Subsidiary.

**“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”** ~~Any~~means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

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

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

**“Eligible Assignee”** means any Person that meets the requirements to be an assignee under Section 13.5.(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 13.5.(b)(iii)).

**“Eligible Property”** means a Property which satisfies all of the following requirements as confirmed by the Administrative Agent: (a) such Property is fully developed as (i) an upscale, upper-upscale or luxury (as defined by Smith Travel Research) full-service hotel with not less than 150 keys or (ii) a select-service

(as defined by Smith Travel Research) hotel located in a top-25 market (or resort market, approved by the Administrative Agent in writing (for any Property to be added after the Agreement Date, such approval not to be unreasonably withheld, conditioned or delayed)); (b) such Property is located in a top 50 MSA or, subject to the written approval of the Administrative Agent (for any Property to be added after the Agreement Date, such approval not to be unreasonably withheld, conditioned or delayed), a resort; (c) such Property is free of all structural defects, architectural deficiencies, title defects, environmental conditions or other adverse

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matters except for defects, deficiencies, conditions or other matters which, individually or collectively, are not material to the profitable operation of such Property; (d) such Property is owned in fee simple, or leased under a Ground Lease, entirely by the Borrower or a Subsidiary that is a Guarantor; (e) such Property is located in one of the 48 contiguous states of the United States of America or in Hawaii or the District of Columbia; (f) all material occupancy and operating permits and customary licenses required under Applicable Law for such Property are in effect and such Property is covered by insurance in amounts and upon terms that satisfy the criteria set forth in Section 10.2.; (g) neither such Property, nor if such Property is owned by a Subsidiary, any of the Borrower's direct or indirect ownership interest in such Subsidiary, is subject to (i) any Lien other than Permitted Liens (but not Permitted Liens described in clause (g) of the definition of that term) or (ii) any Negative Pledge other than a Negative Pledge described in Section 10.2.(b)(i) or (ii); (h) regardless of whether such Property is owned by the Borrower or a Subsidiary, the Borrower has the right directly, or indirectly through a Subsidiary, to take the following actions without the need to obtain the consent of any Person: (i) to create Liens on such Property as security for Indebtedness of the Borrower or such Subsidiary, as applicable, and (ii) to sell, transfer or otherwise dispose of such Property; (i) such Property is currently open for business to the public; (j) such Property is (i) branded by a nationally recognized hotel company (such as, but not limited to, Marriott, Hilton, Hyatt, Fairmont, or Intercontinental) or an Affiliate of such a company or (ii) operated as an independent upscale or above hotel subject to the written approval of the Administrative Agent (for any Property to be added after the Agreement Date, such approval not to be unreasonably withheld, conditioned or delayed), another location; and (k) the Administrative Agent has received information and reports regarding such Property as required under Section 4.1.(b).

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

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

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

**“Equity Issuance”** means any issuance by a Person of any Equity Interest in such Person and shall in any event include (i) the issuance of any Equity Interest upon the conversion or exchange of any security

constituting Indebtedness that is convertible or exchangeable, or is being converted or exchanged, for Equity Interests, (ii) the issuance of any Preferred Equity Interests, (iii) any capital contribution made to Parent or Borrower and (iv) the offering of "securities" (as defined under the Securities Act) in a public offering registered under the Securities Act or an offering not required to be registered under the Securities Act (including, without limitation, a private placement under Section 4(2) of the Securities Act, an exempt offering pursuant to Rule 144A and/or Regulation S of the Securities Act and an offering of exempt securities).

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

“ERISA Event” means, with respect to the ERISA Group, (a) any “reportable event” as defined in Section 4043 of ERISA with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the withdrawal of a member of the ERISA Group from a Plan subject to Section 4063 of ERISA during a plan year in which it was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) the incurrence by a member of the ERISA Group of any liability with respect to the withdrawal or partial withdrawal from any Multiemployer Plan; (d) the incurrence by any member of the ERISA Group of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan; (e) the institution of proceedings to terminate a Plan or Multiemployer Plan by the PBGC; (f) the failure by any member of the ERISA Group to make when due required contributions to a Multiemployer Plan or Plan unless such failure is cured within 30 days or the filing pursuant to Section 412(c) of the Internal Revenue Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard; (g) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan or Multiemployer Plan or the imposition of liability under Section 4069 or 4212(c) of ERISA; (h) the receipt by any member of the ERISA Group of any notice from a Multiemployer Plan imposing, or concerning information that could reasonably be expected to result in the imposition of, Withdrawal Liability on such ERISA Group member or informing such ERISA Group member that the Multiemployer Plan is insolvent (within the meaning of Section 4245 of ERISA), in reorganization (within the meaning of Section 4241 of ERISA), or in “critical” status (within the meaning of Section 432 of the Internal Revenue Code or Section 305 of ERISA); (i) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any member of the ERISA Group or the imposition of any Lien in favor of the PBGC under Title IV of ERISA; or (j) a determination that a Plan is, or is reasonably expected to be, in “at risk” status (within the meaning of Section 430 of the Internal Revenue Code or Section 303 of ERISA).

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

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

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

“Excluded Issuer” means any Subsidiary that (i) indirectly (but not directly) owns an Unencumbered Property and (ii) directly or indirectly owns Property that is not an Unencumbered Property.

“Excluded Prepayment Debt” means (i) Nonrecourse Indebtedness described in Section 10.11.(d)(i)(A) or 10.11.(d)(i)(B), (ii) the proceeds of Revolving Loans and Swingline Loans, (iii) Government Assistance Indebtedness, (iv) Nonrecourse Indebtedness secured by a mortgage on a Property and assumed at the time of acquisition of such Property (and not in contemplation thereof), and (v) Indebtedness incurred in the ordinary course of business in an aggregate amount for all such Indebtedness under this clause (v), not to exceed \$5,000,000.

“Excluded Subsidiary” means any Subsidiary as to which both of the following apply (a) such Subsidiary holds title to, or beneficially owns, assets which are or are intended to become collateral for any

Secured Indebtedness of such Subsidiary, or is a direct or indirect beneficial owner of a Subsidiary holding title to or beneficially owning such assets (but having no material assets other than such beneficial ownership interests); and (b) which (i) is, or is expected to be, prohibited from Guarantying the Indebtedness of any other Person pursuant to any document, instrument or agreement evidencing such Secured Indebtedness or (ii) is prohibited from Guarantying the Indebtedness of any other Person pursuant a provision of such Subsidiary's organizational documents which provision was included in such Subsidiary's organizational documents as a condition to the extension of such Secured Indebtedness.

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**“Excluded Swap Obligation”** means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the liability of such Loan Party for or the Guarantee of such Loan Party of, or the grant by such Loan Party of a Lien to secure, such Swap Obligation (or any liability or guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the liability for or the Guarantee of such Loan Party or the grant of such Lien becomes effective with respect to such Swap Obligation (such determination being made after giving effect to any applicable keepwell, support or other agreement for the benefit of the applicable Loan Party, including under Section 31 of the Guaranty). If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or Lien is or becomes illegal for the reasons identified in the immediately preceding sentence of this definition.

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

**“Existing Credit Agreement”** has the meaning set forth in the first recital hereof.

**“Existing Letters of Credit”** means each of the letters of credit identified on Schedule 1.1.(A).

**“Extended Letter of Credit”** has the meaning given that term in Section 2.3.(b).

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

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

**“FATCA”** means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof,

any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any intergovernmental agreements entered into by the United States of America that implement or modify the foregoing (together with the portions of any law implementing such intergovernmental agreements).

**“Federal Funds Rate”** means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by

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the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by the Administrative Agent. If the Federal Funds Rate determined as provided above would be less than zero, the Federal Funds Rate shall be deemed to be zero.

**“Fee Letter”** means, collectively, (a) that certain fee letter dated as of September 14, 2018, by and among the Borrower, Wells Fargo and Wells Fargo Securities, LLC, ~~and~~ (b) each other respective fee letter by and among the Borrower, each other respective Lead Arranger and the other parties thereto and (c) that certain fee letter dated as of the First Amendment Date by and among the Borrower, Wells Fargo Securities, LLC, BofA Securities, Inc. and JPMorgan Chase Bank, N.A.

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

**“FF&E Reserves”** means, for any period and with respect to a Property, an amount equal to the greater of (a) 4.0% of total gross revenues for such Property for such period and (b) the aggregate amount of reserves in respect to furniture, fixtures and equipment required under any Property Management Agreement or Franchise Agreement applicable to such Property for such period. If the term FF&E Reserves is used without reference to a specific Property, then the amount shall be determined on an aggregate basis with respect to all Properties of the Parent and its Subsidiaries and the applicable Ownership Share of all Properties of all Unconsolidated Affiliates of the Parent.

**“Financial Covenants” mean the covenants set forth in clauses (a) – (i) of Section 10.1. hereof.**

**“First Amendment Date” shall mean [        ], 2020.**

**“Fixed Charges”** means, for any period, the sum of the following (without duplication): (a) Interest Expense of the Parent and its Subsidiaries determined on a consolidated basis for such period, (b) all regularly scheduled principal payments made with respect to Indebtedness of the Parent and its Subsidiaries during such period, other than any balloon, bullet or similar principal payment due upon the stated maturity of such Indebtedness, (c) all Preferred Dividends paid during such period on Preferred Equity Interests not owned by the Parent or any of its Subsidiaries and (d) payments in respect of Capitalized Lease Obligations. The Parent’s Ownership Share of the Fixed Charges of Unconsolidated Affiliates of the Parent shall be included in determinations of Fixed Charges.

**“Foreign Lender”** means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

**“Foreign Subsidiary”** means a Subsidiary that is not a Domestic Subsidiary.

**“Franchise Agreement”** means an agreement permitting the use of the applicable hotel brand name, hotel system trademarks, trade names and any related rights in connection with the ownership or operation of a Property.

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

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

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

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**“GAAP”** means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (including Statement of Financial Accounting Standards No. 168, “The FASB Accounting Standards Codification”) or in such other statements by such other entity as may be approved by a significant segment of the accounting profession in the United States of America, which are applicable to the circumstances as of the date of determination.

**“Governmental Approvals”** means all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and reports to, all Governmental Authorities.

**“Governmental Authority”** means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, administrative, public or statutory instrumentality, authority, body, agency, bureau, commission, board, department or other comparable authority (including, without limitation, the Federal Deposit Insurance Corporation, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority) 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 European Central Bank), or any arbitrator with authority to bind a party at law.

**“Government Assistance Indebtedness” means Indebtedness of the Parent, the Borrower or its Subsidiaries incurred pursuant to federal, state or local stimulus plans in response to the COVID-19 pandemic (including, but not limited to, loans provided by the U.S. Small Business Administration) so long as the proceeds of such Indebtedness are used in compliance with all provisions and requirements of the applicable act including any provisions and requirements applicable for such Indebtedness to be forgiven and such Indebtedness ranks on a pari passu or junior basis with the Obligations in right of payment.**

**“Grantor” means each Person who owns Collateral.**

**“Ground Lease”** means a ground lease containing terms and conditions customarily required by mortgagees making a loan secured by the interest of the holder of the leasehold estate demised pursuant to a ground lease, including without limitation, the following: (a) a remaining term (inclusive of any unexercised extension or renewal options that are exercisable without condition (other than a condition that no default exists under such ground lease at the time of exercise of such extension or renewal option)) of 50 years or more from the Agreement Date or, in the event that such remaining term is less than 50 years, such ground lease either (i) contains an unconditional end-of-term purchase option in favor of the lessee for consideration that is de minimus or (ii) provides that the lessee’s leasehold interest therein automatically becomes a fee-owned interest at the end of the term; (b) the right of the lessee to mortgage and encumber its interest in the leased property, and to amend the terms of any such mortgage or encumbrance, in each case, without the consent of the lessor or, if consent is required, such consent has been obtained or is required to be given upon the satisfaction of customary conditions reasonably acceptable to the Administrative Agent; (c) the obligation of the lessor to give the holder of any mortgage Lien on such leased property written notice of any defaults on the part of the lessee and agreement of such lessor that such lease will not be terminated until such holder has had a reasonable opportunity to cure or complete foreclosures, and fails to do so; (d) acceptable transferability of the lessee’s interest under such lease, including ability to sublease; (e) acceptable limitations on the use of the leased property; and (f) clearly determinable rental payment terms which in no event contain profit participation rights.

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

**“Guarantor”** means any Person that is a party to the Guaranty as a “Guarantor” and, in any event, shall include the Parent and each Material Subsidiary (other than Excluded Subsidiaries, Foreign Subsidiaries and any Domestic Subsidiary that has no material assets other than stock and securities of one or more Foreign Subsidiary).

**“Guaranty”, “Guaranteed”, “Guarantying” or to “Guarantee”** as applied to any obligation means and includes: (a) a guaranty (other than by endorsement of negotiable instruments for collection or deposit in the ordinary course of business), directly or indirectly, in any manner, of any part or all of such obligation, or (b) an agreement, direct or indirect,

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contingent or otherwise, and whether or not constituting a guaranty, the practical effect of which is to assure the payment or performance (or payment of damages in the event of nonperformance) of any part or all of such obligation whether by: (i) the purchase of securities or obligations, (ii) the purchase, sale or lease (as lessee or lessor) of property or the purchase or sale of services primarily for the purpose of enabling the obligor with respect to such obligation to make any payment or performance (or payment of damages in the event of nonperformance) of or on account of any part or all of such obligation, or to assure the owner of such obligation against loss, (iii) the supplying of funds to or in any other manner investing in the obligor with respect to such obligation, (iv) repayment of amounts drawn down by beneficiaries of letters of credit (including Letters of Credit), or (v) the supplying of funds to or investing in a Person on account of all or any part of such Person's obligation under a Guaranty of any obligation or indemnifying or holding harmless, in any way, such Person against any part or all of such obligation. Obligations in respect of customary performance guaranties and Guaranties constituting Nonrecourse Indebtedness shall not be deemed to give rise to Indebtedness or otherwise constitute a Guaranty except as otherwise provided in the definition of "Nonrecourse Indebtedness". As the context requires, "Guaranty" shall also mean the guaranty executed and delivered pursuant to Section 6.1. or 8.13. and substantially in the form of Exhibit C.

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

**"Hyatt Chicago Capital Lease"** means that certain Lease dated December 15, 1997 between Chicago Title Land Trust Company, as trustee, as successor trustee to LaSalle Bank National Association, as successor trustee to American National Bank and Trust Company of Chicago, and Sunstone St. Clair, LLC, a Delaware limited liability company, as assignee of Patriot Mortgage Borrower, L.L.C., as assignee of Oxford Wyn 633 Investment Company, L.L.C.

**"Indebtedness"** means, with respect to a Person, at the time of computation thereof, all of the following (without duplication): (a) all obligations of such Person in respect of money borrowed or for the deferred purchase price of property or services (other than trade debt incurred in the ordinary course of business which is not more than 180 days past due); (b) all obligations of such Person, whether or not for money borrowed (i) represented by notes payable, or drafts accepted, in each case representing extensions of credit, (ii) evidenced by bonds, debentures, notes or similar instruments, or (iii) constituting purchase money indebtedness, conditional sales contracts, title retention debt instruments or other similar instruments, upon which interest charges are customarily paid or that are issued or assumed as full or partial payment for property or for services rendered; (c) Capitalized Lease Obligations of such Person; (d) all reimbursement obligations (contingent or otherwise) of such Person under or in respect of any letters of credit or acceptances (whether or not the same have been presented for payment); (e) all Off-Balance Sheet Obligations of such Person; (f) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Mandatorily Redeemable Stock issued by such Person or any other Person, valued at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (g) all obligations of such Person in respect of any (i) purchase obligation, repurchase obligation or takeout commitment, in each case evidenced by a binding agreement and to the extent such obligation is to acquire Equity Interests of another Person, assets of another Person that constitute the business or a division or operating unit of such Person, real estate, bonds, debentures, notes or similar instruments or (ii) forward equity commitment evidenced by a binding agreement (provided, however that this clause (g) shall exclude (x) any such obligation to the extent the obligation can be satisfied by the issuance of Equity Interests (other than Mandatorily

Redeemable Stock) and (y) obligations incurred in the ordinary course of the business of the Borrower and its Subsidiaries to acquire developed Properties within 6 months of the incurrence of such obligations); (h) net obligations under any Derivatives Contract not entered into as a hedge against interest rate risk in respect of existing Indebtedness, in an amount equal to the Derivatives Termination Value thereof at such time (but in no event less than zero); (i) all Indebtedness of other Persons which such Person has Guaranteed or is otherwise recourse to such Person (except for Guaranties constituting Nonrecourse Indebtedness); and (j) all Indebtedness of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property or assets owned by such Person, even though such Person has not assumed or become

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liable for the payment of such Indebtedness or other payment obligation. Indebtedness of any Person shall include Indebtedness of any partnership or joint venture in which such Person is a general partner or joint venturer to the extent of such Person's Ownership Share of the ownership of such partnership or joint venture (except if such Indebtedness, or portion thereof, is recourse (other than in respect of exceptions referred to in the definition of Nonrecourse Indebtedness) to such Person, in which case the greater of such Person's Ownership Share of such Indebtedness or the amount of such recourse portion of the Indebtedness, shall be included as Indebtedness of such Person). All Loans and Letter of Credit Liabilities shall constitute Indebtedness of the Borrower and Government Assistance Indebtedness shall (except to the extent of forgiveness thereof) constitute Indebtedness of the Borrower, the Guarantor or their applicable Subsidiary that is the obligor with respect thereto. The calculation of Indebtedness shall not include (i) any fair value adjustments to the carrying value of liabilities to record such Indebtedness at fair value pursuant to electing the fair value option election under FASB ASC 825-10-25 (formerly known as FAS 159, The Fair Value Option for Financial Assets and Financial Liabilities) or other FASB ASC standards allowing entities to elect fair value option for financial liabilities or (ii) if the Orlando Loan Conditions are satisfied, the Orlando Loan.

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

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

**"Intercreditor Agreement" means, collectively, an intercreditor agreement substantially in the form of Exhibit O attached hereto to be entered into on or prior to the Security Trigger Date by and among the Collateral Agent, the Administrative Agent and the holders of the Senior Notes and any other intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and entered into with the holders of any other Material Collateral Indebtedness secured by the Collateral.**

**"Interest Expense"** means, with respect to a Person and for any period, and without duplication (a) all paid, accrued or capitalized interest expense (including, without limitation, capitalized interest expense (other than (x) capitalized interest funded from a construction loan interest reserve account held by another lender and not included in the calculation of cash for balance sheet reporting purposes) and (y) interest expense attributable to Capitalized Lease Obligations) of such Person and in any event shall include all letter of credit fees and all interest expense with respect to any Indebtedness in respect of which such Person is wholly or partially liable whether pursuant to any repayment, interest carry, performance guarantee or otherwise, plus (b) to the extent not already included in the foregoing clause (a), such Person's Ownership Share of all paid, accrued or capitalized interest expense for such period of Unconsolidated Affiliates of such Person. The term "Interest Expense" shall exclude all costs and expenses, including any prepayment penalties, of defeasing, or otherwise paying or prepaying, any Indebtedness encumbering any Property or amortization of deferred financing fees or the write-off of any deferred financing fees following the acquisition, disposition or refinancing thereof.

**"Interest Period"** means with respect to each LIBOR Loan, each period commencing on the date such LIBOR Loan is made, or in the case of the Continuation of a LIBOR Loan the last day of the preceding Interest Period for such Loan, and ending on the numerically corresponding day in the first, third or sixth calendar month thereafter, as the Borrower may select in a Notice of Borrowing, any notice of a borrowing for a Term Loan, Notice of Continuation or Notice of Conversion, as the case may be, except that each Interest Period that commences on the last Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month. Notwithstanding the foregoing: (i) if any Interest Period for a Class of Loans would otherwise end after the Termination Date for such Class, such Interest Period shall end on such Termination Date; and (ii) each Interest Period that would otherwise end on a day which is not a Business Day

shall end on the immediately following Business Day (or, if such immediately following Business Day falls in the next calendar month, on the immediately preceding Business Day).

**“Internal Revenue Code”** means the Internal Revenue Code of 1986, as amended.

**“Investment”** means, with respect to any Person, any acquisition or investment (whether or not of a controlling interest) by such Person, by means of any of the following: (a) the purchase or other acquisition of any Equity Interest in

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another Person, (b) a loan, advance or extension of credit to, capital contribution to, Guaranty of Indebtedness of, or purchase or other acquisition of any Indebtedness of, another Person, including any partnership or joint venture interest in such other Person, ~~or~~ (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute the business or a division or operating unit of another Person or (d) the purchase of any Property with the proceeds of the Asset Sale of an Unencumbered Property or the Equity Interests of any Subsidiary that directly or indirectly owns an Unencumbered Property, provided that, so long as such purchased Property is then added as an Unencumbered Property, only the difference between the value of such purchased Property and the value of the Unencumbered Property subject to such Asset Sale shall be included as an Investment. Any commitment to make an Investment in any other Person, as well as any option of another Person to require an Investment in such Person, shall constitute an Investment. Except as expressly provided otherwise, for purposes of determining compliance with any covenant contained in a Loan Document, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment. Notwithstanding anything to the contrary, the issuing of Equity Interests or the use of cash or Cash Equivalents to repay an existing mortgage on a Property owned by the Parent, the Borrower or a Subsidiary shall not be deemed to be an "Investment" so long as such Property becomes and remains an Unencumbered Property.

"Issuer" means each Subsidiary of the Borrower that directly or indirectly owns an Unencumbered Property; provided that "Issuer" shall not include any Excluded Issuer.

"Issuing Bank" means each of Wells Fargo, Bank of America, N.A., and JPMorgan Chase Bank, N.A., in its capacity as an issuer of Letters of Credit pursuant to Section 2.3.

"L/C Commitment Amount" has the meaning given to that term in Section 2.3.(a).

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

"Lender" means each financial institution from time to time party hereto as a "Lender" together with its respective successors and permitted assigns, and, as the context requires, includes the Swingline Lender; provided, however, that except as otherwise expressly provided herein, the term "Lender" shall exclude any Lender (or its Affiliates) in its capacity as a Specified Derivatives Provider.

"Lender Parties" means, collectively, the Administrative Agent, the Lenders, the Issuing Banks, the Specified Derivatives Providers, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 12.5., any other holder from time to time of any of any Obligations and, in each case, their respective successors and permitted assigns.

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

"Letter of Credit" has the meaning given that term in Section 2.3.(a).

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

"Letter of Credit Documents" means, with respect to any Letter of Credit, collectively, any application therefor, any certificate or other document presented in connection with a drawing under such Letter of Credit and any other agreement, instrument or other document governing or providing for (a) the

rights and obligations of the parties concerned or at risk with respect to such Letter of Credit or (b) any collateral security for any of such obligations.

**“Letter of Credit Liabilities”** means, without duplication, at any time and in respect of any Letter of Credit (a) the Stated Amount of such Letter of Credit plus (b) the aggregate unpaid principal amount of all Reimbursement Obligations of the Borrower at such time due and payable in respect of all drawings made under such Letter of Credit. For purposes of

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this Agreement, a Revolving Lender (other than a Lender in its capacity as an Issuing Bank of a Letter of Credit) shall be deemed to hold a Letter of Credit Liability in an amount equal to its participation interest under Section 2.3. in such Letter of Credit, and the Lender that is the Issuing Bank of such Letter of Credit shall be deemed to hold a Letter of Credit Liability in an amount equal to its retained interest in such Letter of Credit after giving effect to the acquisition by the Revolving Lenders (other than the Lender then acting as the Issuing Bank of such Letter of Credit) of their participation interests under such Section.

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

“**Leverage Ratio**” means, as of a given date, the ratio of (a)(i) Total Indebtedness as of such date minus (ii) the amount, if any, by which Unrestricted Cash exceeds \$25,000,000 on such date and (2) Total Indebtedness with respect to the Senior Notes, to (b) EBITDA of the Parent for the period of four consecutive fiscal quarters most recently ended for which financial statements are required to have been delivered pursuant to Section 9.1. or Section 9.2. Notwithstanding the foregoing, for purposes of calculating the Leverage Ratio, (A) for the last full fiscal quarter of the Covenant Relief Period (which, (x) if the Covenant Relief Period ends pursuant to clause (i) of the definition thereof will be the period for which the Borrower calculated the Financial Covenants in the Covenant Relief Termination Notice and (y) if the Covenant Relief Period ends pursuant to clause (ii) of the definition thereof, will be June 30, 2021), EBITDA shall be measured as, at Borrower’s election, either (I) EBITDA for the two fiscal quarter period ending on such date multiplied by 2, or (II) EBITDA for the single fiscal quarter ending on such date multiplied by 4; (B) for the fiscal quarter period immediately following the fiscal quarter period described in clause (A), EBITDA shall be measured as, either (I) if for clause (A) above, EBITDA was measured based on sub-clause (I) thereof, then EBITDA shall be measured as EBITDA for the three fiscal quarter period ending on such date multiplied by 4/3, or (II) if for clause (A) above, EBITDA was measured based on sub-clause (II) thereof, then EBITDA shall be measured as EBITDA for the two fiscal quarter period ending on such date multiplied by 2; and (C) for the fiscal quarter period immediately following the fiscal quarter period described in clause (B), EBITDA shall be measured as, either (I) if for clause (A) above, EBITDA was measured based on sub-clause (I) thereof, then EBITDA shall be measured as EBITDA for the four fiscal quarter period ending on such date, or (II) if for clause (A) above, EBITDA was measured based on sub-clause (II) thereof, then EBITDA shall be measured as EBITDA for the three fiscal quarter period ending on such date multiplied by 4/3.

“**Leverage Ratio Surge Period**” has the meaning given that term in Section 10.1.(a).

“**LIBOR**” means, subject to implementation of a Replacement Rate in accordance with Section 5.2.(b), with respect to any LIBOR Loan for any Interest Period, the rate of interest obtained by dividing (i) the rate of interest per annum determined on the basis of the rate for deposits in Dollars for a period equal to the applicable Interest Period as published by the ICE Benchmark Administration Limited, a United Kingdom Company, or a comparable or successor quoting service approved by the Administrative Agent, at approximately 11:00 a.m. (London time) two Business Days prior to the first day of the applicable Interest Period by (ii) a percentage equal to 1 minus the stated maximum rate (stated as a decimal) of all reserves, if any, required to be maintained with respect to Eurocurrency funding (currently referred to as “Eurocurrency liabilities”) as specified in Regulation D of the Board of Governors of the Federal Reserve System (or against any other category of liabilities which includes deposits by reference to which the interest rate on LIBOR Loans is determined or any applicable category of extensions of credit or other assets which includes loans by an office of any Lender outside of the United States of America). If, for any reason, the rate referred to in the preceding clause (i) is not so published, then the rate to be used for such clause (i) shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) two Business Days prior to the first day of the applicable Interest Period for a period equal to such Interest Period. Any change in the maximum rate or reserves described in the preceding clause (ii) shall result in a change in LIBOR on the date on which such change in such maximum rate becomes effective. Notwithstanding the foregoing, (x) in no event shall LIBOR (including, without limitation, any

Replacement Rate with respect thereto) be less than ~~zero~~0.25% and (y) unless otherwise specified in any amendment to this Agreement entered into accordance with Section 5.2.(b), in the event that a Replacement Rate with respect to LIBOR is implemented then all references herein to LIBOR shall be deemed references to such Replacement Rate.

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

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

**“Lien”** as applied to the property of any Person means: (a) any security interest, encumbrance, mortgage, deed to secure debt, deed of trust, assignment of leases and rents, pledge, lien, hypothecation, assignment, charge or lease constituting a Capitalized Lease Obligation, conditional sale or other title retention agreement, or other security title or encumbrance of any kind in respect of any property of such Person, or upon the income, rents or profits therefrom; (b) any arrangement, express or implied, under which any property of such Person is transferred, sequestered or otherwise identified for the purpose of subjecting the same to the payment of Indebtedness or performance of any other obligation in priority to the payment of the general, unsecured creditors of such Person; (c) the filing of any financing statement under the UCC or its equivalent in any jurisdiction, other than any precautionary filing not otherwise constituting or giving rise to a Lien, including a financing statement filed (i) in respect of a lease not constituting a Capitalized Lease Obligation pursuant to Section 9-505 (or a successor provision) of the UCC or its equivalent as in effect in an applicable jurisdiction or (ii) in connection with a sale or other disposition of accounts or other assets not prohibited by this Agreement in a transaction not otherwise constituting or giving rise to a Lien; and (d) any agreement by such Person to grant, give or otherwise convey any of the foregoing.

**“Loan”** means a Revolving Loan, Term Loan or a Swingline Loan, as the context may require.

**“Loan Document”** means this Agreement, each Note, the Guaranty, each Letter of Credit Document, each Fee Letter, the Pledge Agreement (if and when required to be executed and delivered in accordance with the terms hereof), the Intercreditor Agreement (if and when required to be executed and delivered in accordance with the terms hereof) and each other document or instrument now or hereafter executed and delivered by a Loan Party in connection with, pursuant to or relating to this Agreement (other than any Specified Derivatives Contract).

**“Loan Party”** means the Borrower, the Parent ~~and~~, each other Guarantor and each Grantor. Schedule 1.1.(B) sets forth the Loan Parties in addition to the Borrower and the Parent as of the Agreement Date.

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

**“Marketable Securities”** means: (a) common or preferred Equity Interests of Persons located in, and formed under the laws of, any State of the United States or America or the District of Columbia, which Equity Interests are subject to price quotations (quoted at least daily) on The NASDAQ Stock Market’s National Market System or have trading privileges on the New York Stock Exchange, the American Stock Exchange or another recognized national United States securities exchange and (b) securities evidencing Indebtedness

issued by Persons located in, and formed under the laws of, any State of the United States or America or the District of Columbia, which Persons have a Credit Rating of BBB- or Baa3 or better.

**“Material Acquisition”** means any acquisition by the Borrower or any Subsidiary of one or more hotel Properties in which the purchase price of the assets acquired exceeds 10.0% of the Total Asset Value of the Parent, the Borrower and their respective Subsidiaries as of the most recent fiscal quarter for which financial statements are available.

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**“Material Adverse Effect”** means a materially adverse effect on (a) the business, assets, liabilities, financial condition or results of operations of the Parent and its Subsidiaries, or the Borrower and its Subsidiaries, in each case, taken as a whole, (b) the ability of the Borrower or any other Loan Party to perform its obligations under any Loan Document to which it is a party, (c) the validity or enforceability of any of the Loan Documents, or (d) the material rights and remedies of the Lenders, the Issuing Banks and the Administrative Agent under any of the Loan Documents.

**“Material Collateral Indebtedness” means Indebtedness described under clause (a), (b), (c) (d), (f), (i) and (j) of the definition thereof in an amount in excess of \$50,000,000 (individually or in the aggregate with other such Indebtedness) and shall include, in any event, Indebtedness evidenced by the Senior Notes and any Preferred Equity Interests. Notwithstanding the foregoing, Material Collateral Indebtedness shall not include Secured Indebtedness which is Nonrecourse Indebtedness to the extent such Secured Indebtedness is not secured by the Collateral.**

**“Material Contract”** means any contract or other arrangement (other than Loan Documents and Specified Derivatives Contracts), whether written or oral, to which the Parent, the Borrower, or any other Subsidiary is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect.

**“Material Debt Receivables” mean Mortgage Receivables and Secured Mezz Receivables of the Parent, the Borrower or its Subsidiaries which, individually or in the aggregate with other Mortgage Receivables and Secured Mezz Receivables, exceed \$5,000,000.**

**“Material Subsidiary”** means any Subsidiary (a) that directly or indirectly owns in fee simple, or leases pursuant to a Ground Lease, an Unencumbered Property or (b) to which more than 5% of Total Asset Value is attributable on an individual basis.

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

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

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

**“MSA”** means a Metropolitan Statistical Area as listed in Budget Bulletin No. 09-01 issued by the Executive Office of the President of the United States of America, Office of Management and Budget.

**“Multiemployer Plan”** means at any time a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any member of the ERISA Group is then making or accruing an obligation to make contributions or has within the preceding six plan years made contributions, including for these purposes any Person which ceased to be a member of the ERISA Group during such six-year period.

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

**“Net Operating Income” or “NOI”** means, for any Property and for a given period, the sum of the following (without duplication and determined on a consistent basis with prior periods): (a) gross revenues received in the ordinary course from such Property minus (b) all expenses paid (excluding interest but including an appropriate accrual for property

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taxes and insurance) related to the ownership, operation or maintenance of such Property, including but not limited to property taxes, assessments and the like, insurance, utilities, payroll costs, maintenance, repair and landscaping expenses, marketing expenses, and general and administrative expenses (including an appropriate allocation for legal, accounting, advertising, marketing and other expenses incurred in connection with such Property, but specifically excluding general overhead expenses of the Borrower or any Subsidiary and any property management fees) minus (c) the FF&E Reserves for such Property as of the end of such period minus (d) an imputed management fee in the amount of three percent (3.0%) of the gross revenues for such Property for such period. For purposes of determining Adjusted NOI, (x) NOI from Properties disposed of by the Borrower or any Subsidiary during the period of four consecutive fiscal quarters most recently ended for which financial statements are required to have been delivered pursuant to Section 9.1. or Section 9.2. shall be excluded and (y) NOI for the period of four consecutive fiscal quarters most recently ended for which financial statements are required to have been delivered pursuant to Section 9.1. or Section 9.2. for any Property acquired by the Borrower or any Subsidiary during such period shall be utilized regardless of the date such Property was acquired by the Borrower or such Subsidiary. Notwithstanding anything to the contrary, any Resuming Operation Costs shall not be deducted as expenses relating to a Property in accordance with clause (b) above.

“Net Proceeds” means ~~with respect to an Equity Issuance by a Person, (a) the aggregate amount of all cash and the Fair Market Value of all other property (other than securities of such Person being converted or exchanged in connection with such Equity Issuance) received by such Person in respect of such Equity Issuance net of investment banking fees, legal fees, accountants’ fees, underwriting discounts and commissions and other customary fees and expenses actually incurred by such Person in connection with such Equity Issuance.~~ cash proceeds received by the Parent, the Borrower or any of its Subsidiaries in respect of any Asset Sale by the Parent, the Borrower or any such Subsidiary (including any cash received upon the sale or other disposition of any non-cash consideration or Cash Equivalents substantially concurrently received in any Asset Sale, but only as and when received), minus (b) without duplication (i) any deduction of appropriate amounts, including contractual holdbacks, to be provided by the Parent, the Borrower or any of its Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with such Asset Sale and retained by the Parent, the Borrower or any of its Subsidiaries (or held in escrow with a third party escrow agent) after such Asset Sale; provided that such reserved amounts will be deemed to be Net Proceeds to the extent and at the time of any reversal thereof (to the extent not applied to the satisfaction of any applicable liabilities in cash in a corresponding amount) and (ii) any bona fide direct costs incurred in connection with any Asset Sale including legal, accounting and investment banking fees, brokerage and sales commissions, and income Taxes payable as a result of any gain recognized in connection therewith, in each case under this clause (b), to the extent such amounts are not payable to an Affiliate of the Parent, the Borrower or its Subsidiaries minus (c) the amount of such cash proceeds which are used within 10 Business Days of receipt thereof (or deposited with an escrow agent to hold in escrow either (x) in connection with the completion of “like-kind” exchanges being effected in accordance with Section 1031 of the Internal Revenue Code for a period of no more than 180 days of receipt thereof or (y) for a period of no more than 30 days of receipt thereof unless the Borrower or applicable Subsidiary has entered into a binding contract to purchase an Eligible Property on or prior to the expiration of such 30 day period in which case, such period may be extended for up to 60 additional days with the written consent of the Administrative Agent (for the avoidance of doubt, any amounts placed into escrow and not used within the time periods required by this parenthetical shall be considered Net Proceeds to be applied in accordance with Section 2.8.(b)(ii)) for the purchase of Eligible Properties which Eligible Properties are added as Unencumbered Properties pursuant to Section 4.1. hereof within 20 Business Days following the acquisition thereof.

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

consent that requires the approval of only the Requisite Class Lenders of a Class of Lenders, such amendment, waiver or consent has been approved by such Requisite Class Lenders).

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

**“Nonrecourse Indebtedness”** means, with respect to a Person, (a) Indebtedness for borrowed money in respect of which recourse for payment (except for customary exceptions for fraud, misapplication of funds, environmental indemnities, voluntary bankruptcy, collusive involuntary bankruptcy and other similar exceptions to nonrecourse liability) is

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contractually limited to specific assets of such Person encumbered by a Lien securing such Indebtedness or (b) if such Person is a Single Asset Entity, any Indebtedness for borrowed money of such Person.

**“Note”** means a Revolving Note, a Term Note or a Swingline Note, as the context may require.

**“Notice of Additional Unencumbered Property”** has the meaning given that term in Section 4.1.(b).

**“Notice of Borrowing”** means a notice substantially in the form of Exhibit F (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.1.(b) or Section 2.2.(d) evidencing the Borrower’s request for a borrowing of Revolving Loans.

**“Notice of Continuation”** means a notice substantially in the form of Exhibit D (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.9. evidencing the Borrower’s request for the Continuation of a LIBOR Loan.

**“Notice of Conversion”** means a notice substantially in the form of Exhibit E (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.10. evidencing the Borrower’s request for the Conversion of a Loan from one Type to another Type.

**“Notice of Swingline Borrowing”** means a notice substantially in the form of Exhibit G (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Swingline Lender pursuant to Section 2.4.(b) evidencing the Borrower’s request for a Swingline Loan.

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

**“Off-Balance Sheet Obligations”** means, in the case of the Parent, the Borrower or any of their respective Subsidiaries, liabilities and obligations of the Parent, the Borrower, any such Subsidiary or any other Person in respect of “off-balance sheet arrangements” (as defined in Item 303(a)(4)(ii) of Regulation S-K promulgated under the Securities Act) which the Parent would be required to disclose in the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section of the Parent’s report on Form 10-Q or Form 10-K (or their equivalents) which the Parent is required to file with the SEC.

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

**“Operating Property Value”** means, with respect to any Property, the undepreciated book value of such Property, after any impairments and determined in accordance with GAAP.

**“Orlando Borrower”** means Sunstone Sea Harbor, LLC, a Delaware limited liability company.

**“Orlando Lender”** means Sunstone Orlando Lender, LLC, a Delaware limited liability company.

**“Orlando Loan”** means that certain mortgage loan made by Orlando Lender to Orlando Borrower pursuant to that certain Loan Agreement dated as of June 23, 2005 by and between Bear Stearns Commercial Mortgage, Inc., a New York corporation (predecessor in interest to Orlando Lender) and Orlando Borrower as amended by that certain Amendment to Loan Agreement dated as of June 30, 2016 by and between Orlando Lender and Orlando Borrower.

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**“Orlando Loan Conditions”** means the following: (a) the Orlando Lender is a Wholly Owned Subsidiary of the Borrower, (b) the Orlando Loan is reflected as both a note receivable and a note payable on the balance sheet of the Parent’s Subsidiaries and is eliminated on the consolidated balance sheet of the Parent, (b) the Orlando Lender has no Indebtedness, (c) there are no Liens on (i) the Orlando Loan or any other asset owned by the Orlando Lender other than Permitted Liens (but not Permitted Liens described in clauses (g) or (h) of the definition thereof) or (ii) the Equity Interests of the Orlando Lender other than Permitted Liens described in clause (a) of the definition thereof and (e) the Orlando Lender is engaged solely in the business of holding the Orlando Loan and activities incidental thereto and the assets of the Orlando Lender consist solely of (i) the Orlando Loan and (ii) cash and other assets of nominal value incidental to Orlando Lender’s ownership of the Orlando Loan.

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

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

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

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

**“Participant”** has the meaning given that term in Section 13.5.(d).

**“Participant Register”** has the meaning given that term in Section 13.5.(d).

**“Patriot Act”** means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended from time to time, and any successor statute.

**“PBGC”** means the Pension Benefit Guaranty Corporation and any successor agency.

**“Permitted Liens”** means, with respect to any asset or property of a Person, (a) Liens securing taxes, assessments and other charges or levies imposed by any Governmental Authority (excluding any Lien imposed pursuant to any of the provisions of ERISA or pursuant to any Environmental Laws) which, in each case, are not at the time required to be paid or discharged under Section 8.6., (b) the claims of materialmen, mechanics, carriers, warehousemen or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business, which, in each case, are not at the time required to be paid or discharged under Section 8.6.; (c) Liens consisting of deposits or pledges made, in the ordinary course of business, in connection with, or to secure

payment of, obligations under workers' compensation, unemployment insurance or similar Applicable Laws; (d) Liens consisting of encumbrances in the nature of zoning restrictions, easements, and rights or restrictions of record on the use of real property, which do not materially detract from the value of such property or impair the intended use thereof in the business of such Person; (e) the rights of tenants under leases or subleases not interfering

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with the ordinary conduct of business of such Person; ~~and~~ (f) Liens in favor of the Administrative Agent for its benefit and the benefit of the other Lender Parties; (g) Liens in existence on the Agreement Date and set forth on Schedule 7.1.(g) ~~and~~; (h) solely with respect to Renaissance Orlando at Seaworld and only so long as the Orlando Loan Conditions are satisfied, the mortgage in favor of the Orlando Lender securing the Orlando Loan; and (i) after the Security Trigger Date and prior to the Security Release Date, Liens in the Collateral in favor of the Collateral Agent for the benefit of the holders of the Senior Notes and subject to the terms of the Intercreditor Agreement.

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

**“Plan”** means at any time an employee pension benefit plan within the meaning of Section 3(2) of ERISA (other than a Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Internal Revenue Code and either (a) is maintained, or contributed to, by any member of the ERISA Group for employees of any member of the ERISA Group or (b) has at any time within the preceding six years been maintained, or contributed to, by any Person which was at such time a member of the ERISA Group for employees of any Person which was at such time a member of the ERISA Group.

**“Pledge Agreement”** means a pledge agreement substantially in the form of Exhibit N attached hereto to be entered into on or prior to the Security Trigger Date by and among the Collateral Agent and each Grantor together with any other security document now or hereafter granted to secure the Obligations.

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

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

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

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

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

**“Pro Rata Share”** means, as to each Lender, the ratio, expressed as a percentage of (a)(i) the aggregate amount of such Lender’s Revolving Commitments plus (ii) the aggregate amount of such Lender’s outstanding Term Loans to (b)(i) the aggregate amount of the Revolving Commitments of all Lenders plus (ii) the aggregate principal amount of all outstanding Term Loans; provided, however, that if at the time of determination the Revolving Commitments have been terminated or reduced to zero, the “Pro Rata Share” of each Lender shall be the ratio, expressed as a percentage of (A) the

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sum of the aggregate principal amount of all outstanding Revolving Loans, Term Loans, Swingline Loans and Letter of Credit Liabilities owing to such Lender as of such date to (B) the sum of the aggregate principal amount of all outstanding Revolving Loans, Term Loans, Swingline Loans and Letter of Credit Liabilities. If at the time of determination the Revolving Commitments have been terminated or reduced to zero and there are no outstanding Loans or Letter of Credit Liabilities, then the Pro Rata Shares of the Lenders shall be determined as of the most recent date on which Revolving Commitments were in effect or Loans or Letters of Credit Liabilities were outstanding. For purposes of this definition, a Revolving Lender shall be deemed to hold a Swingline Loan or a Letter of Credit Liability to the extent such Revolving Lender has acquired a participation therein under the terms of this Agreement and has not failed to perform its obligations in respect of such participation.

**“Property”** means any parcel (or group of related parcels) of real property owned or leased (in whole or in part) or operated by the Parent, the Borrower, any other Subsidiary or any Unconsolidated Affiliate of the Parent.

**“Property Management Agreement”** means, collectively, all agreements entered into by a Loan Party pursuant to which such Loan Party engages a Person to advise it with respect to the management of an Unencumbered Property or to provide management services with respect to the same.

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

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

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

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

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

**“Reinvestment Asset” means (i) Eligible Properties which are added as Unencumbered Properties pursuant to Section 4.1. hereof within 20 Business Days following the acquisition thereof; provided, that, for purposes herein, the repayment of Nonrecourse Indebtedness on a Property, such that after such repayment such Property becomes an Eligible Property, shall be included as a “Reinvestment Asset” so long as such Eligible Property is added as an Unencumbered Property pursuant to this clause (i), and (ii) so long as (x) after the Security Trigger Date and prior to the Security Release Date, any Material Debt Receivables are pledged as Collateral under the Pledge Agreement and**

(y) the Investment in such assets is permitted by Section 10.11.(b), Senior Mortgage Receivables, other Mortgage Receivables and Secured Mezz Receivables.

“**REIT**” means a Person qualifying for treatment as a “real estate investment trust” under the Internal Revenue Code.

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

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**“Replacement Rate”** has the meaning assigned thereto in Section 5.2.(c).

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

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

**“Resolution Authority” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.**

**“Responsible Officer”** means with respect to the Borrower or any Subsidiary, the chief executive officer, the chief financial officer, the treasurer and any senior vice president of the Borrower or such Subsidiary.

**“Restricted Payment”** means (a) any dividend or other distribution, direct or indirect, on account of any Equity Interest of the Parent, the Borrower or any Subsidiary now or hereafter outstanding, except a dividend payable solely in Equity Interests; (b) any redemption, conversion, exchange, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interest of the Parent, the Borrower or any Subsidiary now or hereafter outstanding; and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any Equity Interests of the Parent, the Borrower or any Subsidiary now or hereafter outstanding.

**“Resuming Operation Costs” shall have the meaning given to such term in the definition of “EBITDA”.**

**“Revolving Commitment”** means, as to each Revolving Lender (other than the Swingline Lender), such Revolving Lender’s obligation to make Revolving Loans pursuant to Section 2.1., to issue (in the case of an Issuing Bank) and to participate (in the case of the other Revolving Lenders) in Letters of Credit pursuant to Section 2.3.(i), and to participate in Swingline Loans pursuant to Section 2.4.(e), in an amount up to, but not exceeding, the amount set forth for such Revolving Lender on Schedule I as such Revolving Lender’s “Revolving Commitment Amount” or as set forth in the applicable Assignment and Assumption or agreement executed by a Person becoming a Revolving Lender pursuant to Section 2.16., as the same may be reduced from time to time pursuant to Section 2.12. or increased or reduced as appropriate to reflect any assignments

to or by such Revolving Lender effected in accordance with Section 13.5. or increased as appropriate to reflect any increase effected in accordance with Section 2.16.

**“Revolving Commitment Percentage”** means, as to each Lender with a Revolving Commitment, the ratio, expressed as a percentage, of (a) the amount of such Lender’s Revolving Commitment to (b) the aggregate amount of the Revolving Commitments of all Revolving Lenders; provided, however, that if at the time of determination the Revolving Commitments have been terminated or reduced to zero, the “Revolving Commitment Percentage” of each Lender with a

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Revolving Commitment shall be the “Revolving Commitment Percentage” of such Lender in effect immediately prior to such termination or reduction.

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

“**Revolving Lender**” means a Lender having a Revolving Commitment, or if the Revolving Commitments have been terminated or reduced to zero, holding any Revolving Loans.

“**Revolving Loan**” means a loan made by a Revolving Lender to the Borrower pursuant to Section 2.1.(a).

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

“**Revolving Termination Date**” means April 14, 2023 or such later date to which the Revolving Termination Date may be extended pursuant to Section 2.13.

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

“**Sanctioned Person**” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including, without limitation, OFAC’s Specially Designated Nationals and Blocked Persons List and OFAC’s Consolidated Non-SDN List), the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in clauses (a) and (b), including Persons that are a target of Sanctions due to their ownership or control by any Sanctioned Persons.

“**Sanctions**” means economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and anti-terrorism laws, including but not limited to those imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority with jurisdiction over any Lender in each case applicable to activities of the Parent, the Borrower or any of their respective Subsidiaries or Affiliates.

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

“**Secured Indebtedness**” means, with respect to a Person as of a given date, the aggregate principal amount of all Indebtedness of such Person outstanding on such date that is secured in any manner by any Lien on any property and, in the case of the Parent, shall include (without duplication) the Parent’s Ownership Share of the Secured Indebtedness of its Unconsolidated Affiliates; provided, however that after the Security Trigger Date and prior to the Security Release Date, Secured Indebtedness shall not include the Obligations or the obligations evidenced by the Senior Notes.

“**Secured Mezz Receivables**” means promissory notes (other than a promissory note issued by the Parent or any Subsidiary of the Parent) which are not senior obligations of the issuer thereof and which are secured by a pledge of Equity Interests in the owner of a Property of which promissory note the Parent, the Borrower or another Subsidiary is the holder and retains the rights of collection of all payments thereunder.

**“Secured Recourse Indebtedness”** means all Indebtedness (including Guaranties of Secured Indebtedness) that is Secured Indebtedness and is not Nonrecourse Indebtedness.

**“Securities Act”** means the Securities Act of 1933, as amended from time to time, together with all rules and regulations issued thereunder.

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“Security Release Date” shall mean the date upon which the Borrower has delivered a notice to the Administrative Agent certifying that the following has occurred: (i) the Covenant Relief Period shall have ended and the Borrower shall have demonstrated compliance (in its regular quarterly and/or annual reporting) of, at Borrower’s election, either (x) for the two immediately prior fiscal quarters, a Leverage Ratio of not more than 6.50 to 1.00 or (y) for the immediately prior fiscal quarter a Leverage Ratio of not more than 6.00 to 1.00, (ii) no Default or Event of Default shall have occurred and be continuing and (iii) the liens, if any, securing the Senior Notes and any other Material Collateral Indebtedness have been released or shall be released substantially simultaneously therewith. The Administrative Agent shall be authorized to release all liens securing the Senior Credit Facilities on the Security Release Date.

“Security Trigger Date” means the earliest date any of the following shall occur (i) Availability is, at any time, less than \$350,000,000, (ii) the Borrower and its Subsidiaries have aggregate Unrestricted Cash on the balance sheet of less than \$200,000,000 or (iii) the Parent, the Borrower or any of its Subsidiaries grant a Lien (or agree to grant a Lien) to secure the Senior Notes, any Preferred Equity or other Material Collateral Indebtedness. The Security Trigger Date shall not in any event be deemed to occur after the occurrence of the Security Release Date.

“Senior Mortgage Receivables” means Mortgage Receivables which constitute senior debt of the issuer thereof.

“Senior Notes” mean those certain notes issued by the Borrower under the Senior Notes Agreement.

“Senior Notes Agreement” means that certain Note and Guaranty Agreement of the Borrower and the Parent dated as of December 20, 2016.

“Significant Subsidiary” means any Subsidiary to which more than \$10,000,000 of Total Asset Value is attributable.

“Single Asset Entity” means a Person (other than an individual) that (a) only owns a single Property; (b) is engaged only in the business of owning, developing and/or leasing such Property; and (c) receives substantially all of its gross revenues from such Property. In addition, if the assets of a Person consist solely of (i) Equity Interests in one or more Single Asset Entities that directly or indirectly own such single Property and (ii) cash and other assets of nominal value incidental to such Person’s ownership of the other Single Asset Entity, such Person shall also be deemed to be a Single Asset Entity for purposes of this Agreement.

“Solvent” means, when used with respect to any Person (or group of Persons), that (a) the fair value and the fair salable value of its (or their) assets (excluding any Indebtedness due from any Affiliate of such Person (or group of Persons)) are each in excess of the fair valuation of its (or their) total liabilities (including all contingent liabilities computed at the amount which, in light of all facts and circumstances existing at such time, represents the amount that could reasonably be expected to become an actual and matured liability); (b) such Person is (or group of Persons are) able to pay its (or their) debts or other obligations in the ordinary course as they mature; and (c) such Person (or group of Persons) has capital not unreasonably small to carry on its (or their) business and all business in which it proposes (or they propose) to be engaged.

“Specified Derivatives Contract” means any Derivatives Contract that is made or entered into at any time, or in effect at any time now or hereafter, whether as a result of an assignment or transfer or otherwise, between or among any Loan Party and any Specified Derivatives Provider, and which (i) was not prohibited by any of the Loan Documents when made or entered into, and (ii) have been designated by the Specified Derivatives Provider by notice to Administrative Agent (unless such Specified Derivatives Provider is the

Administrative Agent) as a Specified Derivatives Contract entitled to the benefits of, and subject to the obligations under, this Agreement and the other Loan Documents.

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

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**“S&P”** means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, or any successor.

**“Stated Amount”** means the amount available to be drawn by a beneficiary under a Letter of Credit from time to time, as such amount may be increased or reduced from time to time in accordance with the terms of such Letter of Credit. Unless otherwise specified herein, the Stated 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, that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit Document related thereto, provides for one or more automatic increases in the stated amount thereof, the Stated 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.

**“Subsidiary”** means, for any Person, any corporation, partnership, limited liability company or other entity of which at least a majority of the Equity Interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other individuals performing similar functions of such corporation, partnership, limited liability company or other entity (without regard to the occurrence of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person, and shall include all Persons the accounts of which are consolidated with those of such Person pursuant to GAAP.

**“Sunstone 42nd St.” means Sunstone 42nd St. LLC, a Delaware limited liability company.**

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

**“Swingline Commitment”** means the Swingline Lender’s obligation to make Swingline Loans pursuant to Section 2.4. in an amount up to, but not exceeding the amount set forth in the first sentence of Section 2.4.(a), as such amount may be reduced from time to time in accordance with the terms hereof.

**“Swingline Lender”** means Wells Fargo, together with its successors and permitted assigns.

**“Swingline Loan”** means a loan made by the Swingline Lender to the Borrower pursuant to Section 2.4.

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

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

**“Tangible Net Worth”** means, as of a given date, the stockholders’ equity of the Parent and its Subsidiaries determined on a consolidated basis plus accumulated depreciation and amortization, minus (to the extent included when determining such stockholders’ equity): (a) the amount of any write-up in the book value of any assets reflected in any balance sheet resulting from revaluation thereof or any write-up in excess of the cost of such assets acquired, and (b) the aggregate of all amounts appearing on the assets side of any such balance sheet for franchises, licenses, permits, patents, patent applications, copyrights, trademarks, service marks, trade names, goodwill, treasury stock, experimental or organizational expenses and other like assets which would be classified as intangible assets under GAAP, all determined on a consolidated basis.

**“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 1 Loan”** means a loan made by a Term Loan Lender to the Borrower pursuant to the Existing Credit Agreement or Section 2.16.

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**“Term 1 Loan Lender”** means a Lender holding a Term 1 Loan.

**“Term 1 Loan Note”** means a promissory note of the Borrower payable to the order of a Term 1 Loan Lender in a principal amount equal to the amount of such Term 1 Loan Lender’s Term 1 Loans.

**“Term 2 Loan”** means a loan made by a Term Loan Lender to the Borrower pursuant to Section 2.2.(c) or Section 2.16.

**“Term 2 Loan Commitment”** means, as to each Term 2 Loan Lender, such Lender’s obligation to make Term 2 Loans on the Effective Date in an amount up to, but not exceeding, the amount set forth for such Lender on Schedule I as such Lender’s “Term 2 Loan Commitment Amount”.

**“Term 2 Loan Lender”** means a Lender having a Term 2 Loan Commitment, or if the Term 2 Loan Commitments have been terminated or reduced to zero, a Lender holding a Term 2 Loan.

**“Term 2 Loan Note”** means a promissory note of the Borrower payable to the order of a Term 2 Loan Lender in a principal amount equal to the amount of such Term 2 Loan Lender’s Term 2 Loans.

**“Term Loan”** means a Term 1 Loan or a Term 2 Loan, including an Additional Term Loan made pursuant to Section 2.16.

**“Term Loan Lender”** means a Term 1 Loan Lender or a Term 2 Loan Lender.

**“Term Loan Maturity Date”** means, (a) with respect to the Term 1 Loans, September 3, 2022 and (b) with respect to the Term 2 Loans, January 31, 2023.

**“Term Note”** means a Term 1 Loan Note or a Term 2 Loan Note.

**“Termination Date”** means (a) with respect to the Revolving Commitments and the Revolving Loans, the Revolving Termination Date and (b) with respect to any Class of Term Loans, the applicable Term Loan Maturity Date.

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

**“Total Asset Value”** means the sum of all of the following of the Parent, the Borrower and their respective Subsidiaries (without duplication) on a consolidated basis determined in accordance with GAAP applied on a consistent basis: (a) the Operating Property Value of all Properties of the Parent, the Borrower and their respective Subsidiaries on which a hotel is located, plus (b) the book value of Unimproved Land, the undepreciated book value of Development Properties, the book value of Mortgage Receivables and other promissory notes, plus (c) the Parent’s Ownership Share of the preceding items for its Unconsolidated Affiliates, plus (d) in the case of any property subject to a purchase obligation, repurchase obligation or takeout commitment which at such time (x) could not be specifically enforced by the seller of such property, the aggregate amount of due diligence deposits, earnest money payments and other similar payments made under the applicable contract which, at such time, would be subject to forfeiture upon termination of the contract or (y) could be specifically enforced by the seller of such property, the contractual purchase price of such property, but, in either case, only to the extent the amount of the applicable purchase obligation, repurchase obligation or takeout commitment is included in the Indebtedness of the Borrower and its Subsidiaries on a consolidated basis. For purposes of determining Total Asset Value, (i) to the extent the amount of Total Asset Value attributable to Unimproved Land would exceed 5% of Total Asset Value, such excess shall be excluded, (ii) to the extent the amount of Total Asset Value attributable to Mortgage Receivables and other promissory notes would exceed 15% of Total Asset Value, such excess shall be excluded, (iii) to the extent the amount of Total Asset Value attributable to Unconsolidated Affiliates would exceed 20% of Total Asset Value, such excess shall be excluded, (iv) to the extent the amount of Total Asset

Value attributable to Development Properties would exceed 15% of Total Asset Value, such excess shall be excluded and (v) to the extent the amount of Total Asset Value attributable to the items described in clauses (i) through (v) would exceed 35% of Total Asset Value, such excess shall be excluded. The percentage of Total Asset Value attributable to a given Subsidiary shall be equal to the ratio expressed as a percentage

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of (x) an amount equal to Total Asset Value calculated solely with respect to assets owned directly by such Subsidiary to (y) Total Asset Value.

**“Total Indebtedness”** means without duplication: (a) all Indebtedness of the Parent, the Borrower and all other Subsidiaries determined on a consolidated basis plus (b) the Parent’s Ownership Share of the Indebtedness of all Unconsolidated Affiliates of the Parent.

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

**“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 Kingdom Prudential Regulation Authority) or any Person falling within 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, with respect to any Person, any other Person in whom such Person holds an Investment, which Investment is accounted for in the financial statements of such Person on an equity basis of accounting and whose financial results would not be consolidated under GAAP with the financial results of such Person on the consolidated financial statements of such Person.

**“Unencumbered Asset Value”** means at any time the aggregate Operating Property Values of the Unencumbered Properties at such time. For purposes of this definition, the Operating Property Value for any Unencumbered Property shall be reduced by an amount equal to (a) the amount by which the Operating Property Value of such Unencumbered Property would exceed 30% of the aggregate Operating Property Values of all Unencumbered Properties and (b) the amount by which the Operating Property Value of Unencumbered Properties located in the same MSA as such Property would exceed 40% of the aggregate Operating Property Value of all Unencumbered Properties. In addition to the extent that Unencumbered Asset Value attributable to Properties leased under Ground Leases would exceed 25% of Unencumbered Asset Value, such excess shall be excluded.

**“Unencumbered Leverage Ratio Surge Period”** has the meaning given that term in Section 10.1.(d).

**“Unencumbered Property”** means an Eligible Property that is included in the calculation of Unencumbered Asset Value pursuant to Section 4.1. A Property shall cease to be an Unencumbered Property if at any time such Property shall cease to be an Eligible Property (unless such Property has been approved or been deemed to have been approved as an Unencumbered Property by the Requisite Lenders in accordance with Section 4.1.(c)).

**“Unimproved Land”** means land on which no development (other than improvements that are not material and are temporary in nature) has occurred. Unimproved Land shall not include any undeveloped parcels of a Property that has been developed unless and until the Borrower provides written notice to the Administrative Agent that the Borrower intends to develop such parcel.

**“Unrestricted Cash”** means cash and ~~cash equivalents~~Cash Equivalents held by the Borrower and its Subsidiaries other than tenant deposits and other cash and cash equivalents that are subject to a Lien or a Negative Pledge or the disposition of which is restricted in any way.

**“Unsecured Indebtedness”** means with respect to a Person as of any given date, the aggregate principal amount of all Indebtedness of such Person outstanding at such date that is not Secured Indebtedness.

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**“Unsecured Interest Expense”** means, for any period of four consecutive fiscal quarters (subject to Section 10.1(e)), the greater of (a) actual Interest Expense on all Unsecured Indebtedness of the Parent and its Subsidiaries on a consolidated basis or (b) 6.00%.

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

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

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

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

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

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

**“Write-Down and Conversion Powers”** ~~With~~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 such 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.

## **Section 1.2. General; References to Central Time.**

Unless otherwise indicated, all accounting terms, ratios and measurements shall be interpreted or determined in accordance with GAAP from time to time; provided that (i) if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Requisite Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; and (ii) until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) 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 preceding sentence, (A) the calculation of liabilities shall not include any fair value adjustments to the carrying value of liabilities to record such liabilities at fair value pursuant to electing the fair value option election under FASB ASC 825-10-25 (formerly known as FAS 159, The Fair Value Option for Financial Assets and Financial Liabilities) or other FASB standards allowing entities to elect fair value option for financial liabilities and (B) for purposes of calculating the covenants under this Agreement or any other Loan Document, any (i) obligations of a Person under a lease (whether existing on the Agreement Date or entered into thereafter) that

is not (or would not be) required to be classified and accounted for as a capitalized lease on a balance sheet of such Person prepared in accordance with GAAP as in effect on the Agreement Date shall not be treated as a capitalized lease pursuant to this Agreement or the other Loan Documents, (ii) non-cash expense that is incurred will be excluded in the financial covenant calculations, or (iii) adjustments in the determination of Indebtedness will disregarded in the financial covenant calculations, solely as a result of (1) the adoption of changes in GAAP after the Agreement Date (including, for the avoidance of doubt, any changes in GAAP as set forth in FASB ASC 842 (as the same may be amended

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from time to time)) or (2) changes in the application of GAAP after the Agreement Date (including the avoidance of doubt, any changes as set forth in FASB ASC 842 (as the same may be amended from time to time)); provided, however, that upon the request of the Administrative Agent or any Lender the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to any such adoption of changes in, or the application of, GAAP. References in this Agreement to “Sections”, “Articles”, “Exhibits” and “Schedules” are to sections, articles, exhibits and schedules herein and hereto unless otherwise indicated. References in this Agreement to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) except as expressly provided otherwise in any Loan Document, shall include all documents, instruments or agreements issued or executed in replacement thereof, to the extent permitted hereby and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, supplemented, restated or otherwise modified from time to time to the extent not otherwise stated herein or prohibited hereby and in effect at any given time. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter. Unless explicitly set forth to the contrary, a reference to “Subsidiary” means a Subsidiary of the Parent or a Subsidiary of such Subsidiary and a reference to an “Affiliate” means an Affiliate of the Borrower. Titles and captions of Articles, Sections, subsections and clauses in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement. Unless otherwise indicated, all references to time are references to Central time daylight or standard, as applicable.

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

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

### **Section 1.4. Rates.**

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

### **Section 1.5. Divisions.**

**For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.**

## **ARTICLE II. CREDIT FACILITY**

### **Section 2.1. Revolving Loans.**

(a) **Making of Revolving Loans.** Subject to the terms and conditions set forth in this Agreement, including without limitation, Section 2.15., each Revolving Lender severally and not jointly agrees to make Revolving Loans to the Borrower during the period from and including the Effective Date to but excluding the Revolving Termination Date, in an aggregate principal amount at any one time outstanding up to, but not exceeding, such Revolving Lender’s Commitment. Each borrowing of Revolving Loans that are to be (i) Base Rate Loans shall be in an aggregate minimum amount of \$500,000 and integral multiples of

\$100,000 in excess thereof and (ii) LIBOR Loans shall be in an aggregate minimum amount of \$1,000,000 and integral multiples of \$100,000 in excess thereof. Notwithstanding the immediately preceding two sentences but subject to Section 2.15., a borrowing of Revolving Loans may be in the aggregate amount of the unused Revolving Commitments. Within the foregoing limits and subject to the terms and conditions of this Agreement, the Borrower may borrow, repay and reborrow Revolving Loans.

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(b) Requests for Revolving Loans. Not later than 11:00 a.m. Central time at least 1 Business Day prior to a borrowing of Revolving Loans that are to be Base Rate Loans and not later than 11:00 a.m. Central time at least 3 Business Days prior to a borrowing of Revolving Loans that are to be LIBOR Loans, the Borrower shall deliver to the Administrative Agent a Notice of Borrowing. Each Notice of Borrowing shall specify the aggregate principal amount of the Revolving Loans to be borrowed, the date such Revolving Loans are to be borrowed (which must be a Business Day), the Type of the requested Revolving Loans, and if such Revolving Loans are to be LIBOR Loans, the initial Interest Period for such Revolving Loans. Each Notice of Borrowing shall be irrevocable once given and binding on the Borrower. Prior to delivering a Notice of Borrowing, the Borrower may (without specifying whether a Revolving Loan will be a Base Rate Loan or a LIBOR Loan) request that the Administrative Agent provide the Borrower with the most recent LIBOR available to the Administrative Agent. The Administrative Agent shall provide such quoted rate to the Borrower on the date of such request or as soon as possible thereafter.

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

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

(e) Reallocations. Simultaneously with the Effective Date, the outstanding amount of all "Revolving Loans" (as defined in the Existing Credit Agreement) of the "Lenders" (as defined in the Existing Credit Agreement) having a "Revolving Commitment" (as defined in the Existing Credit Agreement) (the "Existing Revolving Lenders") previously made to the Borrower under the Existing Credit Agreement and participations in Existing Letters of Credit of the Existing Revolving Lenders shall be reallocated among the Revolving Lenders in accordance with their respective Revolving Commitment Percentages (determined in accordance with the amount of each Revolving Lender's Commitment set forth on Schedule I), and in order to effect such reallocations, the requisite assignments shall be deemed to be made in amounts from each Existing

Revolving Lender to each Revolving Lender, with the same force and effect as if such assignments were evidenced by the applicable Assignment and Assumptions (as defined in the Existing Credit Agreement) under the Existing Credit Agreement and without the payment of any related assignment fee, and no other documents or instruments shall be, or shall be required to be, executed in connection with such assignments (all of which are hereby waived) and (ii) each assignee Revolving Lender shall make full cash settlement with each corresponding assignor Existing Revolving Lender, through the Administrative Agent, as the Administrative Agent may direct (after giving effect to any netting effected by the Administrative Agent) with respect to such reallocations and assignments.

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## Section 2.2. Term Loans.

(a) Term 1 Loans. Pursuant to the Existing Credit Agreement, certain of the Existing Lenders (the “Existing Term Loan Lenders”) made Term Loans (as defined in the Existing Credit Agreement) denominated in Dollars to the Borrower. The Borrower hereby agrees and acknowledges that as of the Effective Date, the outstanding principal balance of such Term Loans is set forth on Schedule I and shall for all purposes hereunder constitute and be referred to as Term 1 Loans hereunder, without constituting a novation, but in all cases subject to the terms and conditions applicable to Term 1 Loans and Term Loans hereunder. Any portion of a Term 1 Loan that is repaid or prepaid may not be reborrowed. Additional Term 1 Loans shall be made in accordance with Section 2.16.

(b) Reallocations of Term 1 Loans. Simultaneously with the Effective Date, (i) the outstanding amount of all Term Loans (as defined in the Existing Credit Agreement) previously made to the Borrower under the Existing Credit Agreement shall be reallocated among the Term 1 Loan Lenders determined in accordance with the amount of each Term 1 Loan Lender’s outstanding principal balance of Term 1 Loans set forth on Schedule I, and in order to effect such reallocations, the requisite assignments shall be deemed to be made in amounts from each Existing Term Loan Lender to each Term 1 Loan Lender, with the same force and effect as if such assignments were evidenced by the applicable Assignment and Assumptions (as defined in the Existing Credit Agreement) under the Existing Credit Agreement and without the payment of any related assignment fee, and no other documents or instruments shall be, or shall be required to be, executed in connection with such assignments (all of which are hereby waived) and (ii) each assignee Term 1 Loan Lender shall make full cash settlement with each corresponding assignor Existing Term Loan Lender, through the Administrative Agent, as the Administrative Agent may direct (after giving effect to any netting effected by the Administrative Agent) with respect to such reallocations and assignments.

(c) Term 2 Loans. Subject to the terms and conditions set forth in this Agreement, on the Effective Date, each Term 2 Loan Lender severally and not jointly agrees to make a Term 2 Loan to the Borrower in the principal amount set forth for such Term 2 Loan Lender on Schedule I as such Term 2 Loan Lender’s “Term 2 Loan Commitment Amount”. Upon the funding by each Term 2 Loan Lender of its Term 2 Loan on the Effective Date, the Term 2 Loan Commitment of such Term 2 Loan Lender shall terminate whether or not the full amount of the Term 2 Loan Commitments are funded on such date. Any portion of a Term 2 Loan that is repaid or prepaid may not be reborrowed. Additional Term 2 Loans shall be made in accordance with Section 2.16.

(d) Request for Term 2 Loans. The Borrower shall deliver to the Administrative Agent a Notice of Borrowing requesting that the Term 2 Loan Lenders make Term 2 Loans on the Effective Date. Such Notice of Borrowing shall be delivered to the Administrative Agent not later than 11:00 a.m. Central time at least 1 Business Day prior to a borrowing of Term 2 Loans that are to be Base Rate Loans and not later than 11:00 a.m. Central time at least 3 Business Days prior to a borrowing of Term 2 Loans that are to be LIBOR Loans. Such Notice of Borrowing shall specify the aggregate principal amount of the Term 2 Loans to be borrowed, the Type of the requested Term 2 Loans, and if such Term 2 Loans are to be LIBOR Loans, the initial Interest Period for such Term 2 Loans.

(e) Funding of Term 2 Loans. Promptly after receipt of the Notice of Borrowing under the immediately preceding subsection (d), the Administrative Agent shall notify each Term 2 Loan Lender of the proposed borrowing. Each Term 2 Loan Lender shall deposit an amount equal to the Term 2 Loan to be made by such Term 2 Loan Lender to the Borrower with the Administrative Agent at the Principal Office, in immediately available funds not later than 10:00 a.m. Central time on the Effective Date. Subject to fulfillment of all applicable conditions set forth herein, the Administrative Agent shall make available to the Borrower in the account specified in the Disbursement Instruction Agreement, not later than 2:00 p.m. Central time on the date of the requested borrowing of Term 2 Loans, the proceeds of such amounts received by the Administrative Agent.

(f) Assumptions Regarding Funding by Term 2 Loan Lenders. With respect to Term 2 Loans to be made on the Effective Date, unless the Administrative Agent shall have been notified by any Term 2 Loan Lender that such Lender will not make available to the Administrative Agent a Term 2 Loan to be made by such Lender in connection with any borrowing, the Administrative Agent may assume that such Lender will make the proceeds of such Term 2 Loan available to the Administrative Agent in accordance with this Section, and the Administrative Agent may (but shall not be obligated

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to), in reliance upon such assumption, make available to the Borrower the amount of such Term 2 Loan to be provided by such Lender. In such event, if such Lender does not make available to the Administrative Agent the proceeds of such Term 2 Loan, then such Lender and the Borrower severally agree to pay to the Administrative Agent on demand the amount of such Term 2 Loan with interest thereon, for each day from and including the date such Term 2 Loan is made available to the Borrower but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to such Term 2 Loan. If the Borrower and such Lender shall pay the amount of such interest to the Administrative Agent for the same or overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays to the Administrative Agent the amount of such Term 2 Loan, the amount so paid shall constitute such Lender's Term 2 Loan included in the borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Term 2 Loan Lender that shall have failed to make available the proceeds of a Term 2 Loan to be made by such Lender.

### **Section 2.3. Letters of Credit.**

(a) Letters of Credit. Subject to the terms and conditions of this Agreement, including without limitation, Section 2.15., the Issuing Banks, on behalf of the Revolving Lenders, agree to issue for the account of the Borrower during the period from and including the Effective Date to, but excluding, the date 30 days prior to the Revolving Termination Date, one or more standby letters of credit (each a "Letter of Credit") up to a maximum aggregate Stated Amount at any one time outstanding not to exceed \$30,000,000, as such amount may be reduced from time to time in accordance with the terms hereof (the "L/C Commitment Amount"); provided, that an Issuing Bank shall not be obligated to issue any Letter of Credit if (x) after giving effect to such issuance, the aggregate Stated Amount of outstanding Letters of Credit issued by such Issuing Bank would exceed the lesser of (i) one-third of the L/C Commitment Amount and (ii) the Commitment of such Issuing Bank in its capacity as a Lender, (y) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing the Letter of Credit, or any Applicable Law with respect to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or (z) such issuance would conflict with, or cause such Issuing Bank or any Revolving Lender to exceed any limits imposed by, any Applicable Law. The parties hereto agree that each of the Existing Letters of Credit shall, from and after the Effective Date, be deemed to be a Letter of Credit issued under this Agreement.

(b) Terms of Letters of Credit. At the time of issuance, the amount, form, terms and conditions of each Letter of Credit, and of any drafts or acceptances thereunder, shall be subject to approval by the applicable Issuing Bank and the Borrower (such approvals not to be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, in no event may (i) the expiration date of any Letter of Credit extend beyond the date that is 30 days prior to the Revolving Termination Date, or (ii) any Letter of Credit have a duration in excess of one year; provided, however, a Letter of Credit may contain a provision providing for the automatic extension of the expiration date in the absence of a notice of non-renewal from the applicable Issuing Bank but in no event shall any such provision permit the extension of the current expiration date of such Letter of Credit beyond the earlier of (x) the date that is 30 days prior to the Revolving Termination Date and (y) the date one year after the current expiration date. Notwithstanding the foregoing, a Letter of Credit may, as a result of its express terms or as the result of the effect of an automatic extension provision, have an expiration date of not more than one year beyond the Revolving Termination Date (any such Letter of Credit being referred to as an "Extended Letter of Credit"), so long as the Borrower delivers to the Administrative Agent for its benefit and the benefit of the applicable Issuing Bank and the Revolving Lenders no later than 30 days prior to the Revolving Termination Date, Cash Collateral for such Letter of Credit for deposit into the Letter of Credit Collateral Account in an amount equal to the Stated Amount of such Letter of Credit;

provided, that the obligations of the Borrower under this Section 2.3. in respect of such Extended Letters of Credit shall survive the termination of this Agreement and shall remain in effect until no such Extended Letters of Credit remain outstanding. If the Borrower fails to provide Cash Collateral with respect to any Extended Letter of Credit by the date 30 days prior to the Revolving Termination Date, such failure shall be treated as a drawing under such Extended Letter of Credit (in an amount equal to the maximum Stated Amount of such Extended Letter of Credit), which shall be reimbursed (or participations therein funded) by the Revolving Lenders in accordance with the immediately following subsections (i) and (j), with the proceeds being utilized to provide Cash Collateral for such Extended Letter of

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Credit. The initial Stated Amount of each Letter of Credit shall be at least \$50,000 (or such lesser amount as may be acceptable to the applicable Issuing Bank, the Administrative Agent and the Borrower).

(c) Requests for Issuance of Letters of Credit. The Borrower shall give the Issuing Bank selected by the Borrower to issue a Letter of Credit and the Administrative Agent written notice at least 5 Business Days prior to the requested date of issuance of such Letter of Credit, such notice to describe in reasonable detail the proposed terms of such Letter of Credit and the nature of the transactions or obligations proposed to be supported by such Letter of Credit, and in any event shall set forth with respect to such Letter of Credit the proposed (i) initial Stated Amount, (ii) beneficiary, and (iii) expiration date. The Borrower shall also execute and deliver such customary applications and agreements for standby letters of credit, and other forms as requested from time to time by the applicable Issuing Bank. Provided the Borrower has given the notice prescribed by the first sentence of this subsection and delivered such applications and agreements referred to in the preceding sentence, subject to the other terms and conditions of this Agreement, including the satisfaction of any applicable conditions precedent set forth in Section 6.2., the applicable Issuing Bank shall issue the requested Letter of Credit on the requested date of issuance for the benefit of the stipulated beneficiary but in no event prior to the date 5 Business Days (or such shorter period as agreed by the applicable Issuing Bank in its sole and absolute discretion) following the date after which the applicable Issuing Bank has received all of the items required to be delivered to it under this subsection. References herein to “issue” and derivations thereof with respect to Letters of Credit shall also include extensions or modifications of any outstanding Letters of Credit, unless the context otherwise requires. Upon the written request of the Borrower, an Issuing Bank shall deliver to the Borrower a copy of each Letter of Credit issued by such Issuing Bank within a reasonable time after the date of issuance thereof. To the extent any term of a Letter of Credit Document (excluding any certificate or other document presented by a beneficiary in connection with a drawing under such Letter of Credit) is inconsistent with a term of any Loan Document, the term of such Loan Document shall control. The Borrower shall examine the copy of any Letter of Credit or any amendment to a Letter of Credit that is delivered to it by the applicable Issuing Bank and, in the event of any claim of noncompliance with the Borrower’s instructions or other irregularity, the Borrower will promptly (but in any event, within 5 Business Days after the later of (x) receipt by the beneficiary of such Letter of Credit of the original of, or amendment to, such Letter of Credit, as applicable and (y) receipt by the Borrower of a copy of such Letter of Credit or amendment, as applicable) notify such Issuing Bank. The Borrower shall be conclusively deemed to have waived any such claim against such Issuing Bank and its correspondents unless such notice is given as aforesaid.

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

(e) Manner of Reimbursement. Upon its receipt of a notice referred to in the immediately preceding subsection (d), the Borrower shall advise the Administrative Agent and the applicable Issuing Bank whether or not the Borrower intends to borrow hereunder to finance its obligation to reimburse the applicable Issuing Bank for the amount of the related demand for payment and, if it does, the Borrower shall submit a

timely request for such borrowing as provided in the applicable provisions of this Agreement. If the Borrower fails to so advise the Administrative Agent and such Issuing Bank, or if the Borrower fails to reimburse the applicable Issuing Bank for a demand for payment under a Letter of Credit issued by such Issuing Bank by the date of such payment, the failure of which the applicable Issuing Bank shall promptly notify the Administrative Agent, then (i) if the applicable conditions contained in Article VI. would permit the making of Revolving Loans, the Borrower shall be deemed to have requested a borrowing of Revolving Loans (which shall be Base Rate Loans) in an amount equal to the unpaid Reimbursement Obligation and the Administrative Agent shall give each

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Revolving Lender prompt notice of the amount of the Revolving Loan to be made available to the Administrative Agent not later than 12:00 noon Central time and (ii) if such conditions would not permit the making of Revolving Loans, the provisions of subsection (j) of this Section shall apply. The amount limitations set forth in the second sentence of Section 2.1.(a) shall not apply to any borrowing of Base Rate Loans under this subsection.

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

(g) Issuing Banks' Duties Regarding Letters of Credit; Unconditional Nature of Reimbursement Obligations. In examining documents presented in connection with drawings under Letters of Credit and making payments under such Letters of Credit against such documents, each Issuing Bank shall only be required to use the same standard of care as it uses in connection with examining documents presented in connection with drawings under letters of credit in which it has not sold participations and making payments under such letters of credit. The Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, none of the Issuing Banks, Administrative Agent or any of the Lenders shall be responsible for, and the Borrower's obligations in respect of Letters of Credit shall not be affected in any manner by, (i) the form, validity, sufficiency, accuracy, genuineness or legal effects of any document submitted by any party in connection with the application for and issuance of or any drawing honored under any Letter of Credit even if such document should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any Letter of Credit, or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any Letter of Credit to comply fully with conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telex, telecopy, electronic mail or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any Letter of Credit, or of the proceeds thereof; (vii) the misapplication by the beneficiary of any Letter of Credit, or of the proceeds of any drawing under any Letter of Credit; or (viii) any consequences arising from causes beyond the control of the Issuing Banks, the Administrative Agent or the Lenders. None of the above shall affect, impair or prevent the vesting of any of the Issuing Banks' or Administrative Agent's rights or powers hereunder. Any action taken or omitted to be taken by an Issuing Bank under or in connection with any Letter of Credit issued by it, if taken or omitted in the absence of gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final, non-appealable judgment), shall not create against such Issuing Bank any liability to the Borrower, the Administrative Agent, any other Issuing Bank or any Lender. In this connection, the obligation of the Borrower to reimburse the applicable Issuing Bank for any drawing made under any Letter of Credit issued by such Issuing Bank, and to repay any Revolving Loan made pursuant to the second sentence of the immediately preceding subsection (e), shall be absolute, unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement and any other applicable Letter of Credit Document under all circumstances whatsoever, including without limitation, the following circumstances: (A) any lack of validity or enforceability of any Letter of Credit Document or any term or provisions therein; (B) any amendment or waiver of or any consent to departure from all or any of the Letter of Credit Documents; (C) the existence of any claim, setoff, defense or other right which the Borrower may have at any time against any Issuing Bank, the Administrative Agent, any Lender, any beneficiary of a Letter of Credit or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or in the Letter of Credit Documents or any unrelated transaction; (D) any breach of contract or dispute between the Borrower, any Issuing Bank, the Administrative Agent, any Lender or any other Person; (E) any demand, statement or any other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein or made in connection therewith being untrue

or inaccurate in any respect whatsoever; (F) any non-application or misapplication by the beneficiary of a Letter of Credit or of the proceeds of any drawing under such Letter of Credit; (G) payment by an Issuing Bank under any Letter of Credit issued by it against presentation of a draft or certificate which does not strictly comply with the terms of such Letter of Credit; and (H) any other act, omission to act, delay or circumstance whatsoever that might, but for the provisions of this Section, constitute a legal or equitable defense to or discharge of, or provide a right of setoff against, the Borrower's Reimbursement Obligations. Notwithstanding anything to the contrary contained in this Section or Section 13.9., but not in limitation of the Borrower's unconditional obligation to reimburse the

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applicable Issuing Bank for any drawing made under a Letter of Credit issued by such Issuing Bank as provided in this Section and to repay any Revolving Loan made pursuant to the second sentence of the immediately preceding subsection (e), the Borrower shall have no obligation to indemnify the Administrative Agent, any Issuing Bank or any Lender in respect of any liability incurred by the Administrative Agent, such Issuing Bank or such Lender arising solely out of the bad faith, gross negligence or willful misconduct of the Administrative Agent, such Issuing Bank or such Lender in respect of a Letter of Credit as determined by a court of competent jurisdiction in a final, non-appealable judgment. Except as otherwise provided in this Section, nothing in this Section shall affect any rights the Borrower may have with respect to the bad faith, gross negligence or willful misconduct of the Administrative Agent, any Issuing Bank or any Lender with respect to any Letter of Credit.

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

(i) Revolving Lenders' Participation in Letters of Credit. Immediately upon (i) the Effective Date with respect to all Existing Letters of Credit, and (ii) the issuance by an Issuing Bank of all other Letters of Credit, each Revolving Lender shall be deemed to have absolutely, irrevocably and unconditionally purchased and received from such Issuing Bank, without recourse or warranty, an undivided interest and participation to the extent of such Lender's Revolving Commitment Percentage of the liability of such Issuing Bank with respect to such Letter of Credit and each Revolving Lender thereby shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and shall be unconditionally obligated to such Issuing Bank to pay and discharge when due, such Lender's Revolving Commitment Percentage of such Issuing Bank's liability under such Letter of Credit. In addition, upon the making of each payment by a Revolving Lender to the Administrative Agent for the account of an Issuing Bank in respect of any Letter of Credit issued by such Issuing Bank pursuant to the immediately following subsection (j), such Lender shall, automatically and without any further action on the part of any Issuing Bank, the Administrative Agent or such Lender, acquire (i) a participation in an amount equal to such payment in the Reimbursement Obligation owing to such Issuing Bank by the Borrower in respect of such Letter of Credit and (ii) a participation in a percentage equal to such Lender's Revolving Commitment Percentage in any interest or other amounts payable by the Borrower in respect of such Reimbursement Obligation (other than the Fees payable to such Issuing Bank pursuant to the second and the last sentences of Section 3.5.(c)).

(j) Payment Obligation of Revolving Lenders. Each Revolving Lender severally agrees to pay to the Administrative Agent, for the account of the applicable Issuing Bank, on demand in immediately available funds in Dollars the amount of such Lender's Revolving Commitment Percentage of each drawing paid by such Issuing Bank under each Letter of Credit issued by such Issuing Bank to the extent such amount is not reimbursed by the Borrower pursuant to the immediately preceding subsection (d); provided, however, that in respect of any drawing under any Letter of Credit, the maximum amount that any Revolving Lender shall be required to fund, whether as a Revolving Loan or as a participation, shall not exceed such Lender's Revolving Commitment Percentage of such drawing except as otherwise provided in Section 3.9.(d). If the notice referenced in the second sentence of Section 2.3.(e) is received by a Revolving Lender not later than 11:00 a.m. Central time, then such Lender shall make such payment available to the Administrative Agent not later than 2:00 p.m. Central time on the date of demand therefor; otherwise, such payment shall be made available to the Administrative Agent not later than 1:00 p.m. Central time on the next succeeding Business Day. Each Revolving Lender's obligation to make such payments to the Administrative Agent under this subsection, and the Administrative Agent's right to receive the same for the account of the applicable

Issuing Bank, shall be absolute, irrevocable and unconditional and shall not be affected in any way by any circumstance whatsoever, including without limitation, (i) the failure of any other Revolving Lender to make its payment under this subsection, (ii) the financial condition of the Borrower or any other Loan Party, (iii) the existence of any Default or Event of Default, including any Event of Default described in Section 11.1.(e) or (f), (iv) the termination of the Revolving Commitments or (v) the delivery of Cash Collateral in respect of any Extended Letter of Credit. Each such payment to the Administrative Agent for the account of any Issuing Bank shall be made without any offset, abatement, withholding or deduction whatsoever.

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

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

#### **Section 2.4. Swingline Loans.**

(a) Swingline Loans. Subject to the terms and conditions hereof, including without limitation Section 2.15., the Swingline Lender agrees to make Swingline Loans to the Borrower, during the period from the Effective Date to but excluding the Swingline Maturity Date, in an aggregate principal amount at any one time outstanding up to, but not exceeding, the lesser (such lesser amount being referred to as the “Swingline Availability”) of (i) \$40,000,000, as such amount may be reduced from time to time in accordance with the terms hereof, and (ii) the Revolving Commitment of the Swingline Lender in its capacity as a Revolving Lender minus the aggregate outstanding principal amount of Revolving Loans of the Swingline Lender in its capacity as a Revolving Lender. If at any time the aggregate principal amount of the Swingline Loans outstanding at such time exceeds the Swingline Availability at such time, the Borrower shall immediately pay the Administrative Agent for the account of the Swingline Lender the amount of such excess. Subject to the terms and conditions of this Agreement, the Borrower may borrow, repay and reborrow Swingline Loans hereunder. The borrowing of a Swingline Loan shall not constitute usage of any Revolving Lender’s Revolving Commitment for purposes of calculation of the fee payable under Section 3.5.(b).

(b) Procedure for Borrowing Swingline Loans. The Borrower shall give the Administrative Agent and the Swingline Lender notice pursuant to a Notice of Swingline Borrowing or telephonic notice of each borrowing of a Swingline Loan. Each Notice of Swingline Borrowing shall be delivered to the Swingline Lender no later than 11:00 a.m. Central time on the proposed date of such borrowing. Any telephonic notice shall include all information to be specified in a written Notice of Swingline Borrowing and shall be promptly confirmed in writing by the Borrower pursuant to a Notice of Swingline Borrowing sent to the Swingline Lender by telecopy on the same day of the giving of such telephonic notice. Not later than 1:00 p.m. Central time on the date of the requested Swingline Loan and subject to satisfaction of the applicable conditions set forth in Section 6.2. for such borrowing, the Swingline Lender will make the proceeds of such Swingline Loan available to the Borrower in Dollars, in immediately available funds, at the account specified by the Borrower in the Notice of Swingline Borrowing.

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

(d) Swingline Loan Amounts, Etc. Each Swingline Loan shall be in the minimum amount of \$500,000 and integral multiples of \$50,000 in excess thereof, or such other minimum amounts agreed to by the Swingline Lender and the Borrower. Any voluntary prepayment of a Swingline Loan must be in integral multiples of \$100,000 or the aggregate principal amount of all outstanding Swingline Loans (or such other minimum amounts upon which the Swingline Lender

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and the Borrower may agree) and in connection with any such prepayment, the Borrower must give the Swingline Lender and the Administrative Agent prior written notice thereof no later than 12:00 noon Central time on the date of such prepayment. The Swingline Loans shall, in addition to this Agreement, be evidenced by the Swingline Note.

(e) Repayment and Participations of Swingline Loans. The Borrower agrees to repay each Swingline Loan within 3 Business Day of demand therefor by the Swingline Lender and, in any event, within 5 Business Days after the date such Swingline Loan was made; provided, that the proceeds of a Swingline Loan may not be used to pay a Swingline Loan. Notwithstanding the foregoing, the Borrower shall repay the entire outstanding principal amount of, and all accrued but unpaid interest on, the Swingline Loans on the Swingline Maturity Date (or such earlier date as the Swingline Lender and the Borrower may agree in writing). In lieu of demanding repayment of any outstanding Swingline Loan from the Borrower, the Swingline Lender may, on behalf of the Borrower (which hereby irrevocably directs the Swingline Lender to act on its behalf), request a borrowing of Revolving Loans that are Base Rate Loans from the Revolving Lenders in an amount equal to the principal balance of such Swingline Loan. The amount limitations contained in the second sentence of Section 2.1.(a) shall not apply to any borrowing of such Revolving Loans made pursuant to this subsection. The Swingline Lender shall give notice to the Administrative Agent of any such borrowing of Revolving Loans not later than 11:00 a.m. Central time at least one Business Day prior to the proposed date of such borrowing. Promptly after receipt of such notice of borrowing of Revolving Loans from the Swingline Lender under the immediately preceding sentence, the Administrative Agent shall notify each Revolving Lender of the proposed borrowing. Not later than 11:00 a.m. Central time on the proposed date of such borrowing, each Revolving Lender will make available to the Administrative Agent at the Principal Office for the account of the Swingline Lender, in immediately available funds, the proceeds of the Revolving Loan to be made by such Lender. The Administrative Agent shall pay the proceeds of such Revolving Loans to the Swingline Lender, which shall apply such proceeds to repay such Swingline Loan. If the Revolving Lenders are prohibited from making Revolving Loans required to be made under this subsection for any reason whatsoever, including without limitation, the existence of any of the Defaults or Events of Default described in Sections 11.1.(e) or (f), each Revolving Lender shall purchase from the Swingline Lender, without recourse or warranty, an undivided interest and participation to the extent of such Lender's Revolving Commitment Percentage of such Swingline Loan, by directly purchasing a participation in such Swingline Loan in such amount and paying the proceeds thereof to the Administrative Agent for the account of the Swingline Lender in Dollars and in immediately available funds. A Revolving Lender's obligation to purchase such a participation in a Swingline Loan shall be absolute and unconditional and shall not be affected by any circumstance whatsoever, including without limitation, (i) any claim of setoff, counterclaim, recoupment, defense or other right which such Lender or any other Person may have or claim against the Administrative Agent, the Swingline Lender or any other Person whatsoever, (ii) the existence of a Default or Event of Default (including without limitation, any of the Defaults or Events of Default described in Sections 11.1. (e) or (f)), or the termination of any Revolving Lender's Revolving Commitment, (iii) the existence (or alleged existence) of an event or condition which has had or could have a Material Adverse Effect, (iv) any breach of any Loan Document by the Administrative Agent, any Lender, the Borrower or any other Loan Party, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. If such amount is not in fact made available to the Swingline Lender by any Revolving Lender, the Swingline Lender shall be entitled to recover such amount on demand from such Lender, together with accrued interest thereon for each day from the date of demand thereof, at the Federal Funds Rate. If such Lender does not pay such amount forthwith upon the Swingline Lender's demand therefor, and until such time as such Lender makes the required payment, the Swingline Lender shall be deemed to continue to have outstanding Swingline Loans in the amount of such unpaid participation obligation for all purposes of the Loan Documents (other than those provisions requiring the other Revolving Lenders to purchase a participation therein). Further, such Lender shall be deemed to have assigned any and all payments made of principal and interest on its Revolving Loans, and any other amounts due it hereunder, to the Swingline Lender to fund Swingline Loans in the amount of the participation in Swingline Loans that such Lender failed to purchase pursuant to this Section until such amount has been purchased (as a result of such assignment or otherwise).

## **Section 2.5. Rates and Payment of Interest on Loans.**

(a) Rates.

(i) The Borrower promises to pay to the Administrative Agent for the account of each Revolving Lender interest on the unpaid principal amount of each Revolving Loan made by such Revolving Lender for the

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period from and including the date of the making of such Revolving Loan to but excluding the date such Revolving Loan shall be paid in full, at the following per annum rates:

(A) during such periods as such Revolving Loan is a Base Rate Loan, at the Base Rate (as in effect from time to time), plus the Applicable Margin for Revolving Loans that are Base Rate Loans; and

(B) during such periods as such Revolving Loan is a LIBOR Loan, at LIBOR for such Revolving Loan for the Interest Period therefor, plus the Applicable Margin for Revolving Loans that are LIBOR Loans.

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

(A) during such periods as such Term Loan is a Base Rate Loan, at the Base Rate (as in effect from time to time), plus the Applicable Margin for Term Loans that are Base Rate Loans; and

(B) during such periods as such Term Loan is a LIBOR Loan, at LIBOR for such Term Loan for the Interest Period therefor, plus the Applicable Margin for Term Loans that are LIBOR Loans.

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

(b) Payment of Interest. All accrued and unpaid interest on the outstanding principal amount of each Loan (other than a Swingline Loan) shall be payable (i) in the case of a Base Rate Loan, monthly in arrears on the first day of each month, commencing with the first full calendar month occurring after the Effective Date, (ii) in the case of a LIBOR Loan, on the last day of each Interest Period therefor and, if such Interest Period is longer than 3 months, at three-month intervals following the first day of such Interest Period and (iii) in the case of any Loan, on any date on which the principal balance of such Loan is due and payable in full (whether at maturity, due to acceleration or otherwise). Interest payable at the Post-Default Rate as provided in the last paragraph of the immediately preceding subsection (a) shall be payable from time to time on demand. All determinations by the Administrative Agent of an interest rate hereunder shall be conclusive and binding on the Lenders and the Borrower for all purposes, absent manifest error.

(c) Borrower Information Used to Determine Applicable Interest Rates. The parties understand that the applicable interest rate for the Obligations and certain fees set forth herein may be determined and/or adjusted from time to time based upon certain financial ratios and/or other information to be provided or certified to the Lenders by the Borrower (the "Borrower Information"). If it is subsequently determined that any such Borrower Information was incorrect (for whatever reason, including without limitation because of a subsequent restatement of earnings by the Parent) at the time it was delivered to the Administrative Agent, and if the applicable interest rate or fees calculated for any period were lower than they should have been had the correct information been timely provided, then, such interest rate and such fees for such period shall be automatically recalculated using correct Borrower Information. The Administrative Agent shall promptly notify the Borrower in writing of any additional interest and fees due because of such recalculation, and the

Borrower shall pay such additional interest or fees due to the Administrative Agent, for the account of each Lender, within 5 Business Days of receipt of such written notice. This provision shall not in any way limit any of the Administrative Agent's, any Issuing Bank's, or any Lender's other rights under this Agreement.

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## Section 2.6. Number of Interest Periods.

There may be no more than 7 different Interest Periods for Loans that are LIBOR Loans outstanding at the same time.


## Section 2.7. Repayment of Loans.

The Borrower shall repay the entire outstanding principal amount of, and all accrued but unpaid interest on, a Class of Loans on the Termination Date for such Class of Loans.

## Section 2.8. Prepayments.

(a) Optional. Subject to Section 5.4., the Borrower may prepay any Loan at any time without premium or penalty. The Borrower shall give the Administrative Agent at least 2 Business Days prior written notice of the prepayment of any LIBOR Loan and 1 Business Day's prior written notice for the prepayment of any Base Rate Loans (including Swingline Loans). Each voluntary prepayment of Loans shall be in an aggregate minimum amount of \$100,000 and integral multiples of \$100,000 in excess thereof.

(b) Mandatory.

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

(2) Asset Sales. If, at any time, on and after June 30, 2020 and prior to the end of the Covenant Relief Period, the Parent, the Borrower or any Subsidiary thereof receives Net Proceeds from any Asset Sale, the Borrower shall, in accordance with clause (iv) below, prepay the Term Loans, prepay the Revolving Loans and Swingline Loans and Cash Collateralize the Letter of Credit Liabilities (without a permanent reduction in the Revolving Commitments) and prepay the Senior Notes (subject to clause (iv)(C) below) in an amount equal to such Net Proceeds, within three (3) Business Days of the Parent's, Borrower's, or such Subsidiary's receipt thereof (or, if such receipt occurs prior to the First Amendment Date, on the First Amendment Date) or, with respect to the Senior Notes, within the period of time required under the Senior Notes Agreement.

(3) Issuance of Indebtedness; Equity Issuances. If, at any time, on and after June 30, 2020 and prior to the last day of the Covenant Relief Period, the Parent, the Borrower or any Subsidiary thereof receives cash proceeds from any incurrence of any Indebtedness (including the net proceeds of any refinancing of existing Indebtedness but excluding Excluded Prepayment Debt) or any Equity Issuances (other than, if both at the time of such Equity Issuance and after giving effect to the purchase of Reinvestment Assets, Availability is equal to or greater than \$250,000,000, the proceeds of such Equity Issuances applied within ten Business Days of the receipt thereof (or, if such receipt occurs prior to the First Amendment Date, on the First Amendment Date) to (or held in escrow with a third party escrow agent and all or any portion (x) may be removed from escrow and applied to the purchase of Reinvestment Assets or as required pursuant to this clause (b)(iii) and clause (b)(iv) below or (y) if required by the terms of the Senior Notes Agreement to be applied to the payment of the Senior Notes, shall be removed from escrow and applied (1) to the Senior Notes in the amount required to be prepaid to the Senior Notes in accordance with the Senior Notes Agreement and (2) to the Obligations in an amount equal to the proportionate amount based on the amount of the payment made to the Senior Notes under clause (1) above and the calculations provided for in clause (iv)(B)

with respect to the pro rata portion that the Lenders would be entitled to receive based on the actual payment made on the Senior Notes all in accordance with clause (b)(iv) below), the Borrower shall, in accordance with clause (iv) below, prepay the Term Loans, prepay the Revolving Loans and Swingline Loans and Cash Collateralize the Letter of Credit Liabilities (without a permanent reduction in the Revolving Commitments) and prepay the Senior Notes (subject to clause (iv)(C) below) in an amount equal to the amount of such cash proceeds, net of underwriting discounts and commissions and other reasonable costs

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and expenses associated therewith (to the extent not paid to an Affiliate of the Parent, the Borrower or its Subsidiaries), including reasonable legal fees and expenses, within three (3) Business Days of the Parent's, the Borrower's or such Subsidiary's receipt of such cash proceeds or, with respect to the Senior Notes, within the period of time required under the Senior Notes Agreement.

(4) ~~(ii)~~ Application of Mandatory Prepayments.

1. Amounts paid under the preceding subsection (b)(i) and any amounts required to be paid under the preceding subsections (b)(ii) and (b)(iii) which are to be allocated to the Revolving Loans and Letter of Credit Liabilities pursuant to the following clause (B) shall be applied to pay all amounts of principal outstanding on the Revolving Loans and any Reimbursement Obligations pro rata in accordance with Section 3.2. and if any Letters of Credit are outstanding at such time, the remainder, if any, shall be deposited into the Letter of Credit Collateral Account for application to any Reimbursement Obligations.

2. Amounts paid under the preceding subsections (b)(ii) and (iii) shall be applied on a pro rata basis to (i) prepay the Term Loans, the Revolving Loans and Swingline Loans and Cash Collateralize the Letter of Credit Liabilities (without a permanent reduction in the Revolving Commitments) and (ii) prepay the Senior Notes. Such pro rata amount allocable to the Obligations shall be calculated by dividing (1) the sum of the outstanding principal amount of the Loans on such date plus the Letter of Credit Liabilities on such date, by (2) the sum of clause (1) and the outstanding principal amount of the Senior Notes on such date. Amounts payable to the Obligations pursuant to this clause (B) shall be applied, first, to prepay the Revolving Loans and Swingline Loans and to Cash Collateralize the Letter of Credit Liabilities (without a permanent reduction in the Revolving Commitments) until paid in full, then, on a pro rata basis to prepay the outstanding Term Loans.

3. Notwithstanding the foregoing, any amounts allocable to the Senior Notes which are not required to be applied to the Senior Notes pursuant to the terms of the Senior Notes Agreement may instead (i) be deposited into a deposit account controlled by the Borrower or the holders of the Senior Notes to be applied to the Senior Notes or (ii) held as Unrestricted Cash.

D. If the Borrower is required to pay any outstanding LIBOR Loans by reason of this Section 2.8, prior to the end of the applicable Interest Period therefor, the Borrower shall pay all amounts due under Section 5.4.

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

## **Section 2.9. Continuation.**

So long as no Default or Event of Default exists, the Borrower may on any Business Day, with respect to any LIBOR Loan, elect to maintain such LIBOR Loan or any portion thereof as a LIBOR Loan by selecting a new Interest Period for such LIBOR Loan. Each Continuation of LIBOR Loans of the same Class shall be in an aggregate minimum amount of \$1,000,000 and integral multiples of \$100,000 in excess of that amount, and each new Interest Period selected under this Section shall commence on the last day of the immediately preceding Interest Period. Each selection of a new Interest Period shall be made by the Borrower giving to the Administrative Agent a Notice of Continuation not later than 11:00 a.m. Central time

on the third Business Day prior to the date of any such Continuation. Such notice by the Borrower of a Continuation shall be by telecopy, electronic mail or other similar form of communication in the form of a Notice of Continuation, specifying (a) the proposed date of such Continuation, (b) the LIBOR Loans, Class and portions thereof subject to such Continuation and (c) the duration of the selected Interest Period, all of which shall be specified in such manner as is necessary to comply with all limitations on Loans outstanding hereunder. Each Notice of Continuation shall be irrevocable by and binding on the Borrower once given.

Promptly after receipt of a Notice of Continuation, the Administrative Agent shall notify each Lender holding Loans being Continued of the proposed Continuation. If the Borrower shall fail to select in a timely manner a new Interest Period for any LIBOR Loan in accordance with this Section, such Loan will automatically, on the last day of the current Interest Period therefor, continue as a LIBOR Loan with an

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Interest Period of one month; provided, however that if a Default or Event of Default exists, such Loan will automatically, on the last day of the current Interest Period therefor, Convert into a Base Rate Loan notwithstanding the first sentence of Section 2.10. or the Borrower's failure to comply with any of the terms of such Section.

#### **Section 2.10. Conversion.**

The Borrower may on any Business Day, upon the Borrower's giving of a Notice of Conversion to the Administrative Agent by telecopy, electronic mail or other similar form of communication, Convert all or a portion of a Loan of one Type into a Loan of another Type; provided, however, a Base Rate Loan may not be Converted into a LIBOR Loan if a Default or Event of Default exists. Each Conversion of Base Rate Loans of the same Class into LIBOR Loans of the same Class shall be in an aggregate minimum amount of \$1,000,000 and integral multiples of \$100,000 in excess of that amount. Each such Notice of Conversion shall be given not later than 11:00 a.m. Central time 3 Business Days prior to the date of any proposed Conversion.

Promptly after receipt of a Notice of Conversion, the Administrative Agent shall notify each Lender holding Loans being Converted of the proposed Conversion. Subject to the restrictions specified above, each Notice of Conversion shall be by telecopy, electronic mail or other similar form of communication in the form of a Notice of Conversion specifying (a) the requested date of such Conversion, (b) the Type and Class of Loan to be Converted, (c) the portion of such Type of Loan to be Converted, (d) the Type of Loan such Loan is to be Converted into and (e) if such Conversion is into a LIBOR Loan, the requested duration of the Interest Period of such Loan. Each Notice of Conversion shall be irrevocable by and binding on the Borrower once given.

#### **Section 2.11. Notes.**

(a) Notes. If requested by any Lender, the Loans of a Class made by such Lender, in addition to this Agreement, such Loans shall also be evidenced by a Note of such Class, payable to the order of such Lender in a principal amount equal to the amount of its Commitment of such Class as originally in effect and otherwise duly completed. The Swingline Loans made by the Swingline Lender to the Borrower shall, in addition to this Agreement, also be evidenced by a Swingline Note payable to the order of the Swingline Lender.

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

(c) Lost, Stolen, Destroyed or Mutilated Notes. Upon receipt by the Borrower of (i) written notice from a Lender that a Note of such Lender has been lost, stolen, destroyed or mutilated, and (ii)(A) in the case of loss, theft or destruction, an unsecured agreement of indemnity from such Lender in form reasonably satisfactory to the Borrower, or (B) in the case of mutilation, upon surrender and cancellation of such Note, the Borrower shall at its own expense execute and deliver to such Lender a new Note dated the date of such lost, stolen, destroyed or mutilated Note.

#### **Section 2.12. Voluntary Reductions of the Revolving Commitment.**

The Borrower shall have the right to terminate or reduce the aggregate unused amount of the Revolving Commitments (for which purpose use of the Revolving Commitments shall be deemed to include the aggregate amount of all Letter of Credit Liabilities and the aggregate principal amount of all outstanding Swingline Loans) at any time and from time to time without penalty or premium upon not less than 5 Business

Days prior written notice to the Administrative Agent of each such termination or reduction, which notice shall specify the effective date thereof and the amount of any such reduction (which in the case of any partial reduction of the Revolving Commitments shall not be less than \$25,000,000 and integral multiples of \$25,000,000 in excess of that amount in the aggregate) and shall be irrevocable once given and effective only upon receipt by the Administrative Agent (“Commitment Reduction Notice”); provided, however, (i) the Borrower may not reduce the aggregate amount of the Revolving Commitments below \$150,000,000 unless the Borrower is terminating the Revolving Commitments in full and (ii) if such reduction or termination is being made in connection with the closing of another transaction, then it may be made conditional on the closing of such other transaction. Promptly after

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receipt of a Commitment Reduction Notice the Administrative Agent shall notify each Revolving Lender of the proposed termination or Revolving Commitment reduction. The Revolving Commitments, once reduced or terminated pursuant to this Section, may not be increased or reinstated. The Borrower shall pay all interest and fees on the Revolving Loans accrued to the date of such reduction or termination of the Revolving Commitments to the Administrative Agent for the account of the Revolving Lenders, including but not limited to any applicable compensation due to each Lender in accordance with Section 5.4.

### **Section 2.13. Extension of Revolving Termination Date.**

The Borrower shall have the right, exercisable two times, to request that the Administrative Agent and the Revolving Lenders extend the Revolving Termination Date by six months per each request. The Borrower may exercise such right only by executing and delivering to the Administrative Agent at least 30 days but not more than 90 days prior to the current Revolving Termination Date, a written request for such extension (a "Revolving Extension Request"). The Administrative Agent shall notify the Lenders if it receives a Revolving Extension Request promptly upon receipt thereof. Subject to satisfaction of the following conditions, the Revolving Termination Date shall be extended for six months effective upon receipt by the Administrative Agent of a Revolving Extension Request and payment of the fee referred to in the following clause (y): (x) immediately prior to such extension and immediately after giving effect thereto, (A) no Default or Event of Default shall exist and (B) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party, shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of the date of such extension with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted under the Loan Documents, (y) the Borrower shall have paid the Fees payable under Section 3.5.(d) and (z) no more than two Revolving Extension Requests shall have been submitted to Administrative Agent by Borrower. At any time prior to the effectiveness of any such extension, upon the Administrative Agent's request, the Borrower shall deliver to the Administrative Agent a certificate from the chief executive officer or chief financial officer certifying the matters referred to in the immediately preceding clauses (x)(A) and (x)(B).

### **Section 2.14. Expiration Date of Letters of Credit Past Revolving Commitment Termination.**

If on the date the Revolving Commitments are terminated or reduced to zero (whether voluntarily, by reason of the occurrence of an Event of Default or otherwise) there are any Letters of Credit outstanding hereunder and the aggregate Stated Amount of such Letters of Credit exceeds the balance of available funds on deposit in the Letter of Credit Collateral Account, then the Borrower shall, on such date, pay to the Administrative Agent, for its benefit and the benefit of the Revolving Lenders and the Issuing Banks, for deposit into the Letter of Credit Collateral Account, an amount of money equal to the amount of such excess.

### **Section 2.15. Amount Limitations.**

Notwithstanding any other term of this Agreement or any other Loan Document, no Lender shall be required to make a Revolving Loan, the Swingline Lender shall not be required to make a Swingline Loan, the Issuing Banks shall not be required to issue Letters of Credit and no reduction of the Revolving Commitments pursuant to Section 2.12. shall take effect, if immediately after the making of such Loan, the issuance of such Letter of Credit or such reduction in the Revolving Commitments the aggregate principal amount of all outstanding Revolving Loans and Swingline Loans, together with the aggregate amount of all Letter of Credit Liabilities would exceed the aggregate amount of the Revolving Commitments at such time.

## **Section 2.16. Increase in Revolving Commitments; Term Loans.**

The Borrower shall have the right (a) during the period from the Effective Date to but excluding the Revolving Termination Date, to request increases in the aggregate amount of the Revolving Commitments, (b) during the period from the Effective Date to but excluding the Maturity Date for the Term 1 Loans, to request the making of additional Term 1

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Loans (the “Additional Term 1 Loans”), and (c) during the period from the Effective Date to but excluding the Maturity Date for the Term 2 Loans, to request the making of additional Term 2 Loans (the “Additional Term 2 Loans”; together with the Additional Term 1 Loans, the “Additional Term Loans”), in each case, by providing written notice thereof to the Administrative Agent, which notice shall specify the Class and amount of Loans requested and which shall be irrevocable once given; provided, however, that after giving effect to any such increases of the Revolving Commitments and the making of any Additional Term Loans, the aggregate amount of the Revolving Commitments and the aggregate outstanding principal balance of the Term Loans shall not exceed \$800,000,000 (less the amount of any reductions of the Revolving Commitments effected pursuant to Section 2.12. and any prepayments of Term Loans, in each case, prior to such date). Additional Term Loans shall be subject to the same terms and conditions of this Agreement that are applicable to all other Term Loans of the applicable Class being borrowed. Each such increase in the Revolving Commitments or borrowing of Additional Term Loans must be an aggregate minimum amount of \$50,000,000 (or such lesser amount as the Borrower and the Administrative Agent may agree in writing) and integral multiples of \$5,000,000 in excess thereof. The Administrative Agent, in consultation with the Borrower, shall manage all aspects of the syndication of such increase in the Revolving Commitments and the making of any Additional Term Loans, including decisions as to the selection of the existing Lenders and/or other banks, financial institutions and other institutional lenders to be approached with respect to any such increase or making of Additional Term Loans and the allocations of any increase in the Revolving Commitments or making of Additional Term Loans among such existing Lenders and/or other banks, financial institutions and other institutional lenders. No Lender shall be obligated in any way whatsoever to increase its Revolving Commitment, to provide a new Revolving Commitment or to make an Additional Term Loan, and any new Lender becoming a party to this Agreement in connection with any such requested increase of the Revolving Commitments or making of Additional Term Loans must be an Eligible Assignee. If a new Revolving Lender becomes a party to this Agreement, or if any existing Revolving Lender is increasing its Revolving Commitment, such Lender shall on the date it becomes a Revolving Lender hereunder (or in the case of an existing Revolving Lender, increases its Revolving Commitment) (and as a condition thereto) purchase from the other Revolving Lenders its Revolving Commitment Percentage (determined with respect to the Revolving Lenders’ respective Revolving Commitments after giving effect to the increase of Revolving Commitments) of any outstanding Revolving Loans, by making available to the Administrative Agent for the account of such other Revolving Lenders, in same day funds, an amount equal to (A) the portion of the outstanding principal amount of such Revolving Loans to be purchased by such Lender, plus (B) the aggregate amount of payments previously made by the other Revolving Lenders under Section 2.3.(j) that have not been repaid, plus (C) interest accrued and unpaid to and as of such date on such portion of the outstanding principal amount of such Revolving Loans. The Borrower shall pay to the Revolving Lenders amounts payable, if any, to such Lenders under Section 5.4. as a result of the prepayment of any such Revolving Loans. Effecting any increase of the Revolving Commitments or the making of Additional Term Loans under this Section 2.16. is subject to the following conditions precedent: (x) no Default or Event of Default shall be in existence on the effective date of such increase of the Revolving Commitments or making of Additional Term Loans, (y) the representations and warranties made or deemed made by the Borrower and any other Loan Party in any Loan Document to which such Loan Party is a party shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on the effective date of such increase of the Revolving Commitments or making of Term Loans except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted hereunder, and (z) the Administrative Agent shall have received each of the following, in form and substance reasonably satisfactory to the Administrative Agent: (i) if not previously delivered to the Administrative Agent, copies certified by the Secretary or Assistant Secretary of (A) all limited liability company or other necessary action taken by the Borrower to authorize such increase of the Revolving Commitments or Term Loans and (B) all corporate, partnership, member or other necessary action taken by each Guarantor authorizing the guaranty of such increase of the Revolving Commitments or Additional Term Loans; (ii) an opinion of counsel to the Borrower

and the Guarantors, and addressed to the Administrative Agent and the Lenders covering such matters as reasonably requested by the Administrative Agent; and (iii) as applicable, (A) if requested by the applicable Lender, a new Revolving Note executed by the Borrower, payable to any such new Revolving Lenders, and replacement Revolving Notes, as applicable, executed by the Borrower payable to any such existing Revolving Lenders increasing their respective Revolving Commitments, in each case, in the amount of such Lender's Revolving Commitment at the time of the effectiveness of the applicable increase in the aggregate amount of the Revolving Commitments, and/or (B) if requested by the applicable Lender, a new Term Note executed by the Borrower, payable to any such new Term Loan Lenders, and

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replacement Term Notes, as applicable, executed by the Borrower payable to any such existing Term Loan Lenders making such Additional Term Loans, in each case, in the amount of such Lender's aggregate Term Loans at the time of the effectiveness of the applicable making of Additional Term Loans. In connection with any increase in the aggregate amount of the Revolving Commitments or any making of Additional Term Loans pursuant to this Section 2.16., any Lender becoming a party hereto shall (1) execute such documents and agreements as the Administrative Agent may reasonably request and (2) in the case of any Lender that is organized under the laws of a jurisdiction outside of the United States of America, provide to the Administrative Agent, its name, address, tax identification number and/or such other information as shall be necessary for the Administrative Agent to comply with "know your customer" and Anti-Money Laundering Laws, including without limitation, the Patriot Act.

## **Section 2.17. Funds Transfer Disbursements.**

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

## **Section 2.18. Security Interest in Collateral.**

**(a) To secure their Obligations under this Agreement and the other Loan Documents, upon the occurrence of the Security Trigger Date, the Borrower and certain other Loan Parties will grant to the Administrative Agent, for its benefit and the benefit of the other Lenders, a first-priority security interest in the Collateral pursuant to Section 8.14.(a) hereof. The Borrower, the Administrative Agent and the Lenders acknowledge and agree that, in connection with any such grant, the Administrative Agent shall be entering into the Intercreditor Agreement, and the exercise by the Administrative Agent and each of the Lenders of its rights and remedies under the Loan Documents shall be subject to the terms of the Intercreditor Agreement.**

**(b) In accordance with the terms of Section 8.14.(c), the Administrative Agent is hereby authorized by the Lenders to release the Collateral (or any applicable portion thereof) and take all such action as may be reasonably required in order to terminate the Liens in the Collateral (or such portion thereof).**

## **ARTICLE III. PAYMENTS, FEES AND OTHER GENERAL PROVISIONS**

### **Section 3.1. Payments.**

(a) **Payments by Borrower.** Except to the extent otherwise provided herein, all payments of principal, interest, Fees and other amounts to be made by the Borrower under this Agreement, the Notes or any other Loan Document shall be made in Dollars, in immediately available funds, without setoff, deduction or counterclaim (excluding Taxes required to be withheld pursuant to Section 3.10.), to the Administrative Agent at the Principal Office, not later than 2:00 p.m. Central time on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day). Subject to Section 11.5., the Borrower shall, at the time of making each payment under this Agreement or any other Loan Document, specify to the Administrative Agent the amounts payable by the Borrower hereunder to which such payment is to be applied. Each payment received by the Administrative Agent for the account of a Lender under this Agreement or any Note shall be paid to such Lender by wire transfer of immediately available funds in accordance with the wiring instructions provided by such Lender to the Administrative Agent from time to time, for the account of such Lender at the applicable Lending Office of such Lender. Each payment received by the Administrative Agent for the account of an Issuing Bank under this Agreement shall be paid to such Issuing Bank by wire transfer of immediately available funds in accordance with the wiring instructions provided by such Issuing Bank to the

Administrative Agent from time to time, for the account of such Issuing Bank. In the event the Administrative Agent fails to pay such amounts to such Lender or such Issuing Bank, as the case may be, within one Business Day of receipt of such amounts, the Administrative Agent shall pay interest on such amount until paid at a rate per annum equal to the Federal Funds Rate from time to time in effect. If the due date of any payment under this Agreement or any other Loan Document would otherwise fall on a day which is not a Business Day such date shall be extended to the next succeeding Business Day and interest shall continue to accrue at the rate, if any, applicable to such payment for the period of such extension.

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

### **Section 3.2. Pro Rata Treatment.**

Except to the extent otherwise provided herein: (a) each borrowing from the Revolving Lenders under Sections 2.1.(a), 2.3.(e) and 2.4.(e) shall be made from the Revolving Lenders, each payment of the fees under Sections 3.5.(a), 3.5.(b), the first sentence of 3.5.(c), and 3.5.(d) shall be made for the account of the Revolving Lenders, and each termination or reduction of the amount of the Revolving Commitments under Section 2.12. shall be applied to the respective Revolving Commitments of the Revolving Lenders, pro rata according to the amounts of their respective Revolving Commitments; (b) the making of Term 2 Loans shall be made from the Term 2 Loan Lenders, pro rata according to the amounts of their respective Term 2 Loan Commitments; (c) each payment or prepayment of principal of Loans of a Class shall be made for the account of the Lenders of such Class pro rata in accordance with the respective unpaid principal amounts of the Loans of such Class held by them, provided that, subject to Section 3.9., if immediately prior to giving effect to any such payment in respect of any Revolving Loans the outstanding principal amount of the Revolving Loans shall not be held by the Revolving Lenders pro rata in accordance with their respective Revolving Commitments in effect at the time such Revolving Loans were made, then such payment shall be applied to the Revolving Loans in such manner as shall result, as nearly as is practicable, in the outstanding principal amount of the Revolving Loans being held by the Revolving Lenders pro rata in accordance with such respective Revolving Commitments; (d) each payment of interest in respect of a Class of Loans shall be made for the account of the Lenders of such Class pro rata in accordance with the amounts of interest on such Class of Loans then due and payable to the Lenders of such Class; (e) the Conversion and Continuation of Loans of a particular Class and Type (other than Conversions provided for by Sections 5.1.(c) and 5.5.) shall be made pro rata among the Lenders of such Class according to the amounts of their respective Loans of such Class, and the then current Interest Period for each Lender's portion of each such Loan of such Type shall be coterminous; (f) the Revolving Lenders' participation in, and payment obligations in respect of, Swingline Loans under Section 2.4., shall be in accordance with their respective Revolving Commitment Percentages; and (g) the Revolving Lenders' participation in, and payment obligations in respect of, Letters of Credit under Section 2.3., shall be in accordance with their respective Revolving Commitment Percentages. All payments of principal, interest, fees and other amounts in respect of the Swingline Loans shall be for the account of the Swingline Lender only (except to the extent any Revolving Lender shall have acquired a participating interest in any such Swingline Loan pursuant to Section 2.4.(e), in which case such payments shall be pro rata in accordance with such participating interests).

### **Section 3.3. Sharing of Payments, Etc.**

If a Lender shall obtain payment of any principal of, or interest on, any Loan of a Class made by it to the Borrower under this Agreement or shall obtain payment on any other Obligation owing by the Borrower or any other Loan Party through the exercise of any right of set-off, banker's lien, counterclaim or similar right or otherwise or through voluntary prepayments directly to a Lender or other payments made by or on behalf of the Borrower or any other Loan Party to a Lender not in accordance with the terms of this Agreement and such payment should be distributed to the Lenders of the same Class in accordance with Section 3.2.

or Section 11.5., as applicable, such Lender shall promptly purchase from the other Lenders of such Class participations in (or, if and to the extent specified by such Lender, direct interests in) the Loans of such Class made by the other Lenders of such Class or other Obligations owed to such other Lenders in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all the Lenders of such Class shall share the benefit of such payment (net of any reasonable expenses which may actually be incurred by such Lender in obtaining or preserving such benefit) in accordance with the requirements of Section 3.2. or Section 11.5., as applicable. To such end, all the Lenders of such Class shall make appropriate adjustments among themselves (by the resale of

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participations sold or otherwise) if such payment is rescinded or must otherwise be restored. The Borrower agrees that any Lender of such Class so purchasing a participation (or direct interest) in the Loans or other Obligations owed to such other Lenders of such Class may exercise all rights of set-off, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans of such Class in the amount of such participation. Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of the Borrower.

### **Section 3.4. Several Obligations.**

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

### **Section 3.5. Fees.**

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

(b) Revolving Facility Fees. During the period from the Effective Date to but excluding the Revolving Termination Date, the Borrower agrees to pay to the Administrative Agent for the account of the Revolving Lenders an unused facility fee equal to the sum of the daily amount (the "Unused Amount") by which the aggregate amount of the Revolving Commitments exceeds the aggregate outstanding principal balance of Revolving Loans and Letter of Credit Liabilities set forth in the table below multiplied by the corresponding per annum rate:

<b>Unused Amount</b>	<b>Unused Fee (percent per annum)</b>
Greater than 50% of the aggregate amount of Commitments	0.25%
Less than or equal to 50% of the aggregate amount of Commitments	0.20%

Such fee shall be computed on a daily basis and payable quarterly in arrears on the first day of each January, April, July and October during the term of this Agreement and on the Revolving Termination Date or any earlier date of termination of the Revolving Commitments or reduction of the Revolving Commitments to zero. For the avoidance of doubt, for purposes of calculating an unused facility fee, the outstanding principal balance of Swingline Loans shall not be factored into the computation.

(c) Letter of Credit Fees. The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a letter of credit fee at a rate per annum equal to the Applicable Margin for LIBOR Loans that are Revolving Loans times the daily average Stated Amount of each Letter of Credit for the period from and including the date of issuance of such Letter of Credit (x) to and including the date such Letter of Credit expires or is cancelled or terminated or (y) to but excluding the date such Letter of Credit is drawn in full; provided, however, notwithstanding anything to the contrary contained herein, while any Event of Default exists, such letter of credit fees shall accrue at the Post-Default Rate. In addition to such fees, the Borrower shall pay to each Issuing Bank solely for its own account, a fronting fee in respect of each Letter of Credit issued by such Issuing Bank equal to one-eighth of one percent (0.125%) of the initial Stated Amount of such Letter of Credit; provided, however, in no event shall the aggregate amount of such fee in respect of any Letter

of Credit be less than \$500. The fees provided for in this subsection shall be nonrefundable and payable, in the case of the fee provided for in the first sentence, in arrears (i) quarterly on the first day of January, April, July and October, (ii) on the Revolving Termination Date, (iii) on the date the Revolving Commitments are terminated or reduced to zero and (iv) thereafter from time to time on demand of the Administrative Agent and in the case of the fee provided for in the second

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sentence, at the time of issuance of such Letter of Credit. The Borrower shall pay directly to the applicable Issuing Bank from time to time on demand all commissions, charges, costs and expenses in the amounts customarily charged or incurred by such Issuing Bank from time to time in like circumstances with respect to the issuance, amendment, renewal or extension of any Letter of Credit or any other transaction relating thereto.

(d) Revolving Extension Fee. Each time the Borrower exercises its right to extend the Revolving Termination Date in accordance with Section 2.13., the Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a fee for each such extension equal to three-fortieths of one percent (0.075%) of the amount of such Lender's Commitment (whether or not utilized).

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

### **Section 3.6. Computations.**

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

### **Section 3.7. Usury.**

In no event shall the amount of interest due or payable on the Loans or other Obligations exceed the maximum rate of interest allowed by Applicable Law and, if any such payment is paid by the Borrower or any other Loan Party or received by any Lender, then such excess sum shall be credited as a payment of principal, unless the Borrower shall notify the respective Lender in writing that the Borrower elects to have such excess sum returned to it forthwith. It is the express intent of the parties hereto that the Borrower not pay and the Lenders not receive, directly or indirectly, in any manner whatsoever, interest in excess of that which may be lawfully paid by the Borrower under Applicable Law. The parties hereto hereby agree and stipulate that the only charge imposed upon the Borrower for the use of money in connection with this Agreement is and shall be the interest specifically described in Section 2.5.(a)(i) and (ii) and, with respect to Swingline Loans, in Section 2.4.(c). Notwithstanding the foregoing, the parties hereto further agree and stipulate that all agency fees, syndication fees, facility fees, closing fees, letter of credit fees, underwriting fees, default charges, late charges, funding or "breakage" charges, increased cost charges, attorneys' fees and reimbursement for costs and expenses paid by the Administrative Agent or any Lender to third parties or for damages incurred by the Administrative Agent or any Lender, in each case, in connection with the transactions contemplated by this Agreement and the other Loan Documents, are charges made to compensate the Administrative Agent or any such Lender for underwriting or administrative services and costs or losses performed or incurred, and to be performed or incurred, by the Administrative Agent and the Lenders in connection with this Agreement and shall under no circumstances be deemed to be charges for the use of money. All charges other than charges for the use of money shall be fully earned and nonrefundable when due.

### **Section 3.8. Statements of Account.**

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

### **Section 3.9. Defaulting Lenders.**

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

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

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(b) Defaulting Lender Waterfall. Any payment of principal, interest, Fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article XI. or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 13.3. shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, in the case of a Defaulting Lender that is a Revolving Lender, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Banks and the Swingline Lender hereunder; third, in the case of a Defaulting Lender that is a Revolving Lender, to Cash Collateralize the Issuing Banks' Fronting Exposures with respect to such Defaulting Lender in accordance with subsection (e) below; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) in the case of a Defaulting Lender that is a Revolving Lender, Cash Collateralize the Issuing Banks' future Fronting Exposures with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with subsection (e) below; sixth, to the payment of any amounts owing to the Lenders, the Issuing Banks or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuing Bank or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans of any Class or amounts owing by such Defaulting Lender under Section 2.3.(j) in respect of Letters of Credit (such amounts "L/C Disbursements"), in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Article VI. were satisfied or waived, such payment shall be applied solely to pay the Loans of such Class of, and L/C Disbursements owed to, all Non-Defaulting Lenders of the applicable Class on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Disbursements owed to, such Defaulting Lender until such time as all Loans of such Class and, as applicable, funded and unfunded participations in Letter of Credit Liabilities and Swingline Loans are held by the Revolving Lenders pro rata in accordance with their respective Revolving Commitment Percentages (determined without giving effect to the immediately following subsection (d)) and all Term Loans (if any) are held by the Term Loan Lenders pro rata as if there had been no Defaulting Lenders that are Term Loan Lenders. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this subsection shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) Certain Fees.

(i) No Defaulting Lender shall be entitled to receive any Fee payable under Section 3.5.(b) 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).

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

(iii) With respect to any Fee not required to be paid to any Defaulting Lender that is a Revolving Lender pursuant to the immediately preceding clause (ii), the Borrower shall (x) pay to each Non-Defaulting Lender that is a Revolving Lender that portion of any such Fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letter of Credit Liabilities or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to the immediately following subsection (d), (y) pay to each Issuing Bank and the Swingline Lender, as applicable, the amount of any such Fee otherwise payable to such Defaulting Lender to the

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extent allocable to such Issuing Bank's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such Fee.

(d) Reallocation of Participations to Reduce Fronting Exposure. In the case of a Defaulting Lender that is a Revolving Lender, all or any part of such Defaulting Lender's participation in Letter of Credit Liabilities and Swingline Loans shall be reallocated among the Non-Defaulting Lenders that are Revolving Lenders in accordance with their respective Revolving Commitment Percentages (determined without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender that is a Revolving Lender to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 13.20., no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Revolving Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(e) Cash Collateral, Repayment of Swingline Loans.

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

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

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

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

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

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

(f) Defaulting Lender Cure. If the Borrower and the Administrative Agent, and solely in the case of a Defaulting Lender that is a Revolving Lender, the Swingline Lender and the Issuing Banks, agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause, as applicable, (i) the Revolving Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Revolving Lenders in accordance with their respective Revolving Commitment Percentages (determined without giving effect to the immediately preceding subsection (d)) and (ii) the Term Loans to be held by the Term Loan Lenders pro rata as if there had been no Defaulting Lenders of such Class, 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.

(g) New Swingline Loans/Letters of Credit. So long as any Revolving Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) no Issuing Bank shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

(h) Purchase of Defaulting Lender's Commitment. During any period that a Lender is a Defaulting Lender, the Borrower may, by the Borrower giving written notice thereof to the Administrative Agent, such Defaulting Lender and the other Lenders, demand that such Defaulting Lender assign its Commitments and Loans to an Eligible Assignee subject to and in accordance with the provisions of Section 13.5.(b). No party hereto shall have any obligation whatsoever to initiate any such replacement or to assist in finding an Eligible Assignee. In addition, any Lender who is not a Defaulting Lender may, but shall not be obligated, in its sole discretion, to acquire the face amount of all or a portion of such Defaulting Lender's Commitments and Loans via an assignment subject to and in accordance with the provisions of Section 13.5.(b). In connection with any such assignment, such Defaulting Lender shall promptly execute all documents reasonably requested to effect such assignment, including an appropriate Assignment and Assumption and, notwithstanding Section 13.5.(b), shall pay to the Administrative Agent an assignment fee in the amount of \$7,500. The exercise by the Borrower of its rights under this Section shall be at the Borrower's sole cost and expense and at no cost or expense to the Administrative Agent or any of the Lenders.

### **Section 3.10. Taxes.**

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

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower or any other Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower or other applicable Loan Party shall be increased as necessary so that after such

deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

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

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

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

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

(g) Status of Lenders.

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

(ii) Without limiting the generality of the foregoing, 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), an electronic

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copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;

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

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8BEN or 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;

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

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

(IV) to the extent a Foreign Lender is not the beneficial owner, an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit L-2 or Exhibit L-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 L-4 on behalf of each such direct and indirect partner;

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

permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting

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requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Applicable Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

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

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

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

#### ARTICLE IV. UNENCUMBERED PROPERTIES

##### Section 4.1. Eligibility of Unencumbered Properties.

(a) Initial Unencumbered Properties. The Properties identified on Schedule 4.1. shall, on the ~~Effective~~First Amendment Date, be Unencumbered Properties.

(b) Additional Unencumbered Properties. If after the ~~Effective~~First Amendment Date the Borrower desires that any additional Property become an Unencumbered Property, the Borrower shall so notify the Administrative Agent in writing (a "Notice of Additional Unencumbered Property"). Except as otherwise provided in the immediately following subsection (c), no Property shall become an Unencumbered Property unless it is an Eligible Property, and unless and until the Borrower delivers to the Administrative Agent all of the following, in form and substance reasonably satisfactory to the Administrative Agent (unless waived in writing by the Requisite Lenders):

(i) an executive summary of the Property including, at a minimum, the following information relating to such Property: (A) a description of such Property, such description to include the age, location, site plan and physical condition of such Property; and (B) the purchase price paid or to be paid for such Property;

(ii) an operating statement for such Property audited or certified by a representative of the Borrower as being true and correct in all material respects and prepared in accordance with GAAP for the previous three fiscal

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years, provided that, if such Property was owned by the Borrower or a Subsidiary for less than three years, such information shall only be required to be delivered to the extent reasonably available to the Borrower and such certification may be based upon the Borrower's knowledge and provided further, that if such Property has been operating for less than three years, the Borrower shall provide such projections and other information concerning the anticipated operation of such Property as the Administrative Agent may reasonably request;

(iii) a pro forma operating statement or an operating budget for such Property with respect to the current fiscal year and, if available, the immediately following fiscal year;

(iv) if such Property is located in a seismic zone rated 3 or higher, an all assets seismic portfolio report covering all applicable Properties prepared by a firm reasonably acceptable to the Administrative Agent;

(v) if such Property is leased under a ground lease, a copy of such ground lease;

(vi) a copy of the most current Smith Travel Research STAR Report available for such Property;

(vii) a Compliance Certificate ~~showing pro forma~~ calculating (and, unless such Property is being added during the Covenant Relief Period, evidencing compliance with) the covenants set forth in Section 10.1. after giving effect to the addition of such Property as an Unencumbered Property; and

(viii) such other information as the Administrative Agent may reasonably request in order to confirm that such Property is an Eligible Property.

A Notice of Additional Unencumbered Property executed and delivered by the Borrower to the Administrative Agent shall constitute a certification by the Borrower to the Administrative Agent and the Lenders that such Property satisfies all of the requirements contained in the definition of Eligible Property unless such notice states otherwise (in which case the provisions of the immediately following subsection (c) shall apply). Within 5 Business Days after the Administrative Agent's receipt of a Notice of Additional Unencumbered Property and the other reports and documents required under this subsection (b), the Administrative Agent will make such notice, reports and documents available to each of the Lenders. Within 10 Business Days after the Administrative Agent's receipt of a Notice of Additional Unencumbered Property and the other reports and documents required under this subsection (b), the Administrative Agent shall notify the Borrower and the Lenders if the Administrative Agent has confirmed that such Property satisfies all of the requirements contained in the definition of Eligible Property.

(c) Nonconforming Properties. If a Property which the Borrower desires to be included as an Unencumbered Property does not satisfy the requirements of an Eligible Property, then the Administrative Agent, upon written request of the Borrower, shall request that the Requisite Lenders in their sole discretion determine whether such Property shall be included as an Unencumbered Property. In connection therewith, the Borrower shall promptly deliver the information required by the immediately preceding subsection (b) to each of the Lenders. If such a request is made by the Administrative Agent to the Lenders, within 10 Business Days after the date on which a Lender has received such request and all of the items referred to in the immediately preceding subsection (b), each such Lender shall notify the Administrative Agent in writing whether or not such Lender accepts such Property as an Unencumbered Property in its sole discretion. If a Lender fails to give such notice within such time period, such Lender shall be deemed to have approved such Property as an Unencumbered Property. A Property shall become an Unencumbered Property under this subsection (c) only upon the approval and/or deemed approval of the Requisite Lenders.

(d) Documents with Respect to Non-Guarantor Subsidiary- and Collateral.

(1) If a Property owned by a Subsidiary that is not a Guarantor is to become an Unencumbered Property, the Borrower shall deliver to the Administrative Agent an Accession Agreement executed by such Subsidiary together with the other items required by Section 8.13.(a). If the improvements on such a Property or the furniture, fixtures and equipment utilized in the operation of such Property are owned or leased by a Subsidiary (the “Accommodation Subsidiary”)

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other than the Subsidiary that owns or leases such Property, then the Borrower shall also deliver to the Administrative Agent an Accession Agreement executed by such Accommodation Subsidiary.

(2) If, after the Security Trigger Date but prior to the Security Release Date, any Property which is to become an Unencumbered Property is owned directly or indirectly by a Subsidiary whose Equity Interests are required to be subject to the Pledge Agreement, the Borrower shall deliver to the Administrative Agent a supplement to the Pledge Agreement together with the other items required by Section 8.14.

Until such time as the Administrative Agent shall have received the items referred to in the immediately preceding ~~two sentences~~ clauses (i) and (ii) with respect to such Subsidiary ~~and~~, any applicable Accommodation Subsidiary and the Collateral, the applicable Property shall not be considered to be an Unencumbered Property.

#### **Section 4.2. Removal of Unencumbered Properties.**

The Borrower may, upon not less than 10 Business Days' notice to the Administrative Agent (or such shorter period as may be acceptable to the Administrative Agent in its sole discretion), request removal of a Property as an Unencumbered Property, subject to the following conditions: (a) no Default or Event of Default shall exist (other than a Default or Event of Default that would be cured by removal of such Property as an Unencumbered Property) or would result therefrom ~~and~~, (b) the Borrower shall have delivered to Administrative Agent a Compliance Certificate, prepared as of the last day of the most recent fiscal quarter for which financial statements have been required to be delivered pursuant to Section 9.1. or Section 9.2., calculating (and, unless such Property is to be removed during the Covenant Relief Period, evidencing compliance with) the covenants set forth in Section 10.1. as if such Property had not been included in as an Unencumbered Property at such time and (c) during the Covenant Relief Period, the Borrower may only request the release of an Unencumbered Property if such release shall occur substantially simultaneously with a sale of such Property and only so long as the proceeds of such sale shall be applied in accordance with the terms of Section 2.8.(b)(ii) hereof. For the avoidance of doubt, the Parent and the Borrower shall not, and shall not permit any Subsidiary during the Covenant Relief Period (i) to place any Lien (other than a Permitted Lien (but not Permitted Liens described in clause (g) of the definition of the term)) upon, or (ii) grant a Negative Pledge on (other than a Negative Pledge that would not cause a Property to cease to be an Eligible Property under clause (g) of the definition thereof) in, a Property that was an Unencumbered Property on June 30, 2020 or became an Unencumbered Property thereafter (or, if such Property is owned by a Subsidiary, any of the Borrower's direct or indirect ownership interest in such Subsidiary). Upon the Administrative Agent's confirmation that the conditions to such removal have been satisfied, the Administrative Agent shall so notify the Borrower and the Lenders in writing specifying the date of such removal.

### **ARTICLE V. YIELD PROTECTION, ETC.**

#### **Section 5.1. Additional Costs; Capital Adequacy.**

(a) Capital Adequacy. If any Lender determines that any Regulatory Change affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Regulatory Change (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), 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.

(b) Additional Costs. In addition to, and not in limitation of the immediately preceding subsection, the Borrower shall promptly pay to the Administrative Agent for the account of a Lender from time to time such amounts as such Lender may determine to be necessary to compensate such Lender for any costs incurred by such Lender that it determines are attributable to its making or maintaining of any LIBOR Loans or its obligation to make any LIBOR Loans hereunder, any reduction in any amount receivable by such Lender under this Agreement or any of the other Loan Documents in respect of any of such LIBOR Loans or such obligation or the maintenance by such Lender of capital in

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respect of its LIBOR Loans or its Commitments (such increases in costs and reductions in amounts receivable being herein called “Additional Costs”), resulting from any Regulatory Change that:

(i) changes the basis of taxation of any amounts payable to such Lender under this Agreement or any of the other Loan Documents in respect of any of such LIBOR Loans or its Commitments (other than Indemnified Taxes or Excluded Taxes);

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

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

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

(d) Additional Costs in Respect of Letters of Credit. Without limiting the obligations of the Borrower under the preceding subsections of this Section (but without duplication), if as a result of any Regulatory Change or any risk-based capital guideline or other requirement heretofore or hereafter issued by any Governmental Authority there shall be imposed, modified or deemed applicable any Tax (other than Indemnified Taxes, Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and Connection Income Taxes), reserve, special deposit, capital adequacy or similar requirement against or with respect to or measured by reference to Letters of Credit and the result shall be to increase the cost to an Issuing Bank of issuing (or any Revolving Lender of purchasing participations in) or maintaining its obligation hereunder to issue (or purchase participations in) any Letter of Credit or reduce any amount receivable by such Issuing Bank or any Revolving Lender hereunder in respect of any Letter of Credit, then, upon demand by such Issuing Bank or such Lender, the Borrower shall pay immediately to such Issuing Bank or, in the case of such Lender, to the Administrative Agent for the account of such Lender, from time to time as specified by such Issuing Bank or such Lender, such additional amounts as shall be sufficient to compensate such Issuing Bank or such Lender for such increased costs or reductions in amount.

(e) Notification and Determination of Additional Costs. Each of the Administrative Agent, each Issuing Bank and each Lender, as the case may be, agrees to notify the Borrower (and in the case of an Issuing Bank and or a Lender, to notify the Administrative Agent) of any event occurring after the Agreement Date entitling the Administrative Agent, such Issuing Bank or such Lender to compensation under any of the preceding subsections of this Section 5.1. as promptly as practicable. The Administrative Agent, each Issuing Bank and each Lender, as the case may be, agrees to furnish to the Borrower (and in the case of an Issuing Bank or a Lender, to the Administrative Agent as well) a certificate setting forth the basis and amount of each request for compensation under this Section 5.1. Determinations by the Administrative Agent, such

Issuing Bank or such Lender, as the case may be, of the effect of any Regulatory Change shall be conclusive and binding for all purposes, absent manifest error. The Borrower shall pay the Administrative Agent, such Issuing Bank and or any such Lender, as the case may be, the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

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

## **Section 5.2. Changed Circumstances.**

(a) Anything herein to the contrary notwithstanding and unless and until a Replacement Rate is implemented in accordance with Section 5.2.(b) below, if, on or prior to the determination of LIBOR for any Interest Period:

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

(ii) the Administrative Agent reasonably determines (which determination shall be conclusive) that quotations of interest rates for the relevant Dollar deposits referred to in the definition of LIBOR are not being offered to banks in the London interbank Eurodollar market in the relevant amounts or for the relevant Interest Period for LIBOR Loans as provided herein; or

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

then the Administrative Agent shall give the Borrower and each Lender prompt notice thereof and, so long as such condition remains in effect, the Lenders shall be under no obligation to, and shall not, make additional LIBOR Loans, Continue LIBOR Loans or Convert Loans into LIBOR Loans and the Borrower shall, on the last day of each current Interest Period for each outstanding LIBOR Loan, either prepay such Loan or Convert such Loan into a Base Rate Loan.

(b) Alternative Rate of Interest. Notwithstanding anything to the contrary in Section 5.2.(a) above, if the Administrative Agent has made the determination (such determination to be conclusive absent manifest error) that (i) the circumstances described in Section 5.2.(a)(i) or (a)(ii) have arisen and that such circumstances are unlikely to be temporary, (ii) any applicable interest rate specified herein is no longer a widely recognized benchmark rate for newly originated loans in the United States syndicated loan market in the applicable currency or (iii) the applicable supervisor or administrator (if any) of any applicable interest rate specified herein or any Governmental Authority having, or purporting to have, jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which any applicable interest rate specified herein shall no longer be used for determining interest rates for loans in the United States syndicated loan market in the applicable currency, then the Administrative Agent and the Borrower shall negotiate in good faith and endeavor to establish a replacement rate of interest (the "Replacement Rate") (which replacement rate of interest shall, as reasonably determined by the Administrative Agent, be generally in accordance with similar situations in other transactions in which it is serving as administrative agent or otherwise consistent with market practice generally), in which case, the Replacement Rate shall, subject to the next two sentences, replace such applicable interest rate for all purposes under the Loan Documents unless and until an event described in Section 5.2.(a)(i), (a)(ii), (b)(i), (b)(ii) or (b)(iii) occurs with respect

to the Replacement Rate. In connection with the establishment and application of the Replacement Rate, this Agreement and the other Loan Documents shall be amended solely with the consent of the Administrative Agent and the Borrower, as may be necessary or appropriate, in the opinion of the Administrative Agent and Borrower, to effect the provisions of this Section 5.2.(b). Notwithstanding anything to the contrary in this Agreement or the other Loan Documents (including, without limitation, Section 13.6.), such amendment shall become effective without any further action or consent of any party other than the Administrative Agent and the Borrower so long as the Administrative Agent shall not have received, within five (5) Business Days of the delivery of such amendment to the Lenders, written notices from such Lenders that in

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the aggregate constitute Requisite Lenders, with each such notice stating that such Lender objects to such amendment (which such notice shall note with specificity the particular provisions of the amendment to which such Lender objects). To the extent the Replacement Rate is approved by the Administrative Agent in connection with this clause (b), the Replacement Rate shall be applied in a manner consistent with market practice; provided that, in each case, to the extent such market practice is not administratively feasible for the Administrative Agent, such Replacement Rate shall be applied as otherwise reasonably determined by the Administrative Agent (it being understood that any such modification by the Administrative Agent shall not require the consent of, or consultation with, any of the Lenders).

### **Section 5.3. Illegality.**

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

### **Section 5.4. Compensation.**

The Borrower shall pay to the Administrative Agent for the account of each Lender, upon the request of the Administrative Agent, such amount or amounts as the Administrative Agent shall determine in its sole discretion shall be sufficient to compensate such Lender for any loss, cost or expense attributable to:

- (a) any payment or prepayment (whether mandatory or optional) of a LIBOR Loan, or Conversion of a LIBOR Loan, made by such Lender for any reason (including, without limitation, acceleration) on a date other than the last day of the Interest Period for such Loan; or
- (b) any failure by the Borrower for any reason (including, without limitation, the failure of any of the applicable conditions precedent specified in Section 6.2. to be satisfied but excluding any failure as a result of a notice under Section 5.2.) to borrow a LIBOR Loan from such Lender on the date for such borrowing, or to Convert a Base Rate Loan into a LIBOR Loan or Continue a LIBOR Loan on the requested date of such Conversion or Continuation.

Not in limitation of the foregoing, such compensation shall include, without limitation, in the case of a LIBOR Loan, an amount equal to the then present value of (i) the amount of interest that would have accrued on such LIBOR Loan for the remainder of the Interest Period at the rate applicable to such LIBOR Loan, less (ii) the amount of interest that would accrue on the same LIBOR Loan for the same period if LIBOR were set on the date on which such LIBOR Loan was repaid, prepaid or Converted or the date on which the Borrower failed to borrow, Convert or Continue such LIBOR Loan, as applicable, calculating present value by using as a discount rate LIBOR quoted on such date. Upon the Borrower's request, the Administrative Agent shall provide the Borrower with a statement setting forth the basis for requesting such compensation and the method for determining the amount thereof. Any such statement shall be conclusive absent manifest error.

### **Section 5.5. Treatment of Affected Loans.**

If the obligation of any Lender to make LIBOR Loans or to Continue, or to Convert Base Rate Loans into, LIBOR Loans shall be suspended pursuant to Section 5.1.(c), Section 5.2. or Section 5.3. then such Lender's LIBOR Loans shall be automatically Converted into Base Rate Loans on the last day(s) of the then current Interest Period(s) for LIBOR Loans (or, in the case of a Conversion required by Section 5.1.(c), Section 5.2., or Section 5.3. on such earlier date as such Lender or the Administrative Agent, as applicable, may specify to the Borrower (with a copy to the Administrative Agent, as applicable)) and, unless and until

such Lender or the Administrative Agent, as applicable, gives notice as provided below that the circumstances specified in Section 5.1., Section 5.2. or Section 5.3. that gave rise to such Conversion no longer exist:

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

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

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

#### **Section 5.6. Affected Lenders.**

If (a) a Lender requests compensation pursuant to Section 3.10. or 5.1., and the Requisite Lenders are not also doing the same, (b) the obligation of any Lender to make LIBOR Loans or to Continue, or to Convert Base Rate Loans into, LIBOR Loans shall be suspended pursuant to Section 5.1.(c) or 5.3. but the obligation of the Requisite Lenders shall not have been suspended under such Sections or (c) a Lender becomes a Non-Consenting Lender or a Defaulting Lender, then, so long as there does not then exist any Default or Event of Default, the Borrower may demand that such Lender (the "Affected Lender"), and upon such demand the Affected Lender shall promptly, assign its Commitment to an Eligible Assignee subject to and in accordance with the provisions of Section 13.5.(b) for a purchase price equal to (x) the aggregate principal balance of all Loans then owing to the Affected Lender, plus (y) the aggregate amount of payments previously made by the Affected Lender under Section 2.3.(j) that have not been repaid, plus (z) any accrued but unpaid interest thereon and accrued but unpaid fees owing to the Affected Lender, or any other amount as may be mutually agreed upon by such Affected Lender and Eligible Assignee. Each of the Administrative Agent and the Affected Lender shall reasonably cooperate in effectuating the replacement of such Affected Lender under this Section, but at no time shall the Administrative Agent, such Affected Lender, any other Lender or any Titled Agent be obligated in any way whatsoever to initiate any such replacement or to assist in finding an Eligible Assignee. The exercise by the Borrower of its rights under this Section shall be at the Borrower's sole cost and expense and at no cost or expense to the Administrative Agent, the Affected Lender or any of the other Lenders. The terms of this Section shall not in any way limit the Borrower's obligation to pay to any Affected Lender compensation owing to such Affected Lender pursuant to this Agreement (including, without limitation, pursuant to Sections 3.10., 5.1. or 5.4.) with respect to any period up to the date of replacement.

#### **Section 5.7. Change of Lending Office.**

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

#### **Section 5.8. Assumptions Concerning Funding of LIBOR Loans.**

Calculation of all amounts payable to a Lender under this Article shall be made as though such Lender had actually funded LIBOR Loans through the purchase of deposits in the relevant market bearing interest at the rate applicable to such LIBOR Loans in an amount equal to the amount of the LIBOR Loans and having a maturity comparable to the relevant Interest Period; provided, however, that each Lender may fund each of its LIBOR Loans in any manner it sees fit and the foregoing assumption shall be used only for calculation of amounts payable under this Article.

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## ARTICLE VI. CONDITIONS PRECEDENT

### Section 6.1. Initial Conditions Precedent.

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

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

- (i) counterparts of this Agreement executed by each of the parties hereto;
- (ii) Notes (or replacement Notes, as the case may be) of each Class executed by the Borrower, payable to each Lender of such Class that has requested that it receive a Note of such Class, and complying with the terms of Section 2.11.(a) and a replacement Swingline Note executed by the Borrower;
- (iii) the Guaranty executed by the Parent and each of the other Guarantors initially to be a party thereto;
- (iv) an opinion of Latham & Watkins LLP, counsel to the Borrower and the other Loan Parties, addressed to the Administrative Agent and the Lenders and covering such matters as the Administrative Agent may reasonably request;
- (v) the certificate or articles of incorporation or formation, articles of organization, certificate of limited partnership, declaration of trust or other comparable organizational instrument (if any) of each Loan Party certified as of a recent date by the Secretary of State of the state of formation of such Loan Party;
- (vi) a certificate of good standing (or certificate of similar meaning) with respect to each Loan Party issued as of a recent date by the Secretary of State of the state of formation of each such Loan Party and certificates of qualification to transact business or other comparable certificates issued as of a recent date by each Secretary of State (and any state department of taxation, as applicable) of each state in which such Loan Party is required to be so qualified and where failure to be so qualified could reasonably be expected to have a Material Adverse Effect;
- (vii) a certificate of incumbency signed by the Secretary or Assistant Secretary (or other individual performing similar functions) of each Loan Party with respect to each of the officers of such Loan Party authorized to execute and deliver the Loan Documents to which such Loan Party is a party, and in the case of the Borrower, authorized to execute and deliver on behalf of the Borrower Notices of Borrowing, Notices of Swingline Borrowing, requests for Letters of Credit, Notices of Conversion and Notices of Continuation;
- (viii) copies certified by the Secretary or Assistant Secretary (or other individual performing similar functions) of each Loan Party of (A) the by-laws of such Loan Party, if a corporation, the operating agreement, if a limited liability company, the partnership agreement, if a limited or general partnership, or other comparable document in the case of any other form of legal entity and (B) all corporate, partnership, member or other necessary action taken by such Loan Party to authorize the execution, delivery and performance of the Loan Documents to which it is a party;
- (ix) a Compliance Certificate calculated on a pro forma basis for the previous four calendar quarters ending on June 30, 2018;

- (x) a Disbursement Instruction Agreement effective as of the Agreement Date;
  - (xi) [Reserved];
  - (xii) copies of all Material Contracts in existence on the Agreement Date and either entered into or amended in any material respect after April 2, 2015;
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(xiii) evidence that the Fees, if any, then due and payable under Section 3.5., together with all other fees, expenses and reimbursement amounts due and payable to the Administrative Agent, the Lead Arrangers and any of the Lenders, including without limitation, the fees and expenses of counsel to the Administrative Agent, have been paid;

(xiv) certificates of insurance evidencing the insurance then in effect with respect to the Properties and otherwise in compliance with Section 8.5.;

(xv) such other documents, agreements and instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably request;

(b) there shall not have occurred or become known to the Administrative Agent or any of the Lenders any event, condition, situation or status since the date of the information contained in the financial and business projections, budgets, pro forma data and forecasts concerning the Parent, the Borrower and their respective Subsidiaries delivered to the Administrative Agent and the Lenders prior to the Agreement Date that has had or could reasonably be expected to result in a materially adverse effect on the business, assets, liabilities, condition (financial or otherwise), results of operations or business prospects of the Parent, the Borrower and the Subsidiaries taken as a whole;

(c) no litigation, action, suit, investigation or other arbitral, administrative or judicial proceeding shall be pending or threatened which could reasonably be expected to (i) result in a Material Adverse Effect or (ii) restrain or enjoin, impose materially burdensome conditions on, or otherwise materially and adversely affect, the ability of the Parent, the Borrower or any other Loan Party to fulfill its obligations under the Loan Documents to which it is a party;

(d) the Parent, the Borrower, the other Loan Parties and the other Subsidiaries shall have received all approvals, consents and waivers, and shall have made or given all necessary filings and notices as shall be required to consummate the transactions contemplated hereby without the occurrence of any default under, conflict with or violation of (i) any Applicable Law or (ii) any agreement, document or instrument to which any Loan Party is a party or by which any of them or their respective properties is bound;

(e) there shall not have occurred or exist any other material disruption of financial or capital markets that could reasonably be expected to materially and adversely affect the transactions contemplated by the Loan Documents;

(f) the Borrower and each other Loan Party shall have provided all information reasonably requested by the Administrative Agent and each Lender in order to comply with applicable “know your customer” and Anti-Money Laundering Laws, including without limitation, the Patriot Act; and

(g) each Loan Party or Subsidiary thereof that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall, collectively, have delivered to the Administrative Agent, and any Lender requesting the same, one Beneficial Ownership Certification in relation to each such Loan Party or such Subsidiary, in each case, at least five (5) Business Days prior to the Effective Date.

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

In addition to satisfaction or waiver of the conditions precedent contained in Section 6.1., the obligations of (i) Lenders to make any Loans and (ii) the Issuing Banks to issue Letters of Credit are each subject to the further conditions precedent that: (a) no Default or Event of Default shall exist as of the date of the making of such Loan or date of issuance of such Letter of Credit or would exist immediately after giving effect thereto, and no violation of the limits described in Section 2.15. would occur after giving effect thereto; (b) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the

Loan Documents to which any of them is a party, shall be true and correct in all material respects (except (i) in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects and (ii) during the Covenant Relief Period, the representation set forth in the first sentence of Section 7.1(l) shall exclude any event or circumstance resulting from the COVID-19 pandemic as described in the 10-Q publicly filed by the Parent on May 11, 2020 and in subsequent

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public disclosures of the Parent in accordance with applicable securities laws) on and as of the date of the making of such Loan or date of issuance of such Letter of Credit with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted hereunder; (c) in the case of the borrowing of Term 2 Loans on the Effective Date and Revolving Loans, the Administrative Agent shall have received a timely Notice of Borrowing, in the case of a Swingline Loan, the Swingline Lender shall have received a timely Notice of Swingline Borrowing, and in the case of the issuance of a Letter of Credit, the Issuing Banks and the Administrative Agent shall have received a timely request for the issuance of such Letter of Credit and (d) for any request for Loans or Letters of Credit prior to the Security Release Date, receipt by the Administrative Agent of either (i) if the Security Trigger Date has not occurred and will not occur after giving effect to such Loans or Letters of Credit, a notice from a Responsible Officer of the Borrower (which may be included in the Notice of Borrowing or Notice of Swingline Borrowing) certifying that the Security Trigger Date has not occurred and will not occur after giving effect to such Loan or Letter of Credit or (ii) if the Security Trigger Date has occurred (or will occur after giving effect to such Loans or Letters of Credit), all items that are required to be delivered pursuant to Section 8.14. or certification by a Responsible Officer that all such items have been previously delivered to the Administrative Agent. Each Credit Event shall constitute a certification by the Borrower to the effect set forth in the preceding sentence (both as of the date of the giving of notice relating to such Credit Event and, unless the Borrower otherwise notifies the Administrative Agent prior to the date of such Credit Event, as of the date of the occurrence of such Credit Event). In addition, the Borrower shall be deemed to have represented to the Administrative Agent and the Lenders at the time any Loan is made or any Letter of Credit is issued that all conditions to the making of such Loan or issuing of such Letter of Credit contained in this Article VI. have been satisfied. Unless set forth in writing to the contrary, the Continuation of its Loans or the making of its initial Loan by a Lender shall constitute a certification by such Lender to the Administrative Agent for the benefit of the Administrative Agent and the Lenders that the conditions precedent for initial Loans set forth in Sections 6.1. and 6.2. that have not previously been waived by the Lenders in accordance with the terms of this Agreement have been satisfied.

## **ARTICLE VII. REPRESENTATIONS AND WARRANTIES**

### **Section 7.1. Representations and Warranties.**

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

(a) Organization; Power; Qualification. Each of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries is a corporation, partnership or other legal entity, duly organized or formed, validly existing and in good standing under the jurisdiction of its incorporation or formation, has the power and authority to own or lease its respective properties and to carry on its respective business as now being and hereafter proposed to be conducted and is duly qualified and is in good standing as a foreign corporation, partnership or other legal entity, and authorized to do business, in each jurisdiction in which the character of its properties or the nature of its business requires such qualification or authorization and where the failure to be so qualified or authorized could reasonably be expected to have, in each instance, a Material Adverse Effect.

(b) Ownership Structure. Part I of Schedule 7.1.(b) is, as of the ~~Agreement~~First Amendment Date, a complete and correct list of all Subsidiaries of the Parent setting forth for each such Subsidiary, (i) the jurisdiction of organization of such Subsidiary, (ii) each Person holding any Equity Interest in such Subsidiary, (iii) the percentage of ownership of such Subsidiary represented by such Equity Interests and (iv) whether such

Subsidiary is a Material Subsidiary, a Significant Subsidiary, an Excluded Subsidiary ~~or~~, a Foreign Subsidiary or would be an Issuer upon the occurrence of the Security Trigger Date (as if such date occurred on the First Amendment Date), as applicable. As of the ~~Agreement~~First Amendment Date, except as disclosed in such Schedule, (A) each of the Parent and its Subsidiaries owns, free and clear of all Liens (other than Permitted Liens of the types described in clause (a) of the definition of the term “Permitted Liens” and in the case of an Excluded Subsidiary, customary Liens on Equity Interests of such Excluded Subsidiary securing Nonrecourse Indebtedness), and has the unencumbered right to vote, all outstanding Equity Interests in

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each Person shown to be held by it on such Schedule (other than in the case of an Excluded Subsidiary, customary restrictions on the right to vote the Equity Interests of such Excluded Subsidiary relating to Nonrecourse Indebtedness), (B) all of the issued and outstanding capital stock of each such Person organized as a corporation is validly issued, fully paid and nonassessable and (C) there are no outstanding subscriptions, options, warrants, commitments, preemptive rights or agreements of any kind (including, without limitation, any stockholders' or voting trust agreements) for the issuance, sale, registration or voting of, or outstanding securities convertible into, any additional shares of capital stock of any class, or partnership or other ownership interests of any type in, any such Person. As of the ~~Agreement~~First Amendment Date, Part II of Schedule 7.1.(b) correctly sets forth all Unconsolidated Affiliates of the Parent, including the correct legal name of such Person, the type of legal entity which each such Person is, and all Equity Interests in such Person held directly or indirectly by the Parent.

(c) Authorization of Loan Documents and Borrowings. The Borrower has the right and power, and has taken all necessary action to authorize it, to borrow and obtain other extensions of credit hereunder. The Parent, the Borrower and each other Loan Party has the right and power, and has taken all necessary action to authorize it, to execute, deliver and perform each of the Loan Documents to which it is a party in accordance with their respective terms and to consummate the transactions contemplated hereby and thereby, and to grant Liens in the Collateral to the Collateral Agent for the benefit of the Lender Parties pursuant to the Pledge Agreement upon the occurrence of the Security Trigger Date. The Loan Documents to which the Parent, the Borrower or any other Loan Party is a party have been duly executed and delivered by the duly authorized officers of such Person and each is a legal, valid and binding obligation of such Person enforceable against such Person in accordance with its respective terms, except as the same may be limited by bankruptcy, insolvency, and other similar laws affecting the rights of creditors generally and the availability of equitable remedies for the enforcement of certain obligations (other than the payment of principal) contained herein or therein and as may be limited by equitable principles generally.

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

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

(f) Title to Properties; Liens. Schedule 7.1.(f) is, as of the ~~Agreement~~First Amendment Date, a complete and correct listing of all real estate assets of the Borrower, each other Loan Party and each other Subsidiary, setting forth, for each such Property, the current occupancy status of such Property and whether such Property is a Development Property and, if such Property is a Development Property, the status of completion of such Property. Schedule 4.1. is, as of the ~~Agreement~~First Amendment Date, a complete and correct listing of all Unencumbered Properties. Each of the Parent, the Borrower, each other Loan Party and each other Subsidiary has good, marketable and legal title to, or a valid leasehold interest in, its respective assets.

(g) Existing Indebtedness. Schedule 7.1.(g) is, as of the ~~Agreement~~First Amendment Date, a complete and correct listing of all Indebtedness (including all Guarantees) of each of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries having, in each case, an outstanding principal balance of \$10,000,000 or more, and if such Indebtedness is secured by any Lien, a description of all of the property subject to such Lien. As of the ~~Agreement~~First

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Amendment Date, the outstanding principal amount of Indebtedness of each of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries not set forth on such Schedule does not exceed \$25,000,000 in the aggregate.

(h) Material Contracts. Schedule 7.1.(h) is, as of the ~~Agreement~~First Amendment Date, a true, correct and complete listing of all Material Contracts. No event or condition exists which would reasonably be expected to result in any party to a Material Contract taking action to terminate such Material Contract.

(i) Litigation. Except as set forth on Schedule 7.1.(i), there are no actions, suits or proceedings pending (or, to the knowledge of any Loan Party, are there any actions, suits or proceedings threatened) against or in any other way relating adversely to or affecting the Parent, the Borrower, any other Loan Party, any other Subsidiary or any of their respective property in any court or before any arbitrator of any kind or before or by any other Governmental Authority which could reasonably be expected to have a Material Adverse Effect. There are no known strikes, slow downs, work stoppages or walkouts or other labor disputes in progress or threatened relating to, the Parent, the Borrower, any other Loan Party or any other Subsidiary which could reasonably be expected to have a Material Adverse Effect.

(j) Taxes. All federal, state and other material tax returns of the Parent, the Borrower, each other Loan Party and each other Subsidiary required by Applicable Law to be filed have been duly filed, and all federal, material state and other material taxes, assessments and other governmental charges or levies upon, the Parent, the Borrower, each other Loan Party, each other Subsidiary and their respective properties, income, profits and assets which are due and payable have been paid, except any such nonpayment or non-filing which is at the time permitted under Section 8.6. As of the Agreement Date, none of the United States federal income tax returns of the Parent, the Borrower, any other Loan Party or any other Subsidiary is under audit. All charges, accruals and reserves on the books of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries in respect of any taxes or other governmental charges are in accordance with GAAP.

(k) Financial Statements. The Borrower has furnished to each Lender copies of the audited consolidated balance sheet of the Parent and its consolidated Subsidiaries for the fiscal years ended December 31, 2016 and December 31, 2017, and the related audited consolidated statements of operations, shareholders' equity and cash flow for the fiscal years ended on such dates, with the opinion thereon of Ernst & Young LLP. Such financial statements (including in each case related schedules and notes) are complete and correct in all material respects and present fairly, in accordance with GAAP consistently applied throughout the periods involved, the consolidated financial position of the Parent and its consolidated Subsidiaries as at their respective dates and the results of operations and the cash flow for such periods. Neither the Parent nor any of its Subsidiaries has on the Agreement Date any material contingent liabilities, liabilities, liabilities for taxes, unusual or long-term commitments or unrealized or forward anticipated losses from any unfavorable commitments that would be required to be set forth in its financial statements or notes thereto, except as referred to or reflected or provided for in said financial statements.

(l) No Material Adverse Change. Since the date of the most recently audited consolidated financial statements of the Parent and its consolidated Subsidiaries filed with the SEC, there has been no event, change, circumstance or occurrence that could reasonably be expected to have a Material Adverse Effect. Each of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries is Solvent.

(m) ERISA.

(i) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Benefit Arrangement is in compliance with the applicable provisions of ERISA, the Internal Revenue Code and other Applicable Laws. Except with respect to Multiemployer Plans, each Qualified Plan has received a favorable determination from the Internal Revenue Service or may rely upon a favorable opinion letter issued by the Internal Revenue Service with respect to a prototype plan, or a timely application for such a letter is currently being processed by the Internal

Revenue Service with respect thereto. To the knowledge of the Borrower, nothing has occurred which would cause the loss of its reliance on each Qualified Plan's favorable determination letter or opinion letter.

(ii) With respect to any Benefit Arrangement that is a retiree welfare benefit arrangement, all amounts have been accrued on the applicable ERISA Group's financial statements in accordance with FASB ASC 715. The

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aggregate funding contributions payable by the Borrower, the other Loan Parties and the other Subsidiaries as a result of the “benefit obligation” of all Plans exceeding the “fair market value of plan assets” for all Plans which are, or are reasonably expected to be, in “at risk” status (within the meaning of Section 430 of the Internal Revenue Code or Section 303 of ERISA), all as determined, and with such terms defined, in accordance with FASB ASC 715, could not reasonably be expected to exceed \$10,000,000 in the aggregate during any fiscal year of the Borrower.

(iii) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) no ERISA Event has occurred or is reasonably expected to occur; (ii) there are no pending, or to the knowledge of the Borrower, threatened, claims, actions or lawsuits or other action by any Governmental Authority, plan participant or beneficiary with respect to a Benefit Arrangement; (iii) there are no violations of the fiduciary responsibility rules with respect to any Benefit Arrangement; and (iv) no member of the ERISA Group has engaged in a non-exempt “prohibited transaction,” as defined in Section 406 of ERISA and Section 4975 of the Internal Revenue Code, in connection with any Plan, that would subject the Borrower, any other Loan Party or any other Subsidiary to a tax on prohibited transactions imposed by Section 502(i) of ERISA or Section 4975 of the Internal Revenue Code.

(n) Absence of Default. None of the Parent, the Borrower, any of the other Loan Parties or any of the other Subsidiaries is in default under its certificate or articles of incorporation or formation, bylaws, partnership agreement or other similar organizational documents, and no event has occurred, which has not been remedied, cured or waived: (i) which constitutes a Default or an Event of Default; or (ii) which constitutes, or which with the passage of time, the giving of notice, or both, would constitute, a default or event of default by, the Parent, the Borrower, any other Loan Party or any other Subsidiary under any agreement (other than this Agreement) or judgment, decree or order to which any such Person is a party or by which any such Person or any of its respective properties may be bound where such default or event of default could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(o) Environmental Laws. In the ordinary course of business and from time to time each of the Parent, the Borrower, each other Loan Party and each other Subsidiary conducts reviews of the effect of Environmental Laws on its respective business, operations and properties, including without limitation, its respective Properties, in the course of which the Parent, the Borrower, such other Loan Party or such other Subsidiary identifies and evaluates associated actual and potential liabilities and costs (including, without limitation, determining whether any capital or operating expenditures are required for clean-up or closure of properties presently or previously owned, determining whether any capital or operating expenditures are required to achieve or maintain compliance in all material respects with Environmental Laws or required as a condition of any Governmental Approval, any contract, or any related constraints on operating activities, determining whether any costs or liabilities exist in connection with on-site or off-site treatment, storage, handling and disposal of wastes or Hazardous Materials, and determining whether any actual or potential liabilities to third parties, including employees, and any related costs and expenses exist). Each of the Parent, the Borrower, each other Loan Party and each other Subsidiary: (i) is in compliance with all Environmental Laws applicable to its business, operations and the Properties, (ii) has obtained all Governmental Approvals which are required under Environmental Laws, and each such Governmental Approval is in full force and effect, and (iii) is in compliance with all terms and conditions of such Governmental Approvals, where with respect to each of the immediately preceding clauses (i) through (iii) the failure to obtain or to comply with could reasonably be expected to have a Material Adverse Effect. Except for any of the following matters that could not reasonably be expected to have a Material Adverse Effect, no Loan Party has any knowledge of, or has received notice of, any past, present, or pending releases, events, conditions, circumstances, activities, practices, incidents, facts, occurrences, actions, or plans that, with respect to any Loan Party or any other Subsidiary, their respective businesses, operations or with respect to the Properties, may: (x) cause or contribute to an actual or alleged violation of or noncompliance with Environmental Laws, (y) cause or contribute to any other potential common-law or legal claim or other liability, or (z) cause any of the Properties to become subject to any restrictions on ownership, occupancy, use or transferability under any Environmental

Law or require the filing or recording of any notice, approval or disclosure document under any Environmental Law and, with respect to the immediately preceding clauses (x) through (z) is based on or related to the on-site or off-site manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport, removal, clean up or handling, or the emission, discharge, release or threatened release of any wastes or Hazardous Material, or any other requirement under Environmental Law. There is no civil, criminal, or administrative action, suit, demand, claim, hearing, notice, or demand letter, mandate, order, lien, request, investigation, or proceeding pending or, to the Parent's knowledge

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after due inquiry, threatened, against the Parent, the Borrower, any other Loan Party or any other Subsidiary relating in any way to Environmental Laws which, reasonably could be expected to have a Material Adverse Effect. None of the Properties is listed on or proposed for listing on the National Priority List promulgated pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and its implementing regulations, or any state or local priority list promulgated pursuant to any analogous state or local law. To the Parent's knowledge, no Hazardous Materials generated at or transported from the Properties are or have been transported to, or disposed of at, any location that is listed or proposed for listing on the National Priority List or any analogous state or local priority list, or any other location that is or has been the subject of a clean-up, removal or remedial action pursuant to any Environmental Law, except to the extent that such transportation or disposal could not reasonably be expected to result in a Material Adverse Effect.

(p) Investment Company. None of the Parent, the Borrower, any other Loan Party or any other Subsidiary is (i) an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or (ii) subject to any other Applicable Law which purports to regulate or restrict its ability to borrow money or obtain other extensions of credit or to consummate the transactions contemplated by this Agreement or to perform its obligations under any Loan Document to which it is a party.

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

(r) Affiliate Transactions. Except as permitted by Section 10.9. or as otherwise set forth on Schedule 7.1.(r), none of the Parent, the Borrower, any other Loan Party or any other Subsidiary is a party to or bound by any agreement or arrangement (whether oral or written) with any Affiliate.

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

(t) Business. As of the Agreement Date, the Parent, the Borrower, the other Loan Parties and the other Subsidiaries are engaged in the business of development, construction, acquisition, ownership and operation of hotel properties, together with other business activities incidental thereto.

(u) Broker's Fees. No broker's or finder's fee, commission or similar compensation will be payable with respect to the transactions contemplated hereby. No other similar fees or commissions will be payable by any Loan Party for any other services rendered to the Parent, the Borrower, any other Loan Party or any other Subsidiary ancillary to the transactions contemplated hereby.

(v) Accuracy and Completeness of Information. All written information, reports and other papers and data (other than financial projections and other forward looking statements) furnished to the Administrative Agent or any Lender by, on behalf of, or at the direction of, the Parent, the Borrower, any other Loan Party or any other Subsidiary were, at the time the same were so furnished and under the circumstances so furnished, complete and correct in all material respects, to the extent necessary to give the recipient a true and accurate knowledge of the subject matter, or, in the case of financial statements, present fairly, in accordance with GAAP consistently applied throughout the periods involved, the financial

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position of the Persons involved as at the date thereof and the results of operations for such periods (subject, as to interim statements, to changes resulting from normal year end audit adjustments and absence of full footnote disclosure). All financial projections and other forward looking statements prepared by or on behalf of the Parent, the Borrower, any other Loan Party or any other Subsidiary that have been or may hereafter be made available to the Administrative Agent or any Lender were or will be prepared in good faith based on reasonable assumptions. As of the Agreement Date, no fact is known to any Loan Party which has had, or may in the future have (so far as any Loan Party can reasonably foresee), a Material Adverse Effect which has not been set forth in the financial statements referred to in Section 7.1.(k) or in such information, reports or other papers or data or otherwise disclosed in writing to the Administrative Agent and the Lenders. No document furnished or written statement made to the Administrative Agent or any Lender in connection with the negotiation, preparation or execution of, or pursuant to, this Agreement or any of the other Loan Documents contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary in order to make the statements contained therein not misleading.

(w) Not Plan Assets; No Prohibited Transactions. None of the assets of the Parent, the Borrower, any other Loan Party or any other Subsidiary constitutes “plan assets” within the meaning of ERISA, the Internal Revenue Code and the respective regulations promulgated thereunder. Assuming that no Lender funds any amount payable by it hereunder with “plan assets,” as that term is defined in 29 C.F.R. 2510.3-101, the execution, delivery and performance of this Agreement and the other Loan Documents, and the extensions of credit and repayment of amounts hereunder, do not and will not constitute “prohibited transactions” under ERISA or the Internal Revenue Code.

(x) Anti-Corruption Laws; Anti-Money Laundering Laws and Sanctions.

(i) None of (1) the Parent, Borrower, any other Loan Party or any other Subsidiary, any of their respective directors, officers, or, to the knowledge of the Parent, Borrower, such other Loan Party or such other Subsidiary, any of their respective employees or Affiliates, or (2) to the knowledge of the Parent or Borrower, any agent or representative of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the Credit Facility, (A) is a Sanctioned Person or currently the subject or target of any Sanctions, (B) is acting on behalf of a Sanctioned Person, (C) has its assets located in a Sanctioned Country, or (D) is under administrative, civil or criminal investigation for an alleged violation of, or received notice from any governmental entity regarding a possible violation of, Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions by a governmental authority that enforces Sanctions or any Anti-Corruption Laws or Anti-Money Laundering Laws.

(ii) Each of the Parent, the Borrower and their respective Subsidiaries has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by the Borrower and its Subsidiaries and their respective directors, officers, employees, and agents with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions.

(iii) Each of the Parent, the Borrower and their respective Subsidiaries, each director, officer, and to the knowledge of Parent or Borrower, employee, agent and Affiliate of the Parent or Borrower and each such Subsidiary, is in compliance with all Anti-Corruption Laws, Anti-Money Laundering Laws in all material respects and applicable Sanctions.

(iv) No proceeds of any Loans or other extensions of credit hereunder have been used, directly or indirectly, by the Parent, Borrower, any of their respective Subsidiaries or any of its or their respective directors, officers, employees and agents in violation of Section 9.8. or Section 10.4.

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

(z) Unencumbered Properties. Except for any Property that has been approved as an Unencumbered Property pursuant to Section 4.1.(c) or otherwise approved by the Requisite Lenders in writing, each Property included in calculations of the Unencumbered Asset Value satisfies all of the requirements contained in the definition of “Unencumbered Property”.

(aa) EEA Financial Institution. None of the Parent, Borrower or any of their respective Subsidiaries is an EEA Financial Institution.

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**(bb) Security Interest.**

**On and after the Security Trigger Date and prior to the Security Release Date, the Pledge Agreement creates, as security for the Obligations, a valid and enforceable Lien on all of the Collateral in favor of the Collateral Agent for its benefit and the benefit of the Lender Parties, superior to and prior to the rights of all third parties (subject to the terms of the Intercreditor Agreement) and subject to no other Liens (except for Permitted Liens of the types described in clauses (a), (f) and (i) of the definition of such term).**

**Section 7.2. Survival of Representations and Warranties, Etc.**

All statements contained in any certificate, financial statement or other instrument delivered by or on behalf of the Parent, the Borrower, any other Loan Party or any other Subsidiary to the Administrative Agent or any Lender pursuant to or in connection with this Agreement or any of the other Loan Documents (including, but not limited to, any such statement made in or in connection with any amendment thereto or any statement contained in any certificate, financial statement or other instrument delivered by or on behalf of any Loan Party prior to the Agreement Date and delivered to the Administrative Agent or any Lender in connection with the underwriting or closing the transactions contemplated hereby) shall constitute representations and warranties made by the Parent and the Borrower under this Agreement. All representations and warranties made under this Agreement and the other Loan Documents shall be deemed to be made at and as of the Agreement Date, the Effective Date, the date on which any extension of the Termination Date for a Class of Loans is effectuated pursuant to Section 2.13., the date on which any increase of Commitments is effectuated pursuant to Section 2.16. and at and as of the date of the occurrence of each Credit Event, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted hereunder. All such representations and warranties shall survive the effectiveness of this Agreement, the execution and delivery of the Loan Documents and the making of the Loans and the issuance of the Letters of Credit.

**ARTICLE VIII. AFFIRMATIVE COVENANTS**

For so long as this Agreement is in effect, the Parent and the Borrower shall comply with the following covenants:

**Section 8.1. Preservation of Existence and Similar Matters.**

Except as otherwise permitted under Section 10.5., the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, (i) preserve and maintain its respective existence in the jurisdiction of its incorporation or formation, (ii) preserve and maintain its respective rights, franchises, licenses and privileges in the jurisdiction of its incorporation or formation, except where the failure to preserve and maintain such rights, franchises, licenses and privileges could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (iii) qualify and remain qualified and authorized to do business in each jurisdiction in which the character of its properties or the nature of its business requires such qualification and authorization, except where the failure to be so authorized and qualified could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

**Section 8.2. Compliance with Applicable Law.**

The Parent and the Borrower shall comply, and shall cause each other Loan Party and each other Subsidiary to comply, and the Parent and the Borrower shall use, and shall cause each other Loan Party and

each other Subsidiary to use, commercially reasonable efforts to cause all other Persons occupying, using or present on the Properties to comply, with all Applicable Law (including without limitation Anti-Corruption Laws and Sanctions), including the obtaining of all Governmental Approvals, the failure with which to comply could reasonably be expected to have a Material Adverse Effect.

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### **Section 8.3. Maintenance of Property.**

In addition to the requirements of any of the other Loan Documents, the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, protect and preserve all of its respective material properties, including, but not limited to, all Intellectual Property necessary to the conduct of its respective business, and maintain in good repair, working order and condition all tangible properties, ordinary wear and tear excepted.

### **Section 8.4. Conduct of Business.**

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, carry on its respective businesses as described in Section 7.1.(t).

### **Section 8.5. Insurance.**

In addition to the requirements of any of the other Loan Documents, the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, maintain insurance (on a replacement cost basis) with financially sound and reputable insurance companies against such risks (including without limitation, terrorism as applicable) and in such amounts as is customarily maintained by Persons engaged in similar businesses or as may be required by Applicable Law. The Borrower shall from time to time deliver to the Administrative Agent upon request a detailed list, together with copies of certificates of insurance evidencing the insurance then in effect, stating the names of the insurance companies, the amounts and rates of the insurance, the dates of the expiration thereof and the properties and risks covered thereby. Such insurance shall, in any event, include terrorism coverage to the extent prudent owners of properties similar in nature and location generally maintain such insurance.

### **Section 8.6. Payment of Taxes and Claims.**

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, pay and discharge when due (a) all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or upon any properties belonging to it, and (b) all lawful claims of materialmen, mechanics, carriers, warehousemen and landlords for labor, materials, supplies and rentals which, if unpaid, might become a Lien on any properties of such Person; provided, however, that this Section shall not require the payment or discharge of (i) any such tax, assessment, charge, levy or claim which is being contested in good faith by appropriate proceedings which operate to suspend the collection thereof and for which adequate reserves have been established on the books of such Person in accordance with GAAP, or (ii) any immaterial tax or claim so long as no material Property of the Parent, the Borrower, any other Loan Party or any other Subsidiary is at the immediate risk of being seized, levied or forfeited.

### **Section 8.7. Books and Records; Inspections.**

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, keep proper books of record and account in entries that are full, true and correct in all material respects shall be made of all dealings and transactions in relation to its business and activities. The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, permit representatives of the Administrative Agent or any Lender to visit and inspect any of their respective properties, to examine and make abstracts from any of their respective books and records and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants (in the presence of an officer of the Parent or the Borrower if an Event of Default does not then exist), all at such reasonable times during business hours and as often as may reasonably be requested and so long as no Event of Default exists, with reasonable prior notice. The Borrower shall be obligated to reimburse the Administrative Agent and the Lenders for their costs and expenses incurred in connection with the exercise of their rights under this Section only if such exercise occurs while a Default or Event of Default exists. Each of the Parent and the Borrower

hereby authorizes and instructs its accountants to discuss the financial affairs of the Borrower, any other Loan Party or any other Subsidiary with the Administrative Agent or any Lender.

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## **Section 8.8. Environmental Matters.**

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, comply with all Environmental Laws the failure with which to comply could reasonably be expected to have a Material Adverse Effect. The Parent and the Borrower shall comply, and shall cause each other Loan Party and each other Subsidiary to comply, and the Parent and the Borrower shall use, and shall cause each other Loan Party and each other Subsidiary to use, commercially reasonable efforts to cause all other Persons occupying, using or present on the Properties to comply, with all Environmental Laws in all material respects.

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, promptly take all actions and pay or arrange to pay all costs necessary for it and for the Properties to comply in all material respects with all Environmental Laws and all Governmental Approvals, including, to the extent required to comply in all material respects with all Environmental Laws, actions to remove and dispose of all Hazardous Materials and to clean up the Properties as required under Environmental Laws. The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, promptly take all actions necessary to prevent the imposition of any Liens on any of their respective properties arising out of or related to any Environmental Laws (other than a Lien which consists solely of restrictions on the use of property that do not materially detract from the value of such property or impair the intended use or profitable operation thereof in the business of the Parent, the Borrower and their Subsidiaries). Nothing in this Section shall impose any obligation or liability whatsoever on the Administrative Agent or any Lender.

## **Section 8.9. Further Assurances.**

At the Borrower's cost and expense and upon request of the Administrative Agent, the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, duly execute and deliver or cause to be duly executed and delivered, to the Administrative Agent such further instruments, documents and certificates, and do and cause to be done such further acts that may be reasonably necessary or advisable in the reasonable opinion of the Administrative Agent to carry out more effectively the provisions of this Agreement and the other Loan Documents.

## **Section 8.10. Material Contracts.**

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon any such Person under any Material Contract which if not performed or complied with would reasonably be expected to result in any party to a Material Contract taking action to terminate such Material Contract.

## **Section 8.11. REIT Status.**

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

## **Section 8.12. Exchange Listing.**

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

## **Section 8.13. Guarantors.**

(a) If, during any fiscal quarter, (i) any Person becomes a Material Subsidiary (other than an Excluded Subsidiary, a Foreign Subsidiary or any Domestic Subsidiary that has no material assets other than stock and securities of one or more Foreign Subsidiary) ~~or~~ (ii) any Material Subsidiary ceases to be

subject to the restriction which prevented it from becoming a Guarantor on the Effective Date or delivering an Accession Agreement pursuant to this Section or (iii) any Person provides a Guaranty of the Senior Notes, then, not later than the date on which the Compliance Certificate is required to be delivered pursuant to Section 9.3. with respect to such fiscal quarter (or if such fiscal quarter is the fourth fiscal quarter, the fiscal year ending on the date of such fiscal quarter), the Borrower shall cause such Material Subsidiary to deliver to the Administrative Agent each of the following in form and substance reasonably satisfactory to the Administrative Agent: (y) an Accession Agreement executed by such Subsidiary and (z) the items that would have been delivered under subsections (iv) through (viii) and (xv) of Section 6.1.(a) and under Section 6.1.(ef) if such Subsidiary had

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been a Material Subsidiary (other than an Excluded Subsidiary, a Foreign Subsidiary or any Domestic Subsidiary that has no material assets other than stock and securities of one or more Foreign Subsidiary) on the Agreement Date. As provided in Section 4.1.(d), a Property that is to become an Unencumbered Property and that is owned by a Subsidiary that is not a Guarantor shall not be considered to be an Unencumbered Property until such time as the Administrative Agent shall have received the items referred to in Section 4.1.(d).

(b) The Borrower may request in writing that the Administrative Agent release, and upon receipt of such request the Administrative Agent shall release, a Guarantor (other than the Parent) from the Guaranty so long as: (i) such Guarantor owns no Unencumbered Property, nor any direct or indirect equity interest in any Subsidiary that owns an Unencumbered Property; (ii) such Guarantor is not otherwise required to be a party to the Guaranty under the immediately preceding subsection (a); (iii) no Default or Event of Default shall then be in existence or would occur as a result of such release, including without limitation, a Default or Event of Default resulting from a violation of any of the covenants contained in Section 10.1.; (iv) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party, shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of the date of such release with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted under the Loan Documents; and (v) the Administrative Agent shall have received such written request at least 10 Business Days (or such shorter period as may be acceptable to the Administrative Agent in its sole discretion) prior to the requested date of release. Delivery by the Borrower to the Administrative Agent of any such request shall constitute a representation by the Borrower that the matters set forth in the preceding sentence (both as of the date of the giving of such request and as of the date of the effectiveness of such request) are true and correct with respect to such request.

#### Section 8.14. Security Trigger Date / Additional Collateral / Release of Collateral.

(1) On or before the occurrence of the Security Trigger Date, the Parent and the Borrower shall, and shall cause each Subsidiary of the Borrower that owns any interest in any Collateral, to grant a first priority Lien in the Collateral to the Administrative Agent for the benefit of the Lender Parties and shall deliver each of the following to the Administrative Agent in form and substance reasonably satisfactory to the Administrative Agent: (i) the results of a recent UCC, tax, judgment, bankruptcy and lien search in each of the jurisdictions in which UCC financing statements or other filings or recordings should be made to evidence or perfect Liens in the Collateral, (ii) the Pledge Agreement duly executed by each Person that owns Collateral, (iii) each document (including, without limitation, any UCC financing statement and certificates evidencing the Equity Interest of each Issuer, if any, together with stock powers with respect thereto and any promissory notes or other instruments evidencing any Material Debt Receivables together with allonges thereto) and evidence of the taking of all actions required by the Pledge Agreement or under Applicable Law or reasonably deemed necessary or appropriate by the Administrative Agent to be entered into, filed, registered or recorded or taken, in order to create in favor of the Administrative Agent, for the benefit of the Lender Parties, a perfected first-priority Lien in the Collateral, (iv) opinion of counsel to the Parent, the Borrower and their Subsidiaries relating to the creation, attachment and perfection of the Liens granted pursuant to the Pledge Agreement and the authorization, delivery and enforceability of the Pledge Agreement and (v) one or more Intercreditor Agreements duly executed by the Collateral Agent and the holders of the Senior Notes (and, if and to the extent applicable,

any other Material Collateral Indebtedness which is secured by a Lien on the Collateral) and acknowledged by the Grantors.

(2) If, after the occurrence of the Security Trigger Date and prior to the Security Release Date, the Parent, the Borrower or any of their Subsidiaries acquires any Collateral, then, within five Business Days following the acquisition thereof, the Borrower or the applicable Subsidiary shall take such actions as shall be reasonably required to grant to the Administrative Agent for the benefit of the Lender Parties a first priority Lien in such Collateral including, (i) if the owner thereof is not a party to the Pledge

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Agreement and or any existing Intercreditor Agreement, delivering a supplement to the Pledge Agreement and/or the Intercreditor Agreement duly executed by such Person and a UCC financing statement with respect to such Person and (ii) taking such actions as may be required pursuant to the Pledge Agreement including delivery of (x) any certificates evidencing the Equity Interest of any applicable Issuer, if any, together with stock powers with respect thereto, (y) any promissory notes or other instruments evidencing any Material Debt Receivables together with allonges thereto and (z) any UCC financing statement amendment as may be necessary with respect to such additional Collateral. As provided in Section 4.1.(d)., a Property that is to become an Unencumbered Property after the occurrence of the Security Trigger Date and prior to the Security Release Date shall not be considered to be an Unencumbered Property until such time as the Administrative Agent shall have received the items referred to in Section 4.1.(d).

(3) The Borrower may request in writing that the Administrative Agent release, and promptly upon receipt of such request the Administrative Agent shall release, its Lien in the Collateral if (i) the Security Release Date shall have occurred or (ii) any assets secured by Lien are sold (or effective simultaneously with such release, shall be sold) so long as: (A) such sale is permitted by the terms hereof (including Section 4.2.) and, if applicable, the Borrower has complied (or, upon receipt of the proceeds of such sale) will comply with the terms of Section 2.8; (B) such assets are no longer required to be pledged as Collateral under the terms hereof; (C) no Default or Event of Default shall then be in existence or would occur as a result of such release, including without limitation and, to the extent then applicable, a Default or Event of Default resulting from a violation of any of the covenants contained in Section 10.1. after the Covenant Relief Period; and (D) the Administrative Agent shall have received such written request at least 5 Business Days (or such shorter period as may be acceptable to the Administrative Agent in its sole discretion) prior to the requested date of release. Delivery by the Borrower to the Administrative Agent of any such request shall constitute a representation by the Borrower that the matters set forth in the preceding sentence (both as of the date of the giving of such request and as of the date of the effectiveness of such request) are true and correct with respect to such request.

#### Section 8.15. Article 8 Securities.

Notwithstanding any other provision contained in this Agreement or any other Loan Document, the Parent and the Borrower hereby covenant and agree with the Administrative Agent and the Lenders that from and after the date of this Agreement until the earlier of (a) the date this Agreement shall terminate in accordance with Section 13.10. or (b) the Security Release Date: (i) it will take no action (nor permit any Subsidiary to take any action) of any nature whatsoever for any of the Equity Interests in any Issuer to be treated as "securities" within the meaning of, or governed by, Article 8 of the UCC; (ii) it will take no action (nor permit any Subsidiary to take any action) of any nature whatsoever to enter into, acknowledge or agree to a securities control agreement with respect to the Equity Interests of Issuer; and (iii) it will not (nor permit any Subsidiary to) consent to or permit the filing of financing statements with respect to Equity Interests in any Issuer except for financing statements filed pursuant to the Pledge Agreement.

#### Section 8.16. Government Assistance Indebtedness.

(a) The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, (1) use all of the proceeds of Government Assistance Indebtedness issued under the CARES Act exclusively for CARES Forgivable Uses, if applicable, in the manner required under the CARES Act to obtain forgiveness of the largest possible amount of such Government Assistance Indebtedness, which as of the First Amendment Date requires that the applicable borrower use not less than 75% of the proceeds of Government Assistance Indebtedness for CARES Payroll Costs and (2) use

commercially reasonable efforts to conduct their business in a manner that maximizes the amount of the Government Assistance Indebtedness that is forgiven, if any.

(b) Notwithstanding anything contained in this Agreement, the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, maintain the proceeds of Government Assistance Indebtedness in an account that does not sweep funds and thereafter apply them to any other Indebtedness.

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(c) If the Parent, the Borrower or any Subsidiary incurs Government Assistance Indebtedness, the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, (1) maintain all records required to be submitted in connection with the forgiveness of such Government Assistance Indebtedness, (2) apply for forgiveness of such Government Assistance Indebtedness in accordance with regulations implementing Section 1106 of the CARES Act within 30 days after the last day of the eight week period immediately following the date of incurrence of such Government Assistance Indebtedness and (3) provide the Administrative Agent with a copy of its application for forgiveness and all supporting documentation required by the SBA or the lender of such Government Assistance Indebtedness in connection with the forgiveness of such Government Assistance Indebtedness.

## ARTICLE IX. INFORMATION

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

### Section 9.1. Quarterly Financial Statements.

As soon as available and in any event within 5 days after the same is required to be filed with the SEC (but in no event later than 45 days after the end of each of the first, second and third fiscal quarters of the Parent ~~commencing with the fiscal quarter ending September 30, 2018~~ unless, solely during the Covenant Relief Period, the SEC extends the time for quarterly filing past such date for public companies generally, then the earlier of (i) 5 days after the same is required to be filed with the SEC and (ii) the date which is 75 days after the end of such fiscal quarters of the Parent), the unaudited consolidated balance sheet of the Parent and its Subsidiaries as at the end of such period and the related unaudited consolidated statements of income, equity and cash flows of the Parent and its Subsidiaries for such period, setting forth in each case in comparative form the figures as of the end of and for the corresponding periods of the previous fiscal year, all of which shall be certified by the chief financial officer of the Parent, in his or her opinion, to present fairly, in accordance with GAAP and in all material respects, the consolidated financial position of the Parent and its Subsidiaries as at the date thereof and the results of operations for such period (subject to normal year-end audit adjustments and absence of full footnote disclosure).

### Section 9.2. Year-End Statements.

As soon as available and in any event within 5 days after the same is required to be filed with the SEC (but in no event later than 120 days after the end of each fiscal year of the Parent unless, solely during the Covenant Relief Period, the SEC extends the time for annual filing past such date for public companies generally, then the earlier of (i) 5 days after the same is required to be filed with the SEC and (ii) the date which is 150 days after the end of such fiscal year of the Parent), the audited consolidated balance sheet of the Parent and its Subsidiaries as at the end of such fiscal year and the related audited consolidated statements of income, equity and cash flows of the Parent and its Subsidiaries for such fiscal year, setting forth in comparative form the figures as at the end of and for the previous fiscal year, all of which shall be (a) certified by the chief financial officer of the Parent, in his or her opinion, to present fairly, in accordance with GAAP and in all material respects, the financial position of the Parent and its Subsidiaries as at the date thereof and the result of operations for such period and (b) accompanied by the report thereon of Ernst & Young LLP or any other independent certified public accountants of recognized national standing acceptable to the Administrative Agent, whose report shall not be subject to (i) any “going concern” or like qualification or exception or (ii) any qualification or exception as to the scope of such audit.

### Section 9.3. Compliance Certificate.

At the time the financial statements are furnished pursuant to Sections 9.1. and 9.2., a certificate substantially in the form of Exhibit M (a “Compliance Certificate”) executed on behalf of the Parent by the

chief financial officer or chief accounting officer of the Parent in his or her capacity as such officer and not in any individual capacity (a) setting forth in reasonable detail as of the end of such fiscal quarter or fiscal year, as the case may be, the calculations required to establish whether the Parent and the Borrower, as applicable, were in compliance with the covenants contained in Section 10.1. and (b) stating that, to his or her knowledge, after due inquiry, no Default or Event of Default exists, or, if such is not the case, specifying such Default or Event of Default and its nature, when it occurred and the steps being taken by the Borrower with

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respect to such event, condition or failure. Together with the delivery of each Compliance Certificate, the Borrower shall deliver (A) a list of all Persons that have become a Material Subsidiary or a Significant Subsidiary since the date of the Compliance Certificate most recently delivered hereunder and (B) a report of newly acquired Properties, including their Net Operating Income for the period of four consecutive fiscal quarters most recently ending, purchase price, and principal amount of the mortgage debt as of the date of such Compliance Certificate, if any, since the date of the Compliance Certificate most recently delivered hereunder. During the Covenant Relief Period, the Parent and Borrower shall continue to provide the calculations set forth in the compliance certificate (but not a certification as to the compliance therewith). Additionally, concurrently with the Compliance Certificates required with respect to the last fiscal quarter of the Covenant Relief Period and the first two fiscal quarters following the Covenant Relief Period, the Borrower and the Parent shall provide Administrative Agent (for informational purposes only) its calculation of the financial tests set forth in Section 10.1 based on a trailing-twelve month calculation.

During the Covenant Relief Period, the Borrower and the Parent shall deliver a supplemental Compliance Certificate on the 13<sup>th</sup> of each calendar month certifying as to (1) the amount of Unrestricted Cash of the Borrower and its Subsidiaries as of the last day of the preceding month and (2) the calculation of and compliance with the Average Monthly Liquidity covenant set forth in Section 10.1(i).

#### **Section 9.4. Other Information.**

(a) Promptly, and in any event within 5 Business Days, upon receipt thereof, copies of all reports, if any, submitted to the Parent or its Board of Directors by its independent public accountants including, without limitation, any management report;

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

(c) Promptly, and in any event within 5 Business Days, upon the mailing thereof to the shareholders of the Parent generally, copies of all financial statements, reports and proxy statements so mailed and promptly upon the issuance thereof copies of all press releases issued by the Parent, any Subsidiary or any other Loan Party;

(d) Within 45 days after the end of each fiscal quarter of the Borrower, an operating summary with respect to each Unencumbered Property, including without limitation, a quarterly and year-to-date statement of Net Operating Income;

(e) No later than 90 days after the beginning of each fiscal year of the Parent, (i) projected sources and uses of cash statements, balance sheets, income statements, and EBITDA, of the Parent, the Borrower and the other Subsidiaries on a consolidated and annual basis for the next succeeding fiscal year and, to the extent available, for the next three succeeding fiscal years, all itemized in reasonable detail; (ii) operating statements for the prior year, a property budget for the then current year and planned capital expenditure budget on both an individual and consolidated basis for each Property of the Parent, the Borrower and each of the other Subsidiaries and (iii) the most current Smith Travel Research STAR Report available, which will compare the individual Unencumbered Properties to the primary competitive set. The foregoing shall be accompanied by pro forma calculations, together with detailed assumptions, required to establish whether or not the Parent and the Borrower, as applicable, will be in compliance with the covenants contained in Section 10.1. at the end of each fiscal quarter of the next succeeding fiscal year;

(f) To the extent the Parent, the Borrower, any other Loan Party or any other Subsidiary is aware of the same, prompt notice of any matter that has had, or which could reasonably be expected to have,

a Material Adverse Effect, including without limitation the Parent, the Borrower, any other Loan Party or any other Subsidiary actually becoming aware of any ERISA Event or any material litigation, arbitration or governmental investigation or proceeding instituted or threatened in writing against any Loan Party or Unencumbered Property;

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(g) A copy of any amendment to the certificate or articles of incorporation or formation, bylaws, operating agreement, partnership agreement or other similar organizational documents of the Parent, the Borrower or any other Loan Party within 5 Business Days after the effectiveness thereof;

(h) Prompt notice of any change in the senior management of the Parent or the Borrower;

(i) Prompt notice of (i) the occurrence of any Default or Event of Default, or (ii) any event which constitutes or which with the passage of time, the giving of notice, or otherwise, would constitute a default or event of default by the Parent, the Borrower, any other Loan Party or any other Subsidiary under any Material Contract or the Senior Notes Agreement;

(j) Prompt notice of any Person becoming a Material Subsidiary or a Significant Subsidiary or, after the Security Trigger Date and prior to the Security Release Date, an Issuer;

(k) ~~reserved~~ Promptly, and in any event not less than five days prior to the effectiveness thereof, a copy of each material amendment to the Senior Notes Agreement or the terms of the Senior Notes;

(l) Promptly upon the request of the Administrative Agent, evidence of the Parent's calculation of the Ownership Share with respect to a Subsidiary or an Unconsolidated Affiliate, such evidence to be in form and detail reasonably satisfactory to the Administrative Agent;

(m) Promptly, upon each request, information identifying the Parent and the Borrower as a Lender may request in order to comply with applicable "know your customer" and Anti-Money Laundering Laws, including without limitation, the Patriot Act; and

(n) From time to time and promptly upon each request, such data, certificates, reports, statements, documents or further information regarding any Property or the business, assets, liabilities, financial condition, results of operations or business prospects of the Parent, the Borrower, any other Loan Party or any other Subsidiary as the Administrative Agent or any Lender may reasonably request.

Subject to the requirements of Section 9.5.(a), to the extent any notices, documents or other items to be delivered pursuant to this Section 9.4. are included in materials otherwise filed with the SEC, the filing of such materials with the SEC shall satisfy the notice and/or delivery requirements under this Section 9.4.

## **Section 9.5. Electronic Delivery of Certain Information.**

(a) Documents required to be delivered pursuant to the Loan Documents (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered by electronic communication and delivery, including, the Internet, e-mail or intranet websites to which the Administrative Agent and each Lender have access (including a commercial, third-party website or a website sponsored or hosted by the Administrative Agent or the Borrower) provided that the foregoing shall not apply to (i) notices to any Lender (or the Issuing Banks) pursuant to Article II. and (ii) any Lender that has notified the Administrative Agent and the Borrower that it cannot or does not want to receive electronic communications.

The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic delivery pursuant to procedures approved by it for all or particular notices or communications. Documents or notices delivered electronically shall be deemed to have been delivered 24 hours after the date and time on which the Administrative Agent or the Borrower posts such documents or the documents become available on a commercial website and the Administrative Agent or Borrower notifies each Lender of said posting and provides a link thereto provided if such notice or other communication is not sent or posted during the normal business hours of the recipient, said posting date and time shall be deemed to have commenced as of 11:00 a.m. Central time on the opening of business on the next business day for the recipient. Notwithstanding anything contained herein, the Borrower shall deliver paper copies of any documents to the Administrative Agent or to any Lender that requests such paper copies until

a written request to cease delivering paper copies is given by the Administrative Agent or such Lender. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents delivered electronically, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery.

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Each Lender shall be solely responsible for requesting delivery to it of paper copies and maintaining its paper or electronic documents.

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

#### **Section 9.6. Public/Private Information.**

The Borrower shall cooperate with the Administrative Agent in connection with the publication of certain materials and/or information provided by or on behalf of the Borrower. Documents required to be delivered pursuant to the Loan Documents shall be delivered by or on behalf of the Borrower to the Administrative Agent and the Lenders (collectively, “Informational Materials”) pursuant to this Article and the Borrower shall designate Informational Materials (a) that are either available to the public or not material with respect to the Borrower and its Subsidiaries or any of their respective securities for purposes of United States federal and state securities laws, as “Public Information” and (b) that are not Public Information as “Private Information”; provided that any Informational Materials that are not designated as “Public Information” or “Private Information” shall be considered to be “Private Information”.

#### **Section 9.7. Compliance with Anti-Corruption Laws; Beneficial Ownership Regulation, Anti-Money Laundering Laws and Sanctions.**

The Parent and the Borrower will (a) maintain in effect and enforce policies and procedures reasonably designed to ensure compliance by the Parent, the Borrower, their respective Subsidiaries and their respective directors, officers, employees and agents with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions, (b) notify the Administrative Agent and each Lender that previously received a Beneficial Ownership Certification of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified therein and (c) promptly upon the reasonable request of the Administrative Agent or any Lender, provide the Administrative Agent or such Lender, as the case may be, any information or documentation requested by it for purposes of complying with the Beneficial Ownership Regulation.

#### **Section 9.8. Use of Proceeds.**

(a) The Borrower will use the proceeds of Loans or any Letter of Credit only for general corporate purposes, including, without limitation, (i) to finance acquisitions otherwise permitted under this Agreement; (ii) to finance capital expenditures and the repayment of Indebtedness of the Borrower and its Subsidiaries; (iii) to finance repurchases of common and preferred Equity Interests, (iv) to provide for the general working capital needs of the Borrower and its Subsidiaries, (v) the payment of fees and expenses in connection herewith and (vi) Restricted Payments to the extent permitted under this Agreement.

(b) The Borrower will not request any Loan, and the Borrower shall not use, and shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Loan or Letter of Credit, directly or to Borrower’s knowledge indirectly, (i) 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, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

### **ARTICLE X. NEGATIVE COVENANTS**

For so long as this Agreement is in effect, the Parent and the Borrower shall comply with the following covenants:

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## Section 10.1. Financial Covenants.

(a) Maximum Leverage Ratio. The Parent shall not permit the Leverage Ratio to exceed 6.50 to 1.00 at any time; provided, however, that (I) notwithstanding the foregoing if the Covenant Relief Period ends as specified in clause (ii) of the definition thereof then (A) for the fiscal quarter period ending June 30, 2021, the Leverage Ratio may exceed 6.50 to 1.00 but shall not exceed 7.00 to 1.00 at any time and (B) for the fiscal quarter period ending September 30, 2021, the Leverage Ratio may exceed 6.50 to 1.00 but shall not exceed 6.75 to 1.00 at any time, and (II) the Parent shall have the option, exercisable one time beginning the fiscal quarter period ending December 31, 2021, to elect that the Leverage Ratio may exceed 6.50 to 1.00 for a period (such period, the “Leverage Ratio Surge Period”) of up to four consecutive fiscal quarters commencing with the fiscal quarter during which the Borrower delivers the notice referred to below so long as (i) the Borrower has delivered a written notice to the Administrative Agent that the Borrower is exercising its option under this subsection (a) and (ii) the Leverage Ratio does not exceed 7.00 to 1.00 at any time during the Leverage Ratio Surge Period.

(b) Minimum Fixed Charge Coverage Ratio. The Parent shall not permit the ratio of (i) Adjusted EBITDA for the period of four consecutive fiscal quarters most recently ended to (ii) Fixed Charges for such period to be less than 1.50 to 1.00 as of the last day of such period. Notwithstanding the foregoing, for purposes of calculating the foregoing, (A) for the last full fiscal quarter period of the Covenant Relief Period (which, (x) if the Covenant Relief Period ends pursuant to clause (i) of the definition thereof will be the period for which the Borrower calculated the Financial Covenants in the Covenant Relief Termination Notice and (y) if the Covenant Relief Period ends pursuant to clause (ii) of the definition thereof, will be June 30, 2021), Adjusted EBITDA and Fixed Charges shall be measured as, at Borrower’s election, either (I) Adjusted EBITDA and Fixed Charges for the two fiscal quarter period ending on such date multiplied by 2, or (II) Adjusted EBITDA and Fixed Charges for the single fiscal quarter ending on such date multiplied by 4; (B) for the fiscal quarter period immediately following the fiscal quarter period described in clause (A), Adjusted EBITDA and Fixed Charges shall be measured as, either (I) if for clause (A) above, Adjusted EBITDA and Fixed Charges was measured based on sub-clause (I) thereof, then Adjusted EBITDA and Fixed Charges shall be measured as Adjusted EBITDA and Fixed Charges for the three fiscal quarter period ending on such date multiplied by 4/3, or (II) if for clause (A) above, Adjusted EBITDA and Fixed Charges was measured based on sub-clause (II) thereof, then Adjusted EBITDA and Fixed Charges shall be measured as Adjusted EBITDA and Fixed Charges for the two fiscal quarter period ending on such date multiplied by 2; and (C) for the fiscal quarter period immediately following the fiscal quarter period described in clause (B), Adjusted EBITDA and Fixed Charges shall be measured as, either (I) if for clause (A) above, Adjusted EBITDA and Fixed Charges was measured based on sub-clause (I) thereof, then Adjusted EBITDA and Fixed Charges shall be measured as Adjusted EBITDA and Fixed Charges for the four fiscal quarter period ending on such date, or (II) if for clause (A) above, Adjusted EBITDA and Fixed Charges was measured based on sub-clause (II) thereof, then Adjusted EBITDA and Fixed Charges shall be measured as Adjusted EBITDA and Fixed Charges for the three fiscal quarter period ending on such date multiplied by 4/3.

(c) Minimum Tangible Net Worth. The Parent shall not permit Tangible Net Worth at any time to be less than ~~(i) \$2,484,360,000 plus (ii) 75% of the Net Proceeds of all Equity Issuances effected at any time after June 30, 2018 by the Parent, the Borrower or any other Subsidiary to any Person other than the Parent, the Borrower or any other Subsidiary.~~ \$2,000,000,000.

(d) Maximum Unencumbered Leverage Ratio. The Parent shall not permit the ratio of (i) Unsecured Indebtedness of the Parent and its Subsidiaries determined on a consolidated basis to (ii) Unencumbered Asset Value to exceed 0.60 to 1.00 at any time; provided, however, that the Parent shall have the option, exercisable one time, to elect that such ratio may exceed 0.60 to 1.00 for a period (such period, the “Unencumbered Leverage Ratio Surge Period”) of up to four consecutive fiscal quarters commencing with the fiscal quarter during which the Borrower delivers the notice referred to below so long as (i) the Borrower has delivered a written notice to the Administrative Agent that the Borrower is exercising its option under this

subsection (d), (ii) such ratio does not exceed 0.65 to 1.00 at any time during the Unencumbered Leverage Ratio Surge Period and (iii) the Borrower completed a Material Acquisition which resulted in such ratio (after giving effect to such Material Acquisition) exceeding 0.60 to 1.00 at any time during the fiscal quarter in which such Material Acquisition took place or the immediately following fiscal quarter.

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(e) Minimum Unsecured Interest Expense Coverage Ratio. The Parent shall not permit the ratio of (i) Adjusted NOI to (ii) Unsecured Interest Expense of Parent and its Subsidiaries to be less than 2.00 to 1.00 at any time; provided, however, that notwithstanding the foregoing if the Covenant Relief Period ends as specified in clause (ii) of the definition thereof then (A) for the fiscal quarter period ending June 30, 2021, the ratio of Adjusted NOI to Unsecured Interest Expense may be less than 2.00 to 1.00 but shall not be less than 1.50 to 1.00 at any time and (B) for the fiscal quarter period ending September 30, 2021, the ratio of Adjusted NOI to Unsecured Interest Expense may be less than 2.00 to 1.00 but shall not be less than 1.75 to 1.00 at any time. Notwithstanding the foregoing, for purposes of calculating the foregoing, (A) for the last full fiscal quarter period of the Covenant Relief Period (which, (x) if the Covenant Relief Period ends pursuant to clause (i) of the definition thereof will be the period for which the Borrower calculated the Financial Covenants in the Covenant Relief Termination Notice and (y) if the Covenant Relief Period ends pursuant to clause (ii) of the definition thereof, will be June 30, 2021), Adjusted NOI and Unsecured Interest Expense shall be measured as, at Borrower's election, either (I) Adjusted NOI and Unsecured Interest Expense for the two fiscal quarter period ending on such date multiplied by 2, or (II) Adjusted NOI and Unsecured Interest Expense for the single fiscal quarter ending on such date multiplied by 4; (B) for the fiscal quarter period immediately following the fiscal quarter period described in clause (A), Adjusted NOI and Unsecured Interest Expense shall be measured as, either (I) if for clause (A) above, Adjusted NOI and Unsecured Interest Expense was measured based on sub-clause (I) thereof, then Adjusted NOI and Unsecured Interest Expense shall be measured as Adjusted NOI and Unsecured Interest Expense for the three fiscal quarter period ending on such date multiplied by 4/3, or (II) if for clause (A) above, Adjusted NOI and Unsecured Interest Expense was measured based on sub-clause (II) thereof, then Adjusted NOI and Unsecured Interest Expense shall be measured as Adjusted NOI and Unsecured Interest Expense for the two fiscal quarter period ending on such date multiplied by 2; and (C) for the fiscal quarter period immediately following the fiscal quarter period described in clause (B), Adjusted NOI and Unsecured Interest Expense shall be measured as, either (I) if for clause (A) above, Adjusted NOI and Unsecured Interest Expense was measured based on sub-clause (I) thereof, then Adjusted NOI and Unsecured Interest Expense shall be measured as Adjusted NOI and Unsecured Interest Expense for the four fiscal quarter period ending on such date, or (II) if for clause (A) above, Adjusted NOI and Unsecured Interest Expense was measured based on sub-clause (II) thereof, then Adjusted NOI and Unsecured Interest Expense shall be measured as Adjusted NOI and Unsecured Interest Expense for the three fiscal quarter period ending on such date multiplied by 4/3.

(f) Minimum Unencumbered Property Requirements. The Parent shall not permit the number of Unencumbered Properties to be less than 7 Properties or the Unencumbered Asset Value to be less than \$500,000,000.

(g) Maximum Secured Indebtedness Ratio. The Parent shall not permit the ratio of (i) Secured Indebtedness of the Parent and its Subsidiaries to (ii) Total Asset Value to exceed 0.45 to 1.00 at any time.

(h) Maximum Secured Recourse Indebtedness Ratio. The Parent shall not permit the ratio of (i) Secured Recourse Indebtedness of the Parent and its Subsidiaries to (ii) Total Asset Value to exceed 0.10 to 1.00 at any time.

~~(i) Reserved.~~

(i) Liquidity. At all times during the Covenant Relief Period, the Borrower and its Subsidiaries shall maintain Average Monthly Liquidity of not less than \$150,000,000.

(i) ~~Reserved.~~ Covenant Relief Period. Notwithstanding the foregoing, during the Covenant Relief Period, the Parent shall not be required to comply with the Financial Covenants described in clauses (a) – (h) and neither the Leverage Ratio Surge Period nor the Unencumbered Leverage Ratio Surge Period shall be deemed to be utilized.

(k) Dividends and Other Restricted Payments. The Parent and the Borrower shall not, and shall not permit any of their Subsidiaries to, redeem, purchase, repurchase or otherwise acquire any Equity Interests of the Parent, the Borrower or any of their Subsidiaries from any Person other than the Parent, the Borrower or a Subsidiary unless (i) no Default or Event of Default exists or would result therefrom and (ii) the Borrower shall have delivered to the Administrative Agent at least 3 Business Days prior to any redemption, purchase, repurchase or other acquisition that exceeds \$50,000,000 in the aggregate a Compliance Certificate evidencing that the Parent and the Borrower will be in compliance with the covenants contained in Section 10.1. after giving pro forma effect to such redemption, purchase, repurchase or other acquisition.

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Notwithstanding the foregoing, if an Event of Default exists, the Parent and the Borrower shall not, and shall not permit any of their Subsidiaries to, declare or make any Restricted Payments except that (i) the Borrower may declare and make cash distributions to the Parent and other holders of Equity Interests in the Borrower with respect to any fiscal year to the extent necessary for the Parent to distribute, and the Parent may (A) make cash or equity distributions in an aggregate amount not to exceed the minimum amount necessary for the Parent to satisfy the requirements for qualification and taxation as a REIT and not be subject to income or excise taxation under Sections 857(b)(1), 857(b)(3), 860 or 4981 of the Internal Revenue Code and (B) make additional distributions in common Equity Interests of the Parent in an amount under this clause (B) that, when combined with the distributions under clause (A) above, do not exceed 100% of the taxable income of the Parent determined in accordance with Section 857(b)(2) of the Internal Revenue Code and (ii) Subsidiaries of the Borrower may make Restricted Payments to any 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. Notwithstanding the foregoing, during the Covenant Relief Period, the terms of this 10.1.(k) shall be subject to Section 10.11.(a).

## **Section 10.2. Permitted Liens; Negative Pledge.**

(a) The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary or to, create, assume, or incur any Lien (other than Permitted Liens) upon any of its properties, assets, income or profits of any character whether now owned or hereafter acquired or, if immediately prior to the creation, assumption or incurring of such Lien, or immediately thereafter, a Default or Event of Default is or would be in existence, including without limitation, a Default or Event of Default resulting from a violation of any of the covenants contained in Section 10.1. The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to create any Lien (other than Permitted Liens described in clauses (a), (f) and (i) of the definition thereof) in the Collateral (or the property required to become Collateral on the Security Trigger Date) or in the Equity Interests of any Excluded Issuer from and after June 30, 2020 to and including the Security Release Date.

(b) The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary (other than an Excluded Subsidiary) to, enter into, assume or otherwise be bound by any Negative Pledge except for (i) a Negative Pledge contained in any agreement that evidences unsecured Indebtedness which contains restrictions on encumbering assets that are substantially similar to or less restrictive than those restrictions contained in the Loan Documents; (ii) a Negative Pledge contained in any agreement relating to assets to be sold where the restrictions on encumbering assets relate only to such assets pending such sale; (iii) a Negative Pledge contained in a joint venture agreement applicable solely to the assets or Equity Interests of such joint venture; and (iv) a Negative Pledge contained in any agreement (x) evidencing Secured Indebtedness of such Person, but only to the extent that no Default or Event of Default is in existence at the time such Secured Indebtedness is created, incurred or assumed, nor would result from the creation, incurrence or assumption of such Secured Indebtedness (including without limitation, a Default or Event of Default resulting from a violation of any of the covenants contained in Section 10.1.), (y) the Lien securing such Secured Indebtedness permitted to exist pursuant to this Agreement, and (z) which prohibits the creation of any other Lien on only the property securing such Secured Indebtedness. Further, the Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to grant a Negative Pledge (other than a Negative Pledge in the Senior Note Agreement that is substantially identical to this sentence) in the Equity Interests of any Excluded Issuer from and after June 30, 2020 to and including the Security Release Date.

## **Section 10.3. Restrictions on Intercompany Transfers.**

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary (other than an Excluded Subsidiary) to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary to: (a) pay dividends or make any other distribution on any of such Subsidiary's capital stock or other Equity Interests

owned by the Parent, the Borrower or any other Subsidiary; (b) pay any Indebtedness owed to the Parent, the Borrower or any other Subsidiary; (c) make loans or advances to the Parent, the Borrower or any other Subsidiary; or (d) transfer any of its property or assets to the Parent, the Borrower or any other Subsidiary, in each case, other than: (i) with respect to clauses (a) through (d), those encumbrances or restrictions (x) contained in any Loan Document or (y) contained in any other agreement that evidences unsecured Indebtedness containing encumbrances or restrictions on the actions described above that are substantially similar to or less restrictive than those contained in the Loan Documents, or (ii) with respect to clause (d), (x) restrictions contained in any

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agreement relating to the sale of a Subsidiary (other than the Borrower) or the assets of a Subsidiary pending sale, or relating to Secured Indebtedness secured by a Lien on assets that the Parent, the Borrower, any other Loan Party or any other Subsidiary may create, incur, assume, or permit or suffer to exist under the Loan Documents; provided that in any such case, the restrictions apply only to the Subsidiary or the assets that are the subject of such sale or Lien, as the case may be or (y) customary provisions restricting assignment of any agreement entered into by the Parent, the Borrower, any other Loan Party or any other Subsidiary in the ordinary course of business.

#### **Section 10.4. Restrictions on Use of Proceeds.**

The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, use any part of such proceeds to purchase or carry, or to reduce or retire or refinance any credit incurred to purchase or carry, any margin stock (within the meaning of Regulation U or Regulation X of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying any such margin stock; provided, however, subject to Section 10.1.(k), the Borrower may use proceeds of the Loans to redeem, purchase, repurchase or otherwise acquire Equity Interests of the Parent, the Borrower any their Subsidiaries so long as such use will not result in any of the Loans or other Obligations being considered to be "purpose credit" directly or indirectly secured by margin stock within the meaning of Regulation U or Regulation X of the Board of Governors of the Federal Reserve System.

#### **Section 10.5. Merger, Consolidation, Sales of Assets and Other Arrangements.**

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, (i) enter into any transaction of merger or consolidation, (ii) liquidate, windup or dissolve itself (or suffer any liquidation or dissolution) or (iii) convey, sell, lease, sublease, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any substantial part of its business or assets, or the capital stock of or other Equity Interests in any of its Subsidiaries, whether now owned or hereafter acquired; provided, however, that:

(a) any of the actions described in the immediately preceding clauses (i) through (iii) may be taken with respect to any Subsidiary so long as (x) immediately prior to the taking of such action, and immediately thereafter and after giving effect thereto, no Default or Event of Default is or would be in existence, (y) if such action includes the sale of all Equity Interests in a Subsidiary that is a Guarantor owned directly or indirectly by the Parent, such Subsidiary can and will be released from the Guaranty in accordance with Section 8.13.(b) and (z) if such action includes the disposition of an Unencumbered Property (regardless of whether such disposition takes the form of a direct sale of such Unencumbered Property, the sale of the Equity Interests of the Subsidiary that owns such Unencumbered Property or a merger of such Subsidiary), such Unencumbered Property can and will be removed as an Unencumbered Property in accordance with Section 4.2.;

(b) the Parent, the Borrower, the other Loan Parties and the other Subsidiaries may lease and sublease their respective assets, as lessor or sublessor (as the case may be), in the ordinary course of their business;

(c) a Person may merge with a Loan Party so long as (i) the survivor of such merger is such Loan Party or, solely in the case of a Loan Party other than the Borrower or the Parent, becomes a Loan Party at the time of such merger, (ii) immediately prior to such merger, and immediately thereafter and after giving effect thereto, (x) no Default or Event of Default is or would be in existence, including, without limitation, a Default or Event of Default resulting from a breach of Section 10.1. and (y) the representations and warranties made or deemed made by Borrower and the applicable Loan Party in the Loan Documents to which any of them is a party shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of the date

of such extension with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted under the Loan Documents, (iii) the Borrower shall have given the Administrative Agent at least 30-days' prior written notice (or such shorter period as Administrative Agent shall approve) of such merger, such notice to include a certification as to the matters described in the immediately preceding clause (ii) (except that such prior notice shall not be required

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in the case of the merger of a Subsidiary that does not own an Unencumbered Property with and into a Loan Party but the Borrower shall give the Administrative Agent notice of any such merger promptly following the effectiveness of such merger) and (iv) at the time the Borrower gives notice pursuant to clause (iii) of this subsection, the Borrower shall have delivered to the Administrative Agent for distribution to each of the Lenders a Compliance Certificate, calculated on a pro forma basis, evidencing the continued compliance by the Loan Parties, as applicable, with the terms and conditions of this Agreement and the other Loan Documents, including without limitation, the financial covenants contained in Section 10.1., after giving effect to such merger; and

(d) the Parent, the Borrower and each other Subsidiary may sell, transfer or dispose of assets among themselves.

Notwithstanding the foregoing, during the Covenant Relief Period, the Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to enter into any transaction of merger or consolidation or liquidate, windup or dissolve itself (or suffer any liquidation or dissolution), other than, so long as no Default or Event of Default has occurred and is continuing, (1) a transaction of merger or consolidation with a Single Asset Entity which is structured as a merger or consolidation solely to effect an Investment permitted under Section 10.11.(b) below or (2) the liquidation, windup or dissolution of Sunstone 42nd St. or the sale, transfer or other disposition of all or any of its assets so long as, immediately prior to and after giving effect to such transaction, (i) the holder of the mortgage secured by the hotel owned by Sunstone 42nd St. does not have a claim for repayment of the mortgage loan under a “bad boy” guaranty (the “42nd St. Guaranty”) in excess of the then outstanding principal amount of such mortgage loan (which on the First Amendment Date is \$77,174,971.28), accrued and unpaid interest thereon and the costs and expenses of enforcement required to be paid by the guarantor under the 42nd St. Guaranty or (ii) if the holder of such mortgage has a claim in excess of such amount, such holder shall have waived such liability in writing.

Further, (x) no Loan Party shall enter into any sale-leaseback transactions or other transaction by which such Person shall remain liable as lessee (or the economic equivalent thereof) of any real or personal property that it has sold or leased to another Person and (y) no Subsidiary that is not a Loan Party shall enter into any sale-leaseback transactions or other transaction by which such Person shall remain liable as lessee (or the economic equivalent thereof) of any real or personal property that it has sold or leased to another unless no Default or Event of Default exists or would result therefrom.

#### **Section 10.6. Plans.**

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, permit any of its respective assets to become or be deemed to be “plan assets” within the meaning of ERISA, the Internal Revenue Code and the respective regulations promulgated thereunder.

#### **Section 10.7. Fiscal Year.**

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

#### **Section 10.8. Modifications of Organizational Documents.**

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, amend, supplement, restate or otherwise modify or waive the application of any provision of its certificate or articles of incorporation or formation, by-laws, operating agreement, declaration of trust, partnership agreement or other applicable organizational document if such amendment, supplement,

restatement or other modification (a) is adverse to the interest of the Administrative Agent, the Issuing Banks or the Lenders or (b) could reasonably be expected to have a Material Adverse Effect.

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## **Section 10.9. Transactions with Affiliates.**

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, permit to exist or enter into any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate, except (a) as set forth on Schedule 7.1.(r) or (b) transactions pursuant to the reasonable requirements of the business of the Parent, the Borrower, such other Loan Party or such other Subsidiary and upon fair and reasonable terms which are no less favorable to the Parent, the Borrower, such other Loan Party or such other Subsidiary than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate.

## **Section 10.10. Derivatives Contracts.**

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, enter into or become obligated in respect of Derivatives Contracts other than Derivatives Contracts entered into by the Parent, the Borrower, any such Loan Party or any such Subsidiary in the ordinary course of business and which establish an effective hedge in respect of liabilities, commitments or assets held or reasonably anticipated by the Parent, the Borrower, such other Loan Party or such other Subsidiary.

## **Section 10.11. Covenant Relief Period Covenants.**

**Notwithstanding anything to the contrary set forth herein, from June 30, 2020 to the end of the Covenant Relief Period the Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to:**

**(1) Make any Restricted Payment other than (i) the Borrower may declare and make cash distributions to the Parent and the Parent may make cash and equity distributions the holders of its Equity Interests to the extent necessary, as determined by Parent, for the Parent to satisfy the requirements for qualification and taxation as a REIT and not be subject to income or excise taxation under Sections 857(b)(1), 857(b)(3), 860 or 4981 of the Internal Revenue Code; provided that, during the Covenant Relief Period, the Borrower and the Parent shall cause the percentage of such distributions constituting Equity Interests to be the maximum percentage then permitted by applicable law (which shall include any letter ruling issued by the United States Internal Revenue Service), and (ii) so long as no Default or Event of Default exists, Preferred Dividends (A) in an amount not to exceed \$3,210,000 per fiscal quarter and (B) quarterly dividends in an amount required pursuant to any Preferred Equity Interests issued pursuant to Section 10.11(d)(iii) below.**

**(2) Directly or indirectly make any Investment other than, so long as no Default or Event of Default then exists or would result therefrom and no portion of the cost of the acquisition thereof consists of the proceeds of Indebtedness (other than (x) Nonrecourse Indebtedness arising from the assumption of a mortgage on a Property existing at the time of the acquisition thereof and not created in contemplation of such acquisition, (y) Revolving Loans and (z) Swingline Loans), the acquisition of Properties and Senior Mortgage Receivables (and, solely with respect to clause (ii) below, other Mortgage Receivables and Secured Mezz Receivables) (i) in an aggregate amount during the Covenant Relief Period not to exceed \$100,000,000 so long as, at the time of making such Investment and after giving pro forma effect thereto, the aggregate Availability will be equal to or greater than \$250,000,000 and (ii) in an aggregate amount during the Covenant Relief Period not to exceed \$250,000,000 (plus, with respect to acquisitions of Eligible Properties that will become Unencumbered Pool Properties, Mortgage Receivables and Secured Mezz Receivables, an amount equal to the proceeds received by the Borrower from the issuance of common Equity Interests which are not required to be applied as set forth in Section**

2.8(b)(iii)) so long as, at the time of making such Investment and after giving pro forma effect thereto, the Availability is equal to \$500,000,000.

(3) Directly or indirectly voluntarily prepay the Senior Notes (except as specified in Section 2.8 hereof) or any Indebtedness which is secured by Liens which are subordinate to the Liens securing the Obligations or is contractually subordinated to the Obligations.

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(4) Directly or indirectly issue, assume or otherwise incur any Indebtedness or issue any Preferred Equity Interests other than (i) Indebtedness which is Nonrecourse Indebtedness (A) incurred to refinance other Nonrecourse Indebtedness existing on June 30, 2020, so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of the Indebtedness refinanced thereby, and the maturity date of such refinancing Indebtedness is no earlier than the maturity date of the Indebtedness refinanced thereby, (B) constituting a mortgage on a Property assumed at the time of acquisition thereof (and not created in contemplation thereof) or (C) to the extent the proceeds thereof are applied as required pursuant to Section 2.8.(b), (ii) subject to compliance with Section 8.16, Government Assistance Indebtedness and (iii) Preferred Equity Interests in an amount up to \$200,000,000 so long as (A) such Preferred Equity Interests are issued by the Parent and are either (I) perpetual preferred Equity Interests or (II) not available for redemption at the election of the holder thereof prior to the date that is one year after the latest Termination Date for any Class of Loans and, in either case, such Preferred Equity Interests do not provide for an increase in the rate of return thereon if not redeemed on or prior to the latest Termination Date for any Class of Loans, and (2) the proceeds thereof are applied as required pursuant to Section 2.8(b)(iii).

(5) Directly or indirectly make any capital expenditures other than (i) capital expenditures in an amount not exceeding \$110,000,000 in the aggregate for the period commencing May 1, 2020 through the end of the Covenant Relief Period and (ii) other capital expenditures in excess of the amount set forth in clause (i) so long as such capital expenditures are necessary for emergency repairs or other expenditures required for the safety of employees or guests.

(6) Sell, transfer of or otherwise dispose any Unencumbered Property, unless the proceeds thereof are applied as required by and in accordance with Section 2.8.(b), including the definition of "Net Proceeds."

## **ARTICLE XI. DEFAULT**

### **Section 11.1. Events of Default.**

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

(a) Default in Payment. The Borrower shall fail to pay when due under this Agreement or any other Loan Document (whether upon demand, at maturity, by reason of acceleration or otherwise) (i) the principal of any of the Loans or any Reimbursement Obligation, (ii) any interest on any of the Loans, Reimbursement Obligations or L/C Disbursements, or any Fee payable by the Borrower, and solely in the case of this clause (ii), such failure shall continue for a period of 3 Business Days or (iii) other payment Obligations owing by the Borrower under this Agreement or any other Loan Document, or any other Loan Party shall fail to pay when due any payment obligation owing by such Loan Party under any Loan Document to which it is a party, and solely in the case of this clause (iii), such failure shall continue for a period of 3 Business Days.

(b) Default in Performance.

(i) Any Loan Party shall fail to perform or observe any term, covenant, condition or agreement on its part to be performed or observed and contained in Article IX. or Article X. (other than Section 10.6.); or

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

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

(d) Indebtedness Cross-Default.

(i) The Parent, the Borrower, any other Loan Party or any other Subsidiary shall fail to make any payment when due and payable in respect of any Indebtedness (after giving effect to any applicable notice or cure periods under such Indebtedness) (other than the Loans, Reimbursement Obligations and Derivatives Contracts) having an aggregate outstanding principal amount, in each case individually or in the aggregate with all other Indebtedness as to which such a failure exists, of \$75,000,000 or more (or in the case of Nonrecourse Indebtedness, \$165,000,000 or more) (in each case, “Material Indebtedness”); or

(ii) (x) The maturity of any Material Indebtedness shall have been accelerated in accordance with the provisions of any indenture, contract or instrument evidencing, providing for the creation of or otherwise concerning such Material Indebtedness or (y) any Material Indebtedness shall have been required to be prepaid, repurchased, redeemed or defeased prior to the stated maturity thereof, in each case of this clause (y), other than as a result of the sale or other transfer of the collateral for any such Material Indebtedness that is Secured Indebtedness; or

(iii) Any other event shall have occurred and be continuing which, with or without the passage of time, the giving of notice, or otherwise, would permit any holder or holders of any Material Indebtedness, any trustee or agent acting on behalf of such holder or holders or any other Person, to accelerate the maturity of any such Material Indebtedness or require any such Material Indebtedness to be prepaid, repurchased, redeemed or defeased prior to its stated maturity; provided that upon Administrative Agent’s receipt of evidence that such event has been waived in writing by such holder, holders, trustee, agent or other Person holding any such Material Indebtedness, such event shall automatically cease to constitute an Event of Default hereunder; or

(iv) There occurs an “Event of Default” under and as defined in any Derivatives Contract as to which the Parent, the Borrower, any other Loan Party or any other Subsidiary is a “Defaulting Party” (as defined therein), or there occurs an “Early Termination Date” (as defined therein) in respect of any Specified Derivatives Contract as a result of a “Termination Event” (as defined therein) as to which the Borrower or any of its Subsidiaries is an “Affected Party” (as defined therein), in each case, if the Derivatives Termination Value payable by the Parent, the Borrower, any other Loan Party or any other Subsidiary exceeds \$75,000,000 in the aggregate.

(5) Prior to the Security Release Date, the Parent, the Borrower, any other Loan Party or any Subsidiaries shall (x) fail to make a payment when due and payable with respect to the Senior Notes (after giving effect to any applicable notice or cure periods thereunder), (y) the maturity of any Indebtedness under the Senior Notes or Senior Notes Agreement shall have been accelerated in accordance with the terms thereof or the Senior Notes shall be required to be prepaid, repurchased, redeemed or defeased prior to the stated maturity thereof or (z) any other event shall have occurred and be continuing which, with or without the passage of time, the giving of notice, or otherwise, would permit any holder or holders of any the Senior Notes, any trustee or agent acting on behalf of such holder or holders or any other Person, to accelerate the maturity of any of the Senior Notes or require any Indebtedness under the Senior Notes to be prepaid, repurchased, redeemed or defeased prior to its stated maturity; provided that upon Administrative Agent’s receipt of evidence that such event has been waived in writing by

such holder, holders, trustee, agent or other Person holding such Senior Notes, such event shall automatically cease to constitute an Event of Default hereunder.

(e) Voluntary Bankruptcy Proceeding. The Parent, the Borrower, any other Loan Party or any other Significant Subsidiary shall: (i) commence a voluntary case under the Bankruptcy Code or other federal bankruptcy laws (as now or hereafter in effect); (ii) file a petition seeking to take advantage of any other Applicable Laws, domestic or foreign, relating

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to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; (iii) consent to, or fail to contest in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other Applicable Laws or consent to any proceeding or action described in the immediately following subsection (f); (iv) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; (v) admit in writing its inability to pay its debts as they become due; (vi) make a general assignment for the benefit of creditors; (vii) make a conveyance fraudulent as to creditors under any Applicable Law; or (viii) take any corporate or partnership action for the purpose of effecting any of the foregoing.

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

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

(h) Judgment. A judgment or order for the payment of money or for an injunction or other non-monetary relief shall be entered against the Parent, the Borrower, any other Loan Party or any other Subsidiary by any court or other tribunal and (i) such judgment or order shall continue for a period of 30 consecutive days without being satisfied, paid, stayed or dismissed through appropriate appellate proceedings and (ii) either (A) the amount of such judgment or order for which insurance has not been acknowledged in writing by the applicable insurance carrier (or the amount as to which the insurer has denied liability) exceeds, individually or together with all other such judgments or orders entered against the Parent, the Borrower, any other Loan Party or any other Subsidiary, \$75,000,000 or (B) in the case of an injunction or other non-monetary relief, such injunction or judgment or order could reasonably be expected to have a Material Adverse Effect.

(i) Attachment. A warrant, writ of attachment, execution or similar process shall be issued against any property of the Parent, the Borrower, any other Loan Party or any other Subsidiary, which exceeds, individually or together with all other such warrants, writs, executions and processes, \$75,000,000 in amount and such warrant, writ, execution or process shall not be satisfied, paid, discharged, vacated, stayed or bonded for a period of 20 consecutive days; provided, however, that if a bond has been issued in favor of the claimant or other Person obtaining such warrant, writ, execution or process, the issuer of such bond shall execute a waiver or subordination agreement in form and substance reasonably satisfactory to the Administrative Agent pursuant to which the issuer of such bond subordinates its right of reimbursement, contribution or subrogation to the Obligations and waives or subordinates any Lien it may have on the assets of the Borrower, any other Loan Party or any other Subsidiary.

(j) ERISA. The aggregate amount of liabilities of the Borrower, the other Loan Parties and the other Subsidiaries resulting from existing ERISA Events, together with the aggregate minimum funding contributions payable by the Borrower, the other Loan Parties and the other Subsidiaries as a result of the “benefit obligation” of all Plans exceeding the “fair market value of plan assets” for such Plans, all as

determined, and with such terms defined, in accordance with FASB ASC 715, shall exceed \$75,000,000 in the aggregate during any fiscal year of the Borrower.

(k) Loan Documents. An Event of Default (as defined therein) shall occur under any of the other Loan Documents.

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(l) Change of Control/Change in Management.

(i) Any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)), is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a Person will be deemed to have “beneficial ownership” of all securities that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 35.0% of the total voting power of the then outstanding voting stock of the Parent;

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

(iii) The Parent or a Wholly Owned Subsidiary of the Parent (x) shall cease to be the sole managing member of the Borrower or (y) shall cease to have the sole and exclusive power to exercise all management and control over the Borrower; or

(iv) the Parent shall cease to own and control, directly or indirectly, at least 80% of the outstanding Equity Interests of the Borrower.

(m) Liens in the Collateral. After the occurrence of the Security Trigger Date and prior to the Security Release Date, any Lien purported to be created under any Loan Document shall cease to be, or shall be asserted by any Borrower or other Loan Party not to be, a valid and perfected Lien on any Collateral having a value, individually or in the aggregate, in excess of \$5,000,000, with the priority required by the applicable Loan Documents and the Intercreditor Agreement, except as a result of (i) the sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents, or (ii) the release of such Lien as a result of the occurrence of the Security Release Date hereunder.

(n) Intercreditor Agreement. After the occurrence of the Security Trigger Date and prior to the Security Release Date, any Intercreditor Agreement shall be asserted in writing by any Loan Party not to be, in whole or in part, legally valid, binding and enforceable against any party thereto, or such Intercreditor Agreement shall otherwise not be effective to create the rights and obligations purported to be created thereunder (as determined by a court of competent jurisdiction).

Notwithstanding the foregoing provisions of this Section 11.1., no Default or Event of Default shall be deemed to have occurred under the foregoing clauses (d)(i), (d)(ii), (d)(iii), (e), (f), (h) or (i) with respect to any event or occurrence described therein relating to Sunstone 42nd St., the non-recourse mortgage loan secured by the hotel owned by Sunstone 42nd St. on the First Amendment Date or the 42nd St. Guaranty so long as, immediately prior to and after giving effect to such event or occurrence, (i) the holder of such mortgage loan does not have a claim for repayment of such mortgage loan under the 42nd Street Guaranty in excess of the then outstanding principal amount of such mortgage loan (which on the First Amendment Date is \$77,174,971.28), accrued and unpaid interest thereon and the costs and expenses of enforcement required to be paid by the guarantor under the 42nd St. Guaranty or (ii) if the holder of such mortgage loan has a claim in excess of such amount, such holder shall have waived such liability in writing.

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## Section 11.2. Remedies Upon Event of Default.

Upon the occurrence of an Event of Default the following provisions shall apply:

(a) Acceleration; Termination of Facilities.

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

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

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

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

(d) Appointment of Receiver. To the extent permitted by Applicable Law, the Administrative Agent and the Lenders shall be entitled to the appointment of a receiver for the assets and properties of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries, without notice of any kind whatsoever and without regard to the adequacy of any security for the Obligations or the solvency of any party bound for its payment, to take possession of all or any portion of the property and/or the business operations of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries and to exercise such power as the court shall confer upon such receiver.

(e) Remedies in Respect of Specified Derivatives Contracts. Notwithstanding any other provision of this Agreement or other Loan Document, each Specified Derivatives Provider shall have the right, with prompt notice to the Administrative Agent, but without the approval or consent of or other action by the Administrative Agent, the Issuing Banks or the Lenders, and without limitation of other remedies available to such Specified Derivatives Provider under contract or Applicable Law, to undertake any of the following:

(a) to declare an event of default, termination event or other similar event under any Specified Derivatives Contract and to create an "Early Termination Date" (as defined therein) in respect thereof, (b) to determine

net termination amounts in respect of any and all Specified Derivatives Contracts in accordance with the terms thereof, and to set off amounts among such contracts, (c) to set off or proceed against deposit account balances, securities account balances and other property and amounts held by such Specified Derivatives Provider and (d) to prosecute any legal action against the Parent, the Borrower, any other Loan Party or other Subsidiary to enforce or collect net amounts owing to such Specified Derivatives Provider pursuant to any Specified Derivatives Contract.

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### Section 11.3. Remedies Upon Default.

Upon the occurrence of a Default specified in Section 11.1.(f), the Commitments, the Swingline Commitment and the obligation of the Issuing Banks to issue Letters of Credit shall immediately and automatically terminate.

### Section 11.4. Marshaling; Payments Set Aside.

No Lender Party shall be under any obligation to marshal any assets in favor of any Loan Party or any other party or against or in payment of any or all of the Guaranteed Obligations. To the extent that any Loan Party makes a payment or payments to a Lender Party, or a Lender Party enforces its security interest or exercises its right of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such recovery, the Guaranteed Obligations, or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

### Section 11.5. Allocation of Proceeds; Sharing Event.

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

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

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

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

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

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

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

([gvi](#)) the balance, if any, after all of the Guaranteed Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Applicable Law.

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

(b) Notwithstanding anything to the contrary set forth herein, the Lender Parties acknowledge and agree that, at any time that the Intercreditor Agreement is effective, after the occurrence of a “Sharing Event” (as defined in the Intercreditor Agreement) all payments received directly or indirectly with respect to the Guaranteed Obligations will be held by the Administrative Agent (or, if received by a Lender Party, will be turned over to the Administrative Agent) for the benefit of the Lender Parties until the earlier of (i) the occurrence of an “Enforcement” (as defined in the Intercreditor Agreement), at which time such amount shall be distributed to the Collateral Agent for distribution in accordance with the terms of the Intercreditor Agreement and (ii) the date which is 90 days following the occurrence of the Sharing Event if no Enforcement has occurred with respect thereto, at which time such amounts shall be distributed pursuant to the terms of this Agreement.

#### **Section 11.6. Letter of Credit Collateral Account.**

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

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

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

(d) If an Event of Default exists, the Administrative Agent may (and, if instructed by the Requisite Lenders, shall) in its (or their) discretion at any time and from time to time elect to liquidate any such investments and reinvestments and apply the proceeds thereof to the Obligations in accordance with

Section 11.5. Notwithstanding the foregoing, the Administrative Agent shall not liquidate or release any such amounts if such liquidation or release would result in the amount available in the Letter of Credit Collateral Account to be less than the Stated Amount of all Extended Letters of Credit that remain outstanding.

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(e) So long as no Default or Event of Default exists, and to the extent amounts on deposit in or credited to the Letter of Credit Collateral Account exceed the aggregate amount of the Letter of Credit Liabilities then due and owing, the Administrative Agent shall, from time to time, at the request of the Borrower, deliver to the Borrower within 10 Business Days after the Administrative Agent's receipt of such request from the Borrower, against receipt but without any recourse, warranty or representation whatsoever, such amount of the credit balances in the Letter of Credit Collateral Account as exceeds the aggregate amount of Letter of Credit Liabilities at such time. Upon the expiration, termination or cancellation of an Extended Letter of Credit for which the Lenders reimbursed (or funded participations in) a drawing deemed to have occurred under the fourth sentence of Section 2.3.(b) for deposit into the Letter of Credit Collateral Account but in respect of which the Lenders have not otherwise received payment for the amount so reimbursed or funded, the Administrative Agent shall promptly remit to the Lenders the amount so reimbursed or funded for such Extended Letter of Credit that remains in the Letter of Credit Collateral Account, pro rata in accordance with the respective unpaid reimbursements or funded participations of the Lenders in respect of such Extended Letter of Credit, against receipt but without any recourse, warranty or representation whatsoever. When all of the Obligations shall have been indefeasibly paid in full and no Letters of Credit remain outstanding, the Administrative Agent shall deliver to the Borrower, against receipt but without any recourse, warranty or representation whatsoever, the balances remaining in the Letter of Credit Collateral Account.

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

#### **Section 11.7. Performance by Administrative Agent.**

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

#### **Section 11.8. Rights Cumulative.**

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

(b) Enforcement by Administrative Agent. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Article XI. for the benefit of all the Lenders and the Issuing Banks; provided that the foregoing shall not prohibit (i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative

Agent) hereunder and under the other Loan Documents, (ii) any Issuing Bank or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Bank or Swingline Lender, as the case may be) hereunder or under the other Loan Documents, (iii) any Specified Derivatives Provider from exercising the rights and remedies that inure to its benefit under any Specified Derivatives Contract, (iv) any Lender from exercising setoff rights in accordance with Section 13.3. (subject to the terms of Section 3.3.), or (v) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative

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Agent hereunder and under the other Loan Documents, then (x) the Requisite Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Article XI. and (y) in addition to the matters set forth in clauses (ii), (iv) and (v) of the preceding proviso and subject to Section 3.3., any Lender may, with the consent of the Requisite Lenders, enforce any rights and remedies available to it and as authorized by the Requisite Lenders.

## **ARTICLE XII. THE ADMINISTRATIVE AGENT**

### **Section 12.1. Appointment and Authorization.**

Each Lender hereby irrevocably appoints and authorizes the Administrative Agent to take such action as contractual representative on such Lender's behalf and to exercise such powers under this Agreement and the other Loan Documents as are specifically delegated to the Administrative Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto. Not in limitation of the foregoing, each Lender authorizes and directs the Administrative Agent to enter into the Loan Documents for the benefit of the Lenders. Each Lender hereby agrees that, except as otherwise set forth herein, any action taken by the Requisite Lenders in accordance with the provisions of this Agreement or the Loan Documents, and the exercise by the Requisite Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. Nothing herein shall be construed to deem the Administrative Agent a trustee or fiduciary for any Lender or to impose on the Administrative Agent duties or obligations other than those expressly provided for herein. Without limiting the generality of the foregoing, the use of the terms "Agent", "Administrative Agent", "agent" and similar terms in the Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead, use of such terms is merely a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. The Administrative Agent shall deliver or otherwise make available to each Lender, promptly upon receipt thereof by the Administrative Agent, copies of each of the financial statements, certificates, notices and other documents delivered to the Administrative Agent pursuant to Article IX. that the Parent or the Borrower is not otherwise required to deliver directly to the Lenders. The Administrative Agent will furnish to any Lender, upon the request of such Lender, a copy (or, where appropriate, an original) of any document, instrument, agreement, certificate or notice furnished to the Administrative Agent by the Parent, the Borrower, any other Loan Party or any other Affiliate of the Borrower, pursuant to this Agreement or any other Loan Document not already delivered or otherwise made available to such Lender pursuant to the terms of this Agreement or any such other Loan Document. As to any matters not expressly provided for by the Loan Documents (including, without limitation, enforcement or collection of any of the Obligations), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Requisite Lenders (or all of the Lenders if explicitly required under any other provision of this Agreement), and such instructions shall be binding upon all Lenders and all holders of any of the Obligations; provided, however, that, notwithstanding anything in this Agreement to the contrary, the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement or any other Loan Document or Applicable Law. Not in limitation of the foregoing, the Administrative Agent may exercise any right or remedy it or the Lenders may have under any Loan Document upon the occurrence of a Default or an Event of Default unless the Requisite Lenders have directed the Administrative Agent otherwise. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Requisite Lenders, or where applicable, all the Lenders.

### **Section 12.2. Administrative Agent as Lender.**

The Lender acting as Administrative Agent shall have the same rights and powers as a Lender or a Specified Derivatives Provider, as the case may be, under this Agreement, any other Loan Document or any Specified Derivatives Contract, as the case may be, as any other Lender, or Specified Derivatives Provider and may exercise the same as though it were not the Administrative Agent; and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated, include Wells Fargo in each case in its individual capacity. Wells Fargo and its Affiliates may each accept deposits from, maintain deposits or credit balances for, invest in, lend money to, act as trustee under indentures of, serve as financial advisor to, and generally engage in any kind of business with the Borrower, any other Loan Party or any other Affiliate thereof as if it were any other bank and without any duty to account therefor to the Issuing Banks, the other Lenders, or any Specified Derivatives Providers. Further, the Administrative Agent and any Affiliate may accept fees and other

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consideration from the Parent, the Borrower, any other Loan Party or any other Subsidiary for services in connection with this Agreement, any Specified Derivatives Contract, or otherwise without having to account for the same to the Issuing Banks, the other Lenders, or any Specified Derivatives Providers. The Issuing Banks and the Lenders acknowledge that, pursuant to such activities, Wells Fargo or its Affiliates may receive information regarding the Borrower, other Loan Parties, other Subsidiaries and other Affiliates (including information that may be subject to confidentiality obligations in favor of such Person) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them.

### **Section 12.3. Approvals of Lenders.**

All communications from the Administrative Agent to any Lender requesting such Lender's determination, consent or approval (a) shall be given in the form of a written notice to such Lender, (b) shall be accompanied by a description of the matter or issue as to which such determination, consent or approval is requested, or shall advise such Lender where information, if any, regarding such matter or issue may be inspected, or shall otherwise describe the matter or issue to be resolved and (c) shall include, if reasonably requested by such Lender and to the extent not previously provided to such Lender, written materials provided to the Administrative Agent by the Parent, the Borrower in respect of the matter or issue to be resolved. Unless a Lender shall give written notice to the Administrative Agent that it specifically objects to the requested determination, consent or approval within 10 Business Days (or such lesser or greater period as may be specifically required under the express terms of the Loan Documents) of receipt of such communication, such Lender shall be deemed to have conclusively approved such requested determination, consent or approval.

### **Section 12.4. Notice of Events of Default.**

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

### **Section 12.5. Administrative Agent's Reliance.**

Notwithstanding any other provisions of this Agreement or any other Loan Documents, neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by it under or in connection with this Agreement or any other Loan Document, except for its or their own gross negligence or willful misconduct in connection with its duties expressly set forth herein or therein as determined by a court of competent jurisdiction in a final non-appealable judgment. Without limiting the generality of the foregoing, the Administrative Agent may consult with legal counsel (including its own counsel or counsel for the Parent, the Borrower or any other Loan Party), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts. Neither the Administrative Agent nor any of its Related Parties: (a) makes any warranty or representation to any Lender, any Issuing Bank or any other Person, or shall be responsible to any Lender, any Issuing Bank or any other Person for any statement, warranty or representation made or deemed made by the Parent, the Borrower, any other Loan Party or any other Person in or in connection with this Agreement or any other Loan Document; (b) shall have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or any other Loan Document or the satisfaction of any conditions precedent under this Agreement or any Loan Document on the part of the Parent, the Borrower or other Persons, or to inspect the property, books or records of the Parent, the Borrower or any other Person; (c) shall be responsible to any Lender or any Issuing Bank for

the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document, any other instrument or document furnished pursuant thereto or any collateral covered thereby or the perfection or priority of any Lien in favor of the Administrative Agent on behalf of the Lenders Parties in any such collateral; (d) shall have any liability in respect of any recitals, statements, certifications, representations or warranties contained in any of the Loan Documents or any other document, instrument, agreement, certificate or statement delivered in connection therewith; and (e) shall incur any liability under or in respect of this Agreement or any other Loan

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Document by acting upon any notice, consent, certificate or other instrument or writing (which may be by telephone, telecopy or electronic mail) believed by it to be genuine and signed, sent or given by the proper party or parties. The Administrative Agent may execute any of its duties under the Loan Documents by or through agents, employees or attorneys-in-fact and shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct in the selection of such agent or attorney-in-fact as determined by a court of competent jurisdiction in a final non-appealable judgment.

#### **Section 12.6. Indemnification of Administrative Agent.**

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

#### **Section 12.7. Lender Credit Decision, Etc.**

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

analysis and decision to enter into this Agreement and the transactions contemplated hereby, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative Agent, or any of their respective Related Parties, and based on the financial statements of the Parent, the Borrower, the other Loan Parties, the other Subsidiaries and other Affiliates, and inquiries of such Persons, its independent due diligence of the business and affairs of the Parent, the Borrower, the other Loan Parties, the other Subsidiaries and other Persons, its review of the Loan Documents, the legal opinions required to be delivered to it hereunder, the advice of its own counsel and such other documents and information as it has deemed appropriate. Each of the Lenders and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, any other Lender

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or counsel to the Administrative Agent or any of their respective Related Parties, and based on such review, advice, documents and information as it shall deem appropriate at the time, continue to make its own decisions in taking or not taking action under the Loan Documents. The Administrative Agent shall not be required to keep itself informed as to the performance or observance by the Parent, the Borrower or any other Loan Party of the Loan Documents or any other document referred to or provided for therein or to inspect the properties or books of, or make any other investigation of, the Parent, the Borrower, any other Loan Party or any other Subsidiary. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders and the Issuing Banks by the Administrative Agent under this Agreement or any of the other Loan Documents, the Administrative Agent shall have no duty or responsibility to provide any Lender or any Issuing Bank with any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of the Parent, the Borrower, any other Loan Party or any other Affiliate thereof which may come into possession of the Administrative Agent or any of its Related Parties. Each of the Lenders and each Issuing Bank acknowledges that the Administrative Agent's legal counsel in connection with the transactions contemplated by this Agreement is only acting as counsel to the Administrative Agent and is not acting as counsel to any Lender or any Issuing Bank.

#### **Section 12.8. Successor Administrative Agent.**

The Administrative Agent may resign at any time as Administrative Agent under the Loan Documents by giving written notice thereof to the Lenders and the Borrower. If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Requisite Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Borrower and such Person, remove such Person as Administrative Agent. Upon any such resignation or removal, the Requisite Lenders shall have the right to appoint a successor Administrative Agent which appointment shall, provided no Default or Event of Default exists, be subject to the Borrower's approval, which approval shall not be unreasonably withheld, delayed or conditioned (except that the Borrower shall, in all events, be deemed to have approved each Lender and any of its Affiliates as a successor Administrative Agent). If no successor Administrative Agent shall have been so appointed in accordance with the immediately preceding sentence, and shall have accepted such appointment, within 30 days after the current Administrative Agent's giving of notice of resignation or removal, then the current Administrative Agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent, which shall be a Lender, if any Lender shall be willing to serve, and otherwise shall be an Eligible Assignee; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no Lender has accepted such appointment, then such resignation or removal shall nonetheless become effective in accordance with such notice and (1) the Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made to each Lender and each Issuing Bank directly, until such time as a successor Administrative Agent has been appointed as provided for above in this Section; provided, further that such Lenders and such Issuing Banks so acting directly shall be and be deemed to be protected by all indemnities and other provisions herein for the benefit and protection of the Administrative Agent as if each such Lender or Issuing Bank were itself the Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the current Administrative Agent, and the current Administrative Agent shall be discharged from its duties and obligations under the Loan Documents.

Any resignation by or removal of an Administrative Agent shall also constitute the resignation or removal as an Issuing Bank and as the Swingline Lender by the Lender then acting as Administrative Agent (the "Resigning Lender"). Upon the acceptance of a successor's appointment as Administrative Agent hereunder (i) the Resigning Lender shall be discharged from all duties and obligations of an Issuing Bank and the Swingline Lender hereunder and under the other Loan Documents and (ii) any successor Issuing Bank shall issue letters of credit in substitution for all Letters of Credit issued by the Resigning Lender as Issuing Banks outstanding at the time of such succession (which letters of credit issued in substitutions shall be deemed to be Letters of Credit issued hereunder) or make other arrangements satisfactory to the Resigning Lender to effectively assume the obligations of the Resigning Lender with respect to such Letters of Credit. After

any Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Article XII. shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under the Loan Documents. Notwithstanding anything contained herein to the contrary, the Administrative Agent may assign its rights and duties under the Loan Documents to any of its Affiliates by giving the Borrower and each Lender prior written notice.

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## **Section 12.9. Titled Agents.**

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

## **Section 12.10. Specified Derivatives Contracts.**

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

## **Section 12.11. Collateral Matters.**

**In relation to any Liens in the Collateral to secure the Obligations granted on the Security Trigger Date:**

**(a) Each Lender Party (including, by accepting the benefits thereof, each Specified Derivatives Provider) hereby authorizes the Administrative Agent, without the necessity of any notice to or further consent from any Lender Party, from time to time prior to an Event of Default, to take any action (or direct the Collateral Agent to take such action) with respect to any Collateral or Loan Documents which may be necessary to perfect and maintain perfected the Liens upon the Collateral granted pursuant to any of the Loan Documents.**

**(b) The Lenders hereby authorize the Administrative Agent, at its option and in its discretion, to release (or to direct the Collateral Agent to release) any Lien granted to or held by the Administrative Agent upon any Collateral (i) upon termination of the Commitments and indefeasible payment and satisfaction in full of all of the Obligations; (ii) upon the Security Release Date or as otherwise expressly permitted by the terms of the applicable Loan Document; or (iii) if approved, authorized or ratified in writing by the Lenders required to so approve in accordance with the terms of this Agreement. Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent’s authority to release (or to direct the Collateral Agent to release) particular types or items of Collateral pursuant to this Section.**

**(c) Notwithstanding anything set forth herein (including Section 8.14(c)), (i) the Administrative Agent shall not be required to execute any such document on terms which, in the Administrative Agent’s opinion, would expose the Administrative Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty and (ii) any release of the Collateral (or any portion thereof) shall not in any manner discharge, affect or impair the Obligations or any Liens upon (or obligations of the Borrower or any other Loan Party in respect of) all interests retained by the Borrower or any other Loan Party, including (without limitation) the proceeds of such sale or transfer, all of which shall continue to constitute part of the Collateral to**

the extent provided in the Pledge Agreement. In the event of any sale or transfer of Collateral, or any foreclosure with respect to any of the Collateral, the Administrative Agent shall be authorized to deduct all of the expenses reasonably incurred by the Administrative Agent from the proceeds of any such sale, transfer or foreclosure.

(d) The Administrative Agent shall have no obligation whatsoever to the Lender Parties or to any other Person to assure that the Collateral exists or is owned by the Borrower or any other Loan Party or is cared for, protected or insured or that the Liens granted to the Administrative Agent pursuant to any of the Loan Documents have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any

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particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Administrative Agent in this Section or in any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Administrative Agent may act in any manner it may deem appropriate, in its sole discretion but subject to the terms and conditions of the Loan Documents, and that the Administrative Agent shall have no duty or liability whatsoever to the Lender Parties, except to the extent resulting from its gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment.

#### Section 12.12. Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim.

In the case of the pendency of any proceeding under any Debtor Relief Laws relative to any Loan Party, 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 Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(i) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(ii) 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 Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its respective agents and counsel and all other amounts due Administrative Agent under this Agreement allowed in such judicial proceeding; and

(iii) 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 Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under this Agreement. To the extent that the payment of any such compensation, expenses, disbursements and advances of Administrative Agent, its agent and counsel, and any other amounts due Administrative Agent under this Agreement out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

### **ARTICLE XIII. MISCELLANEOUS**

#### **Section 13.1. Notices.**

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

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If to the Borrower:

Sunstone Hotel Partnership, LLC  
200 Spectrum Center Drive, 21<sup>st</sup> Floor  
Irvine, CA 92618  
Attention: Bryan Giglia, CFO  
Telecopier: (949) 330-4078  
Telephone: (949) 382-3036

with a copy to:

Latham & Watkins LLP  
355 South Grand Avenue  
Los Angeles, CA 90071-1560  
Attention: Pablo Clarke  
Telephone: (213) 891-7987

If to the Administrative Agent:

Wells Fargo Bank, National Association  
1750 H Street, NW, #550  
Washington, D.C. 20006  
Attention: Mark F. Monahan  
Telecopier: (202) 429-2589  
Telephone: (202) 303-3017

with a copy to

Wells Fargo Bank, National Association  
Shared Credit Management  
171 17th Street, NW, 4th Floor  
Atlanta, Georgia 30363  
Attn: Sandra Wheeler  
Loan #: 1013605  
Telecopier: (866) 600-0942  
Telephone: (404) 897-9040

If to the Administrative Agent under Article II.:

Wells Fargo Bank, National Association  
Minneapolis Loan Center  
MAC N9303-110  
600 South 4th Street, 9th Floor,  
Minneapolis, Minnesota 55415  
Attn: Manager  
Telecopier: (866) 835-0263  
Telephone: (612) 316-0299

If to Wells Fargo, as an Issuing Bank:

Wells Fargo Bank, National Association  
1750 H Street, NW, #550  
Washington, D.C. 20006  
Attention: Mark F. Monahan  
Telecopier: (202) 429-2589  
Telephone: (202) 303-3017

If to JPMorgan Chase Bank, N.A., as an Issuing Bank:

JPMorgan Chase Bank, N.A.  
10 S. Dearborn, 19th Floor  
Chicago, IL 60603  
Attn: Christian Lunt  
Telecopier: (312) 325-5174  
Telephone: (312) 325-5007

If to Bank of America, N.A., as an Issuing Bank:

Bank of America, N.A.  
Global Trade Operations  
One Fleet Way, 2nd Floor  
Mail Code PA6-580-02-30  
Scranton, PA 18507  
Telecopier: 1-800-755-8743  
Telephone: 1-800-370-7519 and choose Trade product opt. #1  
Email Address: scranton\_standby\_lc@bankofamerica.com

If to any other Lender:

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

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

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## Section 13.2. Expenses.

The Borrower agrees (a) to pay or reimburse the Administrative Agent and the Lead Arranger that is an Affiliate of the Administrative Agent for all of their respective reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation and execution of, and any amendment, supplement or modification to, any of the Loan Documents (including due diligence expenses and reasonable travel expenses related to closing), and the consummation of the transactions contemplated hereby and thereby, including the reasonable fees and disbursements of one single counsel to both the Administrative Agent and such Lead Arranger and all costs and expenses of the Administrative Agent in connection with the use of IntraLinks, SyndTrak or other similar information transmission systems in connection with the Loan Documents and of the Administrative Agent in connection with the review of Properties for inclusion as Unencumbered Properties and the Administrative Agent's other activities under Article IV. and the reasonable and documented fees and disbursements of counsel to the Administrative Agent relating to all such activities, (b) to pay or reimburse the Administrative Agent, the Issuing Banks and the Lenders for all their reasonable and documented costs and expenses incurred in connection with the enforcement, "workout" or preservation of any rights under the Loan Documents, including the reasonable fees and disbursements of their respective counsel (including the reasonable allocated fees and expenses of in-house counsel) and any payments in indemnification or otherwise payable by the Lenders to the Administrative Agent pursuant to the Loan Documents, (c) to pay, and indemnify and hold harmless the Administrative Agent, the Issuing Banks and the Lenders from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any failure to pay or delay in paying, documentary, stamp, excise and other similar taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of any of the Loan Documents, or consummation of any amendment, supplement or modification of, or any waiver or consent under or in respect of, any Loan Document ~~and~~, (d) to pay, and indemnify and hold harmless the Administrative Agent for all reasonable and documented costs and expenses incurred in connection with the exercise of any right or remedy the Administrative Agent or the Lenders may have under this Agreement or the other Loan Documents, including but not limited to, the foreclosure upon, or seizure of, any Collateral or exercise of any other rights of a secured party, and (e) to the extent not already covered by any of the preceding subsections, to pay or reimburse the fees and disbursements of counsel to the Administrative Agent, any Issuing Bank and any Lender incurred in connection with the representation of the Administrative Agent, such Issuing Bank or such Lender in any matter relating to or arising out of any bankruptcy or other proceeding of the type described in Sections 11.1.(e) or 11.1.(f), including, without limitation (i) any motion for relief from any stay or similar order, (ii) the negotiation, preparation, execution and delivery of any document relating to the Obligations and (iii) the negotiation and preparation of any debtor-in-possession financing or any plan of reorganization of the Parent, the Borrower or any other Loan Party, whether proposed by the Parent, the Borrower, such Loan Party, the Lenders or any other Person, and whether such fees and expenses are incurred prior to, during or after the commencement of such proceeding or the confirmation or conclusion of any such proceeding; provided that the fees and expenses of external counsel shall be limited to (x) one external counsel for the Administrative Agent, (y) one external counsel for all other Lenders (and, solely in the case of a conflict of interest, additional conflicts counsel) and (z) and such local or foreign counsel of the Administrative Agent as may be necessary under the circumstances. If the Borrower shall fail to pay any amounts required to be paid by it pursuant to this Section, the Administrative Agent and/or the Lenders may pay such amounts on behalf of the Borrower and such amounts shall be deemed to be Obligations owing hereunder.

## Section 13.3. Setoff.

Subject to Section 3.3. and in addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, the Borrower hereby authorizes the Administrative Agent, each Issuing Bank, each Lender, each Affiliate of the Administrative Agent, any Issuing Bank or any Lender, and each Participant, at any time or from time to time while an Event of Default exists, without notice to the Borrower or to any other Person, any such notice being hereby expressly waived, but in the case of an Issuing Bank, a Lender, an Affiliate of an Issuing Bank or a Lender, or a Participant, subject to receipt of the

prior written consent of the Requisite Lenders exercised in their sole discretion, to set off and to appropriate and to apply any and all deposits (general or special, including, but not limited to, indebtedness evidenced by certificates of deposit, whether matured or unmatured) and any other indebtedness at any time held or owing by the Administrative Agent, such Issuing Bank, such Lender, any Affiliate of the Administrative Agent, such Issuing Bank or such Lender, or such Participant, to or for the credit or the account of the Borrower against and on account of any of the Obligations, irrespective of whether or not any or all of the Loans and all other Obligations have been declared to be, or have otherwise become, due and payable as permitted by Section 11.2., and although such Obligations shall be contingent or unmatured. Notwithstanding anything to the contrary in this Section, if any Defaulting Lender shall exercise any such

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right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 3.9. and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks and the Lenders and (y) such Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

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

(a) EACH PARTY HERETO ACKNOWLEDGES THAT ANY DISPUTE OR CONTROVERSY BETWEEN OR AMONG THE PARENT, THE BORROWER, THE ADMINISTRATIVE AGENT, ANY ISSUING BANK OR ANY OF THE LENDERS WOULD BE BASED ON DIFFICULT AND COMPLEX ISSUES OF LAW AND FACT AND WOULD RESULT IN DELAY AND EXPENSE TO THE PARTIES. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE LENDERS, THE ADMINISTRATIVE AGENT, EACH ISSUING BANK, THE PARENT AND THE BORROWER HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT OR TRIBUNAL IN WHICH AN ACTION MAY BE COMMENCED BY OR AGAINST ANY PARTY HERETO ARISING OUT OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR BY REASON OF ANY OTHER SUIT, CAUSE OF ACTION OR DISPUTE WHATSOEVER BETWEEN OR AMONG THE PARENT, THE BORROWER, THE ADMINISTRATIVE AGENT, ANY ISSUING BANK OR ANY OF THE LENDERS OF ANY KIND OR NATURE RELATING TO ANY OF THE LOAN DOCUMENTS.

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

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

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### Section 13.5. Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor the Parent may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of the immediately following subsection (b), (ii) by way of participation in accordance with the provisions of the immediately following subsection (d) or (iii) by way of pledge or assignment of a security interest subject to the restrictions of the immediately following subsection (e) (and, subject to the last sentence of the immediately following subsection (b), any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in the immediately following subsection (d) and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its 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 an assigning Revolving Lender's Revolving Commitment and/or the Revolving Loans at the time owing to it, or contemporaneous assignments to related Approved Funds that equal at least the amount specified in the immediately following clause (B) in the aggregate, or, if applicable, in the case of an assignment of the entire remaining amount of an assigning Term Loan Lender's Term 1 Loans or Term 2 Loans at the time owing to it, or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

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

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement



with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Classes of Commitments or Loans on a non-pro rata basis.

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

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(A) the consent of the Borrower (such consent not to be unreasonably withheld, delayed or conditioned ) shall be required unless (x) an Event of Default shall exist at the time of such assignment or (y) such assignment is to a Lender of the same Class of Commitments or Loans, an Affiliate of such a Lender or an Approved Fund in respect of such Lender; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 10 Business Days after having received notice thereof;

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

(C) the consent of each Issuing Bank and the Swingline Lender shall be required for any assignment in respect of a Revolving Commitment if such assignment is to a Person that is not already a Revolving Lender.

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

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

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Banks, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and, as applicable, participations in Letters of Credit and Swingline Loans in accordance with its Revolving Commitment Percentage and such that all Term Loans are held by the Term Loan Lenders pro rata as if there had been no Defaulting Lenders that are Term Loan Lenders. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance

with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to the immediately following subsection (c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest

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

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

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Parent, the Borrower, the Administrative Agent, the Issuing Banks and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to (w) increase such Lender's Commitment, (x) extend the date fixed for the payment of principal on the Loans or portions thereof owing to such Lender, (y) reduce the rate at which interest is payable thereon or (z) release any Guarantor from its Obligations under the Guaranty except as contemplated by Section 8.13.(b), in each case, as applicable to that portion of such Lender's rights and/or obligations that are subject to the participation. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.10., 5.1., 5.4. (subject to the requirements and limitations therein, including the requirements under Section 3.10.(g) (it being understood that the documentation required under Section 3.10.(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 5.6. as if it were an assignee under subsection (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 5.1. or 3.10., with respect to any participation, than its participating Lender would have been entitled to receive. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 5.6. with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 13.3. as though it were a Lender; provided that such Participant agrees to be subject to Section 3.3. as though it were a Lender. Each Lender that sells a participation 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.

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For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

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

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

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

### **Section 13.6. Amendments and Waivers.**

(a) Generally. Except as otherwise expressly provided in this Agreement, (i) any consent or approval required or permitted by this Agreement or any other Loan Document to be given by the Lenders may be given, (ii) any term of this Agreement or of any other Loan Document may be amended, (iii) the performance or observance by the Parent, the Borrower, any other Loan Party or any other Subsidiary of any terms of this Agreement or such other Loan Document may be waived, and (iv) the continuance of any Default or Event of Default may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Requisite Lenders (or the Administrative Agent at the written direction of the Requisite Lenders), and, in the case of an amendment to any Loan Document, the written consent of each Loan Party which is party thereto. Any term of this Agreement or of any other Loan Document relating solely to the rights or obligations of the Lenders of a particular Class, and not Lenders of any other Class, may be amended, and the performance or observance by the Borrower or any other Loan Party or any Subsidiary of any such terms may be waived (either generally or in a particular instance and either retroactively or prospectively) with, and only with, the written consent of the Requisite Class Lenders for such Class of Lenders (and, in the case of an amendment to any Loan Document, the written consent of each Loan Party which is a party thereto). Notwithstanding anything to the contrary contained in this Section, each Fee Letter may only be amended, and the performance or observance by any Loan Party thereunder may only be waived, in a writing executed by the parties thereto. Notwithstanding anything to the contrary contained in this Section, the Administrative Agent and the Borrower may, without the consent of any Lender, enter into amendments or modifications to this Agreement or any of the other Loan Documents or enter into additional Loan Documents as the Administrative Agent reasonably deems appropriate in order to implement any Replacement Rate or otherwise effectuate the terms of Section 5.2.(c) in accordance with the terms of Section 5.2.(c).

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

(i) (A) increase (or reinstate) the Commitments of a Lender or subject a Lender to any additional obligations without the written consent of such Lender or (B) increase the aggregate

Commitments other than in connection with an increase under Section 2.16. as provided therein without the consent of each Lender;

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

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

(iv) modify the definition of “Revolving Commitment Percentage” without the written consent of each Revolving Lender;

(v) modify the definitions of “Revolving Termination Date” or clause (a) of the definition of “Termination Date” (in each case, except in accordance with Section 2.13.) or otherwise postpone any date fixed for, or forgive, any payment of principal of, or interest on, any Revolving Loans or for the payment of Fees or any other Obligations owing to the Revolving Lenders, or extend the expiration date of any Letter of Credit beyond the Revolving Termination Date (except in accordance with Section 2.3.(b)), in each case, without the written consent of each Revolving Lender directly affected thereby;

(vi) modify the definitions of “Term Loan Maturity Date” or clause (b) of the definition of “Termination Date” or otherwise postpone any date fixed for, or forgive, any payment of principal of, or interest on, any Term Loans or for the payment of Fees or any other Obligations owing to the Term Loan Lenders, in each case, without the written consent of each Term Loan Lender directly affected thereby;

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

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

(ix) amend this Section or amend the definitions of the terms used in this Agreement or the other Loan Documents insofar as such definitions affect the substance of this Section, modify the definition of the term “Requisite Lenders” or (except as otherwise provided in the immediately following clause (x)), modify in any other manner the number or percentage of the Lenders required to make any determinations or waive any rights hereunder or to modify any provision hereof without the written consent of each Lender;

(x) modify the definition of the term “Requisite Class Lenders” as it relates to a particular Class of Lenders or modify in any other manner the number or percentage of a Class of Lenders required to make any determinations or waive any rights hereunder or to modify any provision hereof, in each case, solely with respect to such Class of Lenders, without the written consent of each Lender in such Class;

(xi) release the Parent as a Guarantor or any other Guarantor from its obligations under the Guaranty (except as expressly permitted by Section 8.13.(b)) without the written consent of each Lender; provided, however, the consent of each Lender shall not otherwise be required under this clause (xi) for any amendment, waiver or consent which does not expressly provide for the release of a Guarantor (but which may indirectly result in such a release);

(xii) amend, or waive the Borrower’s compliance with, Section 2.15. without the written consent of each Revolving Lender;



(xiii) modify Section 2.16. to change the aggregate amount of Revolving Commitments and Term Loans that may be outstanding after giving effect to any increases of the Revolving Commitments or making of any Term Loans without the written consent of each Lender; or

(xiv) waive any Default or Event of Default occurring under Section 11.1.(a) without the written consent of each Lender owed the Obligations that were not paid when due resulting in such Default or Event of Default.

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(c) Amendment of Administrative Agent's Duties, Etc. No amendment, waiver or consent unless in writing and signed by the Administrative Agent, in addition to the Lenders required hereinabove to take such action, shall affect the rights or duties of the Administrative Agent under this Agreement or any of the other Loan Documents. Any amendment, waiver or consent relating to Section 2.4. or the obligations of the Swingline Lender under this Agreement or any other Loan Document shall, in addition to the Lenders required hereinabove to take such action, require the written consent of the Swingline Lender. Any amendment, waiver or consent relating to Section 2.3. or the obligations of an Issuing Bank under this Agreement or any other Loan Document shall, in addition to the Lenders required hereinabove to take such action, require the written consent of such Issuing Bank. Any amendment, waiver or consent with respect to any Loan Document that (i) diminishes the rights of a Specified Derivatives Provider in a manner or to an extent dissimilar to that affecting the Lenders or (ii) increases the liabilities or obligations of a Specified Derivatives Provider shall, in addition to the Lenders required hereinabove to take such action, require the consent of the Lender that is (or having an Affiliate that is) such Specified Derivatives Provider. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitments of any Defaulting Lender may not be increased, reinstated or extended without the written consent of such Defaulting Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the written consent of such Defaulting Lender. No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon and any amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose set forth therein. No course of dealing or delay or omission on the part of the Administrative Agent or any Lender in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. Any Event of Default occurring hereunder shall continue to exist until such time as such Event of Default is waived in writing in accordance with the terms of this Section, notwithstanding any attempted cure or other action by the Parent, the Borrower, any other Loan Party or any other Person subsequent to the occurrence of such Event of Default. Except as otherwise explicitly provided for herein or in any other Loan Document, no notice to or demand upon the Parent, the Borrower or any other Loan Party shall entitle the Parent, the Borrower or any other Loan Party to other or further notice or demand in similar or other circumstances.

(d) Technical Amendments. Notwithstanding anything to the contrary in this Section 13.6., if the Administrative Agent and the Borrower have jointly identified an ambiguity, omission, mistake or defect in any provision of this Agreement or an inconsistency between provisions of this Agreement, the Administrative Agent and the Borrower shall be permitted to amend such provision or provisions to cure such ambiguity, omission, mistake, defect or inconsistency so long as to do so would not adversely affect the interests of the Lenders and the Issuing Banks. Any such amendment shall become effective without any further action or consent of any of other party to this Agreement.

### **Section 13.7. Nonliability of Administrative Agent and Lenders.**

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

### **Section 13.8. Confidentiality.**

The Administrative Agent, each Issuing Bank and each Lender shall maintain the confidentiality of all Information (as defined below) but in any event may make disclosure: (a) to its Affiliates and to its and its Affiliates' other respective Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any actual or proposed assignee, Participant or other transferee in connection with a potential transfer of any Commitment or participation therein as permitted hereunder, or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower

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and its obligations; (c) as required or requested by any Governmental Authority or representative thereof or pursuant to legal process or in connection with any legal proceedings, or as otherwise required by Applicable Law; (d) to the Administrative Agent's, such Issuing Bank's or such Lender's independent auditors and other professional advisors (provided they shall be notified of the confidential nature of the information); (e) in connection with the exercise of any remedies under any Loan Document (or any Specified Derivatives Contract) or any action or proceeding relating to any Loan Document (or any Specified Derivatives Contract) or the enforcement of rights hereunder or thereunder; (f) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section actually known by the Administrative Agent, such Issuing Bank or such Lender to be a breach of this Section or (ii) becomes available to the Administrative Agent, any Issuing Bank, any Lender or any Affiliate of the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis from a source other than the Borrower or any Affiliate of the Borrower; (g) to the extent requested by, or required to be disclosed to, any nationally recognized rating agency or regulatory or similar authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners) having or purporting to have jurisdiction over it; (h) to bank trade publications, such information to consist of deal terms and other information customarily found in such publications; (i) to any other party hereto; and (j) with the prior written consent of the Borrower. Notwithstanding the foregoing, the Administrative Agent, each Issuing Bank and each Lender may disclose any such confidential information, without notice to the Parent, the Borrower or any other Loan Party, to Governmental Authorities in connection with any regulatory examination of the Administrative Agent, such Issuing Bank or such Lender or in accordance with the regulatory compliance policy of the Administrative Agent, such Issuing Bank or such Lender. As used in this Section, the term "Information" means all information received from the Parent, the Borrower, any other Loan Party, any other Subsidiary or Affiliate relating to any Loan Party or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any Issuing Bank on a nonconfidential basis prior to disclosure by the Parent, the Borrower, any other Loan Party, any other Subsidiary or any Affiliate, provided that, in the case of any such information received from the Parent, the Borrower, any other Loan Party, any other Subsidiary or any Affiliate after the date hereof, such information shall be deemed confidential unless it is clearly identified at the time of delivery as public. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

### **Section 13.9. Indemnification.**

(a) The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Issuing Bank, each Lender, the Lead Arrangers and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnified Party") against, and hold each Indemnified Party harmless from, and shall pay or reimburse any such Indemnified Party for, any and all losses, claims (including without limitation, Environmental Claims), damages, liabilities and related expenses (including without limitation, the fees, charges and disbursements of any counsel for any Indemnified Party (which counsel may be employees of any Indemnified Party)), incurred by any Indemnified Party or asserted against any Indemnified Party by any Person (including the Parent, the Borrower, any other Loan Party or any other Subsidiary) other than such Indemnified Party and its Related Parties, arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated hereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Parent, the Borrower, any other Loan Party or any other Subsidiary, or any Environmental Claim related in any way to the Parent, the Borrower, any other Loan Party or any other Subsidiary, (iv) any actual or prospective claim, litigation, investigation or proceeding (an "Indemnity Proceeding") relating to

any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Parent, the Borrower, any other Loan Party or any other Subsidiary, and regardless of whether any Indemnified Party is a party thereto, or (v) any claim (including without limitation, any Environmental Claims), investigation, litigation or other proceeding (whether or not the Administrative Agent, any Issuing Bank or any Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Loans, this Agreement, any other Loan Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby, including without limitation, reasonable attorneys and consultant's fees; provided, however, that (A) such indemnity shall not, as to

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any Indemnified Party, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnified Party and (B) in the case of legal fees and expenses, the Borrower's reimbursement obligations hereunder shall be limited to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to the Indemnified Parties (other than in connection with a dispute among Indemnified Parties resulting from claims against the Administrative Agent or a Lead Arranger in its capacity or in fulfilling its role as an administrative agent or arranger or any similar role under this Agreement and the other Loan Documents) and, if reasonably necessary, a single local counsel for the Indemnified Parties in each relevant jurisdiction and with respect to each relevant specialty, and in the case of an actual or perceived conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnified Parties similarly situated and taken as a whole.

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

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

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

#### **Section 13.10. Termination; Survival.**

This Agreement shall terminate at such time as (a) all of the Commitments have been terminated, (b) all Letters of Credit have terminated or expired or been canceled (other than Extended Letters of Credit in respect of which the Borrower has satisfied the requirements to provide Cash Collateral as required in Section 2.3.(b)), (c) none of the Lenders is obligated any longer under this Agreement to make any Loans and no Issuing Bank is obligated under this Agreement to issue Letters of Credit and (d) all Obligations (other than obligations which survive as provided in the following sentence) have been paid and satisfied in full. The indemnities to which the Administrative Agent, the Issuing Bank the Lenders and their respective Related Parties are entitled under the provisions of Sections 3.10., 5.1., 5.4., 12.6., 13.2. and 13.9. and any other provision of this Agreement and the other Loan Documents, and the provisions of Section 13.4., shall continue in full force and effect and shall protect the Administrative Agent, the Issuing Bank the Lenders and their respective Related Parties (i) notwithstanding any termination of this Agreement, or of the other Loan Documents, against events arising after such termination as well as before and (ii) at all times after any such party ceases to be a party to this Agreement with respect to all matters and events existing on or prior to the date such party ceased to be a party to this Agreement.

#### **Section 13.11. Severability of Provisions.**

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

#### **Section 13.12. GOVERNING LAW.**

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

### **Section 13.13. Counterparts.**

To facilitate execution, this Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts as may be convenient or required (which may be effectively delivered by facsimile, in portable document format (“PDF”) or other similar electronic means). It shall not be necessary that the signature of, or on behalf of,

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each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto.

#### **Section 13.14. Obligations with Respect to Loan Parties and Subsidiaries.**

The obligations of the Parent and the Borrower to direct or prohibit the taking of certain actions by the other Loan Parties and Subsidiaries as specified herein shall be absolute and not subject to any defense the Parent or the Borrower may have that the Parent or the Borrower does not control such Loan Parties or Subsidiaries.

#### **Section 13.15. Independence of Covenants.**

All covenants hereunder shall be given in any jurisdiction independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

#### **Section 13.16. Limitation of Liability.**

None of the Administrative Agent, any Issuing Bank, any Lender, or any of their respective Related Parties shall have any liability with respect to, and each of the Parent and the Borrower hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, consequential or punitive damages suffered or incurred by the Parent or the Borrower in connection with, arising out of, or in any way related to, this Agreement, any of the other Loan Documents or any of the transactions contemplated by this Agreement or any of the other Loan Documents.

#### **Section 13.17. Entire Agreement.**

This Agreement and the other Loan Documents embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. To the extent any term of this Agreement is inconsistent with a term of any other Loan Document to which the parties of this Agreement are party, the term of this Agreement shall control to the extent of such inconsistency. There are no oral agreements among the parties hereto.

#### **Section 13.18. Construction.**

The Administrative Agent, each Issuing Bank, the Parent, Borrower and each Lender acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement and the other Loan Documents with its legal counsel and that this Agreement and the other Loan Documents shall be construed as if jointly drafted by the Administrative Agent, each Issuing Bank, each Lender, the Parent and the Borrower.

#### **Section 13.19. Headings.**

The paragraph and section headings in this Agreement are provided for convenience of reference only and shall not affect its construction or interpretation.

#### **Section 13.20. Acknowledgement and Consent to Bail-in of EEA Financial Institutions.**



Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any ~~EEA~~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 ~~an EEA~~the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

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(a) the application of any Write-Down and Conversion Powers by ~~an EEA~~the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an ~~EEA~~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 ~~EEA~~Affected Financial Institution, its parent ~~undertaking~~entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of ~~any EEA~~the applicable Resolution Authority.

### **Section 13.21. Effect of Amendment and Restatement.**

(a) Existing Credit Agreement. Upon satisfaction of the conditions precedent set forth in Sections 6.1. and 6.2. of this Agreement, this Agreement and the other Loan Documents shall exclusively control and govern the mutual rights and obligations of the parties hereto with respect to the Existing Credit Agreement, and the Existing Credit Agreement shall be superseded in all respects, in each case, on a prospective basis.

(b) NO NOVATION. THE PARTIES HERETO HAVE ENTERED INTO THIS AGREEMENT SOLELY TO AMEND AND RESTATE THE TERMS OF THE EXISTING CREDIT AGREEMENT. THE PARTIES DO NOT INTEND THIS AGREEMENT NOR THE TRANSACTIONS CONTEMPLATED HEREBY TO BE, AND THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL NOT BE CONSTRUED TO BE, A NOVATION OF ANY OF THE OBLIGATIONS OWING BY THE BORROWER OR ANY OTHER LOAN PARTY UNDER OR IN CONNECTION WITH THE EXISTING CREDIT AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS (AS DEFINED IN THE EXISTING CREDIT AGREEMENT).

### **Section 13.22. Acknowledgement Regarding Any Supported OFCs.**

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Derivatives Contracts 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 FDIC 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

OFC and such OFC 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 OFC or any OFC 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 OFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation

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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 OFC or any OFC Credit Support.

(b) As used in this Section 13.22, 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.

“OFC” 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)).

#### Section 13.23. Intercreditor Agreement.

BY ACCEPTING THE BENEFITS OF THE SECURITY INTERESTS SET FORTH HEREIN THE LENDER PARTIES (INCLUDING EACH PERSON THAT BECOMES A LENDER PARTY PURSUANT TO SECTION 13.5 OR OTHERWISE) HEREBY (A) CONSENT TO AND APPROVE EACH AND ALL OF THE PROVISIONS OF THE INTERCREDITOR AGREEMENT, (B) AGREE THAT, UPON THE ADMINISTRATIVE AGENT’S EXECUTION OF THE INTERCREDITOR AGREEMENT, THEY WILL BE BOUND BY AND WILL TAKE NO ACTIONS CONTRARY TO THE PROVISIONS OF THE INTERCREDITOR AGREEMENT, (C) ACKNOWLEDGE THAT THE LIENS SECURING THE OBLIGATIONS, AND THE EXERCISE OF RIGHTS AND REMEDIES WITH RESPECT TO THE GUARANTEED OBLIGATIONS AND THE LIENS GRANTED TO THE COLLATERAL AGENT FOR THE BENEFIT THE ADMINISTRATIVE AGENT AND LENDER PARTIES UNDER THE PLEDGE AGREEMENT AND THE OTHER LOAN DOCUMENTS, ARE SUBJECT TO THE INTERCREDITOR AGREEMENT AND (D) IRREVOCABLY AUTHORIZE AND DIRECT THE ADMINISTRATIVE AGENT TO EXECUTE AND DELIVER THE INTERCREDITOR AGREEMENT UPON THE OCCURRENCE OF THE SECURITY TRIGGER DATE AND TO PERFORM ITS OBLIGATIONS THEREUNDER. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE INTERCREDITOR AGREEMENT AND THIS AGREEMENT, THE TERMS OF THE INTERCREDITOR AGREEMENT SHALL GOVERN.

Further, by accepting the benefits set forth herein the Lender Parties (including each Person that becomes a Lender Party pursuant to Section 13.5 or otherwise) hereby (a) acknowledge that Wells Fargo is acting under the Intercreditor Agreement in multiple capacities as the Administrative Agent and the Collateral Agent and (b) waive any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against Wells Fargo any claims, causes of action, damages or liabilities of whatever kind or nature relating to any such conflict of interest, except for any such claims, causes of action, damages or liabilities resulting

from gross negligence or willful misconduct by Wells Fargo as determined by a court of competent jurisdiction in a final, non-appealable judgment. The Lender Parties (and each Person that becomes a Lender Party pursuant to Section 13.5

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or otherwise) hereby authorize and direct Wells Fargo to enter into the Intercreditor Agreement on behalf of each Lender Party and agree that Wells Fargo, in its various capacities thereunder, may take such actions on its behalf as is contemplated by the terms of the Intercreditor Agreement.

[~~Signatures Continued on Next~~Remainder of Page Intentionally Blank]

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ANNEX II

AMENDED CREDIT AGREEMENT

See attached.

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Loan Number: 1013605

Loan Number: 1014896

Loan Number: 1018459

**[NOT A LEGAL DOCUMENT]**

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AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of October 17, 2018

by and among

SUNSTONE HOTEL PARTNERSHIP, LLC,  
as Borrower,

SUNSTONE HOTEL INVESTORS, INC.,  
as Parent,

THE FINANCIAL INSTITUTIONS PARTY HERETO  
AND THEIR ASSIGNEES UNDER SECTION 13.5.,  
as Lenders,

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Administrative Agent

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WELLS FARGO SECURITIES, LLC,  
BOFA SECURITIES, INC.,  
JPMORGAN CHASE BANK, N.A.,  
PNC CAPITAL MARKETS LLC  
and  
U.S. BANK NATIONAL ASSOCIATION,  
as Joint Lead Arrangers,

WELLS FARGO SECURITIES, LLC,  
BOFA SECURITIES, INC.,  
and  
JPMORGAN CHASE BANK, N.A.,  
as Joint Bookrunners,

BANK OF AMERICA, N.A.  
and  
JPMORGAN CHASE BANK, N.A.,  
as Syndication Agents,

and

CITIBANK, N.A.,



PNC BANK, NATIONAL ASSOCIATION,  
and  
U.S. BANK NATIONAL ASSOCIATION,  
as Documentation Agents

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THIS AMENDED AND RESTATED CREDIT AGREEMENT (this “Agreement”) dated as of October 16, 2018, by and among SUNSTONE HOTEL PARTNERSHIP, LLC, a limited liability company formed under the laws of the State of Delaware (the “Borrower”), SUNSTONE HOTEL INVESTORS, INC., a corporation formed under the laws of the State of Maryland (the “Parent”), each of the financial institutions initially a signatory hereto together with their successors and assignees under Section 13.5. (the “Lenders”), and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent (the “Administrative Agent”), with each of WELLS FARGO SECURITIES, LLC, BOFA SECURITIES, INC. (or any other registered broker-dealer wholly-owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation’s or any of its subsidiaries’ investment banking, commercial lending services or related businesses may be transferred following the date of this Agreement), JPMORGAN CHASE BANK, N.A., PNC CAPITAL MARKETS LLC, and U.S. BANK NATIONAL ASSOCIATION, as joint Lead Arrangers (in such capacities, the “Lead Arrangers”), each of WELLS FARGO SECURITIES, LLC, BOFA SECURITIES, INC. (or any other registered broker-dealer wholly-owned by Bank of America Corporation to which all or substantially all of Bank of America Corporation’s or any of its subsidiaries’ investment banking, commercial lending services or related businesses may be transferred following the date of this Agreement) and JPMORGAN CHASE BANK, N.A., as joint Bookrunners (the “Bookrunners”), each of BANK OF AMERICA, N.A. and JPMORGAN CHASE BANK, N.A., as Syndication Agents (the “Syndication Agents”) and CITIBANK, N.A., PNC BANK, NATIONAL ASSOCIATION and U.S. BANK NATIONAL ASSOCIATION, as Documentation Agent (the “Documentation Agent”).

WHEREAS, the Borrower, the Parent, certain of the Lenders and other lenders party thereto (the “Existing Lenders”), the Administrative Agent and certain other parties have entered into that certain Credit Agreement dated as of April 2, 2015 (as amended and supplemented by that certain Term Loan Supplement dated as of September 3, 2015, and as further amended as in effect immediately prior to the date hereof, the “Existing Credit Agreement”); and

WHEREAS, the Borrower, the Parent, the Administrative Agent, the Issuing Banks, the Swingline Lender and the Lenders desire to amend and restate the Existing Credit Agreement, to, among other things, make available to the Borrower a credit facility in the initial amount of \$685,000,000, which will include a \$500,000,000 revolving credit facility with a \$40,000,000 swingline subfacility and a \$30,000,000 letter of credit subfacility, an \$85,000,000 term loan facility and a \$100,000,000 term loan facility, in each case, on the terms and conditions contained herein.

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

## ARTICLE I. DEFINITIONS

### Section 1.1. Definitions.

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

“**42<sup>nd</sup> Street Guaranty**” has the meaning given that term in Section 10.5.

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

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

“**Additional Term 1 Loans**” has the meaning given that term in Section 2.16.

“**Additional Term 2 Loans**” has the meaning given that term in Section 2.16.

**“Additional Term Loans”** has the meaning given that term in Section 2.16.

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

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**“Adjusted NOI”** means, for any Unencumbered Property and for any period (or if no applicable period is stated, the period of twelve consecutive fiscal months then ended), Net Operating Income for such Unencumbered Property for such period minus an imputed franchise fee in the amount of four percent (4.0%) of the gross revenues for such Unencumbered Property for such period; provided, however, for purposes of this definition, no imputed franchise fee shall be deducted from Net Operating Income with respect to any Unencumbered Property that is not subject to a Franchise Agreement. For purposes of this definition (other than for the period commencing on the First Amendment Date and ending January 1, 2022), the Adjusted NOI for any Unencumbered Property shall be reduced by an amount equal to (a) the amount by which the Adjusted NOI of such Unencumbered Property would exceed 30% of the aggregate Adjusted NOI of all Unencumbered Properties and (b) the amount by which the Adjusted NOI of Unencumbered Properties located in the same MSA as such Unencumbered Property would exceed 40% of the aggregate Adjusted NOI of all Unencumbered Properties. In addition to the extent that Adjusted NOI attributable to Unencumbered Properties leased under Ground Leases would exceed 25% of Adjusted NOI, such excess shall be excluded.

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

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

**“Affected Financial Institution”** means (a) any EEA Financial Institution or (b) any UK Financial Institution.

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

**“Affiliate”** means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

**“Agreement”** has the meaning set forth in the introductory paragraph hereof.

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

**“Anti-Corruption Laws”** means all laws, rules, and regulations of any jurisdiction applicable to the 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 and the rules and regulations thereunder and the U.K. Bribery Act 2010 and the rules and regulations thereunder.

**“Anti-Money Laundering Laws”** means any and all laws, statutes, regulations or obligatory government orders, decrees, ordinances or rules applicable to a Loan Party, its Subsidiaries or Affiliates related to terrorism financing or money laundering, including any applicable provision of the Patriot Act and The Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act,” 31 U.S.C. §§ 5311-5330 and 12U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

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

**“Applicable Margin”** means the following:

(a) Prior to June 30, 2020 and after the end of the Covenant Relief Period, with respect to a particular Class and Type of Loans, the percentage rate set forth below corresponding to the Leverage Ratio as determined in accordance with Section 10.1.(a):

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Level	Leverage Ratio	Applicable Margin for Revolving Loans that are LIBOR Loans	Applicable Margin for Revolving Loans that are Base Rate Loans	Applicable Margin for Term Loans that are LIBOR Loans	Applicable Margin for Term Loans that are Base Rate Loans
1	Less than 3.00 to 1.00	1.40%	0.40%	1.35%	0.35%
2	Greater than or equal to 3.00 to 1.00 but less than 3.50 to 1.00	1.45%	0.45%	1.40%	0.40%
3	Greater than or equal to 3.50 to 1.00 but less than 4.00 to 1.00	1.50%	0.50%	1.45%	0.45%
4	Greater than or equal to 4.00 to 1.00 but less than 5.00 to 1.00	1.60%	0.60%	1.55%	0.55%
5	Greater than or equal to 5.00 to 1.00 but less than 5.50 to 1.00	1.80%	0.80%	1.75%	0.75%
6	Greater than or equal to 5.50 to 1.00 but less than 6.00 to 1.00	1.95%	0.95%	1.85%	0.85%
7	Greater than or equal to 6.00 to 1.00	2.25%	1.25%	2.20%	1.20%

The Applicable Margins for Loans shall be determined by the Administrative Agent from time to time, based on the Leverage Ratio as set forth in the Compliance Certificate most recently delivered by the Borrower pursuant to Section 9.3. Any adjustment to the Applicable Margins shall be effective as of the first day of the calendar month immediately following the month during which the Borrower delivers to the Administrative Agent the applicable Compliance Certificate pursuant to Section 9.3. If the Borrower fails to deliver a Compliance Certificate pursuant to Section 9.3., the Applicable Margins shall equal the percentages corresponding to Level 7 until the first day of the calendar month immediately following the month that the required Compliance Certificate is delivered.

(b) During the Covenant Relief Period, (i) the Applicable Margin for Revolving Loans that are LIBOR Loans shall be 2.25% and for Revolving Loans that are Base Rate Loans shall be 1.25% and (ii) the Applicable Margin for Term Loans that are LIBOR Loans shall be 2.20% and for Term Loans that are Base Rate Loans shall be 1.20%.

The provisions of this definition shall be subject to Section 2.5.(c). During the Leverage Ratio Surge Period, any Applicable Margin determined as provided above shall be increased by 0.35%.

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

**“Asset Sale”** means any conveyance, sale, lease, transfer or other disposition (including by way of merger or consolidation and including any sale and leaseback transaction) of any of following (whether owned on June 30, 2020 or thereafter acquired): (i) any Unencumbered Property and (ii) the Equity Interests of any Subsidiary that directly or indirectly owns any Unencumbered Property.

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

**“Availability”** shall mean, as of any date of determination, an amount equal to the Revolving Commitments of all Lenders as of such date (to the extent available to be drawn) minus all outstanding Revolving Loans, Swingline Loans and Letter of Credit Liabilities as of such date.

**“Average Monthly Liquidity”** shall mean, (a) the sum of the following for each day of any calendar month (i) the Unrestricted Cash held in the United States as of such day, plus (ii) an amount equal to Availability as of such day (to the extent available to be drawn in accordance with this Agreement) divided by (b) the number of days in such month; provided, however, with respect to the property-level operating accounts, “Average Monthly Liquidity” shall mean the Unrestricted Cash held in such accounts on the first and last day of each month divided by 2.

**“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, regulation, rule 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).

**“Bankruptcy Code”** means the Bankruptcy Code of 1978, as amended.

**“Base Rate”** means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) the LIBOR Market Index Rate plus 1.0%; each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or the LIBOR Market Index Rate (provided that clause (c) shall not be applicable during any period in which LIBOR is unavailable or unascertainable).

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

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

**“Beneficial Ownership Regulation”** means 31 CFR § 1010.230.

**“Benefit Arrangement”** means at any time an employee benefit plan within the meaning of Section 3(3) of ERISA which is not a Plan or a Multiemployer Plan and which is maintained or otherwise contributed to by the Borrower, any other Loan Party or any other Subsidiary.

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

**“Borrower Information”** has the meaning given that term in Section 2.5.(c).

**“Business Day”** means (a) for all purposes other than as set forth in clause (b) below, any day (other than a Saturday, Sunday or legal holiday) on which banks in San Francisco, California and New York, New York, are open for the conduct of their commercial banking business, and (b) with respect to all notices and determinations in connection with, and payments of principal and interest on, any LIBOR Loan, or any Base Rate Loan as to which the interest rate is determined

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by reference to LIBOR, any day that is a Business Day described in clause (a) and that is also a day for trading by and between banks in Dollar deposits in the London interbank market. Unless specifically referenced in this Agreement as a Business Day, all references to “days” shall be to calendar days.

**“Capitalized Lease Obligations”** means obligations under a lease (or other arrangement conveying the right to use property) to pay rent or other amounts that are required to be capitalized for financial reporting purposes in accordance with GAAP. The amount of a Capitalized Lease Obligation is the capitalized amount of such obligation as would be required to be reflected on a balance sheet of the applicable Person prepared in accordance with GAAP as of the applicable date. The obligations of (i) Sunstone St. Clair, LLC, a Delaware limited liability company and Subsidiary of the Borrower, under the Hyatt Chicago Capital Lease and (ii) Sunstone OP Properties, L.L.C., a Delaware limited liability company and Subsidiary of the Borrower, under the Courtyard Marriott Los Angeles Capital Lease shall not constitute Capitalized Lease Obligations.

**“CARES Act”** means the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act and applicable rules and regulations.

**“CARES Payroll Costs”** means “payroll costs” as defined in 15 U.S.C. 636(a)(36)(A)(viii) (as added to the Small Business Act by Section 1102 of the CARES Act).

**“CARES Forgivable Uses”** means uses of proceeds of Government Assistance Indebtedness that are eligible for forgiveness under Section 1106 of the CARES Act.

**“Cash Collateralize”** means, to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the applicable Issuing Bank or the Revolving Lenders, as collateral for Letter of Credit Liabilities or obligations of Revolving Lenders to fund participations in respect of Letter of Credit Liabilities, cash or deposit account balances or, if the Administrative Agent and the applicable Issuing Bank shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and the applicable Issuing Bank. “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: (a) securities issued, guaranteed or insured by the United States of America or any of its agencies with maturities of not more than one year from the date acquired; (b) certificates of deposit with maturities of not more than one year from the date acquired issued by a United States federal or state chartered commercial bank of recognized standing, or a commercial bank organized under the laws of any other country which is a member of the Organisation for Economic Cooperation and Development, or a political subdivision of any such country, acting through a branch or agency, which bank has capital and unimpaired surplus in excess of \$500,000,000 and which bank or its holding company has a short-term commercial paper rating of at least A-2 or the equivalent by S&P or at least P-2 or the equivalent by Moody’s; and (c) investments in money market funds registered under the Investment Company Act of 1940, as amended, which have net assets of at least \$500,000,000 and at least 85% of whose assets consist of securities and other obligations of the type described in clauses (a) through (c) above.

**“Class”** means (a) when used with respect to a Commitment, refers to whether such Commitment is a Revolving Commitment or Term 2 Loan Commitment, (b) when used with respect to a Loan, refers to whether such Loan is a Revolving Loan, a Term 1 Loan or a Term 2 Loan and (c) when used with respect to a Lender, refers to whether such Lender has a Loan or Commitment with respect to a particular Class of Loans or Commitments.

**“Collateral”** means (i) the Equity Interests of each Issuer, Material Debt Receivables, and all products and proceeds thereof and other related interests as more fully described as “Pledged Collateral” in the form of Pledge Agreement attached hereto as Exhibit N and (ii) any other assets required to be pledged to the Collateral Agent or the holders of the Senior Notes to secure the obligations thereunder.

**“Collateral Agent”** means Wells Fargo Bank, National Association in its capacity as “Collateral Agent” under the Pledge Agreement and the Intercreditor Agreement.

**“Commitment”** means a Revolving Commitment or Term 2 Loan Commitment, as the context may require.

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**“Commodity Exchange Act”** means the Commodity Exchange Act (7 U.S.C. § 1 et seq.) as amended from time to time, and any successor statute.

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

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

**“Continue”, “Continuation” and “Continued”** each refers to the continuation of a LIBOR Loan from one Interest Period to another Interest Period pursuant to Section 2.9.

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

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

**“Courtyard Marriott Los Angeles Capital Lease”** means that certain Ground Lease dated August 28, 1997, as amended on September 2, 1997, January 23, 1998, January 26, 2002 and December 1, 2003, between Peacock, LLC, as lessor, and Sunstone OP Properties L.L.C., a Delaware limited liability company, as assignee of Sunstone Hotel Investors, L.P.

**“Covenant Relief Period”** means, the period commencing on June 30, 2020 and ending on the date which is the earlier of (i) the date the Borrower has delivered a notice (the “Covenant Relief Termination Notice”) to the Administrative Agent electing to terminate the Covenant Relief Period which notice shall attach calculations demonstrating that the Borrower would have been in compliance with the Financial Covenants (as if the Covenant Relief Period was not in effect and without giving effect to Section 10.1(a)(I) and the proviso in the first sentence of 10.1(e)) for the immediately preceding fiscal quarter for which financial statements have been delivered pursuant to Section 9.1. or 9.2. hereof (which fiscal quarter shall not be prior to the fiscal quarter ending September 30, 2020) and (ii) receipt by the Administrative Agent of the quarterly reporting required pursuant to Section 9.1. hereof (together with the Compliance Certificate required under Section 9.3. for such period) for the fiscal quarter ending June 30, 2021; provided that, for purposes of this clause (ii), the Borrower shall be required to be in compliance with the Financial Covenants for the fiscal quarter ending June 30, 2021 and thereafter.

**“Covenant Relief Termination Notice”** has the meaning given to that term in the definition of “Covenant Relief Period”.

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

**“Credit Rating”** means the rating assigned by a S&P or Moody’s to the senior unsecured long term Indebtedness of a Person.

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

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

**“Defaulting Lender”** means, subject to Section 3.9.(f), any Lender that (a) has failed to (i) fund all or any portion of its Loans within 2 Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies

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

**"Derivatives Contract"** means a "swap agreement" as defined in Section 101 of the Bankruptcy Code.

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

**"Development Property"** means, as of any date of determination, any Property on which the existing building or other improvements are undergoing renovation and redevelopment that will either (a) disrupt the occupancy of at least 10% of the rentable rooms of such Property or (b) temporarily reduce the Net Operating Income of such Property by more than 10% as compared to the immediately preceding comparable prior period. A Property that satisfies the foregoing requirements shall constitute a Development Property unless the Borrower in its discretion notifies the Administrative Agent in writing that such Property shall not constitute a Development Property.

**"Disbursement Instruction Agreement"** means an agreement substantially in the form of Exhibit B to be executed and delivered by the Borrower pursuant to Section 6.1.(a), as the same may be amended,

restated or modified from time to time with the prior written approval of the Administrative Agent (such approval not to be unreasonably withheld, delayed or conditioned).

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

**“Domestic Subsidiary”** means any Subsidiary that is incorporated or organized under the laws of any state of the United States or the District of Columbia.

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**“EBITDA”** means, with respect to a Person for any period (without duplication): (a) net income (loss) of such Person for such period determined on a consolidated basis exclusive of the following (but only to the extent included in determination of such net income (loss)): (i) depreciation and amortization expense; (ii) Interest Expense; (iii) income tax expense; (iv) extraordinary or non-recurring gains, losses, revenues and expenses, including, without limitation, initial costs associated with resuming operations at each Property impacted by COVID-19 as disclosed in the public disclosures of the Parent (“Resuming Operation Costs”); and (v) other non-cash charges including, without limitation, impairment charges (other than non-cash charges that constitute an accrual of a reserve for future cash payments) plus (b) such Person’s Ownership Share of EBITDA of its Unconsolidated Affiliates. EBITDA shall be adjusted to remove any impact from (x) non-cash amortization of stock grants to members of the Parent’s management, (y) straight line rent leveling adjustments required under GAAP and (z) amortization of intangibles pursuant to FASB ASC 805. For purposes of determining compliance with the Leverage Ratio, (x) EBITDA attributable to Properties disposed of by the Borrower or any Subsidiary during the period of four consecutive fiscal quarters most recently ended for which financial statements are required to have been delivered pursuant to Section 9.1. or Section 9.2., or disposed of after such period but on or before the applicable date of determination, shall be excluded and (y) EBITDA attributable to any Property acquired by the Borrower or any Subsidiary during the period of four consecutive fiscal quarters most recently ended for which financial statements are required to have been delivered pursuant to Section 9.1. or Section 9.2., or acquired after such period but on or before the applicable date of determination, shall be utilized regardless of the date such Property was acquired by the Borrower or such Subsidiary.

**“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 delegatee) having responsibility for the resolution of any EEA Financial Institution.

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

**“Eligible Assignee”** means any Person that meets the requirements to be an assignee under Section 13.5.(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 13.5.(b)(iii)).

**“Eligible Property”** means a Property which satisfies all of the following requirements as confirmed by the Administrative Agent: (a) such Property is fully developed as (i) an upscale, upper-upscale or luxury (as defined by Smith Travel Research) full-service hotel with not less than 150 keys or (ii) a select-service (as defined by Smith Travel Research) hotel located in a top-25 market (or resort market, approved by the Administrative Agent in writing (for any Property to be added after the Agreement Date, such approval not to be unreasonably withheld, conditioned or delayed)); (b) such Property is located in a top 50 MSA or, subject to the written approval of the Administrative Agent (for any Property to be added after the Agreement Date, such approval not to be unreasonably withheld, conditioned or delayed), a resort; (c) such Property is free of all structural defects, architectural deficiencies, title defects, environmental conditions or other adverse matters except for defects, deficiencies, conditions or other matters which, individually or collectively, are not

material to the profitable operation of such Property; (d) such Property is owned in fee simple, or leased under a Ground Lease, entirely by the Borrower or a Subsidiary that is a Guarantor; (e) such Property is located in one of the 48 contiguous states of the United States of America or in Hawaii or the District of Columbia; (f) all material occupancy and operating permits and customary licenses required under Applicable Law for such Property are in effect and such Property is covered by insurance in amounts and upon terms that satisfy the criteria set forth in Section 10.2.; (g) neither such Property, nor if such Property is owned by a Subsidiary, any of the Borrower's direct or indirect ownership interest in such Subsidiary, is subject to (i) any Lien other than Permitted Liens (but not Permitted Liens described in clause (g) of the definition of that term) or (ii) any

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Negative Pledge other than a Negative Pledge described in Section 10.2.(b)(i) or (ii); (h) regardless of whether such Property is owned by the Borrower or a Subsidiary, the Borrower has the right directly, or indirectly through a Subsidiary, to take the following actions without the need to obtain the consent of any Person: (i) to create Liens on such Property as security for Indebtedness of the Borrower or such Subsidiary, as applicable, and (ii) to sell, transfer or otherwise dispose of such Property; (i) such Property is currently open for business to the public; (j) such Property is (i) branded by a nationally recognized hotel company (such as, but not limited to, Marriott, Hilton, Hyatt, Fairmont, or Intercontinental) or an Affiliate of such a company or (ii) operated as an independent upscale or above hotel subject to the written approval of the Administrative Agent (for any Property to be added after the Agreement Date, such approval not to be unreasonably withheld, conditioned or delayed), another location; and (k) the Administrative Agent has received information and reports regarding such Property as required under Section 4.1.(b).

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

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

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

**“Equity Issuance”** means any issuance by a Person of any Equity Interest in such Person and shall in any event include (i) the issuance of any Equity Interest upon the conversion or exchange of any security constituting Indebtedness that is convertible or exchangeable, or is being converted or exchanged, for Equity Interests, (ii) the issuance of any Preferred Equity Interests, (iii) any capital contribution made to Parent or Borrower and (iv) the offering of “securities” (as defined under the Securities Act) in a public offering registered under the Securities Act or an offering not required to be registered under the Securities Act (including, without limitation, a private placement under Section 4(2) of the Securities Act, an exempt offering pursuant to Rule 144A and/or Regulation S of the Securities Act and an offering of exempt securities).

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

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

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

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

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

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

**“Excluded Issuer”** means any Subsidiary that (i) indirectly (but not directly) owns an Unencumbered Property and (ii) directly or indirectly owns Property that is not an Unencumbered Property.

**“Excluded Prepayment Debt”** means (i) Nonrecourse Indebtedness described in Section 10.11.(d)(i)(A) or 10.11.(d)(i)(B), (ii) the proceeds of Revolving Loans and Swingline Loans, (iii) Government Assistance Indebtedness, (iv) Nonrecourse Indebtedness secured by a mortgage on a Property and assumed at the time of acquisition of such Property (and not in contemplation thereof), and (v) Indebtedness incurred in the ordinary course of business in an aggregate amount for all such Indebtedness under this clause (v), not to exceed \$5,000,000.

**“Excluded Subsidiary”** means any Subsidiary as to which both of the following apply (a) such Subsidiary holds title to, or beneficially owns, assets which are or are intended to become collateral for any Secured Indebtedness of such Subsidiary, or is a direct or indirect beneficial owner of a Subsidiary holding title to or beneficially owning such assets (but having no material assets other than such beneficial ownership interests); and (b) which (i) is, or is expected to be, prohibited from Guarantying the Indebtedness of any other Person pursuant to any document, instrument or agreement evidencing such Secured Indebtedness or (ii) is prohibited from Guarantying the Indebtedness of any other Person pursuant to a provision of such Subsidiary’s organizational documents which provision was included in such Subsidiary’s organizational documents as a condition to the extension of such Secured Indebtedness.

**“Excluded Swap Obligation”** means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the liability of such Loan Party for or the Guarantee of such Loan Party of, or the grant by such Loan Party of a Lien to secure, such Swap Obligation (or any liability or guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the

Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the liability for or the Guarantee of such Loan Party or the grant of such Lien becomes effective with respect to such Swap Obligation (such determination being made after giving effect to any applicable keepwell, support or other agreement for the benefit of the applicable Loan Party, including under Section 31 of the Guaranty). If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation

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that is attributable to swaps for which such Guarantee or Lien is or becomes illegal for the reasons identified in the immediately preceding sentence of this definition.

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

**“Existing Credit Agreement”** has the meaning set forth in the first recital hereof.

**“Existing Letters of Credit”** means each of the letters of credit identified on Schedule 1.1.(A).

**“Extended Letter of Credit”** has the meaning given that term in Section 2.3.(b).

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

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

**“FATCA”** means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any intergovernmental agreements entered into by the United States of America that implement or modify the foregoing (together with the portions of any law implementing such intergovernmental agreements).

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

**“Fee Letter”** means, collectively, (a) that certain fee letter dated as of September 14, 2018, by and among the Borrower, Wells Fargo and Wells Fargo Securities, LLC, (b) each other respective fee letter by and among the Borrower, each other respective Lead Arranger and the other parties thereto and (c) that certain fee letter dated as of the First Amendment Date by and among the Borrower, Wells Fargo Securities, LLC, BofA Securities, Inc. and JPMorgan Chase Bank, N.A.

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

**“FF&E Reserves”** means, for any period and with respect to a Property, an amount equal to the greater of (a) 4.0% of total gross revenues for such Property for such period and (b) the aggregate amount of reserves in respect to furniture, fixtures and equipment required under any Property Management Agreement or Franchise Agreement applicable to such Property for such period. If the term FF&E Reserves is used without reference to a specific Property, then the amount shall be determined on an aggregate basis with respect to all Properties of the Parent and its Subsidiaries and the applicable Ownership Share of all Properties of all Unconsolidated Affiliates of the Parent.

**“Financial Covenants”** mean the covenants set forth in clauses (a) – (i) of Section 10.1. hereof.

**“First Amendment Date”** shall mean [\_\_\_\_], 2020.

**“Fixed Charges”** means, for any period, the sum of the following (without duplication): (a) Interest Expense of the Parent and its Subsidiaries determined on a consolidated basis for such period, (b) all regularly scheduled principal payments made with respect to Indebtedness of the Parent and its Subsidiaries during such period, other than any balloon, bullet or similar principal payment due upon the stated maturity of such Indebtedness, (c) all Preferred Dividends paid during such period on Preferred Equity Interests not owned by the Parent or any of its Subsidiaries and (d) payments in respect of Capitalized Lease Obligations. The Parent’s Ownership Share of the Fixed Charges of Unconsolidated Affiliates of the Parent shall be included in determinations of Fixed Charges.

**“Foreign Lender”** means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

**“Foreign Subsidiary”** means a Subsidiary that is not a Domestic Subsidiary.

**“Franchise Agreement”** means an agreement permitting the use of the applicable hotel brand name, hotel system trademarks, trade names and any related rights in connection with the ownership or operation of a Property.

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

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

**“GAAP”** means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (including Statement of Financial Accounting Standards No. 168, “The FASB Accounting Standards Codification”) or in such other statements by such other entity as may be approved by a significant segment

of the accounting profession in the United States of America, which are applicable to the circumstances as of the date of determination.

**“Governmental Approvals”** means all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and reports to, all Governmental Authorities.

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**“Governmental Authority”** means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, administrative, public or statutory instrumentality, authority, body, agency, bureau, commission, board, department or other comparable authority (including, without limitation, the Federal Deposit Insurance Corporation, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority) 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 European Central Bank), or any arbitrator with authority to bind a party at law.

**“Government Assistance Indebtedness”** means Indebtedness of the Parent, the Borrower or its Subsidiaries incurred pursuant to federal, state or local stimulus plans in response to the COVID-19 pandemic (including, but not limited to, loans provided by the U.S. Small Business Administration) so long as the proceeds of such Indebtedness are used in compliance with all provisions and requirements of the applicable act including any provisions and requirements applicable for such Indebtedness to be forgiven and such Indebtedness ranks on a pari passu or junior basis with the Obligations in right of payment.

**“Grantor”** means each Person who owns Collateral.

**“Ground Lease”** means a ground lease containing terms and conditions customarily required by mortgagees making a loan secured by the interest of the holder of the leasehold estate demised pursuant to a ground lease, including without limitation, the following: (a) a remaining term (inclusive of any unexercised extension or renewal options that are exercisable without condition (other than a condition that no default exists under such ground lease at the time of exercise of such extension or renewal option)) of 50 years or more from the Agreement Date or, in the event that such remaining term is less than 50 years, such ground lease either (i) contains an unconditional end-of-term purchase option in favor of the lessee for consideration that is de minimus or (ii) provides that the lessee’s leasehold interest therein automatically becomes a fee-owned interest at the end of the term; (b) the right of the lessee to mortgage and encumber its interest in the leased property, and to amend the terms of any such mortgage or encumbrance, in each case, without the consent of the lessor or, if consent is required, such consent has been obtained or is required to be given upon the satisfaction of customary conditions reasonably acceptable to the Administrative Agent; (c) the obligation of the lessor to give the holder of any mortgage Lien on such leased property written notice of any defaults on the part of the lessee and agreement of such lessor that such lease will not be terminated until such holder has had a reasonable opportunity to cure or complete foreclosures, and fails to do so; (d) acceptable transferability of the lessee’s interest under such lease, including ability to sublease; (e) acceptable limitations on the use of the leased property; and (f) clearly determinable rental payment terms which in no event contain profit participation rights.

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

**“Guarantor”** means any Person that is a party to the Guaranty as a “Guarantor” and, in any event, shall include the Parent and each Material Subsidiary (other than Excluded Subsidiaries, Foreign Subsidiaries and any Domestic Subsidiary that has no material assets other than stock and securities of one or more Foreign Subsidiary).

**“Guaranty”, “Guaranteed”, “Guarantying”** or to **“Guarantee”** as applied to any obligation means and includes: (a) a guaranty (other than by endorsement of negotiable instruments for collection or deposit in the ordinary course of business), directly or indirectly, in any manner, of any part or all of such obligation, or (b) an agreement, direct or indirect, contingent or otherwise, and whether or not constituting a guaranty, the practical effect of which is to assure the payment or performance (or payment of damages in the event of nonperformance) of any part or all of such obligation whether by: (i) the purchase of securities or obligations, (ii) the purchase, sale or lease (as lessee or lessor) of property or the purchase or sale of services primarily

for the purpose of enabling the obligor with respect to such obligation to make any payment or performance (or payment of damages in the event of nonperformance) of or on account of any part or all of such obligation, or to assure the owner of such obligation against loss, (iii) the supplying of funds to or in any other manner investing in the obligor with respect to such obligation, (iv) repayment of amounts drawn down by beneficiaries of letters of credit (including Letters of Credit), or (v) the supplying of funds to or investing in a Person on account of all or any part of such Person's obligation under a Guaranty of any obligation or indemnifying or holding harmless, in any way, such Person against any part or all of such obligation. Obligations in respect of customary performance guaranties and Guaranties constituting

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Nonrecourse Indebtedness shall not be deemed to give rise to Indebtedness or otherwise constitute a Guaranty except as otherwise provided in the definition of “Nonrecourse Indebtedness”. As the context requires, “Guaranty” shall also mean the guaranty executed and delivered pursuant to Section 6.1. or 8.13. and substantially in the form of Exhibit C.

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

**“Hyatt Chicago Capital Lease”** means that certain Lease dated December 15, 1997 between Chicago Title Land Trust Company, as trustee, as successor trustee to LaSalle Bank National Association, as successor trustee to American National Bank and Trust Company of Chicago, and Sunstone St. Clair, LLC, a Delaware limited liability company, as assignee of Patriot Mortgage Borrower, L.L.C., as assignee of Oxford Wyn 633 Investment Company, L.L.C.

**“Indebtedness”** means, with respect to a Person, at the time of computation thereof, all of the following (without duplication): (a) all obligations of such Person in respect of money borrowed or for the deferred purchase price of property or services (other than trade debt incurred in the ordinary course of business which is not more than 180 days past due); (b) all obligations of such Person, whether or not for money borrowed (i) represented by notes payable, or drafts accepted, in each case representing extensions of credit, (ii) evidenced by bonds, debentures, notes or similar instruments, or (iii) constituting purchase money indebtedness, conditional sales contracts, title retention debt instruments or other similar instruments, upon which interest charges are customarily paid or that are issued or assumed as full or partial payment for property or for services rendered; (c) Capitalized Lease Obligations of such Person; (d) all reimbursement obligations (contingent or otherwise) of such Person under or in respect of any letters of credit or acceptances (whether or not the same have been presented for payment); (e) all Off-Balance Sheet Obligations of such Person; (f) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Mandatorily Redeemable Stock issued by such Person or any other Person, valued at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (g) all obligations of such Person in respect of any (i) purchase obligation, repurchase obligation or takeout commitment, in each case evidenced by a binding agreement and to the extent such obligation is to acquire Equity Interests of another Person, assets of another Person that constitute the business or a division or operating unit of such Person, real estate, bonds, debentures, notes or similar instruments or (ii) forward equity commitment evidenced by a binding agreement (provided, however that this clause (g) shall exclude (x) any such obligation to the extent the obligation can be satisfied by the issuance of Equity Interests (other than Mandatorily Redeemable Stock) and (y) obligations incurred in the ordinary course of the business of the Borrower and its Subsidiaries to acquire developed Properties within 6 months of the incurrence of such obligations); (h) net obligations under any Derivatives Contract not entered into as a hedge against interest rate risk in respect of existing Indebtedness, in an amount equal to the Derivatives Termination Value thereof at such time (but in no event less than zero); (i) all Indebtedness of other Persons which such Person has Guaranteed or is otherwise recourse to such Person (except for Guaranties constituting Nonrecourse Indebtedness); and (j) all Indebtedness of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property or assets owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness or other payment obligation. Indebtedness of any Person shall include Indebtedness of any partnership or joint venture in which such Person is a general partner or joint venturer to the extent of such Person’s Ownership Share of the

ownership of such partnership or joint venture (except if such Indebtedness, or portion thereof, is recourse (other than in respect of exceptions referred to in the definition of Nonrecourse Indebtedness) to such Person, in which case the greater of such Person's Ownership Share of such Indebtedness or the amount of such recourse portion of the Indebtedness, shall be included as Indebtedness of such Person). All Loans and Letter of Credit Liabilities shall constitute Indebtedness of the Borrower and Government Assistance Indebtedness shall (except to the extent of forgiveness thereof) constitute Indebtedness of the Borrower, the Guarantor or their applicable Subsidiary that is the obligor with respect thereto. The calculation of Indebtedness shall not include (i) any fair value adjustments to the carrying value of liabilities to record such Indebtedness at fair value pursuant to electing the fair value option election under FASB ASC

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825-10-25 (formerly known as FAS 159, The Fair Value Option for Financial Assets and Financial Liabilities) or other FASB ASC standards allowing entities to elect fair value option for financial liabilities or (ii) if the Orlando Loan Conditions are satisfied, the Orlando Loan.

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

**“Intellectual Property”** has the meaning given that term in Section 7.1.(s).

**“Intercreditor Agreement”** means, collectively, an intercreditor agreement substantially in the form of Exhibit O attached hereto to be entered into on or prior to the Security Trigger Date by and among the Collateral Agent, the Administrative Agent and the holders of the Senior Notes and any other intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and entered into with the holders of any other Material Collateral Indebtedness secured by the Collateral.

**“Interest Expense”** means, with respect to a Person and for any period, and without duplication (a) all paid, accrued or capitalized interest expense (including, without limitation, capitalized interest expense (other than (x) capitalized interest funded from a construction loan interest reserve account held by another lender and not included in the calculation of cash for balance sheet reporting purposes) and (y) interest expense attributable to Capitalized Lease Obligations) of such Person and in any event shall include all letter of credit fees and all interest expense with respect to any Indebtedness in respect of which such Person is wholly or partially liable whether pursuant to any repayment, interest carry, performance guarantee or otherwise, plus (b) to the extent not already included in the foregoing clause (a), such Person’s Ownership Share of all paid, accrued or capitalized interest expense for such period of Unconsolidated Affiliates of such Person. The term “Interest Expense” shall exclude all costs and expenses, including any prepayment penalties, of defeasing, or otherwise paying or prepaying, any Indebtedness encumbering any Property or amortization of deferred financing fees or the write-off of any deferred financing fees following the acquisition, disposition or refinancing thereof.

**“Interest Period”** means with respect to each LIBOR Loan, each period commencing on the date such LIBOR Loan is made, or in the case of the Continuation of a LIBOR Loan the last day of the preceding Interest Period for such Loan, and ending on the numerically corresponding day in the first, third or sixth calendar month thereafter, as the Borrower may select in a Notice of Borrowing, any notice of a borrowing for a Term Loan, Notice of Continuation or Notice of Conversion, as the case may be, except that each Interest Period that commences on the last Business Day of a calendar month (or on any day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month. Notwithstanding the foregoing: (i) if any Interest Period for a Class of Loans would otherwise end after the Termination Date for such Class, such Interest Period shall end on such Termination Date; and (ii) each Interest Period that would otherwise end on a day which is not a Business Day shall end on the immediately following Business Day (or, if such immediately following Business Day falls in the next calendar month, on the immediately preceding Business Day).

**“Internal Revenue Code”** means the Internal Revenue Code of 1986, as amended.

**“Investment”** means, with respect to any Person, any acquisition or investment (whether or not of a controlling interest) by such Person, by means of any of the following: (a) the purchase or other acquisition of any Equity Interest in another Person, (b) a loan, advance or extension of credit to, capital contribution to, Guaranty of Indebtedness of, or purchase or other acquisition of any Indebtedness of, another Person, including any partnership or joint venture interest in such other Person, (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute the business or a division or operating unit of another Person or (d) the purchase of any Property with the proceeds of the Asset Sale of an Unencumbered Property or the Equity Interests of any Subsidiary that directly or indirectly

owns an Unencumbered Property, provided that, so long as such purchased Property is then added as an Unencumbered Property, only the difference between the value of such purchased Property and the value of the Unencumbered Property subject to such Asset Sale shall be included as an Investment. Any commitment to make an Investment in any other Person, as well as any option of another Person to require an Investment in such Person, shall constitute an Investment. Except as expressly provided otherwise, for purposes of determining compliance with any covenant contained in a Loan Document, the amount

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of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment. Notwithstanding anything to the contrary, the issuing of Equity Interests or the use of cash or Cash Equivalents to repay an existing mortgage on a Property owned by the Parent, the Borrower or a Subsidiary shall not be deemed to be an “Investment” so long as such Property becomes and remains an Unencumbered Property.

“**Issuer**” means each Subsidiary of the Borrower that directly or indirectly owns an Unencumbered Property; provided that “Issuer” shall not include any Excluded Issuer.

“**Issuing Bank**” means each of Wells Fargo, Bank of America, N.A., and JPMorgan Chase Bank, N.A., in its capacity as an issuer of Letters of Credit pursuant to Section 2.3.

“**L/C Commitment Amount**” has the meaning given to that term in Section 2.3.(a).

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

“**Lender**” means each financial institution from time to time party hereto as a “Lender” together with its respective successors and permitted assigns, and, as the context requires, includes the Swingline Lender; provided, however, that except as otherwise expressly provided herein, the term “Lender” shall exclude any Lender (or its Affiliates) in its capacity as a Specified Derivatives Provider.

“**Lender Parties**” means, collectively, the Administrative Agent, the Lenders, the Issuing Banks, the Specified Derivatives Providers, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 12.5., any other holder from time to time of any of any Obligations and, in each case, their respective successors and permitted assigns.

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

“**Letter of Credit**” has the meaning given that term in Section 2.3.(a).

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

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

“**Letter of Credit Liabilities**” means, without duplication, at any time and in respect of any Letter of Credit (a) the Stated Amount of such Letter of Credit plus (b) the aggregate unpaid principal amount of all Reimbursement Obligations of the Borrower at such time due and payable in respect of all drawings made under such Letter of Credit. For purposes of this Agreement, a Revolving Lender (other than a Lender in its capacity as an Issuing Bank of a Letter of Credit) shall be deemed to hold a Letter of Credit Liability in an amount equal to its participation interest under Section 2.3. in such Letter of Credit, and the Lender that is the Issuing Bank of such Letter of Credit shall be deemed to hold a Letter of Credit Liability in an amount equal to its retained interest in such Letter of Credit after giving effect to the acquisition by the Revolving Lenders (other than the Lender then acting as the Issuing Bank of such Letter of Credit) of their participation interests under such Section.

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

“**Leverage Ratio**” means, as of a given date, the ratio of (a)(i) Total Indebtedness as of such date minus (ii) the amount, if any, by which Unrestricted Cash exceeds \$25,000,000 on such date and (2) Total Indebtedness with respect to

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the Senior Notes, to (b) EBITDA of the Parent for the period of four consecutive fiscal quarters most recently ended for which financial statements are required to have been delivered pursuant to Section 9.1. or Section 9.2. Notwithstanding the foregoing, for purposes of calculating the Leverage Ratio, (A) for the last full fiscal quarter of the Covenant Relief Period (which, (x) if the Covenant Relief Period ends pursuant to clause (i) of the definition thereof will be the period for which the Borrower calculated the Financial Covenants in the Covenant Relief Termination Notice and (y) if the Covenant Relief Period ends pursuant to clause (ii) of the definition thereof, will be June 30, 2021), EBITDA shall be measured as, at Borrower's election, either (I) EBITDA for the two fiscal quarter period ending on such date multiplied by 2, or (II) EBITDA for the single fiscal quarter ending on such date multiplied by 4; (B) for the fiscal quarter period immediately following the fiscal quarter period described in clause (A), EBITDA shall be measured as, either (I) if for clause (A) above, EBITDA was measured based on sub-clause (I) thereof, then EBITDA shall be measured as EBITDA for the three fiscal quarter period ending on such date multiplied by 4/3, or (II) if for clause (A) above, EBITDA was measured based on sub-clause (II) thereof, then EBITDA shall be measured as EBITDA for the two fiscal quarter period ending on such date multiplied by 2; and (C) for the fiscal quarter period immediately following the fiscal quarter period described in clause (B), EBITDA shall be measured as, either (I) if for clause (A) above, EBITDA was measured based on sub-clause (I) thereof, then EBITDA shall be measured as EBITDA for the four fiscal quarter period ending on such date, or (II) if for clause (A) above, EBITDA was measured based on sub-clause (II) thereof, then EBITDA shall be measured as EBITDA for the three fiscal quarter period ending on such date multiplied by 4/3.

**“Leverage Ratio Surge Period”** has the meaning given that term in Section 10.1.(a).

**“LIBOR”** means, subject to implementation of a Replacement Rate in accordance with Section 5.2.(b), with respect to any LIBOR Loan for any Interest Period, the rate of interest obtained by dividing (i) the rate of interest per annum determined on the basis of the rate for deposits in Dollars for a period equal to the applicable Interest Period as published by the ICE Benchmark Administration Limited, a United Kingdom Company, or a comparable or successor quoting service approved by the Administrative Agent, at approximately 11:00 a.m. (London time) two Business Days prior to the first day of the applicable Interest Period by (ii) a percentage equal to 1 minus the stated maximum rate (stated as a decimal) of all reserves, if any, required to be maintained with respect to Eurocurrency funding (currently referred to as “Eurocurrency liabilities”) as specified in Regulation D of the Board of Governors of the Federal Reserve System (or against any other category of liabilities which includes deposits by reference to which the interest rate on LIBOR Loans is determined or any applicable category of extensions of credit or other assets which includes loans by an office of any Lender outside of the United States of America). If, for any reason, the rate referred to in the preceding clause (i) is not so published, then the rate to be used for such clause (i) shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) two Business Days prior to the first day of the applicable Interest Period for a period equal to such Interest Period. Any change in the maximum rate or reserves described in the preceding clause (ii) shall result in a change in LIBOR on the date on which such change in such maximum rate becomes effective. Notwithstanding the foregoing, (x) in no event shall LIBOR (including, without limitation, any Replacement Rate with respect thereto) be less than 0.25% and (y) unless otherwise specified in any amendment to this Agreement entered into accordance with Section 5.2.(b), in the event that a Replacement Rate with respect to LIBOR is implemented then all references herein to LIBOR shall be deemed references to such Replacement Rate.

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

**“LIBOR Market Index Rate”** means, for any day, LIBOR as of that day that would be applicable for a LIBOR Loan having a one-month Interest Period determined at approximately 10:00 a.m. Central time for such day (rather than 11:00 a.m. (London time) two Business Days prior to the first day of such Interest Period

as otherwise provided in the definition of “LIBOR”), or if such day is not a Business Day, the immediately preceding Business Day. The LIBOR Market Index Rate shall be determined on a daily basis.

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

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arrangement, express or implied, under which any property of such Person is transferred, sequestered or otherwise identified for the purpose of subjecting the same to the payment of Indebtedness or performance of any other obligation in priority to the payment of the general, unsecured creditors of such Person; (c) the filing of any financing statement under the UCC or its equivalent in any jurisdiction, other than any precautionary filing not otherwise constituting or giving rise to a Lien, including a financing statement filed (i) in respect of a lease not constituting a Capitalized Lease Obligation pursuant to Section 9-505 (or a successor provision) of the UCC or its equivalent as in effect in an applicable jurisdiction or (ii) in connection with a sale or other disposition of accounts or other assets not prohibited by this Agreement in a transaction not otherwise constituting or giving rise to a Lien; and (d) any agreement by such Person to grant, give or otherwise convey any of the foregoing.

**“Loan”** means a Revolving Loan, Term Loan or a Swingline Loan, as the context may require.

**“Loan Document”** means this Agreement, each Note, the Guaranty, each Letter of Credit Document, each Fee Letter, the Pledge Agreement (if and when required to be executed and delivered in accordance with the terms hereof), the Intercreditor Agreement (if and when required to be executed and delivered in accordance with the terms hereof) and each other document or instrument now or hereafter executed and delivered by a Loan Party in connection with, pursuant to or relating to this Agreement (other than any Specified Derivatives Contract).

**“Loan Party”** means the Borrower, the Parent, each other Guarantor and each Grantor. Schedule 1.1.(B) sets forth the Loan Parties in addition to the Borrower and the Parent as of the Agreement Date.

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

**“Marketable Securities”** means: (a) common or preferred Equity Interests of Persons located in, and formed under the laws of, any State of the United States or America or the District of Columbia, which Equity Interests are subject to price quotations (quoted at least daily) on The NASDAQ Stock Market’s National Market System or have trading privileges on the New York Stock Exchange, the American Stock Exchange or another recognized national United States securities exchange and (b) securities evidencing Indebtedness issued by Persons located in, and formed under the laws of, any State of the United States or America or the District of Columbia, which Persons have a Credit Rating of BBB- or Baa3 or better.

**“Material Acquisition”** means any acquisition by the Borrower or any Subsidiary of one or more hotel Properties in which the purchase price of the assets acquired exceeds 10.0% of the Total Asset Value of the Parent, the Borrower and their respective Subsidiaries as of the most recent fiscal quarter for which financial statements are available.

**“Material Adverse Effect”** means a materially adverse effect on (a) the business, assets, liabilities, financial condition or results of operations of the Parent and its Subsidiaries, or the Borrower and its Subsidiaries, in each case, taken as a whole, (b) the ability of the Borrower or any other Loan Party to perform its obligations under any Loan Document to which it is a party, (c) the validity or enforceability of any

of the Loan Documents, or (d) the material rights and remedies of the Lenders, the Issuing Banks and the Administrative Agent under any of the Loan Documents.

**“Material Collateral Indebtedness”** means Indebtedness described under clause (a), (b), (c) (d), (f), (i) and (j) of the definition thereof in an amount in excess of \$50,000,000 (individually or in the aggregate with other such Indebtedness) and shall include, in any event, Indebtedness evidenced by the Senior Notes and any Preferred Equity Interests. Notwithstanding the foregoing, Material Collateral Indebtedness shall not include Secured Indebtedness which is Nonrecourse Indebtedness to the extent such Secured Indebtedness is not secured by the Collateral.

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**“Material Contract”** means any contract or other arrangement (other than Loan Documents and Specified Derivatives Contracts), whether written or oral, to which the Parent, the Borrower, or any other Subsidiary is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect.

**“Material Debt Receivables”** mean Mortgage Receivables and Secured Mezz Receivables of the Parent, the Borrower or its Subsidiaries which, individually or in the aggregate with other Mortgage Receivables and Secured Mezz Receivables, exceed \$5,000,000.

**“Material Subsidiary”** means any Subsidiary (a) that directly or indirectly owns in fee simple, or leases pursuant to a Ground Lease, an Unencumbered Property or (b) to which more than 5% of Total Asset Value is attributable on an individual basis.

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

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

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

**“MSA”** means a Metropolitan Statistical Area as listed in Budget Bulletin No. 09-01 issued by the Executive Office of the President of the United States of America, Office of Management and Budget.

**“Multiemployer Plan”** means at any time a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any member of the ERISA Group is then making or accruing an obligation to make contributions or has within the preceding six plan years made contributions, including for these purposes any Person which ceased to be a member of the ERISA Group during such six-year period.

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

**“Net Operating Income”** or **“NOI”** means, for any Property and for a given period, the sum of the following (without duplication and determined on a consistent basis with prior periods): (a) gross revenues received in the ordinary course from such Property minus (b) all expenses paid (excluding interest but including an appropriate accrual for property taxes and insurance) related to the ownership, operation or maintenance of such Property, including but not limited to property taxes, assessments and the like, insurance, utilities, payroll costs, maintenance, repair and landscaping expenses, marketing expenses, and general and administrative expenses (including an appropriate allocation for legal, accounting, advertising, marketing and other expenses incurred in connection with such Property, but specifically excluding general overhead expenses of the Borrower or any Subsidiary and any property management fees) minus (c) the FF&E Reserves for such Property as of the end of such period minus (d) an imputed management fee in the amount of three percent (3.0%) of the gross revenues for such Property for such period. For purposes of determining Adjusted NOI, (x) NOI from Properties disposed of by the Borrower or any Subsidiary during the period of four consecutive fiscal quarters most recently ended for which financial statements are required to have been delivered pursuant to Section 9.1. or Section 9.2. shall be excluded and (y) NOI for the period of four

consecutive fiscal quarters most recently ended for which financial statements are required to have been delivered pursuant to Section 9.1. or Section 9.2. for any Property acquired by the Borrower or any Subsidiary during such period shall be utilized regardless of the date such Property was acquired by the Borrower or such Subsidiary.

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Notwithstanding anything to the contrary, any Resuming Operation Costs shall not be deducted as expenses relating to a Property in accordance with clause (b) above.

**“Net Proceeds”** means (a) the aggregate cash proceeds received by the Parent, the Borrower or any of its Subsidiaries in respect of any Asset Sale by the Parent, the Borrower or any such Subsidiary (including any cash received upon the sale or other disposition of any non-cash consideration or Cash Equivalents substantially concurrently received in any Asset Sale, but only as and when received), minus (b) without duplication (i) any deduction of appropriate amounts, including contractual holdbacks, to be provided by the Parent, the Borrower or any of its Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with such Asset Sale and retained by the Parent, the Borrower or any of its Subsidiaries (or held in escrow with a third party escrow agent) after such Asset Sale; provided that such reserved amounts will be deemed to be Net Proceeds to the extent and at the time of any reversal thereof (to the extent not applied to the satisfaction of any applicable liabilities in cash in a corresponding amount) and (ii) any bona fide direct costs incurred in connection with any Asset Sale including legal, accounting and investment banking fees, brokerage and sales commissions, and income Taxes payable as a result of any gain recognized in connection therewith, in each case under this clause (b), to the extent such amounts are not payable to an Affiliate of the Parent, the Borrower or its Subsidiaries minus (c) the amount of such cash proceeds which are used within 10 Business Days of receipt thereof (or deposited with an escrow agent to hold in escrow either (x) in connection with the completion of “like-kind” exchanges being effected in accordance with Section 1031 of the Internal Revenue Code for a period of no more than 180 days of receipt thereof or (y) for a period of no more than 30 days of receipt thereof unless the Borrower or applicable Subsidiary has entered into a binding contract to purchase an Eligible Property on or prior to the expiration of such 30 day period in which case, such period may be extended for up to 60 additional days with the written consent of the Administrative Agent (for the avoidance of doubt, any amounts placed into escrow and not used within the time periods required by this parenthetical shall be considered Net Proceeds to be applied in accordance with Section 2.8.(b)(ii)) for the purchase of Eligible Properties which Eligible Properties are added as Unencumbered Properties pursuant to Section 4.1. hereof within 20 Business Days following the acquisition thereof.

**“Non-Consenting Lender”** means any Lender that does not approve any amendment, waiver or consent that (a) requires the approval of all or all affected Lenders in accordance with the terms of Section 13.6. and (b) has been approved by the Requisite Lenders (or in the case of any amendment, waiver or consent that requires the approval of only the Requisite Class Lenders of a Class of Lenders, such amendment, waiver or consent has been approved by such Requisite Class Lenders).

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

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

**“Note”** means a Revolving Note, a Term Note or a Swingline Note, as the context may require.

**“Notice of Additional Unencumbered Property”** has the meaning given that term in Section 4.1.(b).

**“Notice of Borrowing”** means a notice substantially in the form of Exhibit F (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.1.(b) or Section 2.2.(d) evidencing the Borrower’s request for a borrowing of Revolving Loans.

**“Notice of Continuation”** means a notice substantially in the form of Exhibit D (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.9. evidencing the Borrower’s request for the Continuation of a LIBOR Loan.

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**“Notice of Conversion”** means a notice substantially in the form of Exhibit E (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Administrative Agent pursuant to Section 2.10. evidencing the Borrower’s request for the Conversion of a Loan from one Type to another Type.

**“Notice of Swingline Borrowing”** means a notice substantially in the form of Exhibit G (or such other form reasonably acceptable to the Administrative Agent and containing the information required in such Exhibit) to be delivered to the Swingline Lender pursuant to Section 2.4.(b) evidencing the Borrower’s request for a Swingline Loan.

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

**“Off-Balance Sheet Obligations”** means, in the case of the Parent, the Borrower or any of their respective Subsidiaries, liabilities and obligations of the Parent, the Borrower, any such Subsidiary or any other Person in respect of “off-balance sheet arrangements” (as defined in Item 303(a)(4)(ii) of Regulation S-K promulgated under the Securities Act) which the Parent would be required to disclose in the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section of the Parent’s report on Form 10-Q or Form 10-K (or their equivalents) which the Parent is required to file with the SEC.

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

**“Operating Property Value”** means, with respect to any Property, the undepreciated book value of such Property, after any impairments and determined in accordance with GAAP.

**“Orlando Borrower”** means Sunstone Sea Harbor, LLC, a Delaware limited liability company.

**“Orlando Lender”** means Sunstone Orlando Lender, LLC, a Delaware limited liability company.

**“Orlando Loan”** means that certain mortgage loan made by Orlando Lender to Orlando Borrower pursuant to that certain Loan Agreement dated as of June 23, 2005 by and between Bear Stearns Commercial Mortgage, Inc., a New York corporation (predecessor in interest to Orlando Lender) and Orlando Borrower as amended by that certain Amendment to Loan Agreement dated as of June 30, 2016 by and between Orlando Lender and Orlando Borrower.

**“Orlando Loan Conditions”** means the following: (a) the Orlando Lender is a Wholly Owned Subsidiary of the Borrower, (b) the Orlando Loan is reflected as both a note receivable and a note payable on the balance sheet of the Parent’s Subsidiaries and is eliminated on the consolidated balance sheet of the Parent, (b) the Orlando Lender has no Indebtedness, (c) there are no Liens on (i) the Orlando Loan or any other asset owned by the Orlando Lender other than Permitted Liens (but not Permitted Liens described in clauses (g) or (h) of the definition thereof) or (ii) the Equity Interests of the Orlando Lender other than Permitted Liens described in clause (a) of the definition thereof and (e) the Orlando Lender is engaged solely in the business of holding the Orlando Loan and activities incidental thereto and the assets of the Orlando Lender consist solely of (i) the Orlando Loan and (ii) cash and other assets of nominal value incidental to Orlando Lender’s ownership of the Orlando Loan.

**“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).

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

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

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

**“Participant”** has the meaning given that term in Section 13.5.(d).

**“Participant Register”** has the meaning given that term in Section 13.5.(d).

**“Patriot Act”** means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107-56 (signed into law October 26, 2001)), as amended from time to time, and any successor statute.

**“PBGC”** means the Pension Benefit Guaranty Corporation and any successor agency.

**“Permitted Liens”** means, with respect to any asset or property of a Person, (a) Liens securing taxes, assessments and other charges or levies imposed by any Governmental Authority (excluding any Lien imposed pursuant to any of the provisions of ERISA or pursuant to any Environmental Laws) which, in each case, are not at the time required to be paid or discharged under Section 8.6., (b) the claims of materialmen, mechanics, carriers, warehousemen or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business, which, in each case, are not at the time required to be paid or discharged under Section 8.6.; (c) Liens consisting of deposits or pledges made, in the ordinary course of business, in connection with, or to secure payment of, obligations under workers’ compensation, unemployment insurance or similar Applicable Laws; (d) Liens consisting of encumbrances in the nature of zoning restrictions, easements, and rights or restrictions of record on the use of real property, which do not materially detract from the value of such property or impair the intended use thereof in the business of such Person; (e) the rights of tenants under leases or subleases not interfering with the ordinary conduct of business of such Person; (f) Liens in favor of the Administrative Agent for its benefit and the benefit of the other Lender Parties; (g) Liens in existence on the Agreement Date and set forth on Schedule 7.1.(g), (h) solely with respect to Renaissance Orlando at Seaworld and only so long as the Orlando Loan Conditions are satisfied, the mortgage in favor of the Orlando Lender securing the Orlando Loan, and (i) after the Security Trigger Date and prior to the Security Release Date, Liens in the Collateral in favor of the Collateral Agent for the benefit of the holders of the Senior Notes and subject to the terms of the Intercreditor Agreement.

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

**“Plan”** means at any time an employee pension benefit plan within the meaning of Section 3(2) of ERISA (other than a Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Internal Revenue Code and either (a) is maintained, or contributed to, by any member of the ERISA Group for employees of any member of the ERISA Group or (b) has at any time within the preceding six years been

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maintained, or contributed to, by any Person which was at such time a member of the ERISA Group for employees of any Person which was at such time a member of the ERISA Group.

**“Pledge Agreement”** means a pledge agreement substantially in the form of Exhibit N attached hereto to be entered into on or prior to the Security Trigger Date by and among the Collateral Agent and each Grantor together with any other security document now or hereafter granted to secure the Obligations.

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

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

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

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

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

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

**“Property”** means any parcel (or group of related parcels) of real property owned or leased (in whole or in part) or operated by the Parent, the Borrower, any other Subsidiary or any Unconsolidated Affiliate of the Parent.

**“Property Management Agreement”** means, collectively, all agreements entered into by a Loan Party pursuant to which such Loan Party engages a Person to advise it with respect to the management of an Unencumbered Property or to provide management services with respect to the same.

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

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

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

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

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

**“Reinvestment Asset”** means (i) Eligible Properties which are added as Unencumbered Properties pursuant to Section 4.1. hereof within 20 Business Days following the acquisition thereof; provided, that, for purposes herein, the repayment of Nonrecourse Indebtedness on a Property, such that after such repayment such Property becomes an Eligible Property, shall be included as a “Reinvestment Asset” so long as such Eligible Property is added as an Unencumbered Property pursuant to this clause (i), and (ii) so long as (x) after the Security Trigger Date and prior to the Security Release Date, any Material Debt Receivables are pledged as Collateral under the Pledge Agreement and (y) the Investment in such assets is permitted by Section 10.11.(b), Senior Mortgage Receivables, other Mortgage Receivables and Secured Mezz Receivables.

**“REIT”** means a Person qualifying for treatment as a “real estate investment trust” under the Internal Revenue Code.

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

**“Replacement Rate”** has the meaning assigned thereto in Section 5.2.(c).

**“Requisite Class Lenders”** means, with respect to a Class of Lenders as of any date of determination, Lenders of such Class (a) with respect to the Revolving Lenders, having more than 50% of the aggregate amount of the Revolving Commitments of such Class, or (b) if the Revolving Commitments of such Class have been terminated or reduced to zero and with respect to the Term Loans, holding more than 50% of the principal amount of the aggregate outstanding Loans of such Class, and in the case of Revolving Lenders, outstanding Letter of Credit Liabilities and Swingline Loans; provided that (i) in determining such percentage at any given time, all then existing Defaulting Lenders of such Class will be disregarded and excluded, and (ii) at all times when two or more Lenders (excluding Defaulting Lenders) of such Class are party to this

Agreement, the term “Requisite Class Lenders” shall in no event mean less than two Lenders of such Class. For purposes of this definition, a Revolving Lender shall be deemed to hold a Swingline Loan or a Letter of Credit Liability to the extent such Lender has acquired a participation therein under the terms of this Agreement and has not failed to perform its obligations in respect of such participation.

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

**“Resolution Authority”** means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

**“Responsible Officer”** means with respect to the Borrower or any Subsidiary, the chief executive officer, the chief financial officer, the treasurer and any senior vice president of the Borrower or such Subsidiary.

**“Restricted Payment”** means (a) any dividend or other distribution, direct or indirect, on account of any Equity Interest of the Parent, the Borrower or any Subsidiary now or hereafter outstanding, except a dividend payable solely in Equity Interests; (b) any redemption, conversion, exchange, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interest of the Parent, the Borrower or any Subsidiary now or hereafter outstanding; and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any Equity Interests of the Parent, the Borrower or any Subsidiary now or hereafter outstanding.

**“Resuming Operation Costs”** shall have the meaning given to such term in the definition of “EBITDA”.

**“Revolving Commitment”** means, as to each Revolving Lender (other than the Swingline Lender), such Revolving Lender’s obligation to make Revolving Loans pursuant to Section 2.1., to issue (in the case of an Issuing Bank) and to participate (in the case of the other Revolving Lenders) in Letters of Credit pursuant to Section 2.3.(i), and to participate in Swingline Loans pursuant to Section 2.4.(e), in an amount up to, but not exceeding, the amount set forth for such Revolving Lender on Schedule I as such Revolving Lender’s “Revolving Commitment Amount” or as set forth in the applicable Assignment and Assumption or agreement executed by a Person becoming a Revolving Lender pursuant to Section 2.16., as the same may be reduced from time to time pursuant to Section 2.12. or increased or reduced as appropriate to reflect any assignments to or by such Revolving Lender effected in accordance with Section 13.5. or increased as appropriate to reflect any increase effected in accordance with Section 2.16.

**“Revolving Commitment Percentage”** means, as to each Lender with a Revolving Commitment, the ratio, expressed as a percentage, of (a) the amount of such Lender’s Revolving Commitment to (b) the aggregate amount of the Revolving Commitments of all Revolving Lenders; provided, however, that if at the time of determination the Revolving Commitments have been terminated or reduced to zero, the “Revolving Commitment Percentage” of each Lender with a Revolving Commitment shall be the “Revolving Commitment Percentage” of such Lender in effect immediately prior to such termination or reduction.

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

**“Revolving Lender”** means a Lender having a Revolving Commitment, or if the Revolving Commitments have been terminated or reduced to zero, holding any Revolving Loans.

**“Revolving Loan”** means a loan made by a Revolving Lender to the Borrower pursuant to Section 2.1.(a).

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

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**“Revolving Termination Date”** means April 14, 2023 or such later date to which the Revolving Termination Date may be extended pursuant to Section 2.13.

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

**“Sanctioned Person”** means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including, without limitation, OFAC’s Specially Designated Nationals and Blocked Persons List and OFAC’s Consolidated Non-SDN List), the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in clauses (a) and (b), including Persons that are a target of Sanctions due to their ownership or control by any Sanctioned Persons.

**“Sanctions”** means economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and anti-terrorism laws, including but not limited to those imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority with jurisdiction over any Lender in each case applicable to activities of the Parent, the Borrower or any of their respective Subsidiaries or Affiliates.

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

**“Secured Indebtedness”** means, with respect to a Person as of a given date, the aggregate principal amount of all Indebtedness of such Person outstanding on such date that is secured in any manner by any Lien on any property and, in the case of the Parent, shall include (without duplication) the Parent’s Ownership Share of the Secured Indebtedness of its Unconsolidated Affiliates; provided, however that after the Security Trigger Date and prior to the Security Release Date, Secured Indebtedness shall not include the Obligations or the obligations evidenced by the Senior Notes.

**“Secured Mezz Receivables”** means promissory notes (other than a promissory note issued by the Parent or any Subsidiary of the Parent) which are not senior obligations of the issuer thereof and which are secured by a pledge of Equity Interests in the owner of a Property of which promissory note the Parent, the Borrower or another Subsidiary is the holder and retains the rights of collection of all payments thereunder.

**“Secured Recourse Indebtedness”** means all Indebtedness (including Guaranties of Secured Indebtedness) that is Secured Indebtedness and is not Nonrecourse Indebtedness.

**“Securities Act”** means the Securities Act of 1933, as amended from time to time, together with all rules and regulations issued thereunder.

**“Security Release Date”** shall mean the date upon which the Borrower has delivered a notice to the Administrative Agent certifying that the following has occurred: (i) the Covenant Relief Period shall have ended and the Borrower shall have demonstrated compliance (in its regular quarterly and/or annual reporting) of, at Borrower’s election, either (x) for the two immediately prior fiscal quarters, a Leverage Ratio of not more than 6.50 to 1.00 or (y) for the immediately prior fiscal quarter a Leverage Ratio of not more than 6.00 to 1.00, (ii) no Default or Event of Default shall have occurred and be continuing and (iii) the liens, if any, securing the Senior Notes and any other Material Collateral Indebtedness have been released or shall be released substantially simultaneously therewith. The Administrative Agent shall be authorized to release all liens securing the Senior Credit Facilities on the Security Release Date.

**“Security Trigger Date”** means the earliest date any of the following shall occur (i) Availability is, at any time, less than \$350,000,000, (ii) the Borrower and its Subsidiaries have aggregate Unrestricted Cash on the balance sheet of less than \$200,000,000 or (iii) the Parent, the Borrower or any of its Subsidiaries grant a Lien (or agree to grant a Lien) to secure the Senior Notes, any Preferred Equity or other Material Collateral Indebtedness. The Security Trigger Date shall not in any event be deemed to occur after the occurrence of the Security Release Date.

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**“Senior Mortgage Receivables”** means Mortgage Receivables which constitute senior debt of the issuer thereof.

**“Senior Notes”** mean those certain notes issued by the Borrower under the Senior Notes Agreement.

**“Senior Notes Agreement”** means that certain Note and Guaranty Agreement of the Borrower and the Parent dated as of December 20, 2016.

**“Significant Subsidiary”** means any Subsidiary to which more than \$10,000,000 of Total Asset Value is attributable.

**“Single Asset Entity”** means a Person (other than an individual) that (a) only owns a single Property; (b) is engaged only in the business of owning, developing and/or leasing such Property; and (c) receives substantially all of its gross revenues from such Property. In addition, if the assets of a Person consist solely of (i) Equity Interests in one or more Single Asset Entities that directly or indirectly own such single Property and (ii) cash and other assets of nominal value incidental to such Person’s ownership of the other Single Asset Entity, such Person shall also be deemed to be a Single Asset Entity for purposes of this Agreement.

**“Solvent”** means, when used with respect to any Person (or group of Persons), that (a) the fair value and the fair salable value of its (or their) assets (excluding any Indebtedness due from any Affiliate of such Person (or group of Persons)) are each in excess of the fair valuation of its (or their) total liabilities (including all contingent liabilities computed at the amount which, in light of all facts and circumstances existing at such time, represents the amount that could reasonably be expected to become an actual and matured liability); (b) such Person is (or group of Persons are) able to pay its (or their) debts or other obligations in the ordinary course as they mature; and (c) such Person (or group of Persons) has capital not unreasonably small to carry on its (or their) business and all business in which it proposes (or they propose) to be engaged.

**“Specified Derivatives Contract”** means any Derivatives Contract that is made or entered into at any time, or in effect at any time now or hereafter, whether as a result of an assignment or transfer or otherwise, between or among any Loan Party and any Specified Derivatives Provider, and which (i) was not prohibited by any of the Loan Documents when made or entered into and (ii) have been designated by the Specified Derivatives Provider by notice to Administrative Agent (unless such Specified Derivatives Provider is the Administrative Agent) as a Specified Derivatives Contract entitled to the benefits of, and subject to the obligations under, this Agreement and the other Loan Documents.

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

**“S&P”** means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, or any successor.

**“Stated Amount”** means the amount available to be drawn by a beneficiary under a Letter of Credit from time to time, as such amount may be increased or reduced from time to time in accordance with the terms of such Letter of Credit. Unless otherwise specified herein, the Stated 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, that with respect to any Letter of Credit that, by its terms or the terms of any Letter of Credit Document related thereto, provides for one or more automatic increases in the stated amount thereof, the Stated 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.

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

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by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person, and shall include all Persons the accounts of which are consolidated with those of such Person pursuant to GAAP.

**“Sunstone 42nd St.”** means Sunstone 42nd St. LLC, a Delaware limited liability company.

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

**“Swingline Commitment”** means the Swingline Lender’s obligation to make Swingline Loans pursuant to Section 2.4. in an amount up to, but not exceeding the amount set forth in the first sentence of Section 2.4.(a), as such amount may be reduced from time to time in accordance with the terms hereof.

**“Swingline Lender”** means Wells Fargo, together with its successors and permitted assigns.

**“Swingline Loan”** means a loan made by the Swingline Lender to the Borrower pursuant to Section 2.4.

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

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

**“Tangible Net Worth”** means, as of a given date, the stockholders’ equity of the Parent and its Subsidiaries determined on a consolidated basis plus accumulated depreciation and amortization, minus (to the extent included when determining such stockholders’ equity): (a) the amount of any write-up in the book value of any assets reflected in any balance sheet resulting from revaluation thereof or any write-up in excess of the cost of such assets acquired, and (b) the aggregate of all amounts appearing on the assets side of any such balance sheet for franchises, licenses, permits, patents, patent applications, copyrights, trademarks, service marks, trade names, goodwill, treasury stock, experimental or organizational expenses and other like assets which would be classified as intangible assets under GAAP, all determined on a consolidated basis.

**“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 1 Loan”** means a loan made by a Term Loan Lender to the Borrower pursuant to the Existing Credit Agreement or Section 2.16.

**“Term 1 Loan Lender”** means a Lender holding a Term 1 Loan.

**“Term 1 Loan Note”** means a promissory note of the Borrower payable to the order of a Term 1 Loan Lender in a principal amount equal to the amount of such Term 1 Loan Lender’s Term 1 Loans.

**“Term 2 Loan”** means a loan made by a Term Loan Lender to the Borrower pursuant to Section 2.2.(c) or Section 2.16.

**“Term 2 Loan Commitment”** means, as to each Term 2 Loan Lender, such Lender’s obligation to make Term 2 Loans on the Effective Date in an amount up to, but not exceeding, the amount set forth for such Lender on Schedule I as such Lender’s “Term 2 Loan Commitment Amount”.

**“Term 2 Loan Lender”** means a Lender having a Term 2 Loan Commitment, or if the Term 2 Loan Commitments have been terminated or reduced to zero, a Lender holding a Term 2 Loan.

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**“Term 2 Loan Note”** means a promissory note of the Borrower payable to the order of a Term 2 Loan Lender in a principal amount equal to the amount of such Term 2 Loan Lender’s Term 2 Loans.

**“Term Loan”** means a Term 1 Loan or a Term 2 Loan, including an Additional Term Loan made pursuant to Section 2.16.

**“Term Loan Lender”** means a Term 1 Loan Lender or a Term 2 Loan Lender.

**“Term Loan Maturity Date”** means, (a) with respect to the Term 1 Loans, September 3, 2022 and (b) with respect to the Term 2 Loans, January 31, 2023.

**“Term Note”** means a Term 1 Loan Note or a Term 2 Loan Note.

**“Termination Date”** means (a) with respect to the Revolving Commitments and the Revolving Loans, the Revolving Termination Date and (b) with respect to any Class of Term Loans, the applicable Term Loan Maturity Date.

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

**“Total Asset Value”** means the sum of all of the following of the Parent, the Borrower and their respective Subsidiaries (without duplication) on a consolidated basis determined in accordance with GAAP applied on a consistent basis: (a) the Operating Property Value of all Properties of the Parent, the Borrower and their respective Subsidiaries on which a hotel is located, plus (b) the book value of Unimproved Land, the undepreciated book value of Development Properties, the book value of Mortgage Receivables and other promissory notes, plus (c) the Parent’s Ownership Share of the preceding items for its Unconsolidated Affiliates, plus (d) in the case of any property subject to a purchase obligation, repurchase obligation or takeout commitment which at such time (x) could not be specifically enforced by the seller of such property, the aggregate amount of due diligence deposits, earnest money payments and other similar payments made under the applicable contract which, at such time, would be subject to forfeiture upon termination of the contract or (y) could be specifically enforced by the seller of such property, the contractual purchase price of such property, but, in either case, only to the extent the amount of the applicable purchase obligation, repurchase obligation or takeout commitment is included in the Indebtedness of the Borrower and its Subsidiaries on a consolidated basis. For purposes of determining Total Asset Value, (i) to the extent the amount of Total Asset Value attributable to Unimproved Land would exceed 5% of Total Asset Value, such excess shall be excluded, (ii) to the extent the amount of Total Asset Value attributable to Mortgage Receivables and other promissory notes would exceed 15% of Total Asset Value, such excess shall be excluded, (iii) to the extent the amount of Total Asset Value attributable to Unconsolidated Affiliates would exceed 20% of Total Asset Value, such excess shall be excluded, (iv) to the extent the amount of Total Asset Value attributable to Development Properties would exceed 15% of Total Asset Value, such excess shall be excluded and (v) to the extent the amount of Total Asset Value attributable to the items described in clauses (i) through (v) would exceed 35% of Total Asset Value, such excess shall be excluded. The percentage of Total Asset Value attributable to a given Subsidiary shall be equal to the ratio expressed as a percentage of (x) an amount equal to Total Asset Value calculated solely with respect to assets owned directly by such Subsidiary to (y) Total Asset Value.

**“Total Indebtedness”** means without duplication: (a) all Indebtedness of the Parent, the Borrower and all other Subsidiaries determined on a consolidated basis plus (b) the Parent’s Ownership Share of the Indebtedness of all Unconsolidated Affiliates of the Parent.

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

**“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 Kingdom Prudential Regulation Authority) or any Person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial

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

**“Unencumbered Asset Value”** means at any time the aggregate Operating Property Values of the Unencumbered Properties at such time. For purposes of this definition, the Operating Property Value for any Unencumbered Property shall be reduced by an amount equal to (a) the amount by which the Operating Property Value of such Unencumbered Property would exceed 30% of the aggregate Operating Property Values of all Unencumbered Properties and (b) the amount by which the Operating Property Value of Unencumbered Properties located in the same MSA as such Property would exceed 40% of the aggregate Operating Property Value of all Unencumbered Properties. In addition to the extent that Unencumbered Asset Value attributable to Properties leased under Ground Leases would exceed 25% of Unencumbered Asset Value, such excess shall be excluded.

**“Unencumbered Leverage Ratio Surge Period”** has the meaning given that term in Section 10.1.(d).

**“Unencumbered Property”** means an Eligible Property that is included in the calculation of Unencumbered Asset Value pursuant to Section 4.1. A Property shall cease to be an Unencumbered Property if at any time such Property shall cease to be an Eligible Property (unless such Property has been approved or been deemed to have been approved as an Unencumbered Property by the Requisite Lenders in accordance with Section 4.1.(c)).

**“Unimproved Land”** means land on which no development (other than improvements that are not material and are temporary in nature) has occurred. Unimproved Land shall not include any undeveloped parcels of a Property that has been developed unless and until the Borrower provides written notice to the Administrative Agent that the Borrower intends to develop such parcel.

**“Unrestricted Cash”** means cash and Cash Equivalents held by the Borrower and its Subsidiaries other than tenant deposits and other cash and cash equivalents that are subject to a Lien or a Negative Pledge or the disposition of which is restricted in any way.

**“Unsecured Indebtedness”** means with respect to a Person as of any given date, the aggregate principal amount of all Indebtedness of such Person outstanding at such date that is not Secured Indebtedness.

**“Unsecured Interest Expense”** means, for any period of four consecutive fiscal quarters (subject to Section 10.1(e)), the greater of (a) actual Interest Expense on all Unsecured Indebtedness of the Parent and its Subsidiaries on a consolidated basis or (b) 6.00%.

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

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

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

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

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

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

**“Write-Down and Conversion Powers”** means (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 such 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.

## **Section 1.2. General; References to Central Time.**

Unless otherwise indicated, all accounting terms, ratios and measurements shall be interpreted or determined in accordance with GAAP from time to time; provided that (i) if at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Requisite Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP; and (ii) until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) 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 preceding sentence, (A) the calculation of liabilities shall not include any fair value adjustments to the carrying value of liabilities to record such liabilities at fair value pursuant to electing the fair value option election under FASB ASC 825-10-25 (formerly known as FAS 159, The Fair Value Option for Financial Assets and Financial Liabilities) or other FASB standards allowing entities to elect fair value option for financial liabilities and (B) for purposes of calculating the covenants under this Agreement or any other Loan Document, any (i) obligations of a Person under a lease (whether existing on the Agreement Date or entered into thereafter) that is not (or would not be) required to be classified and accounted for as a capitalized lease on a balance sheet of such Person prepared in accordance with GAAP as in effect on the Agreement Date shall not be treated as a capitalized lease pursuant to this Agreement or the other Loan Documents, (ii) non-cash expense that is incurred will be excluded in the financial covenant calculations, or (iii) adjustments in the determination of Indebtedness will be disregarded in the financial covenant calculations, solely as a result of (1) the adoption of changes in GAAP after the Agreement Date (including, for the avoidance of doubt, any changes in GAAP as set forth in FASB ASC 842 (as the same may be amended from time to time)) or (2) changes in the application of GAAP after the Agreement Date (including the avoidance of doubt, any changes as set forth in FASB ASC 842 (as the same may be amended from time to time)); provided, however, that upon the request of the Administrative Agent or any Lender the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to any such adoption of changes in, or the application of, GAAP. References in this Agreement to “Sections”, “Articles”, “Exhibits” and “Schedules” are to sections, articles, exhibits and schedules herein and hereto unless otherwise indicated. References in this Agreement to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) except as expressly provided otherwise in any Loan Document, shall include all documents, instruments or agreements issued or executed in replacement thereof, to the extent permitted hereby and (c) shall mean

such document, instrument or agreement, or replacement or predecessor thereto, as amended, supplemented, restated or otherwise modified from time to time to the extent not otherwise stated herein or prohibited hereby and in effect at any given time. Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter. Unless explicitly set forth to the contrary, a reference to “Subsidiary” means a Subsidiary of the Parent or a Subsidiary of such Subsidiary and a reference to an “Affiliate” means

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an Affiliate of the Borrower. Titles and captions of Articles, Sections, subsections and clauses in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement. Unless otherwise indicated, all references to time are references to Central time daylight or standard, as applicable.

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

When determining the Applicable Margin, and compliance by the Parent or the Borrower with any financial covenant contained in any of the Loan Documents (a) only the Ownership Share of the Parent of the financial attributes of a Subsidiary that is not a Wholly Owned Subsidiary shall be included and (b) the Parent's Ownership Share of the Borrower shall be deemed to be 100.0%.

### **Section 1.4. Rates.**

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

### **Section 1.5. Divisions.**

For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

## **ARTICLE II. CREDIT FACILITY**

### **Section 2.1. Revolving Loans.**

(a) Making of Revolving Loans. Subject to the terms and conditions set forth in this Agreement, including without limitation, Section 2.15., each Revolving Lender severally and not jointly agrees to make Revolving Loans to the Borrower during the period from and including the Effective Date to but excluding the Revolving Termination Date, in an aggregate principal amount at any one time outstanding up to, but not exceeding, such Revolving Lender's Commitment. Each borrowing of Revolving Loans that are to be (i) Base Rate Loans shall be in an aggregate minimum amount of \$500,000 and integral multiples of \$100,000 in excess thereof and (ii) LIBOR Loans shall be in an aggregate minimum amount of \$1,000,000 and integral multiples of \$100,000 in excess thereof. Notwithstanding the immediately preceding two sentences but subject to Section 2.15., a borrowing of Revolving Loans may be in the aggregate amount of the unused Revolving Commitments. Within the foregoing limits and subject to the terms and conditions of this Agreement, the Borrower may borrow, repay and reborrow Revolving Loans.

(b) Requests for Revolving Loans. Not later than 11:00 a.m. Central time at least 1 Business Day prior to a borrowing of Revolving Loans that are to be Base Rate Loans and not later than 11:00 a.m. Central time at least 3 Business Days prior to a borrowing of Revolving Loans that are to be LIBOR Loans, the Borrower shall deliver to the Administrative Agent a Notice of Borrowing. Each Notice of Borrowing shall specify the aggregate principal amount of the Revolving Loans to be borrowed, the date such Revolving Loans are to be borrowed (which must be a Business Day), the Type of the requested Revolving Loans, and if such Revolving Loans are to be LIBOR Loans, the initial Interest Period for such Revolving Loans. Each Notice of Borrowing shall be irrevocable once given and binding on the Borrower. Prior to delivering a Notice of Borrowing, the Borrower may (without specifying whether a Revolving Loan will be a Base Rate Loan or a LIBOR Loan) request that the Administrative Agent provide the Borrower with the most recent

LIBOR available to the Administrative Agent. The Administrative Agent shall provide such quoted rate to the Borrower on the date of such request or as soon as possible thereafter.

(c) Funding of Revolving Loans. Promptly after receipt of a Notice of Borrowing under the immediately preceding subsection (b), the Administrative Agent shall notify each Revolving Lender of the proposed borrowing. Each Revolving Lender shall deposit an amount equal to the Revolving Loan to be made by such Lender to the Borrower with the Administrative Agent at the Principal Office, in immediately available funds not later than 11:00 a.m. Central time on

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the date of such proposed Revolving Loans. Subject to fulfillment of all applicable conditions set forth herein, the Administrative Agent shall make available to the Borrower in the account specified in the Disbursement Instruction Agreement, not later than 2:00 p.m. Central time on the date of the requested borrowing of Revolving Loans, the proceeds of such amounts received by the Administrative Agent.

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

(e) Reallocations. Simultaneously with the Effective Date, the outstanding amount of all "Revolving Loans" (as defined in the Existing Credit Agreement) of the "Lenders" (as defined in the Existing Credit Agreement) having a "Revolving Commitment" (as defined in the Existing Credit Agreement) (the "Existing Revolving Lenders") previously made to the Borrower under the Existing Credit Agreement and participations in Existing Letters of Credit of the Existing Revolving Lenders shall be reallocated among the Revolving Lenders in accordance with their respective Revolving Commitment Percentages (determined in accordance with the amount of each Revolving Lender's Commitment set forth on Schedule I), and in order to effect such reallocations, the requisite assignments shall be deemed to be made in amounts from each Existing Revolving Lender to each Revolving Lender, with the same force and effect as if such assignments were evidenced by the applicable Assignment and Assumptions (as defined in the Existing Credit Agreement) under the Existing Credit Agreement and without the payment of any related assignment fee, and no other documents or instruments shall be, or shall be required to be, executed in connection with such assignments (all of which are hereby waived) and (ii) each assignee Revolving Lender shall make full cash settlement with each corresponding assignor Existing Revolving Lender, through the Administrative Agent, as the Administrative Agent may direct (after giving effect to any netting effected by the Administrative Agent) with respect to such reallocations and assignments.

## **Section 2.2. Term Loans.**

(a) Term 1 Loans. Pursuant to the Existing Credit Agreement, certain of the Existing Lenders (the "Existing Term Loan Lenders") made Term Loans (as defined in the Existing Credit Agreement) denominated in Dollars to the Borrower. The Borrower hereby agrees and acknowledges that as of the Effective Date, the outstanding principal balance of such Term Loans is set forth on Schedule I and shall for all purposes hereunder constitute and be referred to as Term 1 Loans hereunder, without constituting a novation, but in all cases subject to the terms and conditions applicable to Term 1 Loans and Term Loans hereunder.

Any portion of a Term 1 Loan that is repaid or prepaid may not be reborrowed. Additional Term 1 Loans shall be made in accordance with Section 2.16.

(b) Reallocations of Term 1 Loans. Simultaneously with the Effective Date, (i) the outstanding amount of all Term Loans (as defined in the Existing Credit Agreement) previously made to the Borrower under the Existing Credit Agreement shall be reallocated among the Term 1 Loan Lenders determined in accordance with the amount of each Term 1 Loan Lender's outstanding principal balance of Term 1 Loans set forth on Schedule I, and in order to effect such reallocations, the requisite assignments shall be deemed to be made in amounts from each Existing Term Loan Lender to

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each Term 1 Loan Lender, with the same force and effect as if such assignments were evidenced by the applicable Assignment and Assumptions (as defined in the Existing Credit Agreement) under the Existing Credit Agreement and without the payment of any related assignment fee, and no other documents or instruments shall be, or shall be required to be, executed in connection with such assignments (all of which are hereby waived) and (ii) each assignee Term 1 Loan Lender shall make full cash settlement with each corresponding assignor Existing Term Loan Lender, through the Administrative Agent, as the Administrative Agent may direct (after giving effect to any netting effected by the Administrative Agent) with respect to such reallocations and assignments.

(c) Term 2 Loans. Subject to the terms and conditions set forth in this Agreement, on the Effective Date, each Term 2 Loan Lender severally and not jointly agrees to make a Term 2 Loan to the Borrower in the principal amount set forth for such Term 2 Loan Lender on Schedule I as such Term 2 Loan Lender's "Term 2 Loan Commitment Amount". Upon the funding by each Term 2 Loan Lender of its Term 2 Loan on the Effective Date, the Term 2 Loan Commitment of such Term 2 Loan Lender shall terminate whether or not the full amount of the Term 2 Loan Commitments are funded on such date. Any portion of a Term 2 Loan that is repaid or prepaid may not be reborrowed. Additional Term 2 Loans shall be made in accordance with Section 2.16.

(d) Request for Term 2 Loans. The Borrower shall deliver to the Administrative Agent a Notice of Borrowing requesting that the Term 2 Loan Lenders make Term 2 Loans on the Effective Date. Such Notice of Borrowing shall be delivered to the Administrative Agent not later than 11:00 a.m. Central time at least 1 Business Day prior to a borrowing of Term 2 Loans that are to be Base Rate Loans and not later than 11:00 a.m. Central time at least 3 Business Days prior to a borrowing of Term 2 Loans that are to be LIBOR Loans. Such Notice of Borrowing shall specify the aggregate principal amount of the Term 2 Loans to be borrowed, the Type of the requested Term 2 Loans, and if such Term 2 Loans are to be LIBOR Loans, the initial Interest Period for such Term 2 Loans.

(e) Funding of Term 2 Loans. Promptly after receipt of the Notice of Borrowing under the immediately preceding subsection (d), the Administrative Agent shall notify each Term 2 Loan Lender of the proposed borrowing. Each Term 2 Loan Lender shall deposit an amount equal to the Term 2 Loan to be made by such Term 2 Loan Lender to the Borrower with the Administrative Agent at the Principal Office, in immediately available funds not later than 10:00 a.m. Central time on the Effective Date. Subject to fulfillment of all applicable conditions set forth herein, the Administrative Agent shall make available to the Borrower in the account specified in the Disbursement Instruction Agreement, not later than 2:00 p.m. Central time on the date of the requested borrowing of Term 2 Loans, the proceeds of such amounts received by the Administrative Agent.

(f) Assumptions Regarding Funding by Term 2 Loan Lenders. With respect to Term 2 Loans to be made on the Effective Date, unless the Administrative Agent shall have been notified by any Term 2 Loan Lender that such Lender will not make available to the Administrative Agent a Term 2 Loan to be made by such Lender in connection with any borrowing, the Administrative Agent may assume that such Lender will make the proceeds of such Term 2 Loan available to the Administrative Agent in accordance with this Section, and the Administrative Agent may (but shall not be obligated to), in reliance upon such assumption, make available to the Borrower the amount of such Term 2 Loan to be provided by such Lender. In such event, if such Lender does not make available to the Administrative Agent the proceeds of such Term 2 Loan, then such Lender and the Borrower severally agree to pay to the Administrative Agent on demand the amount of such Term 2 Loan with interest thereon, for each day from and including the date such Term 2 Loan is made available to the Borrower but excluding the date of payment to the Administrative Agent, at (i) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of a payment to be made by the Borrower, the interest rate applicable to such Term 2 Loan. If the Borrower and such Lender shall pay the amount of such interest to the Administrative Agent for the same or overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the

Borrower for such period. If such Lender pays to the Administrative Agent the amount of such Term 2 Loan, the amount so paid shall constitute such Lender's Term 2 Loan included in the borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Term 2 Loan Lender that shall have failed to make available the proceeds of a Term 2 Loan to be made by such Lender.

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### Section 2.3. Letters of Credit.

(a) Letters of Credit. Subject to the terms and conditions of this Agreement, including without limitation, Section 2.15., the Issuing Banks, on behalf of the Revolving Lenders, agree to issue for the account of the Borrower during the period from and including the Effective Date to, but excluding, the date 30 days prior to the Revolving Termination Date, one or more standby letters of credit (each a "Letter of Credit") up to a maximum aggregate Stated Amount at any one time outstanding not to exceed \$30,000,000, as such amount may be reduced from time to time in accordance with the terms hereof (the "L/C Commitment Amount"); provided, that an Issuing Bank shall not be obligated to issue any Letter of Credit if (x) after giving effect to such issuance, the aggregate Stated Amount of outstanding Letters of Credit issued by such Issuing Bank would exceed the lesser of (i) one-third of the L/C Commitment Amount and (ii) the Commitment of such Issuing Bank in its capacity as a Lender, (y) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing the Letter of Credit, or any Applicable Law with respect to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or (z) such issuance would conflict with, or cause such Issuing Bank or any Revolving Lender to exceed any limits imposed by, any Applicable Law. The parties hereto agree that each of the Existing Letters of Credit shall, from and after the Effective Date, be deemed to be a Letter of Credit issued under this Agreement.

(b) Terms of Letters of Credit. At the time of issuance, the amount, form, terms and conditions of each Letter of Credit, and of any drafts or acceptances thereunder, shall be subject to approval by the applicable Issuing Bank and the Borrower (such approvals not to be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, in no event may (i) the expiration date of any Letter of Credit extend beyond the date that is 30 days prior to the Revolving Termination Date, or (ii) any Letter of Credit have a duration in excess of one year; provided, however, a Letter of Credit may contain a provision providing for the automatic extension of the expiration date in the absence of a notice of non-renewal from the applicable Issuing Bank but in no event shall any such provision permit the extension of the current expiration date of such Letter of Credit beyond the earlier of (x) the date that is 30 days prior to the Revolving Termination Date and (y) the date one year after the current expiration date. Notwithstanding the foregoing, a Letter of Credit may, as a result of its express terms or as the result of the effect of an automatic extension provision, have an expiration date of not more than one year beyond the Revolving Termination Date (any such Letter of Credit being referred to as an "Extended Letter of Credit"), so long as the Borrower delivers to the Administrative Agent for its benefit and the benefit of the applicable Issuing Bank and the Revolving Lenders no later than 30 days prior to the Revolving Termination Date, Cash Collateral for such Letter of Credit for deposit into the Letter of Credit Collateral Account in an amount equal to the Stated Amount of such Letter of Credit; provided, that the obligations of the Borrower under this Section 2.3. in respect of such Extended Letters of Credit shall survive the termination of this Agreement and shall remain in effect until no such Extended Letters of Credit remain outstanding. If the Borrower fails to provide Cash Collateral with respect to any Extended Letter of Credit by the date 30 days prior to the Revolving Termination Date, such failure shall be treated as a drawing under such Extended Letter of Credit (in an amount equal to the maximum Stated Amount of such Extended Letter of Credit), which shall be reimbursed (or participations therein funded) by the Revolving Lenders in accordance with the immediately following subsections (i) and (j), with the proceeds being utilized to provide Cash Collateral for such Extended Letter of Credit. The initial Stated Amount of each Letter of Credit shall be at least \$50,000 (or such lesser amount as may be acceptable to the applicable Issuing Bank, the Administrative Agent and the Borrower).

(c) Requests for Issuance of Letters of Credit. The Borrower shall give the Issuing Bank selected by the Borrower to issue a Letter of Credit and the Administrative Agent written notice at least 5 Business Days prior to the requested date of issuance of such Letter of Credit, such notice to describe in reasonable detail the proposed terms of such Letter of Credit and the nature of the transactions or obligations proposed to be supported by such Letter of Credit, and in any event shall set forth with respect to such Letter of Credit the

proposed (i) initial Stated Amount, (ii) beneficiary, and (iii) expiration date. The Borrower shall also execute and deliver such customary applications and agreements for standby letters of credit, and other forms as requested from time to time by the applicable Issuing Bank. Provided the Borrower has given the notice prescribed by the first sentence of this subsection and delivered such applications and agreements referred to in the preceding sentence, subject to the other terms and conditions of this Agreement, including the satisfaction of any applicable conditions precedent set forth in Section 6.2., the applicable Issuing Bank shall issue the requested Letter of Credit on the requested date of issuance for the benefit of the stipulated beneficiary but in no event prior to the date 5

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Business Days (or such shorter period as agreed by the applicable Issuing Bank in its sole and absolute discretion) following the date after which the applicable Issuing Bank has received all of the items required to be delivered to it under this subsection. References herein to “issue” and derivations thereof with respect to Letters of Credit shall also include extensions or modifications of any outstanding Letters of Credit, unless the context otherwise requires. Upon the written request of the Borrower, an Issuing Bank shall deliver to the Borrower a copy of each Letter of Credit issued by such Issuing Bank within a reasonable time after the date of issuance thereof. To the extent any term of a Letter of Credit Document (excluding any certificate or other document presented by a beneficiary in connection with a drawing under such Letter of Credit) is inconsistent with a term of any Loan Document, the term of such Loan Document shall control. The Borrower shall examine the copy of any Letter of Credit or any amendment to a Letter of Credit that is delivered to it by the applicable Issuing Bank and, in the event of any claim of noncompliance with the Borrower’s instructions or other irregularity, the Borrower will promptly (but in any event, within 5 Business Days after the later of (x) receipt by the beneficiary of such Letter of Credit of the original of, or amendment to, such Letter of Credit, as applicable and (y) receipt by the Borrower of a copy of such Letter of Credit or amendment, as applicable) notify such Issuing Bank. The Borrower shall be conclusively deemed to have waived any such claim against such Issuing Bank and its correspondents unless such notice is given as aforesaid.

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

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

(f) Effect of Letters of Credit on Revolving Commitments. Upon the issuance by an Issuing Bank of any Letter of Credit and until such Letter of Credit shall have expired or been cancelled, the Revolving Commitment of each Revolving Lender shall be deemed to be utilized for all purposes of this Agreement in

an amount equal to the product of (i) such Lender's Revolving Commitment Percentage and (ii) (A) the Stated Amount of such Letter of Credit plus (B) any related Reimbursement Obligations then outstanding.

(g) Issuing Banks' Duties Regarding Letters of Credit; Unconditional Nature of Reimbursement Obligations. In examining documents presented in connection with drawings under Letters of Credit and making payments under such Letters of Credit against such documents, each Issuing Banks shall only be required to use the same standard of care as it

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

gross negligence or willful misconduct of the Administrative Agent, any Issuing Bank or any Lender with respect to any Letter of Credit.

(h) Amendments, Etc. The issuance by an Issuing Bank of any amendment, supplement or other modification to any Letter of Credit issued by it shall be subject to the same conditions applicable under this Agreement to the issuance of new Letters of Credit (including, without limitation, that the request therefor be made through the applicable Issuing Bank and the Administrative Agent), and no such amendment, supplement or other modification shall be issued unless

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either (i) the respective Letter of Credit affected thereby would have complied with such conditions had it originally been issued hereunder in such amended, supplemented or modified form or (ii) the Administrative Agent and the Revolving Lenders, if any, required by Section 13.6. shall have consented thereto. In connection with any such amendment, supplement or other modification, the Borrower shall pay the fees, if any, payable under the last sentence of Section 3.5.(c).

(i) Revolving Lenders' Participation in Letters of Credit. Immediately upon (i) the Effective Date with respect to all Existing Letters of Credit, and (ii) the issuance by an Issuing Bank of all other Letters of Credit, each Revolving Lender shall be deemed to have absolutely, irrevocably and unconditionally purchased and received from such Issuing Bank, without recourse or warranty, an undivided interest and participation to the extent of such Lender's Revolving Commitment Percentage of the liability of such Issuing Bank with respect to such Letter of Credit and each Revolving Lender thereby shall absolutely, unconditionally and irrevocably assume, as primary obligor and not as surety, and shall be unconditionally obligated to such Issuing Bank to pay and discharge when due, such Lender's Revolving Commitment Percentage of such Issuing Bank's liability under such Letter of Credit. In addition, upon the making of each payment by a Revolving Lender to the Administrative Agent for the account of an Issuing Bank in respect of any Letter of Credit issued by such Issuing Bank pursuant to the immediately following subsection (j), such Lender shall, automatically and without any further action on the part of any Issuing Bank, the Administrative Agent or such Lender, acquire (i) a participation in an amount equal to such payment in the Reimbursement Obligation owing to such Issuing Bank by the Borrower in respect of such Letter of Credit and (ii) a participation in a percentage equal to such Lender's Revolving Commitment Percentage in any interest or other amounts payable by the Borrower in respect of such Reimbursement Obligation (other than the Fees payable to such Issuing Bank pursuant to the second and the last sentences of Section 3.5.(c)).

(j) Payment Obligation of Revolving Lenders. Each Revolving Lender severally agrees to pay to the Administrative Agent, for the account of the applicable Issuing Bank, on demand in immediately available funds in Dollars the amount of such Lender's Revolving Commitment Percentage of each drawing paid by such Issuing Bank under each Letter of Credit issued by such Issuing Bank to the extent such amount is not reimbursed by the Borrower pursuant to the immediately preceding subsection (d); provided, however, that in respect of any drawing under any Letter of Credit, the maximum amount that any Revolving Lender shall be required to fund, whether as a Revolving Loan or as a participation, shall not exceed such Lender's Revolving Commitment Percentage of such drawing except as otherwise provided in Section 3.9.(d). If the notice referenced in the second sentence of Section 2.3.(e) is received by a Revolving Lender not later than 11:00 a.m. Central time, then such Lender shall make such payment available to the Administrative Agent not later than 2:00 p.m. Central time on the date of demand therefor; otherwise, such payment shall be made available to the Administrative Agent not later than 1:00 p.m. Central time on the next succeeding Business Day. Each Revolving Lender's obligation to make such payments to the Administrative Agent under this subsection, and the Administrative Agent's right to receive the same for the account of the applicable Issuing Bank, shall be absolute, irrevocable and unconditional and shall not be affected in any way by any circumstance whatsoever, including without limitation, (i) the failure of any other Revolving Lender to make its payment under this subsection, (ii) the financial condition of the Borrower or any other Loan Party, (iii) the existence of any Default or Event of Default, including any Event of Default described in Section 11.1.(e) or (f), (iv) the termination of the Revolving Commitments or (v) the delivery of Cash Collateral in respect of any Extended Letter of Credit. Each such payment to the Administrative Agent for the account of any Issuing Bank shall be made without any offset, abatement, withholding or deduction whatsoever.

(k) Information to Revolving Lenders. Promptly following any change in any Letter of Credit outstanding, the applicable Issuing Bank shall deliver to the Administrative Agent, which shall promptly deliver the same to each Revolving Lender and the Borrower, a notice describing the aggregate amount of all Letters of Credit issued by such Issuing Bank and outstanding at such time. Upon the request of any Revolving Lender from time to time, each Issuing Bank shall deliver any other information reasonably requested by such Lender with respect to each Letter of Credit issued by such Issuing Bank and then outstanding. Other than as set forth in this subsection, the Issuing Banks shall have no duty to notify the

Lenders regarding the issuance or other matters regarding Letters of Credit issued hereunder. The failure of any Issuing Bank to perform its requirements under this subsection shall not relieve any Revolving Lender from its obligations under the immediately preceding subsection (j).

(l) Extended Letters of Credit. Each Revolving Lender confirms that its obligations under the immediately preceding subsections (i) and (j) shall be reinstated in full and apply if the delivery of any Cash Collateral in respect of an

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Extended Letter of Credit is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise.

#### **Section 2.4. Swingline Loans.**

(a) Swingline Loans. Subject to the terms and conditions hereof, including without limitation Section 2.15., the Swingline Lender agrees to make Swingline Loans to the Borrower, during the period from the Effective Date to but excluding the Swingline Maturity Date, in an aggregate principal amount at any one time outstanding up to, but not exceeding, the lesser (such lesser amount being referred to as the “Swingline Availability”) of (i) \$40,000,000, as such amount may be reduced from time to time in accordance with the terms hereof, and (ii) the Revolving Commitment of the Swingline Lender in its capacity as a Revolving Lender minus the aggregate outstanding principal amount of Revolving Loans of the Swingline Lender in its capacity as a Revolving Lender. If at any time the aggregate principal amount of the Swingline Loans outstanding at such time exceeds the Swingline Availability at such time, the Borrower shall immediately pay the Administrative Agent for the account of the Swingline Lender the amount of such excess. Subject to the terms and conditions of this Agreement, the Borrower may borrow, repay and reborrow Swingline Loans hereunder. The borrowing of a Swingline Loan shall not constitute usage of any Revolving Lender’s Revolving Commitment for purposes of calculation of the fee payable under Section 3.5.(b).

(b) Procedure for Borrowing Swingline Loans. The Borrower shall give the Administrative Agent and the Swingline Lender notice pursuant to a Notice of Swingline Borrowing or telephonic notice of each borrowing of a Swingline Loan. Each Notice of Swingline Borrowing shall be delivered to the Swingline Lender no later than 11:00 a.m. Central time on the proposed date of such borrowing. Any telephonic notice shall include all information to be specified in a written Notice of Swingline Borrowing and shall be promptly confirmed in writing by the Borrower pursuant to a Notice of Swingline Borrowing sent to the Swingline Lender by telecopy on the same day of the giving of such telephonic notice. Not later than 1:00 p.m. Central time on the date of the requested Swingline Loan and subject to satisfaction of the applicable conditions set forth in Section 6.2. for such borrowing, the Swingline Lender will make the proceeds of such Swingline Loan available to the Borrower in Dollars, in immediately available funds, at the account specified by the Borrower in the Notice of Swingline Borrowing.

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

(d) Swingline Loan Amounts, Etc. Each Swingline Loan shall be in the minimum amount of \$500,000 and integral multiples of \$50,000 in excess thereof, or such other minimum amounts agreed to by the Swingline Lender and the Borrower. Any voluntary prepayment of a Swingline Loan must be in integral multiples of \$100,000 or the aggregate principal amount of all outstanding Swingline Loans (or such other minimum amounts upon which the Swingline Lender and the Borrower may agree) and in connection with any such prepayment, the Borrower must give the Swingline Lender and the Administrative Agent prior written notice thereof no later than 12:00 noon Central time on the date of such prepayment. The Swingline Loans shall, in addition to this Agreement, be evidenced by the Swingline Note.

(e) Repayment and Participations of Swingline Loans. The Borrower agrees to repay each Swingline Loan within 3 Business Day of demand therefor by the Swingline Lender and, in any event, within 5 Business Days after the date such Swingline Loan was made; provided, that the proceeds of a Swingline Loan may not be used to pay a Swingline Loan. Notwithstanding the foregoing, the Borrower shall repay the entire

outstanding principal amount of, and all accrued but unpaid interest on, the Swingline Loans on the Swingline Maturity Date (or such earlier date as the Swingline Lender and the Borrower may agree in writing). In lieu of demanding repayment of any outstanding Swingline Loan from the Borrower, the Swingline Lender may, on behalf of the Borrower (which hereby irrevocably directs the Swingline Lender to act on its behalf), request a borrowing of Revolving Loans that are Base Rate Loans from the Revolving Lenders in an amount equal to the principal balance of such Swingline Loan. The amount limitations contained in the second sentence of Section 2.1.(a)

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

## **Section 2.5. Rates and Payment of Interest on Loans.**

### **(a) Rates.**

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

(A) during such periods as such Revolving Loan is a Base Rate Loan, at the Base Rate (as in effect from time to time), plus the Applicable Margin for Revolving Loans that are Base Rate Loans; and

(B) during such periods as such Revolving Loan is a LIBOR Loan, at LIBOR for such Revolving Loan for the Interest Period therefor, plus the Applicable Margin for Revolving Loans that are LIBOR Loans.

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

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(A) during such periods as such Term Loan is a Base Rate Loan, at the Base Rate (as in effect from time to time), plus the Applicable Margin for Term Loans that are Base Rate Loans; and

(B) during such periods as such Term Loan is a LIBOR Loan, at LIBOR for such Term Loan for the Interest Period therefor, plus the Applicable Margin for Term Loans that are LIBOR Loans.

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

(b) Payment of Interest. All accrued and unpaid interest on the outstanding principal amount of each Loan (other than a Swingline Loan) shall be payable (i) in the case of a Base Rate Loan, monthly in arrears on the first day of each month, commencing with the first full calendar month occurring after the Effective Date, (ii) in the case of a LIBOR Loan, on the last day of each Interest Period therefor and, if such Interest Period is longer than 3 months, at three-month intervals following the first day of such Interest Period and (iii) in the case of any Loan, on any date on which the principal balance of such Loan is due and payable in full (whether at maturity, due to acceleration or otherwise). Interest payable at the Post-Default Rate as provided in the last paragraph of the immediately preceding subsection (a) shall be payable from time to time on demand. All determinations by the Administrative Agent of an interest rate hereunder shall be conclusive and binding on the Lenders and the Borrower for all purposes, absent manifest error.

(c) Borrower Information Used to Determine Applicable Interest Rates. The parties understand that the applicable interest rate for the Obligations and certain fees set forth herein may be determined and/or adjusted from time to time based upon certain financial ratios and/or other information to be provided or certified to the Lenders by the Borrower (the “Borrower Information”). If it is subsequently determined that any such Borrower Information was incorrect (for whatever reason, including without limitation because of a subsequent restatement of earnings by the Parent) at the time it was delivered to the Administrative Agent, and if the applicable interest rate or fees calculated for any period were lower than they should have been had the correct information been timely provided, then, such interest rate and such fees for such period shall be automatically recalculated using correct Borrower Information. The Administrative Agent shall promptly notify the Borrower in writing of any additional interest and fees due because of such recalculation, and the Borrower shall pay such additional interest or fees due to the Administrative Agent, for the account of each Lender, within 5 Business Days of receipt of such written notice. This provision shall not in any way limit any of the Administrative Agent’s, any Issuing Bank’s, or any Lender’s other rights under this Agreement.

## **Section 2.6. Number of Interest Periods.**

There may be no more than 7 different Interest Periods for Loans that are LIBOR Loans outstanding at the same time.

## **Section 2.7. Repayment of Loans.**

The Borrower shall repay the entire outstanding principal amount of, and all accrued but unpaid interest on, a Class of Loans on the Termination Date for such Class of Loans.

## **Section 2.8. Prepayments.**

(a) Optional. Subject to Section 5.4., the Borrower may prepay any Loan at any time without premium or penalty. The Borrower shall give the Administrative Agent at least 2 Business Days prior written notice of the prepayment of any LIBOR Loan and 1 Business Day's prior written notice for the prepayment of any Base Rate Loans (including Swingline Loans). Each voluntary prepayment of Loans shall be in an aggregate minimum amount of \$100,000 and integral multiples of \$100,000 in excess thereof.

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(b) Mandatory.

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

(ii) Asset Sales. If, at any time, on and after June 30, 2020 and prior to the end of the Covenant Relief Period, the Parent, the Borrower or any Subsidiary thereof receives Net Proceeds from any Asset Sale, the Borrower shall, in accordance with clause (iv) below, prepay the Term Loans, prepay the Revolving Loans and Swingline Loans and Cash Collateralize the Letter of Credit Liabilities (without a permanent reduction in the Revolving Commitments) and prepay the Senior Notes (subject to clause (iv)(C) below) in an amount equal to such Net Proceeds, within three (3) Business Days of the Parent's, Borrower's, or such Subsidiary's receipt thereof (or, if such receipt occurs prior to the First Amendment Date, on the First Amendment Date) or, with respect to the Senior Notes, within the period of time required under the Senior Notes Agreement.

(iii) Issuance of Indebtedness; Equity Issuances. If, at any time, on and after June 30, 2020 and prior to the last day of the Covenant Relief Period, the Parent, the Borrower or any Subsidiary thereof receives cash proceeds from any incurrence of any Indebtedness (including the net proceeds of any refinancing of existing Indebtedness but excluding Excluded Prepayment Debt) or any Equity Issuances (other than, if both at the time of such Equity Issuance and after giving effect to the purchase of Reinvestment Assets, Availability is equal to or greater than \$250,000,000, the proceeds of such Equity Issuances applied within ten Business Days of the receipt thereof (or, if such receipt occurs prior to the First Amendment Date, on the First Amendment Date) to (or held in escrow with a third party escrow agent and all or any portion (x) may be removed from escrow and applied to the purchase of Reinvestment Assets or as required pursuant to this clause (b)(iii) and clause (b)(iv) below or (y) if required by the terms of the Senior Notes Agreement to be applied to the payment of the Senior Notes, shall be removed from escrow and applied (1) to the Senior Notes in the amount required to be prepaid to the Senior Notes in accordance with the Senior Notes Agreement and (2) to the Obligations in an amount equal to the proportionate amount based on the amount of the payment made to the Senior Notes under clause (1) above and the calculations provided for in clause (iv)(B) with respect to the pro rata portion that the Lenders would be entitled to receive based on the actual payment made on the Senior Notes all in accordance with clause (b)(iv) below), the Borrower shall, in accordance with clause (iv) below, prepay the Term Loans, prepay the Revolving Loans and Swingline Loans and Cash Collateralize the Letter of Credit Liabilities (without a permanent reduction in the Revolving Commitments) and prepay the Senior Notes (subject to clause (iv)(C) below) in an amount equal to the amount of such cash proceeds, net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith (to the extent not paid to an Affiliate of the Parent, the Borrower or its Subsidiaries), including reasonable legal fees and expenses, within three (3) Business Days of the Parent's, the Borrower's or such Subsidiary's receipt of such cash proceeds or, with respect to the Senior Notes, within the period of time required under the Senior Notes Agreement.

(iv) Application of Mandatory Prepayments.

A. Amounts paid under the preceding subsection (b)(i) and any amounts required to be paid under the preceding subsections (b)(ii) and (b)(iii) which are to be allocated to the Revolving Loans and Letter of Credit Liabilities pursuant to the following clause (B) shall be applied to pay all amounts of principal outstanding on the Revolving Loans and any Reimbursement Obligations pro rata in accordance with Section 3.2. and if any

Letters of Credit are outstanding at such time, the remainder, if any, shall be deposited into the Letter of Credit Collateral Account for application to any Reimbursement Obligations.

B. Amounts paid under the preceding subsections (b)(ii) and (iii) shall be applied on a pro rata basis to (i) prepay the Term Loans, the Revolving Loans and Swingline Loans and Cash Collateralize the Letter of Credit Liabilities (without a permanent reduction in the Revolving Commitments) and (ii) prepay the Senior Notes. Such pro rata amount allocable to the Obligations shall be calculated by dividing (1) the sum of the outstanding principal amount of the Loans on such date plus the Letter of Credit Liabilities on

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such date, by (2) the sum of clause (1) and the outstanding principal amount of the Senior Notes on such date. Amounts payable to the Obligations pursuant to this clause (B) shall be applied, first, to prepay the Revolving Loans and Swingline Loans and to Cash Collateralize the Letter of Credit Liabilities (without a permanent reduction in the Revolving Commitments) until paid in full, then, on a pro rata basis to prepay the outstanding Term Loans.

C. Notwithstanding the foregoing, any amounts allocable to the Senior Notes which are not required to be applied to the Senior Notes pursuant to the terms of the Senior Notes Agreement may instead (i) be deposited into a deposit account controlled by the Borrower or the holders of the Senior Notes to be applied to the Senior Notes or (ii) held as Unrestricted Cash.

D. If the Borrower is required to pay any outstanding LIBOR Loans by reason of this Section 2.8. prior to the end of the applicable Interest Period therefor, the Borrower shall pay all amounts due under Section 5.4.

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

## **Section 2.9. Continuation.**

So long as no Default or Event of Default exists, the Borrower may on any Business Day, with respect to any LIBOR Loan, elect to maintain such LIBOR Loan or any portion thereof as a LIBOR Loan by selecting a new Interest Period for such LIBOR Loan. Each Continuation of LIBOR Loans of the same Class shall be in an aggregate minimum amount of \$1,000,000 and integral multiples of \$100,000 in excess of that amount, and each new Interest Period selected under this Section shall commence on the last day of the immediately preceding Interest Period. Each selection of a new Interest Period shall be made by the Borrower giving to the Administrative Agent a Notice of Continuation not later than 11:00 a.m. Central time on the third Business Day prior to the date of any such Continuation. Such notice by the Borrower of a Continuation shall be by telecopy, electronic mail or other similar form of communication in the form of a Notice of Continuation, specifying (a) the proposed date of such Continuation, (b) the LIBOR Loans, Class and portions thereof subject to such Continuation and (c) the duration of the selected Interest Period, all of which shall be specified in such manner as is necessary to comply with all limitations on Loans outstanding hereunder. Each Notice of Continuation shall be irrevocable by and binding on the Borrower once given.

Promptly after receipt of a Notice of Continuation, the Administrative Agent shall notify each Lender holding Loans being Continued of the proposed Continuation. If the Borrower shall fail to select in a timely manner a new Interest Period for any LIBOR Loan in accordance with this Section, such Loan will automatically, on the last day of the current Interest Period therefor, continue as a LIBOR Loan with an Interest Period of one month; provided, however that if a Default or Event of Default exists, such Loan will automatically, on the last day of the current Interest Period therefor, Convert into a Base Rate Loan notwithstanding the first sentence of Section 2.10. or the Borrower's failure to comply with any of the terms of such Section.

## **Section 2.10. Conversion.**

The Borrower may on any Business Day, upon the Borrower's giving of a Notice of Conversion to the Administrative Agent by telecopy, electronic mail or other similar form of communication, Convert all or a portion of a Loan of one Type into a Loan of another Type; provided, however, a Base Rate Loan may not be Converted into a LIBOR Loan if a Default or Event of Default exists. Each Conversion of Base Rate Loans of the same Class into LIBOR Loans of the same Class shall be in an aggregate minimum amount of \$1,000,000 and integral multiples of \$100,000 in excess of that amount. Each such Notice of Conversion shall be given not later than 11:00 a.m. Central time 3 Business Days prior to the date of any proposed Conversion.

Promptly after receipt of a Notice of Conversion, the Administrative Agent shall notify each Lender holding Loans being Converted of the proposed Conversion. Subject to the restrictions specified above, each Notice of Conversion shall be by telecopy, electronic mail or other similar form of communication in the form of a Notice of Conversion specifying (a) the requested date of such Conversion, (b) the Type and Class of Loan to be Converted, (c) the portion of such Type of Loan to be Converted, (d) the Type of Loan such Loan is to be Converted into and (e) if such Conversion is into a LIBOR Loan, the requested duration of the Interest Period of such Loan. Each Notice of Conversion shall be irrevocable by and binding on the Borrower once given.

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## **Section 2.11. Notes.**

(a) Notes. If requested by any Lender, the Loans of a Class made by such Lender, in addition to this Agreement, such Loans shall also be evidenced by a Note of such Class, payable to the order of such Lender in a principal amount equal to the amount of its Commitment of such Class as originally in effect and otherwise duly completed. The Swingline Loans made by the Swingline Lender to the Borrower shall, in addition to this Agreement, also be evidenced by a Swingline Note payable to the order of the Swingline Lender.

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

(c) Lost, Stolen, Destroyed or Mutilated Notes. Upon receipt by the Borrower of (i) written notice from a Lender that a Note of such Lender has been lost, stolen, destroyed or mutilated, and (ii)(A) in the case of loss, theft or destruction, an unsecured agreement of indemnity from such Lender in form reasonably satisfactory to the Borrower, or (B) in the case of mutilation, upon surrender and cancellation of such Note, the Borrower shall at its own expense execute and deliver to such Lender a new Note dated the date of such lost, stolen, destroyed or mutilated Note.

## **Section 2.12. Voluntary Reductions of the Revolving Commitment.**

The Borrower shall have the right to terminate or reduce the aggregate unused amount of the Revolving Commitments (for which purpose use of the Revolving Commitments shall be deemed to include the aggregate amount of all Letter of Credit Liabilities and the aggregate principal amount of all outstanding Swingline Loans) at any time and from time to time without penalty or premium upon not less than 5 Business Days prior written notice to the Administrative Agent of each such termination or reduction, which notice shall specify the effective date thereof and the amount of any such reduction (which in the case of any partial reduction of the Revolving Commitments shall not be less than \$25,000,000 and integral multiples of \$25,000,000 in excess of that amount in the aggregate) and shall be irrevocable once given and effective only upon receipt by the Administrative Agent ("Commitment Reduction Notice"); provided, however, (i) the Borrower may not reduce the aggregate amount of the Revolving Commitments below \$150,000,000 unless the Borrower is terminating the Revolving Commitments in full and (ii) if such reduction or termination is being made in connection with the closing of another transaction, then it may be made conditional on the closing of such other transaction. Promptly after receipt of a Commitment Reduction Notice the Administrative Agent shall notify each Revolving Lender of the proposed termination or Revolving Commitment reduction. The Revolving Commitments, once reduced or terminated pursuant to this Section, may not be increased or reinstated. The Borrower shall pay all interest and fees on the Revolving Loans accrued to the date of such reduction or termination of the Revolving Commitments to the Administrative Agent for the account of the Revolving Lenders, including but not limited to any applicable compensation due to each Lender in accordance with Section 5.4.

## **Section 2.13. Extension of Revolving Termination Date.**

The Borrower shall have the right, exercisable two times, to request that the Administrative Agent and the Revolving Lenders extend the Revolving Termination Date by six months per each request. The Borrower may exercise such right only by executing and delivering to the Administrative Agent at least 30 days but not

more than 90 days prior to the current Revolving Termination Date, a written request for such extension (a "Revolving Extension Request"). The Administrative Agent shall notify the Lenders if it receives a Revolving Extension Request promptly upon receipt thereof. Subject to satisfaction of the following conditions, the Revolving Termination Date shall be extended for six months effective upon receipt by the Administrative Agent of a Revolving Extension Request and payment of the fee referred to in the following clause (y): (x) immediately prior to such extension and immediately after giving effect thereto, (A) no Default or Event of Default shall exist and (B) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party, shall be true and correct in all material respects (except in the

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case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of the date of such extension with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted under the Loan Documents, (y) the Borrower shall have paid the Fees payable under Section 3.5.(d) and (z) no more than two Revolving Extension Requests shall have been submitted to Administrative Agent by Borrower. At any time prior to the effectiveness of any such extension, upon the Administrative Agent's request, the Borrower shall deliver to the Administrative Agent a certificate from the chief executive officer or chief financial officer certifying the matters referred to in the immediately preceding clauses (x)(A) and (x)(B).

#### **Section 2.14. Expiration Date of Letters of Credit Past Revolving Commitment Termination.**

If on the date the Revolving Commitments are terminated or reduced to zero (whether voluntarily, by reason of the occurrence of an Event of Default or otherwise) there are any Letters of Credit outstanding hereunder and the aggregate Stated Amount of such Letters of Credit exceeds the balance of available funds on deposit in the Letter of Credit Collateral Account, then the Borrower shall, on such date, pay to the Administrative Agent, for its benefit and the benefit of the Revolving Lenders and the Issuing Banks, for deposit into the Letter of Credit Collateral Account, an amount of money equal to the amount of such excess.

#### **Section 2.15. Amount Limitations.**

Notwithstanding any other term of this Agreement or any other Loan Document, no Lender shall be required to make a Revolving Loan, the Swingline Lender shall not be required to make a Swingline Loan, the Issuing Banks shall not be required to issue Letters of Credit and no reduction of the Revolving Commitments pursuant to Section 2.12. shall take effect, if immediately after the making of such Loan, the issuance of such Letter of Credit or such reduction in the Revolving Commitments the aggregate principal amount of all outstanding Revolving Loans and Swingline Loans, together with the aggregate amount of all Letter of Credit Liabilities would exceed the aggregate amount of the Revolving Commitments at such time.

#### **Section 2.16. Increase in Revolving Commitments; Term Loans.**

The Borrower shall have the right (a) during the period from the Effective Date to but excluding the Revolving Termination Date, to request increases in the aggregate amount of the Revolving Commitments, (b) during the period from the Effective Date to but excluding the Maturity Date for the Term 1 Loans, to request the making of additional Term 1 Loans (the "Additional Term 1 Loans"), and (c) during the period from the Effective Date to but excluding the Maturity Date for the Term 2 Loans, to request the making of additional Term 2 Loans (the "Additional Term 2 Loans"; together with the Additional Term 1 Loans, the "Additional Term Loans"), in each case, by providing written notice thereof to the Administrative Agent, which notice shall specify the Class and amount of Loans requested and which shall be irrevocable once given; provided, however, that after giving effect to any such increases of the Revolving Commitments and the making of any Additional Term Loans, the aggregate amount of the Revolving Commitments and the aggregate outstanding principal balance of the Term Loans shall not exceed \$800,000,000 (less the amount of any reductions of the Revolving Commitments effected pursuant to Section 2.12. and any prepayments of Term Loans, in each case, prior to such date). Additional Term Loans shall be subject to the same terms and conditions of this Agreement that are applicable to all other Term Loans of the applicable Class being borrowed. Each such increase in the Revolving Commitments or borrowing of Additional Term Loans must be an aggregate minimum amount of \$50,000,000 (or such lesser amount as the Borrower and the Administrative Agent may agree in writing) and integral multiples of \$5,000,000 in excess thereof. The Administrative Agent, in consultation with the Borrower, shall manage all aspects of the syndication of such increase in the Revolving Commitments and the making of any Additional Term Loans, including decisions as to the selection of the

existing Lenders and/or other banks, financial institutions and other institutional lenders to be approached with respect to any such increase or making of Additional Term Loans and the allocations of any increase in the Revolving Commitments or making of Additional Term Loans among such existing Lenders and/or other banks, financial institutions and other institutional lenders. No Lender shall be obligated in any way whatsoever to increase its Revolving Commitment, to provide a new Revolving Commitment or to make an Additional Term Loan, and any new Lender becoming a party to this Agreement in

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connection with any such requested increase of the Revolving Commitments or making of Additional Term Loans must be an Eligible Assignee. If a new Revolving Lender becomes a party to this Agreement, or if any existing Revolving Lender is increasing its Revolving Commitment, such Lender shall on the date it becomes a Revolving Lender hereunder (or in the case of an existing Revolving Lender, increases its Revolving Commitment) (and as a condition thereto) purchase from the other Revolving Lenders its Revolving Commitment Percentage (determined with respect to the Revolving Lenders' respective Revolving Commitments after giving effect to the increase of Revolving Commitments) of any outstanding Revolving Loans, by making available to the Administrative Agent for the account of such other Revolving Lenders, in same day funds, an amount equal to (A) the portion of the outstanding principal amount of such Revolving Loans to be purchased by such Lender, plus (B) the aggregate amount of payments previously made by the other Revolving Lenders under Section 2.3.(j) that have not been repaid, plus (C) interest accrued and unpaid to and as of such date on such portion of the outstanding principal amount of such Revolving Loans. The Borrower shall pay to the Revolving Lenders amounts payable, if any, to such Lenders under Section 5.4. as a result of the prepayment of any such Revolving Loans. Effecting any increase of the Revolving Commitments or the making of Additional Term Loans under this Section 2.16. is subject to the following conditions precedent: (x) no Default or Event of Default shall be in existence on the effective date of such increase of the Revolving Commitments or making of Additional Term Loans, (y) the representations and warranties made or deemed made by the Borrower and any other Loan Party in any Loan Document to which such Loan Party is a party shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on the effective date of such increase of the Revolving Commitments or making of Term Loans except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted hereunder, and (z) the Administrative Agent shall have received each of the following, in form and substance reasonably satisfactory to the Administrative Agent: (i) if not previously delivered to the Administrative Agent, copies certified by the Secretary or Assistant Secretary of (A) all limited liability company or other necessary action taken by the Borrower to authorize such increase of the Revolving Commitments or Term Loans and (B) all corporate, partnership, member or other necessary action taken by each Guarantor authorizing the guaranty of such increase of the Revolving Commitments or Additional Term Loans; (ii) an opinion of counsel to the Borrower and the Guarantors, and addressed to the Administrative Agent and the Lenders covering such matters as reasonably requested by the Administrative Agent; and (iii) as applicable, (A) if requested by the applicable Lender, a new Revolving Note executed by the Borrower, payable to any such new Revolving Lenders, and replacement Revolving Notes, as applicable, executed by the Borrower payable to any such existing Revolving Lenders increasing their respective Revolving Commitments, in each case, in the amount of such Lender's Revolving Commitment at the time of the effectiveness of the applicable increase in the aggregate amount of the Revolving Commitments, and/or (B) if requested by the applicable Lender, a new Term Note executed by the Borrower, payable to any such new Term Loan Lenders, and replacement Term Notes, as applicable, executed by the Borrower payable to any such existing Term Loan Lenders making such Additional Term Loans, in each case, in the amount of such Lender's aggregate Term Loans at the time of the effectiveness of the applicable making of Additional Term Loans. In connection with any increase in the aggregate amount of the Revolving Commitments or any making of Additional Term Loans pursuant to this Section 2.16., any Lender becoming a party hereto shall (1) execute such documents and agreements as the Administrative Agent may reasonably request and (2) in the case of any Lender that is organized under the laws of a jurisdiction outside of the United States of America, provide to the Administrative Agent, its name, address, tax identification number and/or such other information as shall be necessary for the Administrative Agent to comply with "know your customer" and Anti-Money Laundering Laws, including without limitation, the Patriot Act.

## **Section 2.17. Funds Transfer Disbursements.**

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

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## **Section 2.18. Security Interest in Collateral.**

(a) To secure their Obligations under this Agreement and the other Loan Documents, upon the occurrence of the Security Trigger Date, the Borrower and certain other Loan Parties will grant to the Administrative Agent, for its benefit and the benefit of the other Lenders, a first-priority security interest in the Collateral pursuant to Section 8.14.(a) hereof. The Borrower, the Administrative Agent and the Lenders acknowledge and agree that, in connection with any such grant, the Administrative Agent shall be entering into the Intercreditor Agreement, and the exercise by the Administrative Agent and each of the Lenders of its rights and remedies under the Loan Documents shall be subject to the terms of the Intercreditor Agreement.

(b) In accordance with the terms of Section 8.14.(c), the Administrative Agent is hereby authorized by the Lenders to release the Collateral (or any applicable portion thereof) and take all such action as may be reasonably required in order to terminate the Liens in the Collateral (or such portion thereof).

## **ARTICLE III. PAYMENTS, FEES AND OTHER GENERAL PROVISIONS**

### **Section 3.1. Payments.**

(a) Payments by Borrower. Except to the extent otherwise provided herein, all payments of principal, interest, Fees and other amounts to be made by the Borrower under this Agreement, the Notes or any other Loan Document shall be made in Dollars, in immediately available funds, without setoff, deduction or counterclaim (excluding Taxes required to be withheld pursuant to Section 3.10.), to the Administrative Agent at the Principal Office, not later than 2:00 p.m. Central time on the date on which such payment shall become due (each such payment made after such time on such due date to be deemed to have been made on the next succeeding Business Day). Subject to Section 11.5., the Borrower shall, at the time of making each payment under this Agreement or any other Loan Document, specify to the Administrative Agent the amounts payable by the Borrower hereunder to which such payment is to be applied. Each payment received by the Administrative Agent for the account of a Lender under this Agreement or any Note shall be paid to such Lender by wire transfer of immediately available funds in accordance with the wiring instructions provided by such Lender to the Administrative Agent from time to time, for the account of such Lender at the applicable Lending Office of such Lender. Each payment received by the Administrative Agent for the account of an Issuing Bank under this Agreement shall be paid to such Issuing Bank by wire transfer of immediately available funds in accordance with the wiring instructions provided by such Issuing Bank to the Administrative Agent from time to time, for the account of such Issuing Bank. In the event the Administrative Agent fails to pay such amounts to such Lender or such Issuing Bank, as the case may be, within one Business Day of receipt of such amounts, the Administrative Agent shall pay interest on such amount until paid at a rate per annum equal to the Federal Funds Rate from time to time in effect. If the due date of any payment under this Agreement or any other Loan Document would otherwise fall on a day which is not a Business Day such date shall be extended to the next succeeding Business Day and interest shall continue to accrue at the rate, if any, applicable to such payment for the period of such extension.

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

### **Section 3.2. Pro Rata Treatment.**

Except to the extent otherwise provided herein: (a) each borrowing from the Revolving Lenders under Sections 2.1.(a), 2.3.(e) and 2.4.(e) shall be made from the Revolving Lenders, each payment of the fees under Sections 3.5.(a), 3.5.(b), the first sentence of 3.5.(c), and 3.5.(d) shall be made for the account of the Revolving Lenders,

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and each termination or reduction of the amount of the Revolving Commitments under Section 2.12. shall be applied to the respective Revolving Commitments of the Revolving Lenders, pro rata according to the amounts of their respective Revolving Commitments; (b) the making of Term 2 Loans shall be made from the Term 2 Loan Lenders, pro rata according to the amounts of their respective Term 2 Loan Commitments; (c) each payment or prepayment of principal of Loans of a Class shall be made for the account of the Lenders of such Class pro rata in accordance with the respective unpaid principal amounts of the Loans of such Class held by them, provided that, subject to Section 3.9., if immediately prior to giving effect to any such payment in respect of any Revolving Loans the outstanding principal amount of the Revolving Loans shall not be held by the Revolving Lenders pro rata in accordance with their respective Revolving Commitments in effect at the time such Revolving Loans were made, then such payment shall be applied to the Revolving Loans in such manner as shall result, as nearly as is practicable, in the outstanding principal amount of the Revolving Loans being held by the Revolving Lenders pro rata in accordance with such respective Revolving Commitments; (d) each payment of interest in respect of a Class of Loans shall be made for the account of the Lenders of such Class pro rata in accordance with the amounts of interest on such Class of Loans then due and payable to the Lenders of such Class; (e) the Conversion and Continuation of Loans of a particular Class and Type (other than Conversions provided for by Sections 5.1.(c) and 5.5.) shall be made pro rata among the Lenders of such Class according to the amounts of their respective Loans of such Class, and the then current Interest Period for each Lender's portion of each such Loan of such Type shall be coterminous; (f) the Revolving Lenders' participation in, and payment obligations in respect of, Swingline Loans under Section 2.4., shall be in accordance with their respective Revolving Commitment Percentages; and (g) the Revolving Lenders' participation in, and payment obligations in respect of, Letters of Credit under Section 2.3., shall be in accordance with their respective Revolving Commitment Percentages. All payments of principal, interest, fees and other amounts in respect of the Swingline Loans shall be for the account of the Swingline Lender only (except to the extent any Revolving Lender shall have acquired a participating interest in any such Swingline Loan pursuant to Section 2.4.(e), in which case such payments shall be pro rata in accordance with such participating interests).

### **Section 3.3. Sharing of Payments, Etc.**

If a Lender shall obtain payment of any principal of, or interest on, any Loan of a Class made by it to the Borrower under this Agreement or shall obtain payment on any other Obligation owing by the Borrower or any other Loan Party through the exercise of any right of set-off, banker's lien, counterclaim or similar right or otherwise or through voluntary prepayments directly to a Lender or other payments made by or on behalf of the Borrower or any other Loan Party to a Lender not in accordance with the terms of this Agreement and such payment should be distributed to the Lenders of the same Class in accordance with Section 3.2. or Section 11.5., as applicable, such Lender shall promptly purchase from the other Lenders of such Class participations in (or, if and to the extent specified by such Lender, direct interests in) the Loans of such Class made by the other Lenders of such Class or other Obligations owed to such other Lenders in such amounts, and make such other adjustments from time to time as shall be equitable, to the end that all the Lenders of such Class shall share the benefit of such payment (net of any reasonable expenses which may actually be incurred by such Lender in obtaining or preserving such benefit) in accordance with the requirements of Section 3.2. or Section 11.5., as applicable. To such end, all the Lenders of such Class shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored. The Borrower agrees that any Lender of such Class so purchasing a participation (or direct interest) in the Loans or other Obligations owed to such other Lenders of such Class may exercise all rights of set-off, banker's lien, counterclaim or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans of such Class in the amount of such participation. Nothing contained herein shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of the Borrower.

### **Section 3.4. Several Obligations.**

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

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### Section 3.5. Fees.

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

(b) Revolving Facility Fees. During the period from the Effective Date to but excluding the Revolving Termination Date, the Borrower agrees to pay to the Administrative Agent for the account of the Revolving Lenders an unused facility fee equal to the sum of the daily amount (the “Unused Amount”) by which the aggregate amount of the Revolving Commitments exceeds the aggregate outstanding principal balance of Revolving Loans and Letter of Credit Liabilities set forth in the table below multiplied by the corresponding per annum rate:

Unused Amount	Unused Fee (percent per annum)
Greater than 50% of the aggregate amount of Commitments	0.25%
Less than or equal to 50% of the aggregate amount of Commitments	0.20%

Such fee shall be computed on a daily basis and payable quarterly in arrears on the first day of each January, April, July and October during the term of this Agreement and on the Revolving Termination Date or any earlier date of termination of the Revolving Commitments or reduction of the Revolving Commitments to zero. For the avoidance of doubt, for purposes of calculating an unused facility fee, the outstanding principal balance of Swingline Loans shall not be factored into the computation.

(c) Letter of Credit Fees. The Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a letter of credit fee at a rate per annum equal to the Applicable Margin for LIBOR Loans that are Revolving Loans times the daily average Stated Amount of each Letter of Credit for the period from and including the date of issuance of such Letter of Credit (x) to and including the date such Letter of Credit expires or is cancelled or terminated or (y) to but excluding the date such Letter of Credit is drawn in full; provided, however, notwithstanding anything to the contrary contained herein, while any Event of Default exists, such letter of credit fees shall accrue at the Post-Default Rate. In addition to such fees, the Borrower shall pay to each Issuing Bank solely for its own account, a fronting fee in respect of each Letter of Credit issued by such Issuing Bank equal to one-eighth of one percent (0.125%) of the initial Stated Amount of such Letter of Credit; provided, however, in no event shall the aggregate amount of such fee in respect of any Letter of Credit be less than \$500. The fees provided for in this subsection shall be nonrefundable and payable, in the case of the fee provided for in the first sentence, in arrears (i) quarterly on the first day of January, April, July and October, (ii) on the Revolving Termination Date, (iii) on the date the Revolving Commitments are terminated or reduced to zero and (iv) thereafter from time to time on demand of the Administrative Agent and in the case of the fee provided for in the second sentence, at the time of issuance of such Letter of Credit. The Borrower shall pay directly to the applicable Issuing Bank from time to time on demand all commissions, charges, costs and expenses in the amounts customarily charged or incurred by such Issuing Bank from time to time in like circumstances with respect to the issuance, amendment, renewal or extension of any Letter of Credit or any other transaction relating thereto.

(d) Revolving Extension Fee. Each time the Borrower exercises its right to extend the Revolving Termination Date in accordance with Section 2.13., the Borrower agrees to pay to the Administrative Agent for the account of each Revolving Lender a fee for each such extension equal to three-fortieths of one percent (0.075%) of the amount of such Lender’s Commitment (whether or not utilized).

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

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### **Section 3.6. Computations.**

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

### **Section 3.7. Usury.**

In no event shall the amount of interest due or payable on the Loans or other Obligations exceed the maximum rate of interest allowed by Applicable Law and, if any such payment is paid by the Borrower or any other Loan Party or received by any Lender, then such excess sum shall be credited as a payment of principal, unless the Borrower shall notify the respective Lender in writing that the Borrower elects to have such excess sum returned to it forthwith. It is the express intent of the parties hereto that the Borrower not pay and the Lenders not receive, directly or indirectly, in any manner whatsoever, interest in excess of that which may be lawfully paid by the Borrower under Applicable Law. The parties hereto hereby agree and stipulate that the only charge imposed upon the Borrower for the use of money in connection with this Agreement is and shall be the interest specifically described in Section 2.5.(a)(i) and (ii) and, with respect to Swingline Loans, in Section 2.4.(c). Notwithstanding the foregoing, the parties hereto further agree and stipulate that all agency fees, syndication fees, facility fees, closing fees, letter of credit fees, underwriting fees, default charges, late charges, funding or “breakage” charges, increased cost charges, attorneys’ fees and reimbursement for costs and expenses paid by the Administrative Agent or any Lender to third parties or for damages incurred by the Administrative Agent or any Lender, in each case, in connection with the transactions contemplated by this Agreement and the other Loan Documents, are charges made to compensate the Administrative Agent or any such Lender for underwriting or administrative services and costs or losses performed or incurred, and to be performed or incurred, by the Administrative Agent and the Lenders in connection with this Agreement and shall under no circumstances be deemed to be charges for the use of money. All charges other than charges for the use of money shall be fully earned and nonrefundable when due.

### **Section 3.8. Statements of Account.**

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

### **Section 3.9. Defaulting Lenders.**

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

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

(b) Defaulting Lender Waterfall. Any payment of principal, interest, Fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article XI. or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 13.3. shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, in the case of a Defaulting Lender that is a Revolving Lender, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Banks and

the Swingline Lender hereunder; third, in the case of a Defaulting Lender that is a Revolving Lender, to Cash Collateralize the Issuing Banks' Fronting Exposures with respect to such Defaulting Lender in accordance with subsection (e) below; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) in the case of a Defaulting Lender that is a Revolving

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Lender, Cash Collateralize the Issuing Banks' future Fronting Exposures with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with subsection (e) below; sixth, to the payment of any amounts owing to the Lenders, the Issuing Banks or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuing Bank or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans of any Class or amounts owing by such Defaulting Lender under Section 2.3.(j) in respect of Letters of Credit (such amounts "L/C Disbursements"), in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Article VI. were satisfied or waived, such payment shall be applied solely to pay the Loans of such Class of, and L/C Disbursements owed to, all Non-Defaulting Lenders of the applicable Class on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Disbursements owed to, such Defaulting Lender until such time as all Loans of such Class and, as applicable, funded and unfunded participations in Letter of Credit Liabilities and Swingline Loans are held by the Revolving Lenders pro rata in accordance with their respective Revolving Commitment Percentages (determined without giving effect to the immediately following subsection (d)) and all Term Loans (if any) are held by the Term Loan Lenders pro rata as if there had been no Defaulting Lenders that are Term Loan Lenders. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this subsection shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) Certain Fees.

(i) No Defaulting Lender shall be entitled to receive any Fee payable under Section 3.5.(b) 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).

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

(iii) With respect to any Fee not required to be paid to any Defaulting Lender that is a Revolving Lender pursuant to the immediately preceding clause (ii), the Borrower shall (x) pay to each Non-Defaulting Lender that is a Revolving Lender that portion of any such Fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letter of Credit Liabilities or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to the immediately following subsection (d), (y) pay to each Issuing Bank and the Swingline Lender, as applicable, the amount of any such Fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Bank's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such Fee.

(d) Reallocation of Participations to Reduce Fronting Exposure. In the case of a Defaulting Lender that is a Revolving Lender, all or any part of such Defaulting Lender's participation in Letter of Credit Liabilities and Swingline Loans shall be reallocated among the Non-Defaulting Lenders that are Revolving Lenders in accordance with their respective Revolving Commitment Percentages (determined without regard to such Defaulting Lender's Revolving Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender that is a Revolving Lender

to exceed such Non-Defaulting Lender's Revolving Commitment. Subject to Section 13.20., no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Revolving Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

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(e) Cash Collateral, Repayment of Swingline Loans.

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

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

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

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

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

(f) Defaulting Lender Cure. If the Borrower and the Administrative Agent, and solely in the case of a Defaulting Lender that is a Revolving Lender, the Swingline Lender and the Issuing Banks, agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent

applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause, as applicable, (i) the Revolving Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Revolving Lenders in accordance with their respective Revolving Commitment Percentages (determined without giving effect to the immediately preceding subsection (d)) and (ii) the Term Loans to be held by the Term Loan Lenders pro rata as if there had been no Defaulting Lenders of such Class, 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

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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.

(g) New Swingline Loans/Letters of Credit. So long as any Revolving Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) no Issuing Bank shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

(h) Purchase of Defaulting Lender's Commitment. During any period that a Lender is a Defaulting Lender, the Borrower may, by the Borrower giving written notice thereof to the Administrative Agent, such Defaulting Lender and the other Lenders, demand that such Defaulting Lender assign its Commitments and Loans to an Eligible Assignee subject to and in accordance with the provisions of Section 13.5.(b). No party hereto shall have any obligation whatsoever to initiate any such replacement or to assist in finding an Eligible Assignee. In addition, any Lender who is not a Defaulting Lender may, but shall not be obligated, in its sole discretion, to acquire the face amount of all or a portion of such Defaulting Lender's Commitments and Loans via an assignment subject to and in accordance with the provisions of Section 13.5.(b). In connection with any such assignment, such Defaulting Lender shall promptly execute all documents reasonably requested to effect such assignment, including an appropriate Assignment and Assumption and, notwithstanding Section 13.5.(b), shall pay to the Administrative Agent an assignment fee in the amount of \$7,500. The exercise by the Borrower of its rights under this Section shall be at the Borrower's sole cost and expense and at no cost or expense to the Administrative Agent or any of the Lenders.

### **Section 3.10. Taxes.**

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

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

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

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

the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 Business Days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower or another Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes

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

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

(g) Status of Lenders.

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

(ii) Without limiting the generality of the foregoing, 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), an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-9 (or any successor form) certifying that such Lender is exempt from U.S. federal backup withholding tax;

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

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8BEN or 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

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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;

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

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

(IV) to the extent a Foreign Lender is not the beneficial owner, an electronic copy (or an original if requested by the Borrower or the Administrative Agent) of an executed IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit L-2 or Exhibit L-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 L-4 on behalf of each such direct and indirect partner;

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

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

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

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

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

#### **ARTICLE IV. UNENCUMBERED PROPERTIES**

##### **Section 4.1. Eligibility of Unencumbered Properties.**

(a) Initial Unencumbered Properties. The Properties identified on Schedule 4.1. shall, on the First Amendment Date, be Unencumbered Properties.

(b) Additional Unencumbered Properties. If after the First Amendment Date the Borrower desires that any additional Property become an Unencumbered Property, the Borrower shall so notify the Administrative Agent in writing (a "Notice of Additional Unencumbered Property"). Except as otherwise provided in the immediately following subsection (c), no Property shall become an Unencumbered Property unless it is an Eligible Property, and unless and until the Borrower delivers to the Administrative Agent all of the following, in form and substance reasonably satisfactory to the Administrative Agent (unless waived in writing by the Requisite Lenders):

(i) an executive summary of the Property including, at a minimum, the following information relating to such Property: (A) a description of such Property, such description to include the age, location, site plan and physical condition of such Property; and (B) the purchase price paid or to be paid for such Property;

(ii) an operating statement for such Property audited or certified by a representative of the Borrower as being true and correct in all material respects and prepared in accordance with GAAP for the previous three fiscal years, provided that, if such Property was owned by the Borrower or a Subsidiary for less than three years, such information shall only be required to be delivered to the extent reasonably available to the Borrower and such certification may be based upon the Borrower's knowledge and provided further, that if such Property has been operating for less than three years, the Borrower shall provide such projections and other information concerning the anticipated operation of such Property as the Administrative Agent may reasonably request;

- (iii) a pro forma operating statement or an operating budget for such Property with respect to the current fiscal year and, if available, the immediately following fiscal year;
  - (iv) if such Property is located in a seismic zone rated 3 or higher, an all assets seismic portfolio report covering all applicable Properties prepared by a firm reasonably acceptable to the Administrative Agent;
  - (v) if such Property is leased under a ground lease, a copy of such ground lease;
  - (vi) a copy of the most current Smith Travel Research STAR Report available for such Property;
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(vii) a Compliance Certificate calculating (and, unless such Property is being added during the Covenant Relief Period, evidencing compliance with) the covenants set forth in Section 10.1. after giving effect to the addition of such Property as an Unencumbered Property; and

(viii) such other information as the Administrative Agent may reasonably request in order to confirm that such Property is an Eligible Property.

A Notice of Additional Unencumbered Property executed and delivered by the Borrower to the Administrative Agent shall constitute a certification by the Borrower to the Administrative Agent and the Lenders that such Property satisfies all of the requirements contained in the definition of Eligible Property unless such notice states otherwise (in which case the provisions of the immediately following subsection (c) shall apply). Within 5 Business Days after the Administrative Agent's receipt of a Notice of Additional Unencumbered Property and the other reports and documents required under this subsection (b), the Administrative Agent will make such notice, reports and documents available to each of the Lenders. Within 10 Business Days after the Administrative Agent's receipt of a Notice of Additional Unencumbered Property and the other reports and documents required under this subsection (b), the Administrative Agent shall notify the Borrower and the Lenders if the Administrative Agent has confirmed that such Property satisfies all of the requirements contained in the definition of Eligible Property.

(c) Nonconforming Properties. If a Property which the Borrower desires to be included as an Unencumbered Property does not satisfy the requirements of an Eligible Property, then the Administrative Agent, upon written request of the Borrower, shall request that the Requisite Lenders in their sole discretion determine whether such Property shall be included as an Unencumbered Property. In connection therewith, the Borrower shall promptly deliver the information required by the immediately preceding subsection (b) to each of the Lenders. If such a request is made by the Administrative Agent to the Lenders, within 10 Business Days after the date on which a Lender has received such request and all of the items referred to in the immediately preceding subsection (b), each such Lender shall notify the Administrative Agent in writing whether or not such Lender accepts such Property as an Unencumbered Property in its sole discretion. If a Lender fails to give such notice within such time period, such Lender shall be deemed to have approved such Property as an Unencumbered Property. A Property shall become an Unencumbered Property under this subsection (c) only upon the approval and/or deemed approval of the Requisite Lenders.

(d) Documents with Respect to Non-Guarantor Subsidiary and Collateral.

(i) If a Property owned by a Subsidiary that is not a Guarantor is to become an Unencumbered Property, the Borrower shall deliver to the Administrative Agent an Accession Agreement executed by such Subsidiary together with the other items required by Section 8.13.(a). If the improvements on such a Property or the furniture, fixtures and equipment utilized in the operation of such Property are owned or leased by a Subsidiary (the "Accommodation Subsidiary") other than the Subsidiary that owns or leases such Property, then the Borrower shall also deliver to the Administrative Agent an Accession Agreement executed by such Accommodation Subsidiary.

(ii) If, after the Security Trigger Date but prior to the Security Release Date, any Property which is to become an Unencumbered Property is owned directly or indirectly by a Subsidiary whose Equity Interests are required to be subject to the Pledge Agreement, the Borrower shall deliver to the Administrative Agent a supplement to the Pledge Agreement together with the other items required by Section 8.14.

Until such time as the Administrative Agent shall have received the items referred to in the immediately preceding clauses (i) and (ii) with respect to such Subsidiary, any applicable Accommodation Subsidiary and the Collateral, the applicable Property shall not be considered to be an Unencumbered Property.

#### **Section 4.2. Removal of Unencumbered Properties.**

The Borrower may, upon not less than 10 Business Days' notice to the Administrative Agent (or such shorter period as may be acceptable to the Administrative Agent in its sole discretion), request removal of a Property as an Unencumbered Property, subject to the following conditions: (a) no Default or Event of Default shall exist (other than a Default or Event

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of Default that would be cured by removal of such Property as an Unencumbered Property) or would result therefrom, (b) the Borrower shall have delivered to Administrative Agent a Compliance Certificate, prepared as of the last day of the most recent fiscal quarter for which financial statements have been required to be delivered pursuant to Section 9.1. or Section 9.2., calculating (and, unless such Property is to be removed during the Covenant Relief Period, evidencing compliance with) the covenants set forth in Section 10.1. as if such Property had not been included in as an Unencumbered Property at such time and (c) during the Covenant Relief Period, the Borrower may only request the release of an Unencumbered Property if such release shall occur substantially simultaneously with a sale of such Property and only so long as the proceeds of such sale shall be applied in accordance with the terms of Section 2.8.(b)(ii) hereof. For the avoidance of doubt, the Parent and the Borrower shall not, and shall not permit any Subsidiary during the Covenant Relief Period (i) to place any Lien (other than a Permitted Lien (but not Permitted Liens described in clause (g) of the definition of the term)) upon, or (ii) grant a Negative Pledge on (other than a Negative Pledge that would not cause a Property to cease to be an Eligible Property under clause (g) of the definition thereof) in, a Property that was an Unencumbered Property on June 30, 2020 or became an Unencumbered Property thereafter (or, if such Property is owned by a Subsidiary, any of the Borrower's direct or indirect ownership interest in such Subsidiary). Upon the Administrative Agent's confirmation that the conditions to such removal have been satisfied, the Administrative Agent shall so notify the Borrower and the Lenders in writing specifying the date of such removal.

## **ARTICLE V. YIELD PROTECTION, ETC.**

### **Section 5.1. Additional Costs; Capital Adequacy.**

(a) Capital Adequacy. If any Lender determines that any Regulatory Change affecting such Lender or any lending office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Regulatory Change (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), 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.

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

(i) changes the basis of taxation of any amounts payable to such Lender under this Agreement or any of the other Loan Documents in respect of any of such LIBOR Loans or its Commitments (other than Indemnified Taxes or Excluded Taxes);

(ii) imposes or modifies any reserve, special deposit, compulsory loan, insurance charge or similar requirements (other than Regulation D of the Board of Governors of the Federal Reserve System or other similar reserve requirement applicable to any other category of liabilities or category of extensions of credit or other assets by reference to which the interest rate on LIBOR Loans is determined to the extent utilized when determining LIBOR for such Loans) relating to any extensions

of credit or other assets of, or any deposits with or other liabilities of, or other credit extended by, or any other acquisition of funds by such Lender (or its parent corporation), or any commitment of such Lender (including, without limitation, the Commitments of such Lender hereunder); or

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

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

(d) Additional Costs in Respect of Letters of Credit. Without limiting the obligations of the Borrower under the preceding subsections of this Section (but without duplication), if as a result of any Regulatory Change or any risk-based capital guideline or other requirement heretofore or hereafter issued by any Governmental Authority there shall be imposed, modified or deemed applicable any Tax (other than Indemnified Taxes, Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and Connection Income Taxes), reserve, special deposit, capital adequacy or similar requirement against or with respect to or measured by reference to Letters of Credit and the result shall be to increase the cost to an Issuing Bank of issuing (or any Revolving Lender of purchasing participations in) or maintaining its obligation hereunder to issue (or purchase participations in) any Letter of Credit or reduce any amount receivable by such Issuing Bank or any Revolving Lender hereunder in respect of any Letter of Credit, then, upon demand by such Issuing Bank or such Lender, the Borrower shall pay immediately to such Issuing Bank or, in the case of such Lender, to the Administrative Agent for the account of such Lender, from time to time as specified by such Issuing Bank or such Lender, such additional amounts as shall be sufficient to compensate such Issuing Bank or such Lender for such increased costs or reductions in amount.

(e) Notification and Determination of Additional Costs. Each of the Administrative Agent, each Issuing Bank and each Lender, as the case may be, agrees to notify the Borrower (and in the case of an Issuing Bank and or a Lender, to notify the Administrative Agent) of any event occurring after the Agreement Date entitling the Administrative Agent, such Issuing Bank or such Lender to compensation under any of the preceding subsections of this Section 5.1. as promptly as practicable. The Administrative Agent, each Issuing Bank and each Lender, as the case may be, agrees to furnish to the Borrower (and in the case of an Issuing Bank or a Lender, to the Administrative Agent as well) a certificate setting forth the basis and amount of each request for compensation under this Section 5.1. Determinations by the Administrative Agent, such Issuing Bank or such Lender, as the case may be, of the effect of any Regulatory Change shall be conclusive and binding for all purposes, absent manifest error. The Borrower shall pay the Administrative Agent, such Issuing Bank and or any such Lender, as the case may be, the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

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

## **Section 5.2. Changed Circumstances.**

(a) Anything herein to the contrary notwithstanding and unless and until a Replacement Rate is implemented in accordance with Section 5.2.(b) below, if, on or prior to the determination of LIBOR for any Interest Period:

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

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(ii) the Administrative Agent reasonably determines (which determination shall be conclusive) that quotations of interest rates for the relevant Dollar deposits referred to in the definition of LIBOR are not being offered to banks in the London interbank Eurodollar market in the relevant amounts or for the relevant Interest Period for LIBOR Loans as provided herein; or

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

then the Administrative Agent shall give the Borrower and each Lender prompt notice thereof and, so long as such condition remains in effect, the Lenders shall be under no obligation to, and shall not, make additional LIBOR Loans, Continue LIBOR Loans or Convert Loans into LIBOR Loans and the Borrower shall, on the last day of each current Interest Period for each outstanding LIBOR Loan, either prepay such Loan or Convert such Loan into a Base Rate Loan.

(b) Alternative Rate of Interest. Notwithstanding anything to the contrary in Section 5.2.(a) above, if the Administrative Agent has made the determination (such determination to be conclusive absent manifest error) that (i) the circumstances described in Section 5.2.(a)(i) or (a)(ii) have arisen and that such circumstances are unlikely to be temporary, (ii) any applicable interest rate specified herein is no longer a widely recognized benchmark rate for newly originated loans in the United States syndicated loan market in the applicable currency or (iii) the applicable supervisor or administrator (if any) of any applicable interest rate specified herein or any Governmental Authority having, or purporting to have, jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which any applicable interest rate specified herein shall no longer be used for determining interest rates for loans in the United States syndicated loan market in the applicable currency, then the Administrative Agent and the Borrower shall negotiate in good faith and endeavor to establish a replacement rate of interest (the "Replacement Rate") (which replacement rate of interest shall, as reasonably determined by the Administrative Agent, be generally in accordance with similar situations in other transactions in which it is serving as administrative agent or otherwise consistent with market practice generally), in which case, the Replacement Rate shall, subject to the next two sentences, replace such applicable interest rate for all purposes under the Loan Documents unless and until an event described in Section 5.2.(a)(i), (a)(ii), (b)(i), (b)(ii) or (b)(iii) occurs with respect to the Replacement Rate. In connection with the establishment and application of the Replacement Rate, this Agreement and the other Loan Documents shall be amended solely with the consent of the Administrative Agent and the Borrower, as may be necessary or appropriate, in the opinion of the Administrative Agent and Borrower, to effect the provisions of this Section 5.2.(b). Notwithstanding anything to the contrary in this Agreement or the other Loan Documents (including, without limitation, Section 13.6.), such amendment shall become effective without any further action or consent of any party other than the Administrative Agent and the Borrower so long as the Administrative Agent shall not have received, within five (5) Business Days of the delivery of such amendment to the Lenders, written notices from such Lenders that in the aggregate constitute Requisite Lenders, with each such notice stating that such Lender objects to such amendment (which such notice shall note with specificity the particular provisions of the amendment to which such Lender objects). To the extent the Replacement Rate is approved by the Administrative Agent in connection with this clause (b), the Replacement Rate shall be applied in a manner consistent with market practice; provided that, in each case, to the extent such market practice is not administratively feasible for the Administrative Agent, such Replacement Rate shall be applied as otherwise reasonably determined by the Administrative Agent (it being understood that any such modification by the Administrative Agent shall not require the consent of, or consultation with, any of the Lenders).

### **Section 5.3. Illegality.**

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

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## **Section 5.4. Compensation.**

The Borrower shall pay to the Administrative Agent for the account of each Lender, upon the request of the Administrative Agent, such amount or amounts as the Administrative Agent shall determine in its sole discretion shall be sufficient to compensate such Lender for any loss, cost or expense attributable to:

- (a) any payment or prepayment (whether mandatory or optional) of a LIBOR Loan, or Conversion of a LIBOR Loan, made by such Lender for any reason (including, without limitation, acceleration) on a date other than the last day of the Interest Period for such Loan; or
- (b) any failure by the Borrower for any reason (including, without limitation, the failure of any of the applicable conditions precedent specified in Section 6.2. to be satisfied but excluding any failure as a result of a notice under Section 5.2.) to borrow a LIBOR Loan from such Lender on the date for such borrowing, or to Convert a Base Rate Loan into a LIBOR Loan or Continue a LIBOR Loan on the requested date of such Conversion or Continuation.

Not in limitation of the foregoing, such compensation shall include, without limitation, in the case of a LIBOR Loan, an amount equal to the then present value of (i) the amount of interest that would have accrued on such LIBOR Loan for the remainder of the Interest Period at the rate applicable to such LIBOR Loan, less (ii) the amount of interest that would accrue on the same LIBOR Loan for the same period if LIBOR were set on the date on which such LIBOR Loan was repaid, prepaid or Converted or the date on which the Borrower failed to borrow, Convert or Continue such LIBOR Loan, as applicable, calculating present value by using as a discount rate LIBOR quoted on such date. Upon the Borrower's request, the Administrative Agent shall provide the Borrower with a statement setting forth the basis for requesting such compensation and the method for determining the amount thereof. Any such statement shall be conclusive absent manifest error.

## **Section 5.5. Treatment of Affected Loans.**

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

- (a) to the extent that such Lender's LIBOR Loans have been so Converted, all payments and prepayments of principal that would otherwise be applied to such Lender's LIBOR Loans shall be applied instead to its Base Rate Loans; and
- (b) all Loans that would otherwise be made or Continued by such Lender as LIBOR Loans shall be made or Continued instead as Base Rate Loans, and all Base Rate Loans of such Lender that would otherwise be Converted into LIBOR Loans shall remain as Base Rate Loans.

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

Lenders holding LIBOR Loans and by such Lender are held pro rata (as to principal amounts, Types and Interest Periods) in accordance with their respective Commitments.

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## **Section 5.6. Affected Lenders.**

If (a) a Lender requests compensation pursuant to Section 3.10. or 5.1., and the Requisite Lenders are not also doing the same, (b) the obligation of any Lender to make LIBOR Loans or to Continue, or to Convert Base Rate Loans into, LIBOR Loans shall be suspended pursuant to Section 5.1.(c) or 5.3. but the obligation of the Requisite Lenders shall not have been suspended under such Sections or (c) a Lender becomes a Non-Consenting Lender or a Defaulting Lender, then, so long as there does not then exist any Default or Event of Default, the Borrower may demand that such Lender (the “Affected Lender”), and upon such demand the Affected Lender shall promptly, assign its Commitment to an Eligible Assignee subject to and in accordance with the provisions of Section 13.5.(b) for a purchase price equal to (x) the aggregate principal balance of all Loans then owing to the Affected Lender, plus (y) the aggregate amount of payments previously made by the Affected Lender under Section 2.3.(j) that have not been repaid, plus (z) any accrued but unpaid interest thereon and accrued but unpaid fees owing to the Affected Lender, or any other amount as may be mutually agreed upon by such Affected Lender and Eligible Assignee. Each of the Administrative Agent and the Affected Lender shall reasonably cooperate in effectuating the replacement of such Affected Lender under this Section, but at no time shall the Administrative Agent, such Affected Lender, any other Lender or any Titled Agent be obligated in any way whatsoever to initiate any such replacement or to assist in finding an Eligible Assignee. The exercise by the Borrower of its rights under this Section shall be at the Borrower’s sole cost and expense and at no cost or expense to the Administrative Agent, the Affected Lender or any of the other Lenders. The terms of this Section shall not in any way limit the Borrower’s obligation to pay to any Affected Lender compensation owing to such Affected Lender pursuant to this Agreement (including, without limitation, pursuant to Sections 3.10., 5.1. or 5.4.) with respect to any period up to the date of replacement.

## **Section 5.7. Change of Lending Office.**

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

## **Section 5.8. Assumptions Concerning Funding of LIBOR Loans.**

Calculation of all amounts payable to a Lender under this Article shall be made as though such Lender had actually funded LIBOR Loans through the purchase of deposits in the relevant market bearing interest at the rate applicable to such LIBOR Loans in an amount equal to the amount of the LIBOR Loans and having a maturity comparable to the relevant Interest Period; provided, however, that each Lender may fund each of its LIBOR Loans in any manner it sees fit and the foregoing assumption shall be used only for calculation of amounts payable under this Article.

# **ARTICLE VI. CONDITIONS PRECEDENT**

## **Section 6.1. Initial Conditions Precedent.**

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

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

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

(ii) Notes (or replacement Notes, as the case may be) of each Class executed by the Borrower, payable to each Lender of such Class that has requested that it receive a Note of such Class, and complying with the terms of Section 2.11.(a) and a replacement Swingline Note executed by the Borrower;

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- (iii) the Guaranty executed by the Parent and each of the other Guarantors initially to be a party thereto;
- (iv) an opinion of Latham & Watkins LLP, counsel to the Borrower and the other Loan Parties, addressed to the Administrative Agent and the Lenders and covering such matters as the Administrative Agent may reasonably request;
- (v) the certificate or articles of incorporation or formation, articles of organization, certificate of limited partnership, declaration of trust or other comparable organizational instrument (if any) of each Loan Party certified as of a recent date by the Secretary of State of the state of formation of such Loan Party;
- (vi) a certificate of good standing (or certificate of similar meaning) with respect to each Loan Party issued as of a recent date by the Secretary of State of the state of formation of each such Loan Party and certificates of qualification to transact business or other comparable certificates issued as of a recent date by each Secretary of State (and any state department of taxation, as applicable) of each state in which such Loan Party is required to be so qualified and where failure to be so qualified could reasonably be expected to have a Material Adverse Effect;
- (vii) a certificate of incumbency signed by the Secretary or Assistant Secretary (or other individual performing similar functions) of each Loan Party with respect to each of the officers of such Loan Party authorized to execute and deliver the Loan Documents to which such Loan Party is a party, and in the case of the Borrower, authorized to execute and deliver on behalf of the Borrower Notices of Borrowing, Notices of Swingline Borrowing, requests for Letters of Credit, Notices of Conversion and Notices of Continuation;
- (viii) copies certified by the Secretary or Assistant Secretary (or other individual performing similar functions) of each Loan Party of (A) the by-laws of such Loan Party, if a corporation, the operating agreement, if a limited liability company, the partnership agreement, if a limited or general partnership, or other comparable document in the case of any other form of legal entity and (B) all corporate, partnership, member or other necessary action taken by such Loan Party to authorize the execution, delivery and performance of the Loan Documents to which it is a party;
- (ix) a Compliance Certificate calculated on a pro forma basis for the previous four calendar quarters ending on June 30, 2018;
- (x) a Disbursement Instruction Agreement effective as of the Agreement Date;
- (xi) [Reserved];
- (xii) copies of all Material Contracts in existence on the Agreement Date and either entered into or amended in any material respect after April 2, 2015;
- (xiii) evidence that the Fees, if any, then due and payable under Section 3.5., together with all other fees, expenses and reimbursement amounts due and payable to the Administrative Agent, the Lead Arrangers and any of the Lenders, including without limitation, the fees and expenses of counsel to the Administrative Agent, have been paid;
- (xiv) certificates of insurance evidencing the insurance then in effect with respect to the Properties and otherwise in compliance with Section 8.5.;
- (xv) such other documents, agreements and instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably request;

(b) there shall not have occurred or become known to the Administrative Agent or any of the Lenders any event, condition, situation or status since the date of the information contained in the financial and business projections, budgets, pro forma data and forecasts concerning the Parent, the Borrower and their respective Subsidiaries delivered to the Administrative Agent and the Lenders prior to the Agreement Date that has had or could reasonably be expected to result

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in a materially adverse effect on the business, assets, liabilities, condition (financial or otherwise), results of operations or business prospects of the Parent, the Borrower and the Subsidiaries taken as a whole;

(c) no litigation, action, suit, investigation or other arbitral, administrative or judicial proceeding shall be pending or threatened which could reasonably be expected to (i) result in a Material Adverse Effect or (ii) restrain or enjoin, impose materially burdensome conditions on, or otherwise materially and adversely affect, the ability of the Parent, the Borrower or any other Loan Party to fulfill its obligations under the Loan Documents to which it is a party;

(d) the Parent, the Borrower, the other Loan Parties and the other Subsidiaries shall have received all approvals, consents and waivers, and shall have made or given all necessary filings and notices as shall be required to consummate the transactions contemplated hereby without the occurrence of any default under, conflict with or violation of (i) any Applicable Law or (ii) any agreement, document or instrument to which any Loan Party is a party or by which any of them or their respective properties is bound;

(e) there shall not have occurred or exist any other material disruption of financial or capital markets that could reasonably be expected to materially and adversely affect the transactions contemplated by the Loan Documents;

(f) the Borrower and each other Loan Party shall have provided all information reasonably requested by the Administrative Agent and each Lender in order to comply with applicable “know your customer” and Anti-Money Laundering Laws, including without limitation, the Patriot Act; and

(g) each Loan Party or Subsidiary thereof that qualifies as a “legal entity customer” under the Beneficial Ownership Regulation shall, collectively, have delivered to the Administrative Agent, and any Lender requesting the same, one Beneficial Ownership Certification in relation to each such Loan Party or such Subsidiary, in each case, at least five (5) Business Days prior to the Effective Date.

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

In addition to satisfaction or waiver of the conditions precedent contained in Section 6.1., the obligations of (i) Lenders to make any Loans and (ii) the Issuing Banks to issue Letters of Credit are each subject to the further conditions precedent that: (a) no Default or Event of Default shall exist as of the date of the making of such Loan or date of issuance of such Letter of Credit or would exist immediately after giving effect thereto, and no violation of the limits described in Section 2.15. would occur after giving effect thereto; (b) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party, shall be true and correct in all material respects (except (i) in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects and (ii) during the Covenant Relief Period, the representation set forth in the first sentence of Section 7.1(l) shall exclude any event or circumstance resulting from the COVID-19 pandemic as described in the 10-Q publicly filed by the Parent on May 11, 2020 and in subsequent public disclosures of the Parent in accordance with applicable securities laws) on and as of the date of the making of such Loan or date of issuance of such Letter of Credit with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted hereunder; (c) in the case of the borrowing of Term 2 Loans on the Effective Date and Revolving Loans, the Administrative Agent shall have received a timely Notice of Borrowing, in the case of a Swingline Loan, the Swingline Lender shall have received a timely Notice of Swingline Borrowing, and in the case of the issuance of a Letter of Credit, the Issuing Banks and the Administrative Agent shall have received a timely request for the issuance of such Letter of Credit and (d) for any request for Loans or Letters of Credit prior to the Security Release Date, receipt by the Administrative

Agent of either (i) if the Security Trigger Date has not occurred and will not occur after giving effect to such Loans or Letters of Credit, a notice from a Responsible Officer of the Borrower (which may be included in the Notice of Borrowing or Notice of Swingline Borrowing) certifying that the Security Trigger Date has not occurred and will not occur after giving effect to such Loan or Letter of Credit or (ii) if the Security Trigger Date has occurred (or will occur after giving effect to such Loans or Letters of Credit), all items that are required to be delivered pursuant to Section 8.14. or certification by a Responsible Officer that

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all such items have been previously delivered to the Administrative Agent. Each Credit Event shall constitute a certification by the Borrower to the effect set forth in the preceding sentence (both as of the date of the giving of notice relating to such Credit Event and, unless the Borrower otherwise notifies the Administrative Agent prior to the date of such Credit Event, as of the date of the occurrence of such Credit Event). In addition, the Borrower shall be deemed to have represented to the Administrative Agent and the Lenders at the time any Loan is made or any Letter of Credit is issued that all conditions to the making of such Loan or issuing of such Letter of Credit contained in this Article VI. have been satisfied. Unless set forth in writing to the contrary, the Continuation of its Loans or the making of its initial Loan by a Lender shall constitute a certification by such Lender to the Administrative Agent for the benefit of the Administrative Agent and the Lenders that the conditions precedent for initial Loans set forth in Sections 6.1. and 6.2. that have not previously been waived by the Lenders in accordance with the terms of this Agreement have been satisfied.

## **ARTICLE VII. REPRESENTATIONS AND WARRANTIES**

### **Section 7.1. Representations and Warranties.**

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

(a) Organization; Power; Qualification. Each of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries is a corporation, partnership or other legal entity, duly organized or formed, validly existing and in good standing under the jurisdiction of its incorporation or formation, has the power and authority to own or lease its respective properties and to carry on its respective business as now being and hereafter proposed to be conducted and is duly qualified and is in good standing as a foreign corporation, partnership or other legal entity, and authorized to do business, in each jurisdiction in which the character of its properties or the nature of its business requires such qualification or authorization and where the failure to be so qualified or authorized could reasonably be expected to have, in each instance, a Material Adverse Effect.

(b) Ownership Structure. Part I of Schedule 7.1.(b) is, as of the First Amendment Date, a complete and correct list of all Subsidiaries of the Parent setting forth for each such Subsidiary, (i) the jurisdiction of organization of such Subsidiary, (ii) each Person holding any Equity Interest in such Subsidiary, (iii) the percentage of ownership of such Subsidiary represented by such Equity Interests and (iv) whether such Subsidiary is a Material Subsidiary, a Significant Subsidiary, an Excluded Subsidiary, a Foreign Subsidiary or would be an Issuer upon the occurrence of the Security Trigger Date (as if such date occurred on the First Amendment Date), as applicable. As of the First Amendment Date, except as disclosed in such Schedule, (A) each of the Parent and its Subsidiaries owns, free and clear of all Liens (other than Permitted Liens of the types described in clause (a) of the definition of the term "Permitted Liens" and in the case of an Excluded Subsidiary, customary Liens on Equity Interests of such Excluded Subsidiary securing Nonrecourse Indebtedness), and has the unencumbered right to vote, all outstanding Equity Interests in each Person shown to be held by it on such Schedule (other than in the case of an Excluded Subsidiary, customary restrictions on the right to vote the Equity Interests of such Excluded Subsidiary relating to Nonrecourse Indebtedness), (B) all of the issued and outstanding capital stock of each such Person organized as a corporation is validly issued, fully paid and nonassessable and (C) there are no outstanding subscriptions, options, warrants, commitments, preemptive rights or agreements of any kind (including, without limitation, any stockholders' or voting trust agreements) for the issuance, sale, registration or voting of, or outstanding securities convertible into, any additional shares of capital stock of any class, or partnership or other ownership interests of any type in, any such Person. As of the First Amendment Date, Part II of Schedule 7.1.(b) correctly sets forth all Unconsolidated Affiliates of the Parent, including the correct legal name of such Person, the type of legal entity which each such Person is, and all Equity Interests in such Person held directly or indirectly by the Parent.

(c) Authorization of Loan Documents and Borrowings. The Borrower has the right and power, and has taken all necessary action to authorize it, to borrow and obtain other extensions of credit hereunder. The Parent, the Borrower and each other Loan Party has the right and power, and has taken all necessary action to authorize it, to execute, deliver and perform each of the Loan Documents to which it is a party in accordance with their respective terms and to consummate the transactions contemplated hereby and thereby and to grant Liens in the Collateral to the Collateral Agent for the benefit of the Lender Parties pursuant to the Pledge Agreement upon the occurrence of the Security Trigger Date. The Loan Documents to which the Parent, the Borrower or any other Loan Party is a party have been duly executed and delivered by

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the duly authorized officers of such Person and each is a legal, valid and binding obligation of such Person enforceable against such Person in accordance with its respective terms, except as the same may be limited by bankruptcy, insolvency, and other similar laws affecting the rights of creditors generally and the availability of equitable remedies for the enforcement of certain obligations (other than the payment of principal) contained herein or therein and as may be limited by equitable principles generally.

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

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

(f) Title to Properties; Liens. Schedule 7.1.(f) is, as of the First Amendment Date, a complete and correct listing of all real estate assets of the Borrower, each other Loan Party and each other Subsidiary, setting forth, for each such Property, the current occupancy status of such Property and whether such Property is a Development Property and, if such Property is a Development Property, the status of completion of such Property. Schedule 4.1. is, as of the First Amendment Date, a complete and correct listing of all Unencumbered Properties. Each of the Parent, the Borrower, each other Loan Party and each other Subsidiary has good, marketable and legal title to, or a valid leasehold interest in, its respective assets.

(g) Existing Indebtedness. Schedule 7.1.(g) is, as of the First Amendment Date, a complete and correct listing of all Indebtedness (including all Guarantees) of each of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries having, in each case, an outstanding principal balance of \$10,000,000 or more, and if such Indebtedness is secured by any Lien, a description of all of the property subject to such Lien. As of the First Amendment Date, the outstanding principal amount of Indebtedness of each of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries not set forth on such Schedule does not exceed \$25,000,000 in the aggregate.

(h) Material Contracts. Schedule 7.1.(h) is, as of the First Amendment Date, a true, correct and complete listing of all Material Contracts. No event or condition exists which would reasonably be expected to result in any party to a Material Contract taking action to terminate such Material Contract.

(i) Litigation. Except as set forth on Schedule 7.1.(i), there are no actions, suits or proceedings pending (or, to the knowledge of any Loan Party, are there any actions, suits or proceedings threatened) against or in any other way relating adversely to or affecting the Parent, the Borrower, any other Loan Party, any other Subsidiary or any of their respective property in any court or before any arbitrator of any kind or before or by any other Governmental Authority which could reasonably be expected to have a Material Adverse Effect. There are no known strikes, slow downs, work stoppages or walkouts or other labor disputes in progress or threatened relating to, the Parent, the Borrower, any other Loan Party or any other Subsidiary which could reasonably be expected to have a Material Adverse Effect.

(j) Taxes. All federal, state and other material tax returns of the Parent, the Borrower, each other Loan Party and each other Subsidiary required by Applicable Law to be filed have been duly filed, and all federal, material state and other material taxes, assessments and other governmental charges or levies upon, the Parent, the Borrower, each other Loan Party, each other Subsidiary and their respective properties, income, profits and assets which are due and payable have been paid, except any such nonpayment or non-filing which is at the time permitted under Section 8.6. As of the Agreement

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Date, none of the United States federal income tax returns of the Parent, the Borrower, any other Loan Party or any other Subsidiary is under audit. All charges, accruals and reserves on the books of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries in respect of any taxes or other governmental charges are in accordance with GAAP.

(k) Financial Statements. The Borrower has furnished to each Lender copies of the audited consolidated balance sheet of the Parent and its consolidated Subsidiaries for the fiscal years ended December 31, 2016 and December 31, 2017, and the related audited consolidated statements of operations, shareholders' equity and cash flow for the fiscal years ended on such dates, with the opinion thereon of Ernst & Young LLP. Such financial statements (including in each case related schedules and notes) are complete and correct in all material respects and present fairly, in accordance with GAAP consistently applied throughout the periods involved, the consolidated financial position of the Parent and its consolidated Subsidiaries as at their respective dates and the results of operations and the cash flow for such periods. Neither the Parent nor any of its Subsidiaries has on the Agreement Date any material contingent liabilities, liabilities, liabilities for taxes, unusual or long-term commitments or unrealized or forward anticipated losses from any unfavorable commitments that would be required to be set forth in its financial statements or notes thereto, except as referred to or reflected or provided for in said financial statements.

(l) No Material Adverse Change. Since the date of the most recently audited consolidated financial statements of the Parent and its consolidated Subsidiaries filed with the SEC, there has been no event, change, circumstance or occurrence that could reasonably be expected to have a Material Adverse Effect. Each of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries is Solvent.

(m) ERISA.

(i) Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Benefit Arrangement is in compliance with the applicable provisions of ERISA, the Internal Revenue Code and other Applicable Laws. Except with respect to Multiemployer Plans, each Qualified Plan has received a favorable determination from the Internal Revenue Service or may rely upon a favorable opinion letter issued by the Internal Revenue Service with respect to a prototype plan, or a timely application for such a letter is currently being processed by the Internal Revenue Service with respect thereto. To the knowledge of the Borrower, nothing has occurred which would cause the loss of its reliance on each Qualified Plan's favorable determination letter or opinion letter.

(ii) With respect to any Benefit Arrangement that is a retiree welfare benefit arrangement, all amounts have been accrued on the applicable ERISA Group's financial statements in accordance with FASB ASC 715. The aggregate funding contributions payable by the Borrower, the other Loan Parties and the other Subsidiaries as a result of the "benefit obligation" of all Plans exceeding the "fair market value of plan assets" for all Plans which are, or are reasonably expected to be, in "at risk" status (within the meaning of Section 430 of the Internal Revenue Code or Section 303 of ERISA), all as determined, and with such terms defined, in accordance with FASB ASC 715, could not reasonably be expected to exceed \$10,000,000 in the aggregate during any fiscal year of the Borrower.

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

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

(n) Absence of Default. None of the Parent, the Borrower, any of the other Loan Parties or any of the other Subsidiaries is in default under its certificate or articles of incorporation or formation, bylaws, partnership agreement or other similar organizational documents, and no event has occurred, which has not been remedied, cured or waived: (i) which

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constitutes a Default or an Event of Default; or (ii) which constitutes, or which with the passage of time, the giving of notice, or both, would constitute, a default or event of default by, the Parent, the Borrower, any other Loan Party or any other Subsidiary under any agreement (other than this Agreement) or judgment, decree or order to which any such Person is a party or by which any such Person or any of its respective properties may be bound where such default or event of default could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(o) Environmental Laws. In the ordinary course of business and from time to time each of the Parent, the Borrower, each other Loan Party and each other Subsidiary conducts reviews of the effect of Environmental Laws on its respective business, operations and properties, including without limitation, its respective Properties, in the course of which the Parent, the Borrower, such other Loan Party or such other Subsidiary identifies and evaluates associated actual and potential liabilities and costs (including, without limitation, determining whether any capital or operating expenditures are required for clean-up or closure of properties presently or previously owned, determining whether any capital or operating expenditures are required to achieve or maintain compliance in all material respects with Environmental Laws or required as a condition of any Governmental Approval, any contract, or any related constraints on operating activities, determining whether any costs or liabilities exist in connection with on-site or off-site treatment, storage, handling and disposal of wastes or Hazardous Materials, and determining whether any actual or potential liabilities to third parties, including employees, and any related costs and expenses exist). Each of the Parent, the Borrower, each other Loan Party and each other Subsidiary: (i) is in compliance with all Environmental Laws applicable to its business, operations and the Properties, (ii) has obtained all Governmental Approvals which are required under Environmental Laws, and each such Governmental Approval is in full force and effect, and (iii) is in compliance with all terms and conditions of such Governmental Approvals, where with respect to each of the immediately preceding clauses (i) through (iii) the failure to obtain or to comply with could reasonably be expected to have a Material Adverse Effect. Except for any of the following matters that could not reasonably be expected to have a Material Adverse Effect, no Loan Party has any knowledge of, or has received notice of, any past, present, or pending releases, events, conditions, circumstances, activities, practices, incidents, facts, occurrences, actions, or plans that, with respect to any Loan Party or any other Subsidiary, their respective businesses, operations or with respect to the Properties, may: (x) cause or contribute to an actual or alleged violation of or noncompliance with Environmental Laws, (y) cause or contribute to any other potential common-law or legal claim or other liability, or (z) cause any of the Properties to become subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law or require the filing or recording of any notice, approval or disclosure document under any Environmental Law and, with respect to the immediately preceding clauses (x) through (z) is based on or related to the on-site or off-site manufacture, generation, processing, distribution, use, treatment, storage, disposal, transport, removal, clean up or handling, or the emission, discharge, release or threatened release of any wastes or Hazardous Material, or any other requirement under Environmental Law. There is no civil, criminal, or administrative action, suit, demand, claim, hearing, notice, or demand letter, mandate, order, lien, request, investigation, or proceeding pending or, to the Parent's knowledge after due inquiry, threatened, against the Parent, the Borrower, any other Loan Party or any other Subsidiary relating in any way to Environmental Laws which, reasonably could be expected to have a Material Adverse Effect. None of the Properties is listed on or proposed for listing on the National Priority List promulgated pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and its implementing regulations, or any state or local priority list promulgated pursuant to any analogous state or local law. To the Parent's knowledge, no Hazardous Materials generated at or transported from the Properties are or have been transported to, or disposed of at, any location that is listed or proposed for listing on the National Priority List or any analogous state or local priority list, or any other location that is or has been the subject of a clean-up, removal or remedial action pursuant to any Environmental Law, except to the extent that such transportation or disposal could not reasonably be expected to result in a Material Adverse Effect.

(p) Investment Company. None of the Parent, the Borrower, any other Loan Party or any other Subsidiary is (i) an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940, as amended, or (ii) subject to any other Applicable Law

which purports to regulate or restrict its ability to borrow money or obtain other extensions of credit or to consummate the transactions contemplated by this Agreement or to perform its obligations under any Loan Document to which it is a party.

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

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(r) Affiliate Transactions. Except as permitted by Section 10.9. or as otherwise set forth on Schedule 7.1.(r), none of the Parent, the Borrower, any other Loan Party or any other Subsidiary is a party to or bound by any agreement or arrangement (whether oral or written) with any Affiliate.

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

(t) Business. As of the Agreement Date, the Parent, the Borrower, the other Loan Parties and the other Subsidiaries are engaged in the business of development, construction, acquisition, ownership and operation of hotel properties, together with other business activities incidental thereto.

(u) Broker’s Fees. No broker’s or finder’s fee, commission or similar compensation will be payable with respect to the transactions contemplated hereby. No other similar fees or commissions will be payable by any Loan Party for any other services rendered to the Parent, the Borrower, any other Loan Party or any other Subsidiary ancillary to the transactions contemplated hereby.

(v) Accuracy and Completeness of Information. All written information, reports and other papers and data (other than financial projections and other forward looking statements) furnished to the Administrative Agent or any Lender by, on behalf of, or at the direction of, the Parent, the Borrower, any other Loan Party or any other Subsidiary were, at the time the same were so furnished and under the circumstances so furnished, complete and correct in all material respects, to the extent necessary to give the recipient a true and accurate knowledge of the subject matter, or, in the case of financial statements, present fairly, in accordance with GAAP consistently applied throughout the periods involved, the financial position of the Persons involved as at the date thereof and the results of operations for such periods (subject, as to interim statements, to changes resulting from normal year end audit adjustments and absence of full footnote disclosure). All financial projections and other forward looking statements prepared by or on behalf of the Parent, the Borrower, any other Loan Party or any other Subsidiary that have been or may hereafter be made available to the Administrative Agent or any Lender were or will be prepared in good faith based on reasonable assumptions. As of the Agreement Date, no fact is known to any Loan Party which has had, or may in the future have (so far as any Loan Party can reasonably foresee), a Material Adverse Effect which has not been set forth in the financial statements referred to in Section 7.1.(k) or in such information, reports or other papers or data or otherwise disclosed in writing to the Administrative Agent and the Lenders. No document furnished or written statement made to the Administrative Agent or any Lender in connection with the negotiation, preparation or execution of, or pursuant to, this Agreement or any of the other Loan Documents contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary in order to make the statements contained therein not misleading.

(w) Not Plan Assets; No Prohibited Transactions. None of the assets of the Parent, the Borrower, any other Loan Party or any other Subsidiary constitutes “plan assets” within the meaning of ERISA, the

Internal Revenue Code and the respective regulations promulgated thereunder. Assuming that no Lender funds any amount payable by it hereunder with “plan assets,” as that term is defined in 29 C.F.R. 2510.3-101, the execution, delivery and performance of this Agreement and the other Loan Documents, and the extensions of credit and repayment of amounts hereunder, do not and will not constitute “prohibited transactions” under ERISA or the Internal Revenue Code.

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(x) Anti-Corruption Laws; Anti-Money Laundering Laws and Sanctions.

(i) None of (1) the Parent, Borrower, any other Loan Party or any other Subsidiary, any of their respective directors, officers, or, to the knowledge of the Parent, Borrower, such other Loan Party or such other Subsidiary, any of their respective employees or Affiliates, or (2) to the knowledge of the Parent or Borrower, any agent or representative of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the Credit Facility, (A) is a Sanctioned Person or currently the subject or target of any Sanctions, (B) is acting on behalf of a Sanctioned Person, (C) has its assets located in a Sanctioned Country, or (D) is under administrative, civil or criminal investigation for an alleged violation of, or received notice from any governmental entity regarding a possible violation of, Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions by a governmental authority that enforces Sanctions or any Anti-Corruption Laws or Anti-Money Laundering Laws.

(ii) Each of the Parent, the Borrower and their respective Subsidiaries has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by the Borrower and its Subsidiaries and their respective directors, officers, employees, and agents with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions.

(iii) Each of the Parent, the Borrower and their respective Subsidiaries, each director, officer, and to the knowledge of Parent or Borrower, employee, agent and Affiliate of the Parent or Borrower and each such Subsidiary, is in compliance with all Anti-Corruption Laws, Anti-Money Laundering Laws in all material respects and applicable Sanctions.

(iv) No proceeds of any Loans or other extensions of credit hereunder have been used, directly or indirectly, by the Parent, Borrower, any of their respective Subsidiaries or any of its or their respective directors, officers, employees and agents in violation of Section 9.8. or Section 10.4.

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

(z) Unencumbered Properties. Except for any Property that has been approved as an Unencumbered Property pursuant to Section 4.1.(c) or otherwise approved by the Requisite Lenders in writing, each Property included in calculations of the Unencumbered Asset Value satisfies all of the requirements contained in the definition of “Unencumbered Property”.

(aa) EEA Financial Institution. None of the Parent, Borrower or any of their respective Subsidiaries is an EEA Financial Institution.

(bb) Security Interest.

On and after the Security Trigger Date and prior to the Security Release Date, the Pledge Agreement creates, as security for the Obligations, a valid and enforceable Lien on all of the Collateral in favor of the Collateral Agent for its benefit and the benefit of the Lender Parties, superior to and prior to the rights of all third parties (subject to the terms of the Intercreditor Agreement) and subject to no other Liens (except for Permitted Liens of the types described in clauses (a), (f) and (i) of the definition of such term).

## **Section 7.2. Survival of Representations and Warranties, Etc.**

All statements contained in any certificate, financial statement or other instrument delivered by or on behalf of the Parent, the Borrower, any other Loan Party or any other Subsidiary to the Administrative Agent or any Lender pursuant to or in connection with this Agreement or any of the other Loan Documents

(including, but not limited to, any such statement made in or in connection with any amendment thereto or any statement contained in any certificate, financial statement or other instrument delivered by or on behalf of any Loan Party prior to the Agreement Date and delivered to the Administrative Agent or any Lender in connection with the underwriting or closing the transactions contemplated hereby) shall constitute representations and warranties made by the Parent and the Borrower under this Agreement. All representations and warranties made under this Agreement and the other Loan Documents shall be deemed to be made at and as of the Agreement Date, the Effective Date, the date on which any extension of the Termination Date for a Class of Loans is effectuated

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pursuant to Section 2.13., the date on which any increase of Commitments is effectuated pursuant to Section 2.16. and at and as of the date of the occurrence of each Credit Event, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted hereunder. All such representations and warranties shall survive the effectiveness of this Agreement, the execution and delivery of the Loan Documents and the making of the Loans and the issuance of the Letters of Credit.

## **ARTICLE VIII. AFFIRMATIVE COVENANTS**

For so long as this Agreement is in effect, the Parent and the Borrower shall comply with the following covenants:

### **Section 8.1. Preservation of Existence and Similar Matters.**

Except as otherwise permitted under Section 10.5., the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, (i) preserve and maintain its respective existence in the jurisdiction of its incorporation or formation, (ii) preserve and maintain its respective rights, franchises, licenses and privileges in the jurisdiction of its incorporation or formation, except where the failure to preserve and maintain such rights, franchises, licenses and privileges could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (iii) qualify and remain qualified and authorized to do business in each jurisdiction in which the character of its properties or the nature of its business requires such qualification and authorization, except where the failure to be so authorized and qualified could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

### **Section 8.2. Compliance with Applicable Law.**

The Parent and the Borrower shall comply, and shall cause each other Loan Party and each other Subsidiary to comply, and the Parent and the Borrower shall use, and shall cause each other Loan Party and each other Subsidiary to use, commercially reasonable efforts to cause all other Persons occupying, using or present on the Properties to comply, with all Applicable Law (including without limitation Anti-Corruption Laws and Sanctions), including the obtaining of all Governmental Approvals, the failure with which to comply could reasonably be expected to have a Material Adverse Effect.

### **Section 8.3. Maintenance of Property.**

In addition to the requirements of any of the other Loan Documents, the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, protect and preserve all of its respective material properties, including, but not limited to, all Intellectual Property necessary to the conduct of its respective business, and maintain in good repair, working order and condition all tangible properties, ordinary wear and tear excepted.

### **Section 8.4. Conduct of Business.**

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, carry on its respective businesses as described in Section 7.1.(t).

### **Section 8.5. Insurance.**

In addition to the requirements of any of the other Loan Documents, the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, maintain insurance (on a replacement

cost basis) with financially sound and reputable insurance companies against such risks (including without limitation, terrorism as applicable) and in such amounts as is customarily maintained by Persons engaged in similar businesses or as may be required by Applicable Law. The Borrower shall from time to time deliver to the Administrative Agent upon request a detailed list, together with copies of certificates of insurance evidencing the insurance then in effect, stating the names of the insurance companies, the amounts and rates of the insurance, the dates of the expiration thereof and the properties and risks covered thereby. Such

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insurance shall, in any event, include terrorism coverage to the extent prudent owners of properties similar in nature and location generally maintain such insurance.

#### **Section 8.6. Payment of Taxes and Claims.**

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, pay and discharge when due (a) all taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits or upon any properties belonging to it, and (b) all lawful claims of materialmen, mechanics, carriers, warehousemen and landlords for labor, materials, supplies and rentals which, if unpaid, might become a Lien on any properties of such Person; provided, however, that this Section shall not require the payment or discharge of (i) any such tax, assessment, charge, levy or claim which is being contested in good faith by appropriate proceedings which operate to suspend the collection thereof and for which adequate reserves have been established on the books of such Person in accordance with GAAP, or (ii) any immaterial tax or claim so long as no material Property of the Parent, the Borrower, any other Loan Party or any other Subsidiary is at the immediate risk of being seized, levied or forfeited.

#### **Section 8.7. Books and Records; Inspections.**

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, keep proper books of record and account in entries that are full, true and correct in all material respects shall be made of all dealings and transactions in relation to its business and activities. The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, permit representatives of the Administrative Agent or any Lender to visit and inspect any of their respective properties, to examine and make abstracts from any of their respective books and records and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants (in the presence of an officer of the Parent or the Borrower if an Event of Default does not then exist), all at such reasonable times during business hours and as often as may reasonably be requested and so long as no Event of Default exists, with reasonable prior notice. The Borrower shall be obligated to reimburse the Administrative Agent and the Lenders for their costs and expenses incurred in connection with the exercise of their rights under this Section only if such exercise occurs while a Default or Event of Default exists. Each of the Parent and the Borrower hereby authorizes and instructs its accountants to discuss the financial affairs of the Borrower, any other Loan Party or any other Subsidiary with the Administrative Agent or any Lender.

#### **Section 8.8. Environmental Matters.**

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, comply with all Environmental Laws the failure with which to comply could reasonably be expected to have a Material Adverse Effect. The Parent and the Borrower shall comply, and shall cause each other Loan Party and each other Subsidiary to comply, and the Parent and the Borrower shall use, and shall cause each other Loan Party and each other Subsidiary to use, commercially reasonable efforts to cause all other Persons occupying, using or present on the Properties to comply, with all Environmental Laws in all material respects. The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, promptly take all actions and pay or arrange to pay all costs necessary for it and for the Properties to comply in all material respects with all Environmental Laws and all Governmental Approvals, including, to the extent required to comply in all material respects with all Environmental Laws, actions to remove and dispose of all Hazardous Materials and to clean up the Properties as required under Environmental Laws. The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, promptly take all actions necessary to prevent the imposition of any Liens on any of their respective properties arising out of or related to any Environmental Laws (other than a Lien which consists solely of restrictions on the use of property that do not materially detract from the value of such property or impair the intended use or profitable operation thereof in the business of the Parent, the Borrower and their Subsidiaries). Nothing in this Section shall impose any obligation or liability whatsoever on the Administrative Agent or any Lender.

## **Section 8.9. Further Assurances.**

At the Borrower's cost and expense and upon request of the Administrative Agent, the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, duly execute and deliver or cause to be duly executed and delivered, to the Administrative Agent such further instruments, documents and certificates, and do and cause

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to be done such further acts that may be reasonably necessary or advisable in the reasonable opinion of the Administrative Agent to carry out more effectively the provisions of this Agreement and the other Loan Documents.

#### **Section 8.10. Material Contracts.**

The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon any such Person under any Material Contract which if not performed or complied with would reasonably be expected to result in any party to a Material Contract taking action to terminate such Material Contract.

#### **Section 8.11. REIT Status.**

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

#### **Section 8.12. Exchange Listing.**

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

#### **Section 8.13. Guarantors.**

(a) If, during any fiscal quarter, (i) any Person becomes a Material Subsidiary (other than an Excluded Subsidiary, a Foreign Subsidiary or any Domestic Subsidiary that has no material assets other than stock and securities of one or more Foreign Subsidiary), (ii) any Material Subsidiary ceases to be subject to the restriction which prevented it from becoming a Guarantor on the Effective Date or delivering an Accession Agreement pursuant to this Section or (iii) any Person provides a Guaranty of the Senior Notes, then, not later than the date on which the Compliance Certificate is required to be delivered pursuant to Section 9.3. with respect to such fiscal quarter (or if such fiscal quarter is the fourth fiscal quarter, the fiscal year ending on the date of such fiscal quarter), the Borrower shall cause such Material Subsidiary to deliver to the Administrative Agent each of the following in form and substance reasonably satisfactory to the Administrative Agent: (y) an Accession Agreement executed by such Subsidiary and (z) the items that would have been delivered under subsections (iv) through (viii) and (xv) of Section 6.1.(a) and under Section 6.1.(f) if such Subsidiary had been a Material Subsidiary (other than an Excluded Subsidiary, a Foreign Subsidiary or any Domestic Subsidiary that has no material assets other than stock and securities of one or more Foreign Subsidiary) on the Agreement Date. As provided in Section 4.1.(d), a Property that is to become an Unencumbered Property and that is owned by a Subsidiary that is not a Guarantor shall not be considered to be an Unencumbered Property until such time as the Administrative Agent shall have received the items referred to in Section 4.1.(d).

(b) The Borrower may request in writing that the Administrative Agent release, and upon receipt of such request the Administrative Agent shall release, a Guarantor (other than the Parent) from the Guaranty so long as: (i) such Guarantor owns no Unencumbered Property, nor any direct or indirect equity interest in any Subsidiary that owns an Unencumbered Property; (ii) such Guarantor is not otherwise required to be a party to the Guaranty under the immediately preceding subsection (a); (iii) no Default or Event of Default shall then be in existence or would occur as a result of such release, including without limitation, a Default or Event of Default resulting from a violation of any of the covenants contained in Section 10.1.; (iv) the representations and warranties made or deemed made by the Borrower and each other Loan Party in the Loan Documents to which any of them is a party, shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of the date of such release with the same force and effect as

if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted under the Loan Documents; and (v) the Administrative Agent shall have received such written request at least 10 Business Days (or such shorter period as may be acceptable to the Administrative Agent in its sole discretion) prior to the

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requested date of release. Delivery by the Borrower to the Administrative Agent of any such request shall constitute a representation by the Borrower that the matters set forth in the preceding sentence (both as of the date of the giving of such request and as of the date of the effectiveness of such request) are true and correct with respect to such request.

#### **Section 8.14. Security Trigger Date / Additional Collateral / Release of Collateral.**

(a) On or before the occurrence of the Security Trigger Date, the Parent and the Borrower shall, and shall cause each Subsidiary of the Borrower that owns any interest in any Collateral, to grant a first priority Lien in the Collateral to the Administrative Agent for the benefit of the Lender Parties and shall deliver each of the following to the Administrative Agent in form and substance reasonably satisfactory to the Administrative Agent: (i) the results of a recent UCC, tax, judgment, bankruptcy and lien search in each of the jurisdictions in which UCC financing statements or other filings or recordings should be made to evidence or perfect Liens in the Collateral, (ii) the Pledge Agreement duly executed by each Person that owns Collateral, (iii) each document (including, without limitation, any UCC financing statement and certificates evidencing the Equity Interest of each Issuer, if any, together with stock powers with respect thereto and any promissory notes or other instruments evidencing any Material Debt Receivables together with allonges thereto) and evidence of the taking of all actions required by the Pledge Agreement or under Applicable Law or reasonably deemed necessary or appropriate by the Administrative Agent to be entered into, filed, registered or recorded or taken, in order to create in favor of the Administrative Agent, for the benefit of the Lender Parties, a perfected first-priority Lien in the Collateral, (iv) opinion of counsel to the Parent, the Borrower and their Subsidiaries relating to the creation, attachment and perfection of the Liens granted pursuant to the Pledge Agreement and the authorization, delivery and enforceability of the Pledge Agreement and (v) one or more Intercreditor Agreements duly executed by the Collateral Agent and the holders of the Senior Notes (and, if and to the extent applicable, any other Material Collateral Indebtedness which is secured by a Lien on the Collateral) and acknowledged by the Grantors.

(b) If, after the occurrence of the Security Trigger Date and prior to the Security Release Date, the Parent, the Borrower or any of their Subsidiaries acquires any Collateral, then, within five Business Days following the acquisition thereof, the Borrower or the applicable Subsidiary shall take such actions as shall be reasonably required to grant to the Administrative Agent for the benefit of the Lender Parties a first priority Lien in such Collateral including, (i) if the owner thereof is not a party to the Pledge Agreement and or any existing Intercreditor Agreement, delivering a supplement to the Pledge Agreement and/or the Intercreditor Agreement duly executed by such Person and a UCC financing statement with respect to such Person and (ii) taking such actions as may be required pursuant to the Pledge Agreement including delivery of (x) any certificates evidencing the Equity Interest of any applicable Issuer, if any, together with stock powers with respect thereto, (y) any promissory notes or other instruments evidencing any Material Debt Receivables together with allonges thereto and (z) any UCC financing statement amendment as may be necessary with respect to such additional Collateral. As provided in Section 4.1.(d)., a Property that is to become an Unencumbered Property after the occurrence of the Security Trigger Date and prior to the Security Release Date shall not be considered to be an Unencumbered Property until such time as the Administrative Agent shall have received the items referred to in Section 4.1.(d).

(c) The Borrower may request in writing that the Administrative Agent release, and promptly upon receipt of such request the Administrative Agent shall release, its Lien in the Collateral if (i) the Security Release Date shall have occurred or (ii) any assets secured by Lien are sold (or effective simultaneously with such release, shall be sold) so long as: (A) such sale is permitted by the terms hereof (including Section 4.2.) and, if applicable, the Borrower has complied (or, upon receipt of the proceeds of such sale) will comply with the terms of Section 2.8; (B) such assets are no longer required to be pledged as Collateral under the terms hereof; (C) no Default or Event of Default shall then be in existence or would occur as a result of such release, including without limitation and, to the extent then applicable, a Default or Event of Default resulting from a violation of any of the covenants contained in Section 10.1. after the Covenant Relief Period; and (D) the Administrative Agent shall have received such written request at least 5 Business Days (or such shorter period

as may be acceptable to the Administrative Agent in its sole discretion) prior to the requested date of release. Delivery by the Borrower to the Administrative Agent of any such request shall constitute a representation by the Borrower that the matters set forth in the preceding sentence (both as of the date of the giving of such request and as of the date of the effectiveness of such request) are true and correct with respect to such request.

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### **Section 8.15. Article 8 Securities.**

Notwithstanding any other provision contained in this Agreement or any other Loan Document, the Parent and the Borrower hereby covenant and agree with the Administrative Agent and the Lenders that from and after the date of this Agreement until the earlier of (a) the date this Agreement shall terminate in accordance with Section 13.10. or (b) the Security Release Date: (i) it will take no action (nor permit any Subsidiary to take any action) of any nature whatsoever for any of the Equity Interests in any Issuer to be treated as “securities” within the meaning of, or governed by, Article 8 of the UCC; (ii) it will take no action (nor permit any Subsidiary to take any action) of any nature whatsoever to enter into, acknowledge or agree to a securities control agreement with respect to the Equity Interests of Issuer; and (iii) it will not (nor permit any Subsidiary to) consent to or permit the filing of financing statements with respect to Equity Interests in any Issuer except for financing statements filed pursuant to the Pledge Agreement.

### **Section 8.16. Government Assistance Indebtedness.**

(a) The Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, (1) use all of the proceeds of Government Assistance Indebtedness issued under the CARES Act exclusively for CARES Forgivable Uses, if applicable, in the manner required under the CARES Act to obtain forgiveness of the largest possible amount of such Government Assistance Indebtedness, which as of the First Amendment Date requires that the applicable borrower use not less than 75% of the proceeds of Government Assistance Indebtedness for CARES Payroll Costs and (2) use commercially reasonable efforts to conduct their business in a manner that maximizes the amount of the Government Assistance Indebtedness that is forgiven, if any.

(b) Notwithstanding anything contained in this Agreement, the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, maintain the proceeds of Government Assistance Indebtedness in an account that does not sweep funds and thereafter apply them to any other Indebtedness.

(c) If the Parent, the Borrower or any Subsidiary incurs Government Assistance Indebtedness, the Parent and the Borrower shall, and shall cause each other Loan Party and each other Subsidiary to, (1) maintain all records required to be submitted in connection with the forgiveness of such Government Assistance Indebtedness, (2) apply for forgiveness of such Government Assistance Indebtedness in accordance with regulations implementing Section 1106 of the CARES Act within 30 days after the last day of the eight week period immediately following the date of incurrence of such Government Assistance Indebtedness and (3) provide the Administrative Agent with a copy of its application for forgiveness and all supporting documentation required by the SBA or the lender of such Government Assistance Indebtedness in connection with the forgiveness of such Government Assistance Indebtedness.

## **ARTICLE IX. INFORMATION**

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

### **Section 9.1. Quarterly Financial Statements.**

As soon as available and in any event within 5 days after the same is required to be filed with the SEC (but in no event later than 45 days after the end of each of the first, second and third fiscal quarters of the Parent unless, solely during the Covenant Relief Period, the SEC extends the time for quarterly filing past such date for public companies generally, then the earlier of (i) 5 days after the same is required to be filed with the SEC and (ii) the date which is 75 days after the end of such fiscal quarters of the Parent), the unaudited consolidated balance sheet of the Parent and its Subsidiaries as at the end of such period and the related unaudited consolidated statements of income, equity and cash flows of the Parent and its Subsidiaries for such

period, setting forth in each case in comparative form the figures as of the end of and for the corresponding periods of the previous fiscal year, all of which shall be certified by the chief financial officer of the Parent, in his or her opinion, to present fairly, in accordance with GAAP and in all material respects, the consolidated financial position of the Parent and its Subsidiaries as at the date thereof and the results of operations for such period (subject to normal year-end audit adjustments and absence of full footnote disclosure).

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## **Section 9.2. Year-End Statements.**

As soon as available and in any event within 5 days after the same is required to be filed with the SEC (but in no event later than 120 days after the end of each fiscal year of the Parent unless, solely during the Covenant Relief Period, the SEC extends the time for annual filing past such date for public companies generally, then the earlier of (i) 5 days after the same is required to be filed with the SEC and (ii) the date which is 150 days after the end of such fiscal year of the Parent), the audited consolidated balance sheet of the Parent and its Subsidiaries as at the end of such fiscal year and the related audited consolidated statements of income, equity and cash flows of the Parent and its Subsidiaries for such fiscal year, setting forth in comparative form the figures as at the end of and for the previous fiscal year, all of which shall be (a) certified by the chief financial officer of the Parent, in his or her opinion, to present fairly, in accordance with GAAP and in all material respects, the financial position of the Parent and its Subsidiaries as at the date thereof and the result of operations for such period and (b) accompanied by the report thereon of Ernst & Young LLP or any other independent certified public accountants of recognized national standing acceptable to the Administrative Agent, whose report shall not be subject to (i) any “going concern” or like qualification or exception or (ii) any qualification or exception as to the scope of such audit.

## **Section 9.3. Compliance Certificate.**

At the time the financial statements are furnished pursuant to Sections 9.1. and 9.2., a certificate substantially in the form of Exhibit M (a “Compliance Certificate”) executed on behalf of the Parent by the chief financial officer or chief accounting officer of the Parent in his or her capacity as such officer and not in any individual capacity (a) setting forth in reasonable detail as of the end of such fiscal quarter or fiscal year, as the case may be, the calculations required to establish whether the Parent and the Borrower, as applicable, were in compliance with the covenants contained in Section 10.1. and (b) stating that, to his or her knowledge, after due inquiry, no Default or Event of Default exists, or, if such is not the case, specifying such Default or Event of Default and its nature, when it occurred and the steps being taken by the Borrower with respect to such event, condition or failure. Together with the delivery of each Compliance Certificate, the Borrower shall deliver (A) a list of all Persons that have become a Material Subsidiary or a Significant Subsidiary since the date of the Compliance Certificate most recently delivered hereunder and (B) a report of newly acquired Properties, including their Net Operating Income for the period of four consecutive fiscal quarters most recently ending, purchase price, and principal amount of the mortgage debt as of the date of such Compliance Certificate, if any, since the date of the Compliance Certificate most recently delivered hereunder. During the Covenant Relief Period, the Parent and Borrower shall continue to provide the calculations set forth in the compliance certificate (but not a certification as to the compliance therewith). Additionally, concurrently with the Compliance Certificates required with respect to the last fiscal quarter of the Covenant Relief Period and the first two fiscal quarters following the Covenant Relief Period, the Borrower and the Parent shall provide Administrative Agent (for informational purposes only) its calculation of the financial tests set forth in Section 10.1 based on a trailing-twelve month calculation.

During the Covenant Relief Period, the Borrower and the Parent shall deliver a supplemental Compliance Certificate on the 13<sup>th</sup> of each calendar month certifying as to (1) the amount of Unrestricted Cash of the Borrower and its Subsidiaries as of the last day of the preceding month and (2) the calculation of and compliance with the Average Monthly Liquidity covenant set forth in Section 10.1.(i).

## **Section 9.4. Other Information.**

(a) Promptly, and in any event within 5 Business Days, upon receipt thereof, copies of all reports, if any, submitted to the Parent or its Board of Directors by its independent public accountants including, without limitation, any management report;

(b) Within 5 Business Days of the filing thereof, copies of all registration statements (excluding the exhibits thereto (unless requested by the Administrative Agent) and any registration statements on Form

S-8 or its equivalent), reports on Forms 10-K and 10-Q (or their equivalents) and all other periodic reports which any Loan Party or any other Subsidiary shall file with the SEC or any national securities exchange.

(c) Promptly, and in any event within 5 Business Days, upon the mailing thereof to the shareholders of the Parent generally, copies of all financial statements, reports and proxy statements so mailed and promptly upon the issuance thereof copies of all press releases issued by the Parent, any Subsidiary or any other Loan Party;

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(d) Within 45 days after the end of each fiscal quarter of the Borrower, an operating summary with respect to each Unencumbered Property, including without limitation, a quarterly and year-to-date statement of Net Operating Income;

(e) No later than 90 days after the beginning of each fiscal year of the Parent, (i) projected sources and uses of cash statements, balance sheets, income statements, and EBITDA, of the Parent, the Borrower and the other Subsidiaries on a consolidated and annual basis for the next succeeding fiscal year and, to the extent available, for the next three succeeding fiscal years, all itemized in reasonable detail; (ii) operating statements for the prior year, a property budget for the then current year and planned capital expenditure budget on both an individual and consolidated basis for each Property of the Parent, the Borrower and each of the other Subsidiaries and (iii) the most current Smith Travel Research STAR Report available, which will compare the individual Unencumbered Properties to the primary competitive set. The foregoing shall be accompanied by pro forma calculations, together with detailed assumptions, required to establish whether or not the Parent and the Borrower, as applicable, will be in compliance with the covenants contained in Section 10.1. at the end of each fiscal quarter of the next succeeding fiscal year;

(f) To the extent the Parent, the Borrower, any other Loan Party or any other Subsidiary is aware of the same, prompt notice of any matter that has had, or which could reasonably be expected to have, a Material Adverse Effect, including without limitation the Parent, the Borrower, any other Loan Party or any other Subsidiary actually becoming aware of any ERISA Event or any material litigation, arbitration or governmental investigation or proceeding instituted or threatened in writing against any Loan Party or Unencumbered Property;

(g) A copy of any amendment to the certificate or articles of incorporation or formation, bylaws, operating agreement, partnership agreement or other similar organizational documents of the Parent, the Borrower or any other Loan Party within 5 Business Days after the effectiveness thereof;

(h) Prompt notice of any change in the senior management of the Parent or the Borrower;

(i) Prompt notice of (i) the occurrence of any Default or Event of Default, or (ii) any event which constitutes or which with the passage of time, the giving of notice, or otherwise, would constitute a default or event of default by the Parent, the Borrower, any other Loan Party or any other Subsidiary under any Material Contract or the Senior Notes Agreement;

(j) Prompt notice of any Person becoming a Material Subsidiary or a Significant Subsidiary or, after the Security Trigger Date and prior to the Security Release Date, an Issuer;

(k) Promptly, and in any event not less than five days prior to the effectiveness thereof, a copy of each material amendment to the Senior Notes Agreement or the terms of the Senior Notes;

(l) Promptly upon the request of the Administrative Agent, evidence of the Parent's calculation of the Ownership Share with respect to a Subsidiary or an Unconsolidated Affiliate, such evidence to be in form and detail reasonably satisfactory to the Administrative Agent;

(m) Promptly, upon each request, information identifying the Parent and the Borrower as a Lender may request in order to comply with applicable "know your customer" and Anti-Money Laundering Laws, including without limitation, the Patriot Act; and

(n) From time to time and promptly upon each request, such data, certificates, reports, statements, documents or further information regarding any Property or the business, assets, liabilities, financial condition, results of operations or business prospects of the Parent, the Borrower, any other Loan Party or any other Subsidiary as the Administrative Agent or any Lender may reasonably request.

Subject to the requirements of Section 9.5.(a), to the extent any notices, documents or other items to be delivered pursuant to this Section 9.4. are included in materials otherwise filed with the SEC, the filing of such materials with the SEC shall satisfy the notice and/or delivery requirements under this Section 9.4.

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## **Section 9.5. Electronic Delivery of Certain Information.**

(a) Documents required to be delivered pursuant to the Loan Documents (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered by electronic communication and delivery, including, the Internet, e-mail or intranet websites to which the Administrative Agent and each Lender have access (including a commercial, third-party website or a website sponsored or hosted by the Administrative Agent or the Borrower) provided that the foregoing shall not apply to (i) notices to any Lender (or the Issuing Banks) pursuant to Article II. and (ii) any Lender that has notified the Administrative Agent and the Borrower that it cannot or does not want to receive electronic communications. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic delivery pursuant to procedures approved by it for all or particular notices or communications. Documents or notices delivered electronically shall be deemed to have been delivered 24 hours after the date and time on which the Administrative Agent or the Borrower posts such documents or the documents become available on a commercial website and the Administrative Agent or Borrower notifies each Lender of said posting and provides a link thereto provided if such notice or other communication is not sent or posted during the normal business hours of the recipient, said posting date and time shall be deemed to have commenced as of 11:00 a.m. Central time on the opening of business on the next business day for the recipient. Notwithstanding anything contained herein, the Borrower shall deliver paper copies of any documents to the Administrative Agent or to any Lender that requests such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents delivered electronically, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery. Each Lender shall be solely responsible for requesting delivery to it of paper copies and maintaining its paper or electronic documents.

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

## **Section 9.6. Public/Private Information.**

The Borrower shall cooperate with the Administrative Agent in connection with the publication of certain materials and/or information provided by or on behalf of the Borrower. Documents required to be delivered pursuant to the Loan Documents shall be delivered by or on behalf of the Borrower to the Administrative Agent and the Lenders (collectively, "Informational Materials") pursuant to this Article and the Borrower shall designate Informational Materials (a) that are either available to the public or not material with respect to the Borrower and its Subsidiaries or any of their respective securities for purposes of United States federal and state securities laws, as "Public Information" and (b) that are not Public Information as "Private Information"; provided that any Informational Materials that are not designated as "Public Information" or "Private Information" shall be considered to be "Private Information".

## **Section 9.7. Compliance with Anti-Corruption Laws; Beneficial Ownership Regulation, Anti-Money Laundering Laws and Sanctions.**

The Parent and the Borrower will (a) maintain in effect and enforce policies and procedures reasonably designed to ensure compliance by the Parent, the Borrower, their respective Subsidiaries and their respective directors, officers, employees and agents with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions, (b) notify the Administrative Agent and each Lender that previously received a Beneficial Ownership Certification of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified therein and (c) promptly upon the reasonable request of the Administrative Agent or any Lender, provide the Administrative Agent or such Lender, as the case may be, any information or documentation requested by it for purposes of complying with the Beneficial Ownership Regulation.

**Section 9.8. Use of Proceeds.**

(a) The Borrower will use the proceeds of Loans or any Letter of Credit only for general corporate purposes, including, without limitation, (i) to finance acquisitions otherwise permitted under this Agreement; (ii) to finance capital expenditures and the repayment of Indebtedness of the Borrower and its Subsidiaries; (iii) to finance repurchases of common

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and preferred Equity Interests, (iv) to provide for the general working capital needs of the Borrower and its Subsidiaries, (v) the payment of fees and expenses in connection herewith and (vi) Restricted Payments to the extent permitted under this Agreement.

(b) The Borrower will not request any Loan, and the Borrower shall not use, and shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Loan or Letter of Credit, directly or to Borrower's knowledge indirectly, (i) 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, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

## ARTICLE X. NEGATIVE COVENANTS

For so long as this Agreement is in effect, the Parent and the Borrower shall comply with the following covenants:

### Section 10.1. Financial Covenants.

(a) Maximum Leverage Ratio. The Parent shall not permit the Leverage Ratio to exceed 6.50 to 1.00 at any time; provided, however, that (I) notwithstanding the foregoing if the Covenant Relief Period ends as specified in clause (ii) of the definition thereof then (A) for the fiscal quarter period ending June 30, 2021, the Leverage Ratio may exceed 6.50 to 1.00 but shall not exceed 7.00 to 1.00 at any time and (B) for the fiscal quarter period ending September 30, 2021, the Leverage Ratio may exceed 6.50 to 1.00 but shall not exceed 6.75 to 1.00 at any time, and (II) the Parent shall have the option, exercisable one time beginning the fiscal quarter period ending December 31, 2021, to elect that the Leverage Ratio may exceed 6.50 to 1.00 for a period (such period, the "Leverage Ratio Surge Period") of up to four consecutive fiscal quarters commencing with the fiscal quarter during which the Borrower delivers the notice referred to below so long as (i) the Borrower has delivered a written notice to the Administrative Agent that the Borrower is exercising its option under this subsection (a) and (ii) the Leverage Ratio does not exceed 7.00 to 1.00 at any time during the Leverage Ratio Surge Period.

(b) Minimum Fixed Charge Coverage Ratio. The Parent shall not permit the ratio of (i) Adjusted EBITDA for the period of four consecutive fiscal quarters most recently ended to (ii) Fixed Charges for such period to be less than 1.50 to 1.00 as of the last day of such period. Notwithstanding the foregoing, for purposes of calculating the foregoing, (A) for the last full fiscal quarter period of the Covenant Relief Period (which, (x) if the Covenant Relief Period ends pursuant to clause (i) of the definition thereof will be the period for which the Borrower calculated the Financial Covenants in the Covenant Relief Termination Notice and (y) if the Covenant Relief Period ends pursuant to clause (ii) of the definition thereof, will be June 30, 2021), Adjusted EBITDA and Fixed Charges shall be measured as, at Borrower's election, either (I) Adjusted EBITDA and Fixed Charges for the two fiscal quarter period ending on such date multiplied by 2, or (II) Adjusted EBITDA and Fixed Charges for the single fiscal quarter ending on such date multiplied by 4; (B) for the fiscal quarter period immediately following the fiscal quarter period described in clause (A), Adjusted EBITDA and Fixed Charges shall be measured as, either (I) if for clause (A) above, Adjusted EBITDA and Fixed Charges was measured based on sub-clause (I) thereof, then Adjusted EBITDA and Fixed Charges shall be measured as Adjusted EBITDA and Fixed Charges for the three fiscal quarter period ending on such date multiplied by 4/3, or (II) if for clause (A) above, Adjusted EBITDA and Fixed Charges was measured based on sub-clause (II) thereof, then Adjusted EBITDA and Fixed Charges shall be measured as Adjusted EBITDA and Fixed Charges for the two fiscal quarter period ending on such date multiplied by 2; and (C) for the fiscal quarter period immediately following the fiscal quarter period described in clause (B), Adjusted EBITDA and Fixed Charges shall be measured as, either (I) if for clause (A) above, Adjusted EBITDA and Fixed Charges

was measured based on sub-clause (I) thereof, then Adjusted EBITDA and Fixed Charges shall be measured as Adjusted EBITDA and Fixed Charges for the four fiscal quarter period ending on such date, or (II) if for clause (A) above, Adjusted EBITDA and Fixed Charges was measured based on sub-clause (II) thereof, then Adjusted EBITDA and Fixed Charges shall be measured as Adjusted EBITDA and Fixed Charges for the three fiscal quarter period ending on such date multiplied by 4/3.

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(c) Minimum Tangible Net Worth. The Parent shall not permit Tangible Net Worth at any time to be less than \$2,000,000,000.

(d) Maximum Unencumbered Leverage Ratio. The Parent shall not permit the ratio of (i) Unsecured Indebtedness of the Parent and its Subsidiaries determined on a consolidated basis to (ii) Unencumbered Asset Value to exceed 0.60 to 1.00 at any time; provided, however, that the Parent shall have the option, exercisable one time, to elect that such ratio may exceed 0.60 to 1.00 for a period (such period, the “Unencumbered Leverage Ratio Surge Period”) of up to four consecutive fiscal quarters commencing with the fiscal quarter during which the Borrower delivers the notice referred to below so long as (i) the Borrower has delivered a written notice to the Administrative Agent that the Borrower is exercising its option under this subsection (d), (ii) such ratio does not exceed 0.65 to 1.00 at any time during the Unencumbered Leverage Ratio Surge Period and (iii) the Borrower completed a Material Acquisition which resulted in such ratio (after giving effect to such Material Acquisition) exceeding 0.60 to 1.00 at any time during the fiscal quarter in which such Material Acquisition took place or the immediately following fiscal quarter.

(e) Minimum Unsecured Interest Expense Coverage Ratio. The Parent shall not permit the ratio of (i) Adjusted NOI to (ii) Unsecured Interest Expense of Parent and its Subsidiaries to be less than 2.00 to 1.00 at any time; provided, however, that notwithstanding the foregoing if the Covenant Relief Period ends as specified in clause (ii) of the definition thereof then (A) for the fiscal quarter period ending June 30, 2021, the ratio of Adjusted NOI to Unsecured Interest Expense may be less than 2.00 to 1.00 but shall not be less than 1.50 to 1.00 at any time and (B) for the fiscal quarter period ending September 30, 2021, the ratio of Adjusted NOI to Unsecured Interest Expense may be less than 2.00 to 1.00 but shall not be less than 1.75 to 1.00 at any time. Notwithstanding the foregoing, for purposes of calculating the foregoing, (A) for the last full fiscal quarter period of the Covenant Relief Period (which, (x) if the Covenant Relief Period ends pursuant to clause (i) of the definition thereof will be the period for which the Borrower calculated the Financial Covenants in the Covenant Relief Termination Notice and (y) if the Covenant Relief Period ends pursuant to clause (ii) of the definition thereof, will be June 30, 2021), Adjusted NOI and Unsecured Interest Expense shall be measured as, at Borrower’s election, either (I) Adjusted NOI and Unsecured Interest Expense for the two fiscal quarter period ending on such date multiplied by 2, or (II) Adjusted NOI and Unsecured Interest Expense for the single fiscal quarter ending on such date multiplied by 4; (B) for the fiscal quarter period immediately following the fiscal quarter period described in clause (A), Adjusted NOI and Unsecured Interest Expense shall be measured as, either (I) if for clause (A) above, Adjusted NOI and Unsecured Interest Expense was measured based on sub-clause (I) thereof, then Adjusted NOI and Unsecured Interest Expense shall be measured as Adjusted NOI and Unsecured Interest Expense for the three fiscal quarter period ending on such date multiplied by 4/3, or (II) if for clause (A) above, Adjusted NOI and Unsecured Interest Expense was measured based on sub-clause (II) thereof, then Adjusted NOI and Unsecured Interest Expense shall be measured as Adjusted NOI and Unsecured Interest Expense for the two fiscal quarter period ending on such date multiplied by 2; and (C) for the fiscal quarter period immediately following the fiscal quarter period described in clause (B), Adjusted NOI and Unsecured Interest Expense shall be measured as, either (I) if for clause (A) above, Adjusted NOI and Unsecured Interest Expense was measured based on sub-clause (I) thereof, then Adjusted NOI and Unsecured Interest Expense shall be measured as Adjusted NOI and Unsecured Interest Expense for the four fiscal quarter period ending on such date, or (II) if for clause (A) above, Adjusted NOI and Unsecured Interest Expense was measured based on sub-clause (II) thereof, then Adjusted NOI and Unsecured Interest Expense shall be measured as Adjusted NOI and Unsecured Interest Expense for the three fiscal quarter period ending on such date multiplied by 4/3.

(f) Minimum Unencumbered Property Requirements. The Parent shall not permit the number of Unencumbered Properties to be less than 7 Properties or the Unencumbered Asset Value to be less than \$500,000,000.

(g) Maximum Secured Indebtedness Ratio. The Parent shall not permit the ratio of (i) Secured Indebtedness of the Parent and its Subsidiaries to (ii) Total Asset Value to exceed 0.45 to 1.00 at any time.

(h) Maximum Secured Recourse Indebtedness Ratio. The Parent shall not permit the ratio of (i) Secured Recourse Indebtedness of the Parent and its Subsidiaries to (ii) Total Asset Value to exceed 0.10 to 1.00 at any time.

(i) Liquidity. At all times during the Covenant Relief Period, the Borrower and its Subsidiaries shall maintain Average Monthly Liquidity of not less than \$150,000,000.

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(j) Covenant Relief Period. Notwithstanding the foregoing, during the Covenant Relief Period, the Parent shall not be required to comply with the Financial Covenants described in clauses (a) – (h) and neither the Leverage Ratio Surge Period nor the Unencumbered Leverage Ratio Surge Period shall be deemed to be utilized.

(k) Dividends and Other Restricted Payments. The Parent and the Borrower shall not, and shall not permit any of their Subsidiaries to, redeem, purchase, repurchase or otherwise acquire any Equity Interests of the Parent, the Borrower or any of their Subsidiaries from any Person other than the Parent, the Borrower or a Subsidiary unless (i) no Default or Event of Default exists or would result therefrom and (ii) the Borrower shall have delivered to the Administrative Agent at least 3 Business Days prior to any redemption, purchase, repurchase or other acquisition that exceeds \$50,000,000 in the aggregate a Compliance Certificate evidencing that the Parent and the Borrower will be in compliance with the covenants contained in Section 10.1. after giving pro forma effect to such redemption, purchase, repurchase or other acquisition. Notwithstanding the foregoing, if an Event of Default exists, the Parent and the Borrower shall not, and shall not permit any of their Subsidiaries to, declare or make any Restricted Payments except that (i) the Borrower may declare and make cash distributions to the Parent and other holders of Equity Interests in the Borrower with respect to any fiscal year to the extent necessary for the Parent to distribute, and the Parent may (A) make cash or equity distributions in an aggregate amount not to exceed the minimum amount necessary for the Parent to satisfy the requirements for qualification and taxation as a REIT and not be subject to income or excise taxation under Sections 857(b)(1), 857(b)(3), 860 or 4981 of the Internal Revenue Code and (B) make additional distributions in common Equity Interests of the Parent in an amount under this clause (B) that, when combined with the distributions under clause (A) above, do not exceed 100% of the taxable income of the Parent determined in accordance with Section 857(b)(2) of the Internal Revenue Code and (ii) Subsidiaries of the Borrower may make Restricted Payments to any 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. Notwithstanding the foregoing, during the Covenant Relief Period, the terms of this 10.1.(k) shall be subject to Section 10.11.(a).

## **Section 10.2. Permitted Liens; Negative Pledge.**

(a) The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary or to, create, assume, or incur any Lien (other than Permitted Liens) upon any of its properties, assets, income or profits of any character whether now owned or hereafter acquired or, if immediately prior to the creation, assumption or incurring of such Lien, or immediately thereafter, a Default or Event of Default is or would be in existence, including without limitation, a Default or Event of Default resulting from a violation of any of the covenants contained in Section 10.1. The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to create any Lien (other than Permitted Liens described in clauses (a), (f) and (i) of the definition thereof) in the Collateral (or the property required to become Collateral on the Security Trigger Date) or in the Equity Interests of any Excluded Issuer from and after June 30, 2020 to and including the Security Release Date.

(b) The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary (other than an Excluded Subsidiary) to, enter into, assume or otherwise be bound by any Negative Pledge except for (i) a Negative Pledge contained in any agreement that evidences unsecured Indebtedness which contains restrictions on encumbering assets that are substantially similar to or less restrictive than those restrictions contained in the Loan Documents; (ii) a Negative Pledge contained in any agreement relating to assets to be sold where the restrictions on encumbering assets relate only to such assets pending such sale; (iii) a Negative Pledge contained in a joint venture agreement applicable solely to the assets or Equity Interests of such joint venture; and (iv) a Negative Pledge contained in any agreement (x) evidencing Secured Indebtedness of such Person, but only to the extent that no Default or Event of Default is in existence at the time such Secured Indebtedness is created, incurred or assumed, nor would result from the creation, incurrence or assumption of such Secured Indebtedness (including without limitation, a Default or Event of Default resulting from a violation of any of the covenants contained in Section 10.1.), (y) the Lien securing such

Secured Indebtedness permitted to exist pursuant to this Agreement, and (z) which prohibits the creation of any other Lien on only the property securing such Secured Indebtedness. Further, the Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to grant a Negative Pledge (other than a Negative Pledge in the Senior Note Agreement that is substantially identical to this sentence) in the Equity Interests of any Excluded Issuer from and after June 30, 2020 to and including the Security Release Date.

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### **Section 10.3. Restrictions on Intercompany Transfers.**

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary (other than an Excluded Subsidiary) to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary to: (a) pay dividends or make any other distribution on any of such Subsidiary's capital stock or other Equity Interests owned by the Parent, the Borrower or any other Subsidiary; (b) pay any Indebtedness owed to the Parent, the Borrower or any other Subsidiary; (c) make loans or advances to the Parent, the Borrower or any other Subsidiary; or (d) transfer any of its property or assets to the Parent, the Borrower or any other Subsidiary, in each case, other than: (i) with respect to clauses (a) through (d), those encumbrances or restrictions (x) contained in any Loan Document or (y) contained in any other agreement that evidences unsecured Indebtedness containing encumbrances or restrictions on the actions described above that are substantially similar to or less restrictive than those contained in the Loan Documents, or (ii) with respect to clause (d), (x) restrictions contained in any agreement relating to the sale of a Subsidiary (other than the Borrower) or the assets of a Subsidiary pending sale, or relating to Secured Indebtedness secured by a Lien on assets that the Parent, the Borrower, any other Loan Party or any other Subsidiary may create, incur, assume, or permit or suffer to exist under the Loan Documents; provided that in any such case, the restrictions apply only to the Subsidiary or the assets that are the subject of such sale or Lien, as the case may be or (y) customary provisions restricting assignment of any agreement entered into by the Parent, the Borrower, any other Loan Party or any other Subsidiary in the ordinary course of business.

### **Section 10.4. Restrictions on Use of Proceeds.**

The Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, use any part of such proceeds to purchase or carry, or to reduce or retire or refinance any credit incurred to purchase or carry, any margin stock (within the meaning of Regulation U or Regulation X of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying any such margin stock; provided, however, subject to Section 10.1.(k), the Borrower may use proceeds of the Loans to redeem, purchase, repurchase or otherwise acquire Equity Interests of the Parent, the Borrower any their Subsidiaries so long as such use will not result in any of the Loans or other Obligations being considered to be "purpose credit" directly or indirectly secured by margin stock within the meaning of Regulation U or Regulation X of the Board of Governors of the Federal Reserve System.

### **Section 10.5. Merger, Consolidation, Sales of Assets and Other Arrangements.**

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, (i) enter into any transaction of merger or consolidation, (ii) liquidate, windup or dissolve itself (or suffer any liquidation or dissolution) or (iii) convey, sell, lease, sublease, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any substantial part of its business or assets, or the capital stock of or other Equity Interests in any of its Subsidiaries, whether now owned or hereafter acquired; provided, however, that:

(a) any of the actions described in the immediately preceding clauses (i) through (iii) may be taken with respect to any Subsidiary so long as (x) immediately prior to the taking of such action, and immediately thereafter and after giving effect thereto, no Default or Event of Default is or would be in existence, (y) if such action includes the sale of all Equity Interests in a Subsidiary that is a Guarantor owned directly or indirectly by the Parent, such Subsidiary can and will be released from the Guaranty in accordance with Section 8.13.(b) and (z) if such action includes the disposition of an Unencumbered Property (regardless of whether such disposition takes the form of a direct sale of such Unencumbered Property, the sale of the Equity Interests of the Subsidiary that owns such Unencumbered Property or a merger of such Subsidiary), such Unencumbered Property can and will be removed as an Unencumbered Property in accordance with Section 4.2.;

(b) the Parent, the Borrower, the other Loan Parties and the other Subsidiaries may lease and sublease their respective assets, as lessor or sublessor (as the case may be), in the ordinary course of their business;

(c) a Person may merge with a Loan Party so long as (i) the survivor of such merger is such Loan Party or, solely in the case of a Loan Party other than the Borrower or the Parent, becomes a Loan Party at the time of such merger, (ii) immediately prior to such merger, and immediately thereafter and after giving effect thereto, (x) no Default or Event of Default is or would be in existence, including, without limitation, a Default or Event of Default

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resulting from a breach of Section 10.1. and (y) the representations and warranties made or deemed made by Borrower and the applicable Loan Party in the Loan Documents to which any of them is a party shall be true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of the date of such extension with the same force and effect as if made on and as of such date except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects (except in the case of a representation or warranty qualified by materiality, in which case such representation or warranty shall be true and correct in all respects) on and as of such earlier date) and except for changes in factual circumstances specifically and expressly permitted under the Loan Documents, (iii) the Borrower shall have given the Administrative Agent at least 30-days' prior written notice (or such shorter period as Administrative Agent shall approve) of such merger, such notice to include a certification as to the matters described in the immediately preceding clause (ii) (except that such prior notice shall not be required in the case of the merger of a Subsidiary that does not own an Unencumbered Property with and into a Loan Party but the Borrower shall give the Administrative Agent notice of any such merger promptly following the effectiveness of such merger) and (iv) at the time the Borrower gives notice pursuant to clause (iii) of this subsection, the Borrower shall have delivered to the Administrative Agent for distribution to each of the Lenders a Compliance Certificate, calculated on a pro forma basis, evidencing the continued compliance by the Loan Parties, as applicable, with the terms and conditions of this Agreement and the other Loan Documents, including without limitation, the financial covenants contained in Section 10.1., after giving effect to such merger; and

(d) the Parent, the Borrower and each other Subsidiary may sell, transfer or dispose of assets among themselves.

Notwithstanding the foregoing, during the Covenant Relief Period, the Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to enter into any transaction of merger or consolidation or liquidate, windup or dissolve itself (or suffer any liquidation or dissolution), other than, so long as no Default or Event of Default has occurred and is continuing, (1) a transaction of merger or consolidation with a Single Asset Entity which is structured as a merger or consolidation solely to effect an Investment permitted under Section 10.11.(b) below or (2) the liquidation, windup or dissolution of Sunstone 42nd St. or the sale, transfer or other disposition of all or any of its assets so long as, immediately prior to and after giving effect to such transaction, (i) the holder of the mortgage secured by the hotel owned by Sunstone 42nd St. does not have a claim for repayment of the mortgage loan under a "bad boy" guaranty (the "42nd St. Guaranty") in excess of the then outstanding principal amount of such mortgage loan (which on the First Amendment Date is \$77,174,971.28), accrued and unpaid interest thereon and the costs and expenses of enforcement required to be paid by the guarantor under the 42nd St. Guaranty or (ii) if the holder of such mortgage has a claim in excess of such amount, such holder shall have waived such liability in writing.

Further, (x) no Loan Party shall enter into any sale-leaseback transactions or other transaction by which such Person shall remain liable as lessee (or the economic equivalent thereof) of any real or personal property that it has sold or leased to another Person and (y) no Subsidiary that is not a Loan Party shall enter into any sale-leaseback transactions or other transaction by which such Person shall remain liable as lessee (or the economic equivalent thereof) of any real or personal property that it has sold or leased to another unless no Default or Event of Default exists or would result therefrom.

## **Section 10.6. Plans.**

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, permit any of its respective assets to become or be deemed to be "plan assets" within the meaning of ERISA, the Internal Revenue Code and the respective regulations promulgated thereunder.

#### **Section 10.7. Fiscal Year.**

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

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## **Section 10.8. Modifications of Organizational Documents.**

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

## **Section 10.9. Transactions with Affiliates.**

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, permit to exist or enter into any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate, except (a) as set forth on Schedule 7.1.(r) or (b) transactions pursuant to the reasonable requirements of the business of the Parent, the Borrower, such other Loan Party or such other Subsidiary and upon fair and reasonable terms which are no less favorable to the Parent, the Borrower, such other Loan Party or such other Subsidiary than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate.

## **Section 10.10. Derivatives Contracts.**

The Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to, enter into or become obligated in respect of Derivatives Contracts other than Derivatives Contracts entered into by the Parent, the Borrower, any such Loan Party or any such Subsidiary in the ordinary course of business and which establish an effective hedge in respect of liabilities, commitments or assets held or reasonably anticipated by the Parent, the Borrower, such other Loan Party or such other Subsidiary.

## **Section 10.11. Covenant Relief Period Covenants.**

Notwithstanding anything to the contrary set forth herein, from June 30, 2020 to the end of the Covenant Relief Period the Parent and the Borrower shall not, and shall not permit any other Loan Party or any other Subsidiary to:

(a) Make any Restricted Payment other than (i) the Borrower may declare and make cash distributions to the Parent and the Parent may make cash and equity distributions the holders of its Equity Interests to the extent necessary, as determined by Parent, for the Parent to satisfy the requirements for qualification and taxation as a REIT and not be subject to income or excise taxation under Sections 857(b)(1), 857(b)(3), 860 or 4981 of the Internal Revenue Code; provided that, during the Covenant Relief Period, the Borrower and the Parent shall cause the percentage of such distributions constituting Equity Interests to be the maximum percentage then permitted by applicable law (which shall include any letter ruling issued by the United States Internal Revenue Service), and (ii) so long as no Default or Event of Default exists, Preferred Dividends (A) in an amount not to exceed \$3,210,000 per fiscal quarter and (B) quarterly dividends in an amount required pursuant to any Preferred Equity Interests issued pursuant to Section 10.11(d)(iii) below.

(b) Directly or indirectly make any Investment other than, so long as no Default or Event of Default then exists or would result therefrom and no portion of the cost of the acquisition thereof consists of the proceeds of Indebtedness (other than (x) Nonrecourse Indebtedness arising from the assumption of a mortgage on a Property existing at the time of the acquisition thereof and not created in contemplation of such acquisition, (y) Revolving Loans and (z) Swingline Loans), the acquisition of Properties and Senior Mortgage Receivables (and, solely with respect to clause (ii) below, other Mortgage Receivables and Secured Mezz Receivables) (i) in an aggregate amount during the Covenant Relief Period not to exceed \$100,000,000 so long as, at the time of making such Investment and after giving pro forma effect thereto, the aggregate Availability will be equal to or greater than \$250,000,000 and (ii) in an aggregate amount during the Covenant Relief

Period not to exceed \$250,000,000 (plus, with respect to acquisitions of Eligible Properties that will become Unencumbered Pool Properties, Mortgage Receivables and Secured Mezz Receivables, an amount equal to the proceeds received by the Borrower from the issuance of common Equity Interests which are not required to be applied as set forth in Section 2.8(b)(iii)) so long as, at the time of making such Investment and after giving pro forma effect thereto, the Availability is equal to \$500,000,000.

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(c) Directly or indirectly voluntarily prepay the Senior Notes (except as specified in Section 2.8 hereof) or any Indebtedness which is secured by Liens which are subordinate to the Liens securing the Obligations or is contractually subordinated to the Obligations.

(d) Directly or indirectly issue, assume or otherwise incur any Indebtedness or issue any Preferred Equity Interests other than (i) Indebtedness which is Nonrecourse Indebtedness (A) incurred to refinance other Nonrecourse Indebtedness existing on June 30, 2020, so long as the principal amount of such refinancing Indebtedness does not exceed the principal amount of the Indebtedness refinanced thereby, and the maturity date of such refinancing Indebtedness is no earlier than the maturity date of the Indebtedness refinanced thereby, (B) constituting a mortgage on a Property assumed at the time of acquisition thereof (and not created in contemplation thereof) or (C) to the extent the proceeds thereof are applied as required pursuant to Section 2.8.(b), (ii) subject to compliance with Section 8.16, Government Assistance Indebtedness and (iii) Preferred Equity Interests in an amount up to \$200,000,000 so long as (A) such Preferred Equity Interests are issued by the Parent and are either (I) perpetual preferred Equity Interests or (II) not available for redemption at the election of the holder thereof prior to the date that is one year after the latest Termination Date for any Class of Loans and, in either case, such Preferred Equity Interests do not provide for an increase in the rate of return thereon if not redeemed on or prior to the latest Termination Date for any Class of Loans, and (2) the proceeds thereof are applied as required pursuant to Section 2.8(b)(iii).

(e) Directly or indirectly make any capital expenditures other than (i) capital expenditures in an amount not exceeding \$110,000,000 in the aggregate for the period commencing May 1, 2020 through the end of the Covenant Relief Period and (ii) other capital expenditures in excess of the amount set forth in clause (i) so long as such capital expenditures are necessary for emergency repairs or other expenditures required for the safety of employees or guests.

(f) Sell, transfer of or otherwise dispose any Unencumbered Property, unless the proceeds thereof are applied as required by and in accordance with Section 2.8.(b), including the definition of "Net Proceeds."

## **ARTICLE XI. DEFAULT**

### **Section 11.1. Events of Default.**

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

(a) Default in Payment. The Borrower shall fail to pay when due under this Agreement or any other Loan Document (whether upon demand, at maturity, by reason of acceleration or otherwise) (i) the principal of any of the Loans or any Reimbursement Obligation, (ii) any interest on any of the Loans, Reimbursement Obligations or L/C Disbursements, or any Fee payable by the Borrower, and solely in the case of this clause (ii), such failure shall continue for a period of 3 Business Days or (iii) other payment Obligations owing by the Borrower under this Agreement or any other Loan Document, or any other Loan Party shall fail to pay when due any payment obligation owing by such Loan Party under any Loan Document to which it is a party, and solely in the case of this clause (iii), such failure shall continue for a period of 3 Business Days.

(b) Default in Performance.

(i) Any Loan Party shall fail to perform or observe any term, covenant, condition or agreement on its part to be performed or observed and contained in Article IX. or Article X. (other than Section 10.6.); or

(ii) Any Loan Party shall fail to perform or observe any term, covenant, condition or agreement contained in this Agreement or any other Loan Document to which it is a party and not

otherwise mentioned in this Section, and solely in the case of this subsection (b)(ii), such failure shall continue for a period of 30 days after the earlier of (x) the date upon which a Responsible Officer of the Borrower or such other Loan Party obtains knowledge of such failure or (y) the date upon which the Borrower has received written notice of such failure from the Administrative Agent.

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

(d) Indebtedness Cross-Default.

(i) The Parent, the Borrower, any other Loan Party or any other Subsidiary shall fail to make any payment when due and payable in respect of any Indebtedness (after giving effect to any applicable notice or cure periods under such Indebtedness) (other than the Loans, Reimbursement Obligations and Derivatives Contracts) having an aggregate outstanding principal amount, in each case individually or in the aggregate with all other Indebtedness as to which such a failure exists, of \$75,000,000 or more (or in the case of Nonrecourse Indebtedness, \$165,000,000 or more) (in each case, “Material Indebtedness”); or

(ii) (x) The maturity of any Material Indebtedness shall have been accelerated in accordance with the provisions of any indenture, contract or instrument evidencing, providing for the creation of or otherwise concerning such Material Indebtedness or (y) any Material Indebtedness shall have been required to be prepaid, repurchased, redeemed or defeased prior to the stated maturity thereof, in each case of this clause (y), other than as a result of the sale or other transfer of the collateral for any such Material Indebtedness that is Secured Indebtedness; or

(iii) Any other event shall have occurred and be continuing which, with or without the passage of time, the giving of notice, or otherwise, would permit any holder or holders of any Material Indebtedness, any trustee or agent acting on behalf of such holder or holders or any other Person, to accelerate the maturity of any such Material Indebtedness or require any such Material Indebtedness to be prepaid, repurchased, redeemed or defeased prior to its stated maturity; provided that upon Administrative Agent’s receipt of evidence that such event has been waived in writing by such holder, holders, trustee, agent or other Person holding any such Material Indebtedness, such event shall automatically cease to constitute an Event of Default hereunder; or

(iv) There occurs an “Event of Default” under and as defined in any Derivatives Contract as to which the Parent, the Borrower, any other Loan Party or any other Subsidiary is a “Defaulting Party” (as defined therein), or there occurs an “Early Termination Date” (as defined therein) in respect of any Specified Derivatives Contract as a result of a “Termination Event” (as defined therein) as to which the Borrower or any of its Subsidiaries is an “Affected Party” (as defined therein), in each case, if the Derivatives Termination Value payable by the Parent, the Borrower, any other Loan Party or any other Subsidiary exceeds \$75,000,000 in the aggregate.

(v) Prior to the Security Release Date, the Parent, the Borrower, any other Loan Party or any Subsidiaries shall (x) fail to make a payment when due and payable with respect to the Senior Notes (after giving effect to any applicable notice or cure periods thereunder), (y) the maturity of any Indebtedness under the Senior Notes or Senior Notes Agreement shall have been accelerated in accordance with the terms thereof or the Senior Notes shall be required to be prepaid, repurchased, redeemed or defeased prior to the stated maturity thereof or (z) any other event shall have occurred and be continuing which, with or without the passage of time, the giving of notice, or otherwise, would permit any holder or holders of any the Senior Notes, any trustee or agent acting on behalf of such holder or holders or any other Person, to accelerate the maturity of any of the Senior Notes or require any Indebtedness under the Senior Notes to be prepaid, repurchased, redeemed or defeased prior to its stated maturity; provided that upon Administrative Agent’s receipt of evidence that such event has

been waived in writing by such holder, holders, trustee, agent or other Person holding such Senior Notes, such event shall automatically cease to constitute an Event of Default hereunder.

(e) Voluntary Bankruptcy Proceeding. The Parent, the Borrower, any other Loan Party or any other Significant Subsidiary shall: (i) commence a voluntary case under the Bankruptcy Code or other federal bankruptcy laws (as now or hereafter in effect); (ii) file a petition seeking to take advantage of any other Applicable Laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts; (iii) consent to, or fail to

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contest in a timely and appropriate manner, any petition filed against it in an involuntary case under such bankruptcy laws or other Applicable Laws or consent to any proceeding or action described in the immediately following subsection (f); (iv) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign; (v) admit in writing its inability to pay its debts as they become due; (vi) make a general assignment for the benefit of creditors; (vii) make a conveyance fraudulent as to creditors under any Applicable Law; or (viii) take any corporate or partnership action for the purpose of effecting any of the foregoing.

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

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

(h) Judgment. A judgment or order for the payment of money or for an injunction or other non-monetary relief shall be entered against the Parent, the Borrower, any other Loan Party or any other Subsidiary by any court or other tribunal and (i) such judgment or order shall continue for a period of 30 consecutive days without being satisfied, paid, stayed or dismissed through appropriate appellate proceedings and (ii) either (A) the amount of such judgment or order for which insurance has not been acknowledged in writing by the applicable insurance carrier (or the amount as to which the insurer has denied liability) exceeds, individually or together with all other such judgments or orders entered against the Parent, the Borrower, any other Loan Party or any other Subsidiary, \$75,000,000 or (B) in the case of an injunction or other non-monetary relief, such injunction or judgment or order could reasonably be expected to have a Material Adverse Effect.

(i) Attachment. A warrant, writ of attachment, execution or similar process shall be issued against any property of the Parent, the Borrower, any other Loan Party or any other Subsidiary, which exceeds, individually or together with all other such warrants, writs, executions and processes, \$75,000,000 in amount and such warrant, writ, execution or process shall not be satisfied, paid, discharged, vacated, stayed or bonded for a period of 20 consecutive days; provided, however, that if a bond has been issued in favor of the claimant or other Person obtaining such warrant, writ, execution or process, the issuer of such bond shall execute a waiver or subordination agreement in form and substance reasonably satisfactory to the Administrative Agent pursuant to which the issuer of such bond subordinates its right of reimbursement, contribution or subrogation to the Obligations and waives or subordinates any Lien it may have on the assets of the Borrower, any other Loan Party or any other Subsidiary.

(j) ERISA. The aggregate amount of liabilities of the Borrower, the other Loan Parties and the other Subsidiaries resulting from existing ERISA Events, together with the aggregate minimum funding contributions payable by the Borrower, the other Loan Parties and the other Subsidiaries as a result of the “benefit obligation” of all Plans exceeding the “fair market value of plan assets” for such Plans, all as determined, and with such terms defined, in accordance with FASB ASC 715, shall exceed \$75,000,000 in the aggregate during any fiscal year of the Borrower.

(k) Loan Documents. An Event of Default (as defined therein) shall occur under any of the other Loan Documents.

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(l) Change of Control/Change in Management.

(i) Any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”)), is or becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a Person will be deemed to have “beneficial ownership” of all securities that such Person has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of more than 35.0% of the total voting power of the then outstanding voting stock of the Parent;

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

(iii) The Parent or a Wholly Owned Subsidiary of the Parent (x) shall cease to be the sole managing member of the Borrower or (y) shall cease to have the sole and exclusive power to exercise all management and control over the Borrower; or

(iv) the Parent shall cease to own and control, directly or indirectly, at least 80% of the outstanding Equity Interests of the Borrower.

(m) Liens in the Collateral. After the occurrence of the Security Trigger Date and prior to the Security Release Date, any Lien purported to be created under any Loan Document shall cease to be, or shall be asserted by any Borrower or other Loan Party not to be, a valid and perfected Lien on any Collateral having a value, individually or in the aggregate, in excess of \$5,000,000, with the priority required by the applicable Loan Documents and the Intercreditor Agreement, except as a result of (i) the sale or other disposition of the applicable Collateral in a transaction permitted under the Loan Documents, or (ii) the release of such Lien as a result of the occurrence of the Security Release Date hereunder.

(n) Intercreditor Agreement. After the occurrence of the Security Trigger Date and prior to the Security Release Date, any Intercreditor Agreement shall be asserted in writing by any Loan Party not to be, in whole or in part, legally valid, binding and enforceable against any party thereto, or such Intercreditor Agreement shall otherwise not be effective to create the rights and obligations purported to be created thereunder (as determined by a court of competent jurisdiction).

Notwithstanding the foregoing provisions of this Section 11.1., no Default or Event of Default shall be deemed to have occurred under the foregoing clauses (d)(i), (d)(ii), (d)(iii), (e), (f), (h) or (i) with respect to any event or occurrence described therein relating to Sunstone 42nd St., the non-recourse mortgage loan secured by the hotel owned by Sunstone 42nd St. on the First Amendment Date or the 42nd St. Guaranty so long as, immediately prior to and after giving effect to such event or occurrence, (i) the holder of such mortgage loan does not have a claim for repayment of such mortgage loan under the 42nd Street Guaranty in excess of the then outstanding principal amount of such mortgage loan (which on the First Amendment Date is \$77,174,971.28), accrued and unpaid interest thereon and the costs and expenses of enforcement required to be paid by the guarantor under the 42nd St. Guaranty or (ii) if the holder of such mortgage loan has a claim in excess of such amount, such holder shall have waived such liability in writing.

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## Section 11.2. Remedies Upon Event of Default.

Upon the occurrence of an Event of Default the following provisions shall apply:

(a) Acceleration; Termination of Facilities.

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

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

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

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

(d) Appointment of Receiver. To the extent permitted by Applicable Law, the Administrative Agent and the Lenders shall be entitled to the appointment of a receiver for the assets and properties of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries, without notice of any kind whatsoever and without regard to the adequacy of any security for the Obligations or the solvency of any party bound for its payment, to take possession of all or any portion of the property and/or the business operations of the Parent, the Borrower, the other Loan Parties and the other Subsidiaries and to exercise such power as the court shall confer upon such receiver.

(e) Remedies in Respect of Specified Derivatives Contracts. Notwithstanding any other provision of this Agreement or other Loan Document, each Specified Derivatives Provider shall have the right, with prompt notice to the Administrative Agent, but without the approval or consent of or other action by the Administrative Agent, the Issuing Banks or the Lenders, and without limitation of other remedies available to such Specified Derivatives Provider under contract or Applicable Law, to undertake any of the following:

(a) to declare an event of default, termination event or other similar event under any Specified Derivatives Contract and to create an "Early Termination Date" (as defined therein) in respect thereof, (b) to determine

net termination amounts in respect of any and all Specified Derivatives Contracts in accordance with the terms thereof, and to set off amounts among such contracts, (c) to set off or proceed against deposit account balances, securities account balances and other property and amounts held by such Specified Derivatives Provider and (d) to prosecute any legal action against the Parent, the Borrower, any other Loan Party or other Subsidiary to enforce or collect net amounts owing to such Specified Derivatives Provider pursuant to any Specified Derivatives Contract.

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### **Section 11.3. Remedies Upon Default.**

Upon the occurrence of a Default specified in Section 11.1.(f), the Commitments, the Swingline Commitment and the obligation of the Issuing Banks to issue Letters of Credit shall immediately and automatically terminate.

### **Section 11.4. Marshaling; Payments Set Aside.**

No Lender Party shall be under any obligation to marshal any assets in favor of any Loan Party or any other party or against or in payment of any or all of the Guaranteed Obligations. To the extent that any Loan Party makes a payment or payments to a Lender Party, or a Lender Party enforces its security interest or exercises its right of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then to the extent of such recovery, the Guaranteed Obligations, or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or setoff had not occurred.

### **Section 11.5. Allocation of Proceeds; Sharing Event.**

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

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

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

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

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

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

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

(vii) the balance, if any, after all of the Guaranteed Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Applicable Law.

Notwithstanding the foregoing, Guaranteed Obligations arising under Specified Derivatives Contracts shall be excluded from “Guaranteed Obligations” and the application described above if the Administrative Agent has not received written

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notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Specified Derivatives Provider, as the case may be. Each Specified Derivatives Provider not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, (A) be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article XII. for itself and its Affiliates as if a “Lender” party hereto and (B) acknowledged and agreed that the terms hereof and payments received by such Specified Derivatives Provider are subject to the terms of the Intercreditor Agreement.

(b) Notwithstanding anything to the contrary set forth herein, the Lender Parties acknowledge and agree that, at any time that the Intercreditor Agreement is effective, after the occurrence of a “Sharing Event” (as defined in the Intercreditor Agreement) all payments received directly or indirectly with respect to the Guaranteed Obligations will be held by the Administrative Agent (or, if received by a Lender Party, will be turned over to the Administrative Agent) for the benefit of the Lender Parties until the earlier of (i) the occurrence of an “Enforcement” (as defined in the Intercreditor Agreement), at which time such amount shall be distributed to the Collateral Agent for distribution in accordance with the terms of the Intercreditor Agreement and (ii) the date which is 90 days following the occurrence of the Sharing Event if no Enforcement has occurred with respect thereto, at which time such amounts shall be distributed pursuant to the terms of this Agreement.

#### **Section 11.6. Letter of Credit Collateral Account.**

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

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

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

(d) If an Event of Default exists, the Administrative Agent may (and, if instructed by the Requisite Lenders, shall) in its (or their) discretion at any time and from time to time elect to liquidate any such investments and reinvestments and apply the proceeds thereof to the Obligations in accordance with Section 11.5. Notwithstanding the foregoing, the Administrative Agent shall not liquidate or release any such

amounts if such liquidation or release would result in the amount available in the Letter of Credit Collateral Account to be less than the Stated Amount of all Extended Letters of Credit that remain outstanding.

(e) So long as no Default or Event of Default exists, and to the extent amounts on deposit in or credited to the Letter of Credit Collateral Account exceed the aggregate amount of the Letter of Credit Liabilities then due and owing, the Administrative Agent shall, from time to time, at the request of the Borrower, deliver to the Borrower within 10 Business

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Days after the Administrative Agent's receipt of such request from the Borrower, against receipt but without any recourse, warranty or representation whatsoever, such amount of the credit balances in the Letter of Credit Collateral Account as exceeds the aggregate amount of Letter of Credit Liabilities at such time. Upon the expiration, termination or cancellation of an Extended Letter of Credit for which the Lenders reimbursed (or funded participations in) a drawing deemed to have occurred under the fourth sentence of Section 2.3.(b) for deposit into the Letter of Credit Collateral Account but in respect of which the Lenders have not otherwise received payment for the amount so reimbursed or funded, the Administrative Agent shall promptly remit to the Lenders the amount so reimbursed or funded for such Extended Letter of Credit that remains in the Letter of Credit Collateral Account, pro rata in accordance with the respective unpaid reimbursements or funded participations of the Lenders in respect of such Extended Letter of Credit, against receipt but without any recourse, warranty or representation whatsoever. When all of the Obligations shall have been indefeasibly paid in full and no Letters of Credit remain outstanding, the Administrative Agent shall deliver to the Borrower, against receipt but without any recourse, warranty or representation whatsoever, the balances remaining in the Letter of Credit Collateral Account.

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

#### **Section 11.7. Performance by Administrative Agent.**

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

#### **Section 11.8. Rights Cumulative.**

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

(b) Enforcement by Administrative Agent. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Article XI. for the benefit of all the Lenders and the Issuing Banks; provided that the foregoing shall not prohibit (i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (ii) any Issuing Bank or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Bank or Swingline Lender, as the case may be) hereunder or under the other Loan Documents, (iii) any Specified

Derivatives Provider from exercising the rights and remedies that inure to its benefit under any Specified Derivatives Contract, (iv) any Lender from exercising setoff rights in accordance with Section 13.3. (subject to the terms of Section 3.3.), or (v) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (x) the Requisite Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Article XI. and (y) in addition to the matters set forth in clauses (ii), (iv)

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and (v) of the preceding proviso and subject to Section 3.3., any Lender may, with the consent of the Requisite Lenders, enforce any rights and remedies available to it and as authorized by the Requisite Lenders.

## **ARTICLE XII. THE ADMINISTRATIVE AGENT**

### **Section 12.1. Appointment and Authorization.**

Each Lender hereby irrevocably appoints and authorizes the Administrative Agent to take such action as contractual representative on such Lender's behalf and to exercise such powers under this Agreement and the other Loan Documents as are specifically delegated to the Administrative Agent by the terms hereof and thereof, together with such powers as are reasonably incidental thereto. Not in limitation of the foregoing, each Lender authorizes and directs the Administrative Agent to enter into the Loan Documents for the benefit of the Lenders. Each Lender hereby agrees that, except as otherwise set forth herein, any action taken by the Requisite Lenders in accordance with the provisions of this Agreement or the Loan Documents, and the exercise by the Requisite Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. Nothing herein shall be construed to deem the Administrative Agent a trustee or fiduciary for any Lender or to impose on the Administrative Agent duties or obligations other than those expressly provided for herein. Without limiting the generality of the foregoing, the use of the terms "Agent", "Administrative Agent", "agent" and similar terms in the Loan Documents with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead, use of such terms is merely a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties. The Administrative Agent shall deliver or otherwise make available to each Lender, promptly upon receipt thereof by the Administrative Agent, copies of each of the financial statements, certificates, notices and other documents delivered to the Administrative Agent pursuant to Article IX. that the Parent or the Borrower is not otherwise required to deliver directly to the Lenders. The Administrative Agent will furnish to any Lender, upon the request of such Lender, a copy (or, where appropriate, an original) of any document, instrument, agreement, certificate or notice furnished to the Administrative Agent by the Parent, the Borrower, any other Loan Party or any other Affiliate of the Borrower, pursuant to this Agreement or any other Loan Document not already delivered or otherwise made available to such Lender pursuant to the terms of this Agreement or any such other Loan Document. As to any matters not expressly provided for by the Loan Documents (including, without limitation, enforcement or collection of any of the Obligations), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Requisite Lenders (or all of the Lenders if explicitly required under any other provision of this Agreement), and such instructions shall be binding upon all Lenders and all holders of any of the Obligations; provided, however, that, notwithstanding anything in this Agreement to the contrary, the Administrative Agent shall not be required to take any action which exposes the Administrative Agent to personal liability or which is contrary to this Agreement or any other Loan Document or Applicable Law. Not in limitation of the foregoing, the Administrative Agent may exercise any right or remedy it or the Lenders may have under any Loan Document upon the occurrence of a Default or an Event of Default unless the Requisite Lenders have directed the Administrative Agent otherwise. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of the Requisite Lenders, or where applicable, all the Lenders.

### **Section 12.2. Administrative Agent as Lender.**

The Lender acting as Administrative Agent shall have the same rights and powers as a Lender or a Specified Derivatives Provider, as the case may be, under this Agreement, any other Loan Document or any Specified Derivatives Contract, as the case may be, as any other Lender, or Specified Derivatives Provider and may exercise the same as though it were not the Administrative Agent; and the term "Lender" or "Lenders"

shall, unless otherwise expressly indicated, include Wells Fargo in each case in its individual capacity. Wells Fargo and its Affiliates may each accept deposits from, maintain deposits or credit balances for, invest in, lend money to, act as trustee under indentures of, serve as financial advisor to, and generally engage in any kind of business with the Borrower, any other Loan Party or any other Affiliate thereof as if it were any other bank and without any duty to account therefor to the Issuing Banks, the other Lenders, or any Specified Derivatives Providers. Further, the Administrative Agent and any Affiliate may accept fees and other consideration from the Parent, the Borrower, any other Loan Party or any other Subsidiary for services in connection with this Agreement, any Specified Derivatives Contract, or otherwise without having to account for the same to the Issuing

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Banks, the other Lenders, or any Specified Derivatives Providers. The Issuing Banks and the Lenders acknowledge that, pursuant to such activities, Wells Fargo or its Affiliates may receive information regarding the Borrower, other Loan Parties, other Subsidiaries and other Affiliates (including information that may be subject to confidentiality obligations in favor of such Person) and acknowledge that the Administrative Agent shall be under no obligation to provide such information to them.

### **Section 12.3. Approvals of Lenders.**

All communications from the Administrative Agent to any Lender requesting such Lender's determination, consent or approval (a) shall be given in the form of a written notice to such Lender, (b) shall be accompanied by a description of the matter or issue as to which such determination, consent or approval is requested, or shall advise such Lender where information, if any, regarding such matter or issue may be inspected, or shall otherwise describe the matter or issue to be resolved and (c) shall include, if reasonably requested by such Lender and to the extent not previously provided to such Lender, written materials provided to the Administrative Agent by the Parent, the Borrower in respect of the matter or issue to be resolved. Unless a Lender shall give written notice to the Administrative Agent that it specifically objects to the requested determination, consent or approval within 10 Business Days (or such lesser or greater period as may be specifically required under the express terms of the Loan Documents) of receipt of such communication, such Lender shall be deemed to have conclusively approved such requested determination, consent or approval.

### **Section 12.4. Notice of Events of Default.**

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

### **Section 12.5. Administrative Agent's Reliance.**

Notwithstanding any other provisions of this Agreement or any other Loan Documents, neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by it under or in connection with this Agreement or any other Loan Document, except for its or their own gross negligence or willful misconduct in connection with its duties expressly set forth herein or therein as determined by a court of competent jurisdiction in a final non-appealable judgment. Without limiting the generality of the foregoing, the Administrative Agent may consult with legal counsel (including its own counsel or counsel for the Parent, the Borrower or any other Loan Party), independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts. Neither the Administrative Agent nor any of its Related Parties: (a) makes any warranty or representation to any Lender, any Issuing Bank or any other Person, or shall be responsible to any Lender, any Issuing Bank or any other Person for any statement, warranty or representation made or deemed made by the Parent, the Borrower, any other Loan Party or any other Person in or in connection with this Agreement or any other Loan Document; (b) shall have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or any other Loan Document or the satisfaction of any conditions precedent under this Agreement or any Loan Document on the part of the Parent, the Borrower or other Persons, or to inspect the property, books or records of the Parent, the Borrower or any other Person; (c) shall be responsible to any Lender or any Issuing Bank for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document, any other instrument or document furnished pursuant thereto or any collateral covered

thereby or the perfection or priority of any Lien in favor of the Administrative Agent on behalf of the Lenders Parties in any such collateral; (d) shall have any liability in respect of any recitals, statements, certifications, representations or warranties contained in any of the Loan Documents or any other document, instrument, agreement, certificate or statement delivered in connection therewith; and (e) shall incur any liability under or in respect of this Agreement or any other Loan Document by acting upon any notice, consent, certificate or other instrument or writing (which may be by telephone, telecopy or electronic mail) believed by it to be genuine and signed, sent or given by the proper party or parties. The

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Administrative Agent may execute any of its duties under the Loan Documents by or through agents, employees or attorneys-in-fact and shall not be responsible for the negligence or misconduct of any agent or attorney-in-fact that it selects in the absence of gross negligence or willful misconduct in the selection of such agent or attorney-in-fact as determined by a court of competent jurisdiction in a final non-appealable judgment.

#### **Section 12.6. Indemnification of Administrative Agent.**

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

#### **Section 12.7. Lender Credit Decision, Etc.**

Each of the Lenders and each Issuing Bank expressly acknowledges and agrees that neither the Administrative Agent nor any of its Related Parties has made any representations or warranties to such Issuing Bank or such Lender and that no act by the Administrative Agent hereafter taken, including any review of the affairs of the Borrower, any other Loan Party or any other Subsidiary or Affiliate, shall be deemed to constitute any such representation or warranty by the Administrative Agent to any Issuing Bank or any Lender. Each of the Lenders and each Issuing Bank acknowledges that it has made its own credit and legal analysis and decision to enter into this Agreement and the transactions contemplated hereby, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative

Agent, or any of their respective Related Parties, and based on the financial statements of the Parent, the Borrower, the other Loan Parties, the other Subsidiaries and other Affiliates, and inquiries of such Persons, its independent due diligence of the business and affairs of the Parent, the Borrower, the other Loan Parties, the other Subsidiaries and other Persons, its review of the Loan Documents, the legal opinions required to be delivered to it hereunder, the advice of its own counsel and such other documents and information as it has deemed appropriate. Each of the Lenders and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, any other Lender or counsel to the Administrative Agent or any of their respective Related Parties, and based on such review, advice, documents and information as it shall deem appropriate at the time, continue to make its own decisions in taking or not

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taking action under the Loan Documents. The Administrative Agent shall not be required to keep itself informed as to the performance or observance by the Parent, the Borrower or any other Loan Party of the Loan Documents or any other document referred to or provided for therein or to inspect the properties or books of, or make any other investigation of, the Parent, the Borrower, any other Loan Party or any other Subsidiary. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders and the Issuing Banks by the Administrative Agent under this Agreement or any of the other Loan Documents, the Administrative Agent shall have no duty or responsibility to provide any Lender or any Issuing Bank with any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of the Parent, the Borrower, any other Loan Party or any other Affiliate thereof which may come into possession of the Administrative Agent or any of its Related Parties. Each of the Lenders and each Issuing Bank acknowledges that the Administrative Agent's legal counsel in connection with the transactions contemplated by this Agreement is only acting as counsel to the Administrative Agent and is not acting as counsel to any Lender or any Issuing Bank.

#### **Section 12.8. Successor Administrative Agent.**

The Administrative Agent may resign at any time as Administrative Agent under the Loan Documents by giving written notice thereof to the Lenders and the Borrower. If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Requisite Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Borrower and such Person, remove such Person as Administrative Agent. Upon any such resignation or removal, the Requisite Lenders shall have the right to appoint a successor Administrative Agent which appointment shall, provided no Default or Event of Default exists, be subject to the Borrower's approval, which approval shall not be unreasonably withheld, delayed or conditioned (except that the Borrower shall, in all events, be deemed to have approved each Lender and any of its Affiliates as a successor Administrative Agent). If no successor Administrative Agent shall have been so appointed in accordance with the immediately preceding sentence, and shall have accepted such appointment, within 30 days after the current Administrative Agent's giving of notice of resignation or removal, then the current Administrative Agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent, which shall be a Lender, if any Lender shall be willing to serve, and otherwise shall be an Eligible Assignee; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no Lender has accepted such appointment, then such resignation or removal shall nonetheless become effective in accordance with such notice and (1) the Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made to each Lender and each Issuing Bank directly, until such time as a successor Administrative Agent has been appointed as provided for above in this Section; provided, further that such Lenders and such Issuing Banks so acting directly shall be and be deemed to be protected by all indemnities and other provisions herein for the benefit and protection of the Administrative Agent as if each such Lender or Issuing Bank were itself the Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the current Administrative Agent, and the current Administrative Agent shall be discharged from its duties and obligations under the Loan Documents.

Any resignation by or removal of an Administrative Agent shall also constitute the resignation or removal as an Issuing Bank and as the Swingline Lender by the Lender then acting as Administrative Agent (the "Resigning Lender"). Upon the acceptance of a successor's appointment as Administrative Agent hereunder (i) the Resigning Lender shall be discharged from all duties and obligations of an Issuing Bank and the Swingline Lender hereunder and under the other Loan Documents and (ii) any successor Issuing Bank shall issue letters of credit in substitution for all Letters of Credit issued by the Resigning Lender as Issuing Banks outstanding at the time of such succession (which letters of credit issued in substitutions shall be deemed to be Letters of Credit issued hereunder) or make other arrangements satisfactory to the Resigning Lender to effectively assume the obligations of the Resigning Lender with respect to such Letters of Credit. After any Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Article XII. shall continue to inure to its benefit as to any actions taken or omitted to be taken by it while it was

Administrative Agent under the Loan Documents. Notwithstanding anything contained herein to the contrary, the Administrative Agent may assign its rights and duties under the Loan Documents to any of its Affiliates by giving the Borrower and each Lender prior written notice.

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## **Section 12.9. Titled Agents.**

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

## **Section 12.10. Specified Derivatives Contracts.**

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

## **Section 12.11. Collateral Matters.**

In relation to any Liens in the Collateral to secure the Obligations granted on the Security Trigger Date:

(a) Each Lender Party (including, by accepting the benefits thereof, each Specified Derivatives Provider) hereby authorizes the Administrative Agent, without the necessity of any notice to or further consent from any Lender Party, from time to time prior to an Event of Default, to take any action (or direct the Collateral Agent to take such action) with respect to any Collateral or Loan Documents which may be necessary to perfect and maintain perfected the Liens upon the Collateral granted pursuant to any of the Loan Documents.

(b) The Lenders hereby authorize the Administrative Agent, at its option and in its discretion, to release (or to direct the Collateral Agent to release) any Lien granted to or held by the Administrative Agent upon any Collateral (i) upon termination of the Commitments and indefeasible payment and satisfaction in full of all of the Obligations; (ii) upon the Security Release Date or as otherwise expressly permitted by the terms of the applicable Loan Document; or (iii) if approved, authorized or ratified in writing by the Lenders required to so approve in accordance with the terms of this Agreement. Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Administrative Agent’s authority to release (or to direct the Collateral Agent to release) particular types or items of Collateral pursuant to this Section.

(c) Notwithstanding anything set forth herein (including Section 8.14(c)), (i) the Administrative Agent shall not be required to execute any such document on terms which, in the Administrative Agent’s opinion, would expose the Administrative Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty and (ii) any release of the Collateral (or any portion thereof) shall not in any manner discharge, affect or impair the Obligations or any Liens upon (or obligations of the Borrower or any other Loan Party in respect of) all interests retained by the Borrower or any other Loan Party, including (without limitation) the proceeds of such sale or transfer, all of which shall continue to constitute part of the Collateral to the extent provided in the Pledge Agreement. In the event of any sale or transfer of Collateral, or any foreclosure with respect to any of the Collateral, the Administrative

Agent shall be authorized to deduct all of the expenses reasonably incurred by the Administrative Agent from the proceeds of any such sale, transfer or foreclosure.

(d) The Administrative Agent shall have no obligation whatsoever to the Lender Parties or to any other Person to assure that the Collateral exists or is owned by the Borrower or any other Loan Party or is cared for, protected or insured or that the Liens granted to the Administrative Agent pursuant to any of the Loan Documents have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or

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to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Administrative Agent in this Section or in any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Administrative Agent may act in any manner it may deem appropriate, in its sole discretion but subject to the terms and conditions of the Loan Documents, and that the Administrative Agent shall have no duty or liability whatsoever to the Lender Parties, except to the extent resulting from its gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final, non-appealable judgment.

#### **Section 12.12. Administrative Agent May File Bankruptcy Disclosure and Proofs of Claim.**

In the case of the pendency of any proceeding under any Debtor Relief Laws relative to any Loan Party, 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 Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(i) to file a verified statement pursuant to rule 2019 of the Federal Rules of Bankruptcy Procedure that, in its sole opinion, complies with such rule's disclosure requirements for entities representing more than one creditor;

(ii) 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 Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its respective agents and counsel and all other amounts due Administrative Agent under this Agreement allowed in such judicial proceeding; and

(iii) 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 Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under this Agreement. To the extent that the payment of any such compensation, expenses, disbursements and advances of Administrative Agent, its agent and counsel, and any other amounts due Administrative Agent under this Agreement out of the estate in any such proceeding, shall be denied for any reason, payment of the same shall be secured by a Lien on, and shall be paid out of, any and all distributions, dividends, money securities and other properties that the Lenders may be entitled to receive in such proceeding whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

### **ARTICLE XIII. MISCELLANEOUS**

#### **Section 13.1. Notices.**

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

If to the Borrower:

Sunstone Hotel Partnership, LLC  
200 Spectrum Center Drive, 21<sup>st</sup> Floor

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Irvine, CA 92618  
Attention: Bryan Giglia, CFO  
Telecopier: (949) 330-4078  
Telephone: (949) 382-3036

with a copy to:

Latham & Watkins LLP  
355 South Grand Avenue  
Los Angeles, CA 90071-1560  
Attention: Pablo Clarke  
Telephone: (213) 891-7987

If to the Administrative Agent:

Wells Fargo Bank, National Association  
1750 H Street, NW, #550  
Washington, D.C. 20006  
Attention: Mark F. Monahan  
Telecopier: (202) 429-2589  
Telephone: (202) 303-3017

with a copy to

Wells Fargo Bank, National Association  
Shared Credit Management  
171 17th Street, NW, 4th Floor  
Atlanta, Georgia 30363  
Attn: Sandra Wheeler  
Loan #: 1013605  
Telecopier: (866) 600-0942  
Telephone: (404) 897-9040

If to the Administrative Agent under Article II.:

Wells Fargo Bank, National Association  
Minneapolis Loan Center  
MAC N9303-110  
600 South 4th Street, 9th Floor,  
Minneapolis, Minnesota 55415  
Attn: Manager  
Telecopier: (866) 835-0263  
Telephone: (612) 316-0299

If to Wells Fargo, as an Issuing Bank:

Wells Fargo Bank, National Association  
1750 H Street, NW, #550  
Washington, D.C. 20006  
Attention: Mark F. Monahan  
Telecopier: (202) 429-2589  
Telephone: (202) 303-3017

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If to JPMorgan Chase Bank, N.A., as an Issuing Bank:

JPMorgan Chase Bank, N.A.  
10 S. Dearborn, 19th Floor  
Chicago, IL 60603  
Attn: Christian Lunt  
Telecopier: (312) 325-5174  
Telephone: (312) 325-5007

If to Bank of America, N.A., as an Issuing Bank:

Bank of America, N.A.  
Global Trade Operations  
One Fleet Way, 2nd Floor  
Mail Code PA6-580-02-30  
Scranton, PA 18507  
Telecopier: 1-800-755-8743  
Telephone: 1-800-370-7519 and choose Trade product opt. #1  
Email Address: scranton\_standby\_lc@bankofamerica.com

If to any other Lender:

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

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

### **Section 13.2. Expenses.**

The Borrower agrees (a) to pay or reimburse the Administrative Agent and the Lead Arranger that is an Affiliate of the Administrative Agent for all of their respective reasonable and documented out-of-pocket costs and expenses incurred in connection with the preparation, negotiation and execution of, and any amendment, supplement or modification to, any of the Loan Documents (including due diligence expenses and reasonable travel expenses related to closing), and the consummation of the transactions contemplated hereby and thereby, including the reasonable fees and disbursements of one single counsel to both the Administrative

Agent and such Lead Arranger and all costs and expenses of the Administrative Agent in connection with the use of IntraLinks, SyndTrak or other similar information transmission systems in connection with the Loan Documents and of the Administrative Agent in connection with the review of Properties for inclusion as Unencumbered Properties and the Administrative Agent's other activities under Article IV. and the reasonable and documented fees and disbursements of counsel to the Administrative Agent relating to all such activities, (b) to pay or

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reimburse the Administrative Agent, the Issuing Banks and the Lenders for all their reasonable and documented costs and expenses incurred in connection with the enforcement, “workout” or preservation of any rights under the Loan Documents, including the reasonable fees and disbursements of their respective counsel (including the reasonable allocated fees and expenses of in-house counsel) and any payments in indemnification or otherwise payable by the Lenders to the Administrative Agent pursuant to the Loan Documents, (c) to pay, and indemnify and hold harmless the Administrative Agent, the Issuing Banks and the Lenders from, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any failure to pay or delay in paying, documentary, stamp, excise and other similar taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of any of the Loan Documents, or consummation of any amendment, supplement or modification of, or any waiver or consent under or in respect of, any Loan Document, (d) to pay, and indemnify and hold harmless the Administrative Agent for all reasonable and documented costs and expenses incurred in connection with the exercise of any right or remedy the Administrative Agent or the Lenders may have under this Agreement or the other Loan Documents, including but not limited to, the foreclosure upon, or seizure of, any Collateral or exercise of any other rights of a secured party, and (e) to the extent not already covered by any of the preceding subsections, to pay or reimburse the fees and disbursements of counsel to the Administrative Agent, any Issuing Bank and any Lender incurred in connection with the representation of the Administrative Agent, such Issuing Bank or such Lender in any matter relating to or arising out of any bankruptcy or other proceeding of the type described in Sections 11.1.(e) or 11.1.(f), including, without limitation (i) any motion for relief from any stay or similar order, (ii) the negotiation, preparation, execution and delivery of any document relating to the Obligations and (iii) the negotiation and preparation of any debtor-in-possession financing or any plan of reorganization of the Parent, the Borrower or any other Loan Party, whether proposed by the Parent, the Borrower, such Loan Party, the Lenders or any other Person, and whether such fees and expenses are incurred prior to, during or after the commencement of such proceeding or the confirmation or conclusion of any such proceeding; provided that the fees and expenses of external counsel shall be limited to (x) one external counsel for the Administrative Agent, (y) one external counsel for all other Lenders (and, solely in the case of a conflict of interest, additional conflicts counsel) and (z) and such local or foreign counsel of the Administrative Agent as may be necessary under the circumstances. If the Borrower shall fail to pay any amounts required to be paid by it pursuant to this Section, the Administrative Agent and/or the Lenders may pay such amounts on behalf of the Borrower and such amounts shall be deemed to be Obligations owing hereunder.

### **Section 13.3. Setoff.**

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

describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff.

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

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

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

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

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

### **Section 13.5. Successors and Assigns.**

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor the Parent may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations

hereunder except (i) to an Eligible Assignee in accordance with the provisions of the immediately following subsection (b), (ii) by way of participation in accordance with the provisions of the immediately following subsection (d) or (iii) by way of pledge or assignment of a security interest subject to the restrictions of the immediately following subsection (e) (and, subject to the last sentence of the immediately following subsection (b), any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and

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assigns permitted hereby, Participants to the extent provided in the immediately following subsection (d) and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its 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 an assigning Revolving Lender's Revolving Commitment and/or the Revolving Loans at the time owing to it, or contemporaneous assignments to related Approved Funds that equal at least the amount specified in the immediately following clause (B) in the aggregate, or, if applicable, in the case of an assignment of the entire remaining amount of an assigning Term Loan Lender's Term 1 Loans or Term 2 Loans at the time owing to it, or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

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

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, except that this clause (ii) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Classes of Commitments or Loans on a non-pro rata basis.

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

(A) the consent of the Borrower (such consent not to be unreasonably withheld, delayed or conditioned ) shall be required unless (x) an Event of Default shall exist at the time of such assignment or (y) such assignment is to a Lender of the same Class of Commitments or Loans, an Affiliate of such a Lender or an Approved Fund in respect of such Lender; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 10 Business Days after having received notice thereof;

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

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(C) the consent of each Issuing Bank and the Swingline Lender shall be required for any assignment in respect of a Revolving Commitment if such assignment is to a Person that is not already a Revolving Lender.

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

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

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural person.

(vii) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Banks, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and, as applicable, participations in Letters of Credit and Swingline Loans in accordance with its Revolving Commitment Percentage and such that all Term Loans are held by the Term Loan Lenders pro rata as if there had been no Defaulting Lenders that are Term Loan Lenders. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to the immediately following subsection (c), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 5.4., 13.2. and 13.9. and the other provisions of this Agreement and the other Loan Documents as provided in Section 13.10. with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting

Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with the immediately following subsection (d).

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Principal Office a copy of each Assignment and Assumption delivered to it and a register for the

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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 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 Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Parent, the Borrower, the Administrative Agent, the Issuing Banks and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to (w) increase such Lender's Commitment, (x) extend the date fixed for the payment of principal on the Loans or portions thereof owing to such Lender, (y) reduce the rate at which interest is payable thereon or (z) release any Guarantor from its Obligations under the Guaranty except as contemplated by Section 8.13.(b), in each case, as applicable to that portion of such Lender's rights and/or obligations that are subject to the participation. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.10., 5.1., 5.4. (subject to the requirements and limitations therein, including the requirements under Section 3.10.(g) (it being understood that the documentation required under Section 3.10.(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 5.6. as if it were an assignee under subsection (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 5.1. or 3.10., with respect to any participation, than its participating Lender would have been entitled to receive. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 5.6. with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 13.3. as though it were a Lender; provided that such Participant agrees to be subject to Section 3.3. as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall

release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

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

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

### **Section 13.6. Amendments and Waivers.**

(a) Generally. Except as otherwise expressly provided in this Agreement, (i) any consent or approval required or permitted by this Agreement or any other Loan Document to be given by the Lenders may be given, (ii) any term of this Agreement or of any other Loan Document may be amended, (iii) the performance or observance by the Parent, the Borrower, any other Loan Party or any other Subsidiary of any terms of this Agreement or such other Loan Document may be waived, and (iv) the continuance of any Default or Event of Default may be waived (either generally or in a particular instance and either retroactively or prospectively) with, but only with, the written consent of the Requisite Lenders (or the Administrative Agent at the written direction of the Requisite Lenders), and, in the case of an amendment to any Loan Document, the written consent of each Loan Party which is party thereto. Any term of this Agreement or of any other Loan Document relating solely to the rights or obligations of the Lenders of a particular Class, and not Lenders of any other Class, may be amended, and the performance or observance by the Borrower or any other Loan Party or any Subsidiary of any such terms may be waived (either generally or in a particular instance and either retroactively or prospectively) with, and only with, the written consent of the Requisite Class Lenders for such Class of Lenders (and, in the case of an amendment to any Loan Document, the written consent of each Loan Party which is a party thereto). Notwithstanding anything to the contrary contained in this Section, each Fee Letter may only be amended, and the performance or observance by any Loan Party thereunder may only be waived, in a writing executed by the parties thereto. Notwithstanding anything to the contrary contained in this Section, the Administrative Agent and the Borrower may, without the consent of any Lender, enter into amendments or modifications to this Agreement or any of the other Loan Documents or enter into additional Loan Documents as the Administrative Agent reasonably deems appropriate in order to implement any Replacement Rate or otherwise effectuate the terms of Section 5.2.(c) in accordance with the terms of Section 5.2.(c).

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

(i) (A) increase (or reinstate) the Commitments of a Lender or subject a Lender to any additional obligations without the written consent of such Lender or (B) increase the aggregate Commitments other than in connection with an increase under Section 2.16. as provided therein without the consent of each Lender;

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

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

(iv) modify the definition of “Revolving Commitment Percentage” without the written consent of each Revolving Lender;

(v) modify the definitions of “Revolving Termination Date” or clause (a) of the definition of “Termination Date” (in each case, except in accordance with Section 2.13.) or otherwise postpone any date fixed for, or forgive, any payment of principal of, or interest on, any Revolving Loans or for the payment of Fees or any other Obligations owing to the Revolving Lenders, or extend the expiration date of any Letter of Credit beyond the Revolving Termination Date (except in accordance with Section 2.3.(b)), in each case, without the written consent of each Revolving Lender directly affected thereby;

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(vi) modify the definitions of “Term Loan Maturity Date” or clause (b) of the definition of “Termination Date” or otherwise postpone any date fixed for, or forgive, any payment of principal of, or interest on, any Term Loans or for the payment of Fees or any other Obligations owing to the Term Loan Lenders, in each case, without the written consent of each Term Loan Lender directly affected thereby;

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

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

(ix) amend this Section or amend the definitions of the terms used in this Agreement or the other Loan Documents insofar as such definitions affect the substance of this Section, modify the definition of the term “Requisite Lenders” or (except as otherwise provided in the immediately following clause (x)), modify in any other manner the number or percentage of the Lenders required to make any determinations or waive any rights hereunder or to modify any provision hereof without the written consent of each Lender;

(x) modify the definition of the term “Requisite Class Lenders” as it relates to a particular Class of Lenders or modify in any other manner the number or percentage of a Class of Lenders required to make any determinations or waive any rights hereunder or to modify any provision hereof, in each case, solely with respect to such Class of Lenders, without the written consent of each Lender in such Class;

(xi) release the Parent as a Guarantor or any other Guarantor from its obligations under the Guaranty (except as expressly permitted by Section 8.13.(b)) without the written consent of each Lender; provided, however, the consent of each Lender shall not otherwise be required under this clause (xi) for any amendment, waiver or consent which does not expressly provide for the release of a Guarantor (but which may indirectly result in such a release);

(xii) amend, or waive the Borrower’s compliance with, Section 2.15. without the written consent of each Revolving Lender;

(xiii) modify Section 2.16. to change the aggregate amount of Revolving Commitments and Term Loans that may be outstanding after giving effect to any increases of the Revolving Commitments or making of any Term Loans without the written consent of each Lender; or

(xiv) waive any Default or Event of Default occurring under Section 11.1.(a) without the written consent of each Lender owed the Obligations that were not paid when due resulting in such Default or Event of Default.

(c) Amendment of Administrative Agent’s Duties, Etc. No amendment, waiver or consent unless in writing and signed by the Administrative Agent, in addition to the Lenders required hereinabove to take such action, shall affect the rights or duties of the Administrative Agent under this Agreement or any of the other Loan Documents. Any amendment, waiver or consent relating to Section 2.4. or the obligations of the Swingline Lender under this Agreement or any other Loan Document shall, in addition to the Lenders required hereinabove to take such action, require the written consent of the Swingline Lender. Any amendment, waiver or consent relating to Section 2.3. or the obligations of an Issuing Bank under this Agreement or any other

Loan Document shall, in addition to the Lenders required hereinabove to take such action, require the written consent of such Issuing Bank. Any amendment, waiver or consent with respect to any Loan Document that (i) diminishes the rights of a Specified Derivatives Provider in a manner or to an extent dissimilar to that affecting the Lenders or (ii) increases the liabilities or obligations of a Specified Derivatives Provider shall, in addition to the Lenders required hereinabove to take such action, require the consent of the Lender that is (or having an Affiliate that is) such Specified Derivatives Provider. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by

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its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitments of any Defaulting Lender may not be increased, reinstated or extended without the written consent of such Defaulting Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the written consent of such Defaulting Lender. No waiver shall extend to or affect any obligation not expressly waived or impair any right consequent thereon and any amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose set forth therein. No course of dealing or delay or omission on the part of the Administrative Agent or any Lender in exercising any right shall operate as a waiver thereof or otherwise be prejudicial thereto. Any Event of Default occurring hereunder shall continue to exist until such time as such Event of Default is waived in writing in accordance with the terms of this Section, notwithstanding any attempted cure or other action by the Parent, the Borrower, any other Loan Party or any other Person subsequent to the occurrence of such Event of Default. Except as otherwise explicitly provided for herein or in any other Loan Document, no notice to or demand upon the Parent, the Borrower or any other Loan Party shall entitle the Parent, the Borrower or any other Loan Party to other or further notice or demand in similar or other circumstances.

(d) Technical Amendments. Notwithstanding anything to the contrary in this Section 13.6., if the Administrative Agent and the Borrower have jointly identified an ambiguity, omission, mistake or defect in any provision of this Agreement or an inconsistency between provisions of this Agreement, the Administrative Agent and the Borrower shall be permitted to amend such provision or provisions to cure such ambiguity, omission, mistake, defect or inconsistency so long as to do so would not adversely affect the interests of the Lenders and the Issuing Banks. Any such amendment shall become effective without any further action or consent of any of other party to this Agreement.

### **Section 13.7. Nonliability of Administrative Agent and Lenders.**

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

### **Section 13.8. Confidentiality.**

The Administrative Agent, each Issuing Bank and each Lender shall maintain the confidentiality of all Information (as defined below) but in any event may make disclosure: (a) to its Affiliates and to its and its Affiliates' other respective Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any actual or proposed assignee, Participant or other transferee in connection with a potential transfer of any Commitment or participation therein as permitted hereunder, or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations; (c) as required or requested by any Governmental Authority or representative thereof or pursuant to legal process or in connection with any legal proceedings, or as otherwise required by Applicable Law; (d) to the Administrative Agent's, such Issuing Bank's or such Lender's independent auditors and other professional advisors (provided they shall be notified of the confidential nature of the information); (e) in connection with the exercise of any remedies under any Loan Document (or any Specified Derivatives Contract) or any action or proceeding relating to any Loan Document (or any Specified Derivatives Contract)

or the enforcement of rights hereunder or thereunder; (f) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section actually known by the Administrative Agent, such Issuing Bank or such Lender to be a breach of this Section or (ii) becomes available to the Administrative Agent, any Issuing Bank, any Lender or any Affiliate of the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis from a source other than the Borrower or any Affiliate of the Borrower; (g) to the extent requested by, or required to be disclosed to, any nationally recognized rating agency or regulatory or similar authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners) having or purporting to have jurisdiction over it; (h) to bank trade publications, such information to consist of deal terms and other information

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customarily found in such publications; (i) to any other party hereto; and (j) with the prior written consent of the Borrower. Notwithstanding the foregoing, the Administrative Agent, each Issuing Bank and each Lender may disclose any such confidential information, without notice to the Parent, the Borrower or any other Loan Party, to Governmental Authorities in connection with any regulatory examination of the Administrative Agent, such Issuing Bank or such Lender or in accordance with the regulatory compliance policy of the Administrative Agent, such Issuing Bank or such Lender. As used in this Section, the term “Information” means all information received from the Parent, the Borrower, any other Loan Party, any other Subsidiary or Affiliate relating to any Loan Party or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any Issuing Bank on a nonconfidential basis prior to disclosure by the Parent, the Borrower, any other Loan Party, any other Subsidiary or any Affiliate, provided that, in the case of any such information received from the Parent, the Borrower, any other Loan Party, any other Subsidiary or any Affiliate after the date hereof, such information shall be deemed confidential unless it is clearly identified at the time of delivery as public. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

### **Section 13.9. Indemnification.**

(a) The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Issuing Bank, each Lender, the Lead Arrangers and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnified Party”) against, and hold each Indemnified Party harmless from, and shall pay or reimburse any such Indemnified Party for, any and all losses, claims (including without limitation, Environmental Claims), damages, liabilities and related expenses (including without limitation, the fees, charges and disbursements of any counsel for any Indemnified Party (which counsel may be employees of any Indemnified Party)), incurred by any Indemnified Party or asserted against any Indemnified Party by any Person (including the Parent, the Borrower, any other Loan Party or any other Subsidiary) other than such Indemnified Party and its Related Parties, arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated hereby, the performance by the parties hereto or thereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Parent, the Borrower, any other Loan Party or any other Subsidiary, or any Environmental Claim related in any way to the Parent, the Borrower, any other Loan Party or any other Subsidiary, (iv) any actual or prospective claim, litigation, investigation or proceeding (an “Indemnity Proceeding”) relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Parent, the Borrower, any other Loan Party or any other Subsidiary, and regardless of whether any Indemnified Party is a party thereto, or (v) any claim (including without limitation, any Environmental Claims), investigation, litigation or other proceeding (whether or not the Administrative Agent, any Issuing Bank or any Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Loans, this Agreement, any other Loan Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby, including without limitation, reasonable attorneys and consultant’s fees; provided, however, that (A) such indemnity shall not, as to any Indemnified Party, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnified Party and (B) in the case of legal fees and expenses, the Borrower’s reimbursement obligations hereunder shall be limited to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to the Indemnified Parties (other than in connection with a dispute among Indemnified Parties resulting from claims against the Administrative Agent or a Lead Arranger in its capacity or in fulfilling its role as an administrative

agent or arranger or any similar role under this Agreement and the other Loan Documents) and, if reasonably necessary, a single local counsel for the Indemnified Parties in each relevant jurisdiction and with respect to each relevant specialty, and in the case of an actual or perceived conflict of interest, one additional counsel in each relevant jurisdiction to the affected Indemnified Parties similarly situated and taken as a whole.

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

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

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

#### **Section 13.10. Termination; Survival.**

This Agreement shall terminate at such time as (a) all of the Commitments have been terminated, (b) all Letters of Credit have terminated or expired or been canceled (other than Extended Letters of Credit in respect of which the Borrower has satisfied the requirements to provide Cash Collateral as required in Section 2.3.(b)), (c) none of the Lenders is obligated any longer under this Agreement to make any Loans and no Issuing Bank is obligated under this Agreement to issue Letters of Credit and (d) all Obligations (other than obligations which survive as provided in the following sentence) have been paid and satisfied in full. The indemnities to which the Administrative Agent, the Issuing Bank the Lenders and their respective Related Parties are entitled under the provisions of Sections 3.10., 5.1., 5.4., 12.6., 13.2. and 13.9. and any other provision of this Agreement and the other Loan Documents, and the provisions of Section 13.4., shall continue in full force and effect and shall protect the Administrative Agent, the Issuing Bank the Lenders and their respective Related Parties (i) notwithstanding any termination of this Agreement, or of the other Loan Documents, against events arising after such termination as well as before and (ii) at all times after any such party ceases to be a party to this Agreement with respect to all matters and events existing on or prior to the date such party ceased to be a party to this Agreement.

#### **Section 13.11. Severability of Provisions.**

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

#### **Section 13.12. GOVERNING LAW.**

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

#### **Section 13.13. Counterparts.**

To facilitate execution, this Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts as may be convenient or required (which may be effectively delivered by facsimile, in portable document format ("PDF") or other similar electronic means). It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto.

#### **Section 13.14. Obligations with Respect to Loan Parties and Subsidiaries.**

The obligations of the Parent and the Borrower to direct or prohibit the taking of certain actions by the other Loan Parties and Subsidiaries as specified herein shall be absolute and not subject to any defense the Parent or the Borrower may have that the Parent or the Borrower does not control such Loan Parties or Subsidiaries.

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### **Section 13.15. Independence of Covenants.**

All covenants hereunder shall be given in any jurisdiction independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

### **Section 13.16. Limitation of Liability.**

None of the Administrative Agent, any Issuing Bank, any Lender, or any of their respective Related Parties shall have any liability with respect to, and each of the Parent and the Borrower hereby waives, releases, and agrees not to sue any of them upon, any claim for any special, indirect, incidental, consequential or punitive damages suffered or incurred by the Parent or the Borrower in connection with, arising out of, or in any way related to, this Agreement, any of the other Loan Documents or any of the transactions contemplated by this Agreement or any of the other Loan Documents.

### **Section 13.17. Entire Agreement.**

This Agreement and the other Loan Documents embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and thereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. To the extent any term of this Agreement is inconsistent with a term of any other Loan Document to which the parties of this Agreement are party, the term of this Agreement shall control to the extent of such inconsistency. There are no oral agreements among the parties hereto.

### **Section 13.18. Construction.**

The Administrative Agent, each Issuing Bank, the Parent, Borrower and each Lender acknowledge that each of them has had the benefit of legal counsel of its own choice and has been afforded an opportunity to review this Agreement and the other Loan Documents with its legal counsel and that this Agreement and the other Loan Documents shall be construed as if jointly drafted by the Administrative Agent, each Issuing Bank, each Lender, the Parent and the Borrower.

### **Section 13.19. Headings.**

The paragraph and section headings in this Agreement are provided for convenience of reference only and shall not affect its construction or interpretation.

### **Section 13.20. Acknowledgement and Consent to Bail-in of EEA Financial Institutions.**

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document 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 party hereto 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 entity, 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

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(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.

#### **Section 13.21. Effect of Amendment and Restatement.**

(a) Existing Credit Agreement. Upon satisfaction of the conditions precedent set forth in Sections 6.1. and 6.2. of this Agreement, this Agreement and the other Loan Documents shall exclusively control and govern the mutual rights and obligations of the parties hereto with respect to the Existing Credit Agreement, and the Existing Credit Agreement shall be superseded in all respects, in each case, on a prospective basis.

(b) NO NOVATION. THE PARTIES HERETO HAVE ENTERED INTO THIS AGREEMENT SOLELY TO AMEND AND RESTATE THE TERMS OF THE EXISTING CREDIT AGREEMENT. THE PARTIES DO NOT INTEND THIS AGREEMENT NOR THE TRANSACTIONS CONTEMPLATED HEREBY TO BE, AND THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL NOT BE CONSTRUED TO BE, A NOVATION OF ANY OF THE OBLIGATIONS OWING BY THE BORROWER OR ANY OTHER LOAN PARTY UNDER OR IN CONNECTION WITH THE EXISTING CREDIT AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS (AS DEFINED IN THE EXISTING CREDIT AGREEMENT).

#### **Section 13.22. Acknowledgement Regarding Any Supported QFCs.**

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Derivatives Contracts 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 FDIC 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 13.22, 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);
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(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)).

### **Section 13.23. Intercreditor Agreement.**

BY ACCEPTING THE BENEFITS OF THE SECURITY INTERESTS SET FORTH HEREIN THE LENDER PARTIES (INCLUDING EACH PERSON THAT BECOMES A LENDER PARTY PURSUANT TO SECTION 13.5 OR OTHERWISE) HEREBY (A) CONSENT TO AND APPROVE EACH AND ALL OF THE PROVISIONS OF THE INTERCREDITOR AGREEMENT, (B) AGREE THAT, UPON THE ADMINISTRATIVE AGENT’S EXECUTION OF THE INTERCREDITOR AGREEMENT, THEY WILL BE BOUND BY AND WILL TAKE NO ACTIONS CONTRARY TO THE PROVISIONS OF THE INTERCREDITOR AGREEMENT, (C) ACKNOWLEDGE THAT THE LIENS SECURING THE OBLIGATIONS, AND THE EXERCISE OF RIGHTS AND REMEDIES WITH RESPECT TO THE GUARANTEED OBLIGATIONS AND THE LIENS GRANTED TO THE COLLATERAL AGENT FOR THE BENEFIT THE ADMINISTRATIVE AGENT AND LENDER PARTIES UNDER THE PLEDGE AGREEMENT AND THE OTHER LOAN DOCUMENTS, ARE SUBJECT TO THE INTERCREDITOR AGREEMENT AND (D) IRREVOCABLY AUTHORIZE AND DIRECT THE ADMINISTRATIVE AGENT TO EXECUTE AND DELIVER THE INTERCREDITOR AGREEMENT UPON THE OCCURRECE OF THE SECURITY TRIGGER DATE AND TO PERFORM ITS OBLIGATIONS THEREUNDER. IN THE EVENT OF ANY CONFLICT BETWEEN THE TERMS OF THE INTERCREDITOR AGREEMENT AND THIS AGREEMENT, THE TERMS OF THE INTERCREDITOR AGREEMENT SHALL GOVERN.

Further, by accepting the benefits set forth herein the Lender Parties (including each Person that becomes a Lender Party pursuant to Section 13.5 or otherwise) hereby (a) acknowledge that Wells Fargo is acting under the Intercreditor Agreement in multiple capacities as the Administrative Agent and the Collateral Agent and (b) waive any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against Wells Fargo any claims, causes of action, damages or liabilities of whatever kind or nature relating to any such conflict of interest, except for any such claims, causes of action, damages or liabilities resulting from gross negligence or willful misconduct by Wells Fargo as determined by a court of competent jurisdiction in a final, non-appealable judgment. The Lender Parties (and each Person that becomes a Lender Party pursuant to Section 13.5 or otherwise) hereby authorize and direct Wells Fargo to enter into the Intercreditor Agreement on behalf of each Lender Party and agree that Wells Fargo, in its various capacities thereunder, may take such actions on its behalf as is contemplated by the terms of the Intercreditor Agreement.

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Execution Version

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SUNSTONE HOTEL PARTNERSHIP, LLC  
SUNSTONE HOTEL INVESTORS, INC.

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FIRST AMENDMENT  
Dated as of July 15, 2020

to

NOTE AND GUARANTEE AGREEMENT  
Dated as of December 20, 2016

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Re: \$120,000,000 4.69% Series A Guaranteed Senior Notes due January 10, 2026  
\$120,000,000 4.79% Series B Guaranteed Senior Notes due January 10, 2028

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## FIRST AMENDMENT

THIS FIRST AMENDMENT dated as of July 15, 2020 (this “**Amendment**”) is entered into by and among SUNSTONE HOTEL PARTNERSHIP, LLC, a Delaware limited liability company (the “**Issuer**”), and SUNSTONE HOTEL INVESTORS, INC., a Maryland corporation (the “**Parent Guarantor**” and, together with the Issuer, collectively the “**Constituent Companies**” and individually each a “**Constituent Company**”), and each of the institutional investors listed on the signature pages hereto (collectively, the “**Noteholders**”).

### RECITALS:

A. The Constituent Companies and the purchasers listed on the Purchaser Schedule thereto have heretofore entered into that certain Note and Guarantee Agreement dated as of December 20, 2016 (the “**Note Agreement**”), pursuant to which the Issuer issued and sold \$120,000,000 aggregate principal amount of its 4.69% Series A Guaranteed Senior Notes due January 10, 2026 (the “**Series A Notes**”) and \$120,000,000 aggregate principal amount of its 4.79% Series B Guaranteed Senior Notes due January 10, 2028 (the “**Series B Notes**” and, together with the Series A Notes, collectively the “**Notes**”).

B. The Constituent Companies and the Noteholders now desire to amend the Note 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 Agreement 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 Amendment a valid, legal and binding instrument according to its terms for the purposes herein expressed have been done or performed.

NOW, THEREFORE, upon the full and complete satisfaction of the conditions precedent to the effectiveness of this Amendment set forth in Section 4.1, and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Constituent Companies and the Noteholders do hereby agree as follows:

**SECTION 1. AMENDMENTS.** Subject to the conditions to effectiveness set forth in Section 4 below, the Note Agreement is amended as set forth in Annex A hereto. Language being inserted into the applicable section of the Note Agreement is evidenced by bold and underline formatting. Language being deleted from the applicable section of the Note Agreement is evidenced by strike-through formatting.

**SECTION 2. CONSENT.** The Required Holders consent to (a) for purposes of Section 9.12 of the Note Agreement (as amended hereby), the removal of the Property known as “Renaissance Harborplace” located at 202 E. Pratt Street in Baltimore, Maryland (the “**Baltimore Property**”) as an Unencumbered Property and (b) in connection therewith, the release of Sunstone East Pratt GP, LLC and Sunstone East Pratt, LP as guarantors under the Subsidiary Guaranty Agreement, in each case as of the later to occur of (1) July 15, 2020 and (2) the date of removal and release, respectively, pursuant to the Bank Credit Agreement.

**SECTION 3. REPRESENTATIONS AND WARRANTIES OF THE CONSTITUENT COMPANIES.**

To induce the Noteholders to execute and deliver this Amendment (which representations shall survive the execution and delivery of this Amendment), each Constituent Company represents and warrants to the Noteholders that:

(a) this Amendment has been duly authorized by all necessary limited liability company or corporate action on the part of such Constituent Company and executed and delivered by such Constituent Company, and this Amendment and the Note Agreement, as amended by this Amendment, constitute the legal, valid and binding obligations of such Constituent Company enforceable against such Constituent Company in accordance with its terms, except as such enforceability may be limited by (1) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors’ rights generally and (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law)

(b) the execution and delivery of this Amendment by such Constituent Company and performance by such Constituent Company of this Amendment and the Note Agreement, as amended by this Amendment, will not (1) contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien (other than the Liens contemplated by such Amendment) in respect of any property of such Constituent Company under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter, regulations or by-laws, shareholders agreement or any other agreement or instrument to which such Constituent Company is bound or by which such Constituent Company or any of its Subsidiaries or any of their respective properties may be bound or affected, (2) 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 such Constituent Company or any of its Subsidiaries or (3) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to such Constituent Company or any of its Subsidiaries.

(c) no consent, approval or authorization of, or registration, filing or declaration with, any Governmental Authority is required in connection with the execution and delivery by such Constituent Company of this Amendment or the performance by such Constituent Company of this Amendment or the Note Agreement, as amended by this Amendment.

(d) all the representations and warranties contained in Section 5 of the Note Agreement are true and correct with the same force and effect as if made by such Constituent



Company on and as of the date hereof (except (1) to the extent such representations and warranties expressly refer to an earlier date, in which case they were true and correct as of such earlier date and (2) for purposes of this clause (d): (i)(A) the reference in Section 5.3 of the Note Agreement to “October 18, 2016” shall be deemed to be a reference to “May 11, 2020” and (B) any determination of Material Adverse Effect under such Section shall exclude any event or circumstance resulting from the COVID-19 pandemic as described in the Parent Guarantor’s quarterly report on Form 10-Q filed with the SEC on May 11, 2020; (ii) a reference to Schedule 5.4 to the Note Agreement shall be deemed to be a reference to Schedule 2 hereto; (iii) the reference in Section 5.9(a) of the Original Note Purchase Agreement to “December 31, 2012” shall be deemed to be a reference to “December 31, 2015”; (iv) (A) the reference in Section 5.10 to “Execution Date” shall be deemed to be a reference to the “First Amendment Date” and (B) a reference to Schedule 5.10 of the Original Note Purchase Agreement shall be deemed to be a reference to Schedule 3 hereto; and (v) the reference in Section 5.15(a) of the Original Note Purchase Agreement to “September 30, 2016” shall be deemed to be a reference to “March 31, 2020” and (B) a reference to Schedule 5.15 to the Original Note Purchase Agreement shall be deemed to be a reference to Schedule 4 hereto;

(e) neither such Constituent Company nor any other Person has paid or agreed to pay, and neither such Constituent Company nor any Subsidiary will pay or agree to pay, any amendment fees or similar consideration to any Person, in connection with amending (pursuant to the amendment and restatement thereof) of the Bank Credit Agreement in a manner consistent with the amendments set forth herein, in excess (based on basis points) of the amendment fee paid to the Noteholders in connection with this Amendment; and

(f) as of the date hereof and after giving effect to this Amendment, no Default or Event of Default has occurred which is continuing.

#### **SECTION 4. CONDITIONS TO EFFECTIVENESS OF THIS AMENDMENT.**

Upon satisfaction of each and every one of the following conditions, this Amendment shall become effective as of the date first written above:

(a) executed counterparts of this Amendment, duly executed by the Company and the Required Holders, shall have been delivered to each Noteholder or its special counsel;

(b) the representations and warranties of the Company set forth in Section 3 shall be true and correct on and with respect to the date hereof and each Noteholder shall have received an Officer’s Certificate to such effect;

(c) the Bank Credit Agreement shall have been amended in a manner such that the terms of the Note Agreement, after giving effect to this Amendment, shall be no less favorable to the Noteholders than the terms of the Bank Credit Agreement, as so amended;

(d) each Noteholder or its special counsel shall have received opinions of counsel to the Constituent Companies and the Subsidiary Guarantors, dated the date of this Amendment, in scope, form and substance reasonably satisfactory to the Required Holders;

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(e) each Noteholder or its special counsel shall have received one or more Guaranty Supplements executed by Sunstone Sea Harbor, LLC, Key West 2016, LLC, Sunstone Holdco 10, LLC, Sunstone Sea Harbor Holdco, LLC and SWW No. 1 LLC, together with all related documents required by Section 9.9(a) of the Note Purchase Agreement;

(f) each Noteholder shall have received, by payment in immediately available funds to the account of such holder set forth in the Purchaser Schedule to the Note Agreement or to such other account as such Noteholder shall have heretofore provided to the Company, the amount set forth opposite such holder's name in Schedule 1 hereto; and

(g) the Company shall have paid the fees and expenses of Schiff Hardin LLP, special counsel to the Noteholders, in connection with the negotiation, preparation, approval, execution and delivery of this Amendment to the extent invoiced by noon (New York time) on the date hereof.

#### **SECTION 5. REAFFIRMATION OF GUARANTY AGREEMENT.**

By their execution and delivery hereof, the undersigned Subsidiary Guarantors hereby acknowledge and agree to this Amendment, reaffirm the Subsidiary Guaranty Agreement given in favor of each Noteholder and their respective successors and assigns and acknowledge and agree that Excess Leverage Fees shall constitute additional obligations guaranteed under the Subsidiary Guaranty Agreement.

#### **SECTION 6. MISCELLANEOUS.**

6.1. This Amendment shall be construed in connection with and as part of the Note Agreement, and except as modified and expressly amended by this Amendment, all terms, conditions and covenants contained in the Note Agreement and the Notes are hereby ratified and shall be and remain in full force and effect.



6.2. Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Amendment may refer to the Note Agreement without making specific reference to this Amendment but nevertheless all such references shall include this Amendment unless the context otherwise requires.

6.3. The descriptive headings of the various Sections or parts of this Amendment are for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

6.4. This Amendment shall be governed by and construed in accordance with the laws of the State of New York.

6.5. The execution hereof by you shall constitute a contract between us for the uses and purposes hereinabove set forth, and this Amendment may be executed in any number of counterparts, each executed counterpart constituting an original, but all together only one agreement.

[Remainder of page intentionally left blank.]

SUNSTONE HOTEL PARTNERSHIP, LLC,  
a Delaware limited liability company

By: /s/ Bryan A. Giglia

Name: Bryan A. Giglia

Title: Chief Financial Officer

SUNSTONE HOTEL INVESTORS, INC.,  
a Maryland corporation

By: /s/ John V. Arabia

Name: John V. Arabia

Title: President and Chief Executive Officer

SUNSTONE EAST GRAND, LLC  
SUNSTONE ST. CHARLES, LLC  
SUNSTONE SAINT CLAIR, LLC  
WB SUNSTONE -PORTLAND, LLC  
SUNSTONE OCEAN, LLC  
SUNSTONE LA AIRPORT, LLC  
SUNSTONE RED OAK, LLC  
SUNSTONE EC5, LLC  
SUNSTONE HAWAII 3-0, LLC  
SUNSTONE HOLDCO 4, LLC  
SUNSTONE HOLDCO 5, LLC  
SUNSTONE HOLDCO 6, LLC  
SUNSTONE HOLDCO 8, LLC  
BOSTON 1927 OWNER, LLC  
SUNSTONE WHARF, LLC  
SUNSTONE SEA HARBOR, LLC  
KEY WEST 2016, LLC  
SUNSTONE HOLDCO 10, LLC  
SUNSTONE SEA HARBOR HOLDCO, LLC  
SWW NO. 1 LLC

By: /s/ Bryan A. Giglia

Name: Bryan A. Giglia

Title: Chief Financial Officer

Sunstone First Amendment to Note and Guarantee Agreement

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Accepted and Agreed to:

TRANSAMERICA LIFE INSURANCE  
COMPANY  
TRANSAMERICA LIFE (BERMUDA) LTD  
TRANSAMERICA FINANCIAL LIFE  
INSURANCE COMPANY

BY: Aegon USA Investment Management,  
LLC, its investment manager

By: /s/ Josh Prieskorn

Name: Josh Prieskorn

Title: Vice President

Sunstone First Amendment to Note and Guarantee Agreement

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USAA LIFE INSURANCE COMPANY  
USAA CASUALTY INSURANCE COMPANY  
UNITED SERVICES AUTOMOBILE  
ASSOCIATION

By: BlackRock Financial Management, Inc., its  
investment manager

By: /s/ R. Marshall Merriman

Name: R. Marshall Merriman

Title: Managing Director

Sunstone First Amendment to Note and Guarantee Agreement

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PRIMERICA LIFE INSURANCE COMPANY  
AMERICAN HEALTH AND LIFE  
INSURANCE COMPANY  
SENIOR HEALTH INSURANCE COMPANY  
OF PENNSYLVANIA

By: Conning, Inc., as Investment Manager

By: /s/ Samuel Otchere

Name: Samuel Otchere

Title: Director

Sunstone First Amendment to Note and Guarantee Agreement

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AMERICO FINANCIAL LIFE & ANNUITY  
INSURANCE COMPANY

By: /s/ Gregory A. Hamilton

Name: Gregory A. Hamilton

Title: SVP & Chief Investment Officer

Sunstone First Amendment to Note and Guarantee Agreement

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AMERICAN FAMILY LIFE INSURANCE  
COMPANY

By: /s/ David L. Voge

Name: David L. Voge

Title: Director – Private Markets

Sunstone First Amendment to Note and Guarantee Agreement

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TRAVELERS CASUALTY AND SURETY  
COMPANY

By: /s/ Mark W. Vandermyde

Name: Mark W. Vandermyde

Title: Senior Vice President

THE STANDARD FIRE INSURANCE  
COMPANY

By: /s/ Mark W. Vandermyde

Name: Mark W. Vandermyde

Title: Senior Vice President

Sunstone First Amendment to Note and Guarantee Agreement

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LIFE INSURANCE COMPANY OF THE  
SOUTHWEST

By: /s/ Ken Weliczka

Name: Ken Weliczka

Title: Head of Private Placements

NATIONAL LIFE INSURANCE COMPANY

By: /s/ Ken Weliczka

Name: Ken Weliczka

Title: Head of Private Placements

NATIONAL LIFE INSURANCE COMPANY

By: /s/ Ken Weliczka

Name: Ken Weliczka

Title: Head of Private Placements

Sunstone First Amendment to Note and Guarantee Agreement

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PACIFIC LIFE INSURANCE COMPANY

By: /s/ Kevin Liang

Name: Kevin Liang

Title: Senior Director

Sunstone First Amendment to Note and Guarantee Agreement

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AMERICAN REPUBLIC INSURANCE  
COMPANY  
BLUE CROSS AND BLUE SHIELD OF  
FLORIDA, INC.  
CATHOLIC UNITED FINANCIAL  
CATHOLIC FINANCIAL LIFE  
THE CINCINNATI LIFE INSURANCE  
COMPANY  
FARM BUREAU LIFE INSURANCE  
COMPANY OF MICHIGAN  
GLENER LIFE INSURANCE SOCIETY  
GREAT WESTERN INSURANCE COMPANY  
MINNESOTA LIFE INSURANCE COMPANY  
UNITEDHEALTHCARE INSURANCE  
COMPANY  
TRINITY UNIVERSAL INSURANCE  
COMPANY  
WESTERN FRATERNAL LIFE ASSOCIATION

By: Securian Asset Management, Inc.

By: /s/ Jennifer L. Wolf

Name: Jennifer L. Wolf

Title: Vice President

Sunstone First Amendment to Note and Guarantee Agreement

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EQUITABLE FINANCIAL LIFE INSURANCE  
COMPANY

By: /s/ Amy Judd

Name: Amy Judd

Title: Investment Officer

Sunstone First Amendment to Note and Guarantee Agreement

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AB US DIVERSIFIED CREDIT BM FUND

By: AllianceBernstein L.P., Its Investment  
Advisor

By: \_\_\_\_\_

Name:

Title:

Sunstone First Amendment to Note and Guarantee Agreement

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THRIVENT FINANCIAL FOR LUTHERANS

By: /s/ Martin Rosacker

Name: Martin Rosacker

Title: Managing Director

Sunstone First Amendment to Note and Guarantee Agreement

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BANKERS LIFE AND CASUALTY COMPANY  
WASHINGTON NATIONAL INSURANCE  
COMPANY

By: 40|86 Advisors, Inc., acting as Investment  
Advisor

By: \_\_\_\_\_  
Name:  
Title:

Sunstone First Amendment to Note and Guarantee Agreement

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# SCHEDULE 1

## Fee Schedule

NOTEHOLDER	FEE
TRANSAMERICA LIFE INSURANCE COMPANY	\$ 12,000
TRANSAMERICA LIFE (BERMUDA) LTD	\$ 3,000
TRANSAMERICA FINANCIAL LIFE INSURANCE COMPANY	\$ 10,000
USAA LIFE INSURANCE COMPANY	\$ 15,000
USAA CASUALTY INSURANCE COMPANY	\$ 10,000
UNITED SERVICES AUTOMOBILE ASSOCIATION	\$ 10,000
PRIMERICA LIFE INSURANCE COMPANY	\$ 2,000
AMERICAN HEALTH AND LIFE INSURANCE COMPANY	\$ 1,500
SENIOR HEALTH INSURANCE COMPANY OF PENNSYLVANIA	\$ 1,500
AMERICO FINANCIAL LIFE & ANNUITY INSURANCE COMPANY	\$ 10,000
AMERICAN FAMILY LIFE INSURANCE COMPANY	\$ 5,000
TRAVELERS CASUALTY AND SURETY COMPANY	\$ 5,000
THE STANDARD FIRE INSURANCE COMPANY	\$ 5,000
LIFE INSURANCE COMPANY OF THE SOUTHWEST	\$ 8,000
NATIONAL LIFE INSURANCE COMPANY	\$ 2,000
NATIONAL LIFE INSURANCE COMPANY	\$ 2,000
PACIFIC LIFE INSURANCE COMPANY	\$ 25,000
AMERICAN REPUBLIC INSURANCE COMPANY	\$ 2,000
BLUE CROSS AND BLUE SHIELD OF FLORIDA, INC.	\$ 3,000
CATHOLIC UNITED FINANCIAL	\$ 650
CATHOLIC FINANCIAL LIFE	\$ 1,000
THE CINCINNATI LIFE INSURANCE COMPANY	\$ 5,300
FARM BUREAU LIFE INSURANCE COMPANY OF MICHIGAN	\$ 5,400
GLENER LIFE INSURANCE SOCIETY	\$ 1,000
GREAT WESTERN INSURANCE COMPANY	\$ 2,650
MINNESOTA LIFE INSURANCE COMPANY	\$ 13,000
UNITEDHEALTHCARE INSURANCE COMPANY	\$ 1,000
TRINITY UNIVERSAL INSURANCE COMPANY	\$ 3,500
WESTERN FRATERNAL LIFE ASSOCIATION	\$ 500
EQUITABLE FINANCIAL LIFE INSURANCE COMPANY	\$ 26,000
AB US DIVERSIFIED CREDIT BM FUND	\$ 6,000
THRIVENT FINANCIAL FOR LUTHERANS	\$ 30,000
BANKERS LIFE AND CASUALTY COMPANY	\$ 8,000
WASHINGTON NATIONAL INSURANCE COMPANY	\$ 4,000
Total	<u>\$240,000</u>



## SCHEDULE 2

### Subsidiaries of the Parent Guarantor and Ownership of Subsidiary Stock

(1) Subsidiaries:

<b><u>Entity</u></b>	<b><u>Jurisdiction of Organization</u></b>	<b><u>Ownership</u></b>	<b><u>Subsidiary Classification</u></b>
Boston 1927 Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Boston 1927 Owner, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary Guarantor
EP Holdings, LLC	Delaware	100% Sunstone East Pratt, LP	Subsidiary
One Park Boulevard, LLC	Delaware	75% Sunstone Park, LLC; 25% HHC One Park Boulevard, LLC	Excluded Subsidiary
Sun CHP I, Inc.	Delaware	100% Sunstone Hotel Investors, Inc.	Significant Subsidiary
Sun SHP II, LLC	Delaware	90.9092% Sunstone Hotel Investors, Inc.; 9.0908% Sun CHP I, Inc.	Significant Subsidiary
Sunstone 42 <sup>nd</sup> Street Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone 42 <sup>nd</sup> Street, LLC	Delaware	100% Sunstone Holdco 5, LLC	Excluded Subsidiary
Sunstone Canal Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Canal, LLC	Delaware	100% Sunstone Holdco 9, LLC	Excluded Subsidiary
Sunstone Century Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Cowboy, LP	Delaware	99.5% Sunstone Holdco 3, LLC, 0.5% Sunstone Cowboy GP, LLC	Subsidiary
Sunstone Cowboy GP, LLC	Delaware	100% Sunstone Holdco 3, LLC	Subsidiary
Sunstone Cowboy Lessee, LP	Delaware	99.5% Sunstone Hotel TRS Lessee, Inc.; 0.5% Sunstone Cowboy Lessee GP, LLC	Subsidiary
Sunstone Cowboy Lessee GP, LLC	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary

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<b><u>Entity</u></b>	<b><u>Jurisdiction of Organization</u></b>	<b><u>Ownership</u></b>	<b><u>Subsidiary Classification</u></b>
Sunstone East Grand, LLC	Delaware	100% Sunstone Holdco 6, LLC	Subsidiary Guarantor
Sunstone East Grand Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone East Pratt, LP	Maryland	99% Sunstone Holdco 4, LLC; 1% Sunstone East Pratt GP, LLC	Subsidiary
Sunstone East Pratt GP, LLC	Delaware	100% Sunstone Holdco 4, LLC	Subsidiary
Sunstone East Pratt Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone EC5, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary Guarantor
Sunstone EC5 Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Hawaii 3-0, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary Guarantor
Sunstone Hawaii 3-0 Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Holdco 3, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary
Sunstone Holdco 4, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary Guarantor
Sunstone Holdco 5, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary Guarantor
Sunstone Holdco 6, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary Guarantor
Sunstone Holdco 8, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary Guarantor
Sunstone Holdco 9, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Significant Subsidiary
Sunstone Holdco 10, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary Guarantor
Sunstone Hotel Acquisitions, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary
Sunstone Hotel Partnership, LLC	Delaware	98.9% Sunstone Hotel Investors, Inc., 1.1% Sun SHP II, LLC	Issuer
Sunstone Hotel TRS Lessee, Inc.	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary
Sunstone Jamboree, LLC	Delaware	100% Sunstone Holdco 8, LLC	Subsidiary

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<b><u>Entity</u></b>	<b><u>Jurisdiction of Organization</u></b>	<b><u>Ownership</u></b>	<b><u>Subsidiary Classification</u></b>
Sunstone Jamboree Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone K9, LLC	Delaware	100% Sunstone Holdco 5, LLC	Excluded Subsidiary
Sunstone K9 Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone LA Airport, LLC	Delaware	100% Sunstone Holdco 8, LLC	Subsidiary Guarantor
Sunstone LA Airport Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Leesburg, LLC	Delaware	100% Sunstone Holdco 3, LLC	Subsidiary
Sunstone Leesburg Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Longhorn, LP	Delaware	99.5% Sunstone Pledgeco, LLC; 0.5% Sunstone Longhorn GP, LLC	Subsidiary
Sunstone Longhorn GP, LLC	Delaware	100% Sunstone Pledgeco, LLC	Subsidiary
Sunstone Longhorn Holdco, LLC	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Longhorn Lessee, LP	Delaware	99.5% Sunstone Longhorn Holdco, LLC; 0.5% Sunstone Longhorn Lessee GP, LLC	Subsidiary
Sunstone Longhorn Lessee GP, LLC	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone MacArthur, LLC	Delaware	100% Sunstone Holdco 8, LLC	Subsidiary
Sunstone MacArthur Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone North State Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone North State, LLC	Delaware	100% Sunstone Pledgeco, LLC	Significant Subsidiary
Sunstone Ocean, LLC	Delaware	100% Sunstone Holdco 4, LLC	Subsidiary Guarantor
Sunstone Ocean Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Park, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Significant Subsidiary

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<b><u>Entity</u></b>	<b><u>Jurisdiction of Organization</u></b>	<b><u>Ownership</u></b>	<b><u>Subsidiary Classification</u></b>
Sunstone Park Lessee, LLC	Delaware	75% Sunstone Hotel TRS Lessee, Inc.; 25% Park US Lessee Holdings Inc.	Subsidiary
Sunstone Philly, LP	Delaware	99.5% Sunstone Holdco 3, LLC; 0.5% Sunstone Philly GP, LLC	Subsidiary
Sunstone Philly GP, LLC	Delaware	100% Sunstone Holdco 3, LLC	Subsidiary
Sunstone Philly Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Pledgeco, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Significant Subsidiary
Sunstone Quincy, LLC	Delaware	100% Sunstone Holdco 8, LLC	Subsidiary
Sunstone Quincy Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Red Oak, LLC	Delaware	100% Sunstone Holdco 8, LLC	Subsidiary Guarantor
Sunstone Red Oak Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Saint Clair, LLC	Delaware	100% Sunstone Holdco 6, LLC	Subsidiary Guarantor
Sunstone Saint Clair Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Sea Harbor Holdco, LLC	Delaware	100% Sunstone Holdco 4, LLC	Subsidiary Guarantor
Sunstone Sea Harbor Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Sea Harbor, LLC	Delaware	100% SWW No. 1, LLC	Subsidiary Guarantor
Sunstone Sidewinder Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone St. Charles, LLC	Delaware	100% Sunstone Holdco 10, LLC	Subsidiary Guarantor
Sunstone St. Charles Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Top Gun Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Top Gun, LLC	Delaware	100% Sunstone Holdco 5, LLC	Excluded Subsidiary
Sunstone Von Karman, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary

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<b><u>Entity</u></b>	<b><u>Jurisdiction of Organization</u></b>	<b><u>Ownership</u></b>	<b><u>Subsidiary Classification</u></b>
Sunstone Westwood, LLC	Delaware	100% Sunstone Holdco 8, LLC	Significant Subsidiary
Sunstone Wharf Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Wharf, LLC	Delaware	100% Sunstone Holdco 6, LLC	Subsidiary Guarantor
SWW No. 1, LLC	Florida	100% Sunstone Sea Harbor Holdco, LLC	Subsidiary Guarantor
WB Sunstone-Portland, LLC	Delaware	100% Sunstone Holdco 8, LLC	Subsidiary Guarantor
WB Sunstone-Portland, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
WHP Bevflow, LLC	Texas	100% Sunstone Longhorn Lessee, LP	Subsidiary
WHP Texas Beverage 1, Inc.	Texas	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
WHP Texas Beverage 2, Inc.	Texas	100% WHP Bevflow, LLC	Subsidiary
Sunstone Orlando Lender, LLC	Delaware	100 % Sunstone Hotel Partnership, LLC	Subsidiary
Gumbo Alley, LLC	Delaware	100 % Sunstone Hotel Partnership, LLC	Significant Subsidiary
Key West 2016, LLC	Delaware	100 % Sunstone Hotel Partnership, LLC	Subsidiary Guarantor
Key West 2016 Lessee, Inc.	Delaware	100 % Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Jenolia RIP, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary
Oceanside Investors, LLC	Florida	100% Key West 2016, LLC	Subsidiary
Oceanside Wet Slip, LLC	Florida	100% Key West 2016, LLC	Subsidiary
Yuma Motel Ventures, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary
TM20, LLC	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary

(2) Affiliates:

None other than as listed above.

(3) Issuer's Directors and Senior Officers:

Sunstone Hotel Investors, Inc., managing member

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John Arabia, President & Chief Executive Officer

Bryan Giglia, Chief Financial Officer

Robert C. Springer, Senior Vice President & Treasurer

(4) Parent Guarantor's Directors and Senior Officers:

John V. Arabia, President & Chief Executive Officer and Director

Marc A. Hoffman, Executive Vice President & Chief Operating Officer

Bryan Giglia, Executive Vice President & Chief Financial Officer

Robert C. Springer, Executive Vice President & Chief Investment Officer

David Klein, Executive Vice President & General Counsel

Douglas M. Pasquale, Chairman of the Board of Directors

Andrew Batinovich, Director

Keith P. Russell, Director

W. Blake Baird, Director

Thomas A. Lewis, Jr., Director

Murray J. McCabe, Director

Monica Digilio, Director

### SCHEDULE 3

#### Real Estate Assets

PROPERTY NAME	ADDRESS	FEE AND/OR LEASEHOLD OWNER	OCCUPANCY STATUS <sup>1</sup>	Property Classification	Encumbered
Hilton Garden Inn Chicago Downtown/ Magnificent Mile	10 E. Grand Ave., Chicago, IL 60611	Sunstone East Grand, LLC	84.2%	Seasoned	No
Hilton New Orleans St. Charles	333 St. Charles Ave., New Orleans, LA 70130	Sunstone St. Charles, LLC	74.3%	Seasoned	No
Hyatt Chicago Magnificent Mile	633 N St. Clair St, Chicago, IL 60611	Sunstone Saint Clair, LLC	83.1%	Seasoned	No
Marriott Portland	520 SW Broadway, Portland, Oregon 97205	WB Sunstone- Portland, LLC	80.1%	Seasoned	No
Renaissance Long Beach	111 E. Ocean Blvd., Long Beach, CA 90802	Sunstone Ocean, LLC	81.6%	Seasoned	No
Renaissance Los Angeles Airport	9620 Airport Blvd, Los Angeles, CA 90045	Sunstone LA Airport, LLC	90.6%	Seasoned	No
Renaissance Westchester	80 W Red Oak Ln., West Harrison, NY 10604	Sunstone Red Oak, LLC	71.1%	Seasoned	No
Hyatt Regency San Francisco	5 Embarcadero Center, San Francisco, CA 94111	Sunstone EC5, LLC	89.0%	Seasoned	No

<sup>1</sup> Occupancy percentages as shown reflect the average occupancy rates for each property for year ended December 31, 2019.

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PROPERTY NAME	ADDRESS	FEE AND/OR LEASEHOLD OWNER	OCCUPANCY STATUS <sup>1</sup>	Property Classification	Encumbered
Wailea Beach Resort	3700 Wailea Alanui Drive, Maui, HI 96753	Sunstone Hawaii 3-0, LLC	91.2%	Seasoned	No
Boston Park Plaza	50 Park Plaza, Boston, MA 02116	Boston 1927 Owner, LLC	90.6%	Seasoned	No
Marriott Boston Long Wharf	296 State Street, Boston, MA 02109	Sunstone Wharf, LLC	86.7%	Seasoned	No
Embassy Suites Chicago	600 North State Street, Chicago, IL 60654	Sunstone North State, LLC	90.0%	Seasoned	No
Embassy Suites La Jolla	4550 La Jolla Village Drive, San Diego, CA 92122	Sunstone Top Gun, LLC	86.6%	Seasoned	Yes
JW Marriott New Orleans	614 Canal Street, New Orleans, LA 70130	Sunstone Canal, LLC	83.9%	Seasoned	Yes
Renaissance Orlando at SeaWorld	6677 Sea Harbor Drive, Orlando, FL 32821	Sunstone Sea Harbor, LLC	78.9%	Seasoned	No
Hilton San Diego Bayfront	One Park Blvd., San Diego, CA 92101	One Park Boulevard, LLC	81.4%	Seasoned	Yes
Hilton Times Square	234 West 42nd St., New York, NY 10036	Sunstone 42nd Street, LLC	99.1%	Seasoned	Yes
Renaissance Washington D.C.	999 9th Street NW, Washington, DC 20001	Sunstone K9, LLC	78.1%	Seasoned	Yes
Oceans Edge Resort & Marina	5950 Peninsular Avenue, Key West FL 33040	Key West 2016, LLC	88.7%	Seasoned	No

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## SCHEDULE 4

### Existing Indebtedness of the Parent Guarantor and its Subsidiaries

<u>Mortgage Loans Payable</u>	<u>Borrower</u>	<u>Lender</u>	<u>Outstanding<sup>2</sup></u>
Mortgage loan (fixed) secured by Hilton Times Square <sup>3</sup>	Sunstone 42nd Street, LLC	Bank of America	\$77,339,000
Mortgage loan (fixed) secured by Renaissance Washington D.C.	Sunstone K9, LLC	TIAA-CREF	\$110,312,000
Mortgage loan (fixed) secured by JW Marriott New Orleans	Sunstone Canal, LLC	Wells Fargo Bank	\$81,430,000
Mortgage loan (fixed) secured by Embassy Suites La Jolla	Sunstone Top Gun, LLC	Deutsche Bank	\$58,884,000
Mortgage loan (variable) secured by Hilton San Diego Bayfront	One Park Boulevard, LLC	Wells Fargo Bank	\$220,000,000

<u>Unsecured Loans Payable</u>			<u>Outstanding<sup>4</sup></u>
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<sup>2</sup> Loan balances as of March 31, 2020.

<sup>3</sup> Mortgage loan in special servicing.

<sup>4</sup> Loan balances as of March 31, 2020.



Unsecured term loan (fixed) <sup>5</sup> #1	Sunstone Hotel Partnership, LLC	Wells Fargo Bank, Bank of America, JP Morgan, PNC Bank, U.S. Bank, Truist Bank	\$85,000,000
Unsecured term loan (fixed) <sup>6</sup> #2	Sunstone Hotel Partnership, LLC	Wells Fargo Bank, Bank of America, JP Morgan, PNC Bank, U.S. Bank, BBVA, Truist Bank	\$100,000,000
Revolving Portion of Bank Credit Agreement (variable)	Sunstone Hotel Partnership, LLC	Wells Fargo Bank, Bank of America, JP Morgan, PNC Bank, U.S. Bank, Citibank, BBVA, The Bank of Nova Scotia, Truist Bank	\$300,000,000

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<sup>5</sup> Loan swapped to fixed interest rate.

<sup>6</sup> Loan swapped to fixed interest rate.

Annex A  
to First Amendment

[See Attached]

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COMPOSITE COPY  
INCORPORATING THE FIRST AMENDMENT DATED AS OF JULY 15, 2020

~~EXECUTION VERSION~~

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SUNSTONE HOTEL PARTNERSHIP, LLC  
SUNSTONE HOTEL INVESTORS, INC.

\$240,000,000

4.69% Series A Guaranteed Senior Notes due January 10, 2026  
4.79% Series B Guaranteed Senior Notes due January 10, 2028

\_\_\_\_\_  
  
NOTE AND GUARANTEE AGREEMENT

\_\_\_\_\_  
  
Dated as of December 20, 2016

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**SUNSTONE HOTEL PARTNERSHIP, LLC**  
**SUNSTONE HOTEL INVESTORS, INC.**  
120 Vantis, Suite 300  
Aliso Viejo, CA 92656

4.69% Series A Guaranteed Senior Notes due January 10, 2026  
4.79% Series B Guaranteed Senior Notes due January 10, 2028

Dated as of December 20, 2016

TO EACH OF THE PURCHASERS LISTED IN  
THE PURCHASER SCHEDULE HERETO:

Ladies and Gentlemen:

SUNSTONE HOTEL PARTNERSHIP, LLC, a Delaware limited liability company (the “**Issuer**”), and SUNSTONE HOTEL INVESTORS, INC., a Maryland corporation (the “**Parent Guarantor**,” and together with the Issuer, the “**Constituent Companies**” and individually, a “**Constituent Company**”), jointly and severally, agree with each of the Purchasers as follows:

**AUTHORIZATION OF NOTES.**

The Issuer will authorize the issue and sale of \$240,000,000 aggregate principal of its Guaranteed Senior Notes, of which \$120,000,000 aggregate principal amount shall be its 4.69% Series A Guaranteed Senior Notes due January 10, 2026 (the “**Series A Notes**”) and \$120,000,000 aggregate principal amount shall be its 4.79% Series B Guaranteed Senior Notes due January 10, 2028 (the “**Series B Notes**”; the Series A Notes and the Series B Notes are hereinafter referred to collectively as the “**Notes**”). The Series A Notes and the Series B Notes shall be substantially in the forms set out in Schedule 1(a) and Schedule 1(b), respectively. Certain capitalized and other terms used in this Agreement are defined in Schedule A and, for purposes of this Agreement, the rules of construction set forth in Section 23.4 shall govern.

**SALE AND PURCHASE OF NOTES; GUARANTIES.**

**Sale and Purchase of Notes.** Subject to the terms and conditions of this Agreement, the Issuer will issue and sell to each Purchaser and each Purchaser will purchase from the Issuer, at the Closing provided for in Section 3, Notes in the principal amount and of the series specified opposite such Purchaser’s name in the Purchaser Schedule 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.

**Guaranties.** The obligations of the Issuer hereunder and under the Notes are unconditionally and irrevocably guaranteed (a) by the Parent Guarantor pursuant to Section 13 and (b) by each Subsidiary Guarantor pursuant to that certain Subsidiary Guaranty Agreement to be dated as of the date of the Closing (the “**Subsidiary Guaranty Agreement**”) substantially in the form of Exhibit SGA.

**EXECUTION; CLOSING.**

The execution and delivery of this Agreement shall occur on December 20, 2016 (the “**Execution Date**”). The sale and purchase of the Notes to be purchased by each Purchaser shall occur at the offices of Schiff Hardin LLP, 666 Fifth Avenue, 17<sup>th</sup> Floor, New York, New York 10103, at 11:00 a.m., New York, New York time, at a closing (the “**Closing**”) on January 10, 2017. At the Closing, the Issuer will deliver to each Purchaser the Notes of each series to be purchased by such Purchaser in the form of a single Note of such series (or such greater number of Notes of such series in denominations of at least \$100,000 as such Purchaser may request) dated the date of the Closing and registered

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in such Purchaser's name (or in the name of its nominee), against delivery by such Purchaser to the Issuer or its order in the amount of the purchase price therefor by wire transfer to the account of the Issuer set forth in the funding instructions delivered by the Issuer pursuant to Section 4.10. If at the Closing the Issuer 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 such failure by the Issuer to tender such Notes or any of the conditions specified in Section 4 not having been fulfilled to such Purchaser's satisfaction.

#### **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:

##### **Representations and Warranties.**

*Representations of each Constituent Company.* The representations and warranties of each Constituent Company in this Agreement shall be correct when made and at the Closing.

*Representations and Warranties of each Subsidiary Guarantor.* The representations and warranties of each Subsidiary Guarantor in the Subsidiary Guaranty Agreement shall be correct when made and at the Closing.

**Performance; No Default.** Each Constituent Company and each Subsidiary Guarantor shall have performed and complied with all agreements and conditions contained in this Agreement and the Subsidiary Guaranty Agreement required to be performed or complied with by it prior to or at 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 or Event of Default shall have occurred and be continuing. Neither Constituent Company or any Subsidiary 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.

##### **Compliance Certificates.**

*Officer's Certificate of each Constituent Company.* Each Constituent 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, 4.2 and 4.9 have been fulfilled.

*Secretary's Certificate of each Constituent Company.* Each Constituent Company shall have delivered to such Purchaser a certificate of its Secretary or Assistant Secretary, dated the date of the Closing, certifying as to (1) the resolutions attached thereto and other corporate or limited liability company proceedings relating to the authorization, execution and delivery of the Notes (in the case of the Issuer) and this Agreement (in the case of each Constituent Company) and (2) such Constituent Company's organizational documents as then in effect.

*Officer's Certificate of each Subsidiary Guarantor.* Each Subsidiary Guarantor shall have delivered to such Purchaser an Officer's Certificate, dated the date of the Closing, certifying as to such Subsidiary Guarantor that the conditions specified in Sections 4.1(b), 4.2 and 4.9 have been fulfilled.

*Secretary's Certificate of each Subsidiary Guarantor.* Each Subsidiary Guarantor shall have delivered to such Purchaser a certificate of its Secretary or Assistant Secretary, dated the date of the Closing, certifying as to (1) the resolutions attached thereto and other corporate, limited liability company, partnership or trust proceedings relating to the authorization, execution and delivery of the Subsidiary Guaranty Agreement and (2) such Subsidiary Guarantor's organizational documents as then in effect.

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**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 (1) Latham & Watkins LLP, special counsel for the Constituent Companies and the Subsidiary Guarantors, and (2) Venable LLP, Maryland counsel to the Parent Guarantor, covering the matters set forth in Schedules 4.4(a)(1) and 4.4(a)(2) (and the Constituent Companies hereby instruct their counsel to deliver such opinions to the Purchasers) and (b) from Schiff Hardin 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.

**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 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 from the Issuer 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.

**Sale of Other Notes.** Contemporaneously with the Closing, the Issuer 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 the Purchaser Schedule.

**Payment of Special Counsel Fees.** Without limiting Section 16.1, the Issuer shall have paid on or before the Execution Date and the date of the Closing the fees, charges and disbursements of the Purchasers' special counsel referred to in Section 4.4(b) to the extent reflected in a statement of such counsel rendered to the Issuer at least one Business Day prior to such date.

**Private Placement Numbers.** A Private Placement Number issued by Standard & Poor's CUSIP Service Bureau (in cooperation with the SVO) shall have been obtained for each series of the Notes.

**Changes in Corporate Structure; Change in Control.** Neither Constituent Company or any Subsidiary Guarantor shall have changed its 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. No Change in Control shall have occurred.

**Funding Instructions.** At least three Business Days prior to the date of the Closing, each Purchaser shall have received written instructions signed by a Responsible Officer of the Issuer on letterhead of the Issuer directing the manner of the payment of the purchase price for the Notes and setting forth (a) the name and address of the transferee bank, (b) such transferee bank's ABA number and (c) the account name and number into which the purchase price for the Notes is to be deposited.

**Subsidiary Guaranty Agreement.** Such Purchaser shall have received a copy of the Subsidiary Guaranty Agreement which shall have been duly authorized, executed and delivered by each Person then required to be a Subsidiary Guarantor.

**Bank Credit Agreement.** Such Purchaser shall have received a copy of the Bank Credit Agreement as in effect on the date of the Closing, which copy shall be certified as true, correct and complete and evidences the amendment of the definition of "Capitalized Lease Obligations" therein to include a new sentence at the end thereof corresponding to the last sentence in the definition of Capitalized Lease Obligations in this Agreement, and which certificate shall identify each Additional Covenant then in effect therein.

**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

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counterpart originals or certified or other copies of such documents as such Purchaser or such special counsel may reasonably request.

#### **REPRESENTATIONS AND WARRANTIES OF THE CONSTITUENT COMPANIES.**

Each Constituent Company represents and warrants to each Purchaser that:

##### **Organization; Power and Authority.**

The Issuer is a limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and is duly qualified as a foreign limited liability company and 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. The Issuer has the limited liability company 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 ~~and~~, the Notes and each other Note Document to which it is a party and to perform the provisions hereof and thereof.

The Parent Guarantor is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and is duly qualified as a foreign corporation and 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. The Parent Guarantor has the corporate 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 and each other Note Document to which it is a party and to perform the provisions hereof and thereof.

Each Subsidiary Guarantor 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 Subsidiary Guarantor 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 and to execute and deliver the Subsidiary Guaranty Agreement and each other Note Document to which it is a party and to perform the provisions thereof.

##### **Authorization, Etc.**

This Agreement ~~and~~, the Notes and each other Note Document to which the Issuer is or will be a party have been duly authorized by all necessary limited liability company action on the part of the Issuer, and this Agreement constitutes, and upon execution and delivery thereof each Note and each other Note Document to which the Issuer is a party will constitute, a legal, valid and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, except as such enforceability may be limited by (1) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

This Agreement ~~has~~ and each other Note Document to which the Parent Guarantor is or will be a party have been duly authorized by all necessary corporate action on the part of the Parent Guarantor, and this Agreement constitutes, and upon execution and delivery thereof each other Note Document to which the Parent Guarantor is a party will constitute, a legal, valid and binding obligation of the Parent Guarantor enforceable against the Parent

Guarantor in accordance with its terms, except as such enforceability may be limited by (1) applicable bankruptcy, insolvency, reorganization, moratorium or other

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similar laws affecting the enforcement of creditors' rights generally and (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

The Subsidiary Guaranty Agreement ~~has~~and each other Note Document to which a Subsidiary Guarantor is or will be a party have been duly authorized by all necessary corporate or other action on the part of ~~each such~~ Subsidiary Guarantor, and the Subsidiary Guaranty Agreement constitutes and upon execution and delivery thereof each other Note Document to which a Subsidiary Guaranty is a party will constitute, a legal, valid and binding obligation of ~~each such~~ Subsidiary Guarantor enforceable against ~~each such~~ Subsidiary Guarantor in accordance with its terms, except as such enforceability may be limited by (1) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (2) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**Disclosure.** The Constituent Companies, through their agents, Merrill Lynch, Pierce, Fenner & Smith Incorporated, JPMorgan Securities, LLC and US Bancorp Investments, Inc., have delivered to each Purchaser a copy of a Private Placement Memorandum, dated September 2016 (the "**Memorandum**"), relating to the transactions contemplated hereby. The Memorandum fairly describes, in all material respects, the general nature of the business and principal properties of the Parent Guarantor and its Subsidiaries. This Agreement, the 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 Constituent Companies prior to October 18, 2016 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. Except as disclosed in the Disclosure Documents, since December 31, 2015, there has been no change in the financial condition, operations, business, properties or prospects of the Parent Guarantor or any Subsidiary 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 either Constituent Company that could reasonably be expected to have a Material Adverse Effect that has not been set forth herein or in the Disclosure Documents.

#### **Organization and Ownership of Shares of Subsidiaries; Affiliates.**

Schedule 5.4 contains (except as noted therein) complete and correct lists of (1) the Parent Guarantor's Subsidiaries, showing, as to each Subsidiary, the name thereof, the jurisdiction of its organization, the percentage of shares of each class of its capital stock or similar Equity Interests outstanding owned by the Parent Guarantor and each other Subsidiary and whether such Subsidiary is a Subsidiary Guarantor, a Significant Subsidiary and/or an Excluded Subsidiary, (2) the Parent Guarantor's Affiliates, other than Subsidiaries and identifying each Unconsolidated Affiliate, and (3) each Constituent Company's directors and senior officers.

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 Parent Guarantor and its Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by the Parent Guarantor or another Subsidiary free and clear of any Lien that is prohibited by this Agreement.

Each Subsidiary (other than a Subsidiary Guarantor) 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.

No Subsidiary is subject to any legal, regulatory, contractual or other restriction (other than [this Agreement](#), the agreements listed on Schedule 5.4 and customary limitations imposed by corporate law or

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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 Guarantor or any of its Subsidiaries that owns outstanding shares of capital stock or similar Equity Interests of such Subsidiary.

**Financial Statements; Material Liabilities.** The Constituent Companies have delivered to each Purchaser copies of the consolidated financial statements of the Parent Guarantor 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 Parent Guarantor and its Subsidiaries 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 Parent Guarantor and its Subsidiaries do not have any Material liabilities that are not disclosed in the Disclosure Documents.

**Compliance with Laws, Other Instruments, Etc.** The execution, delivery and performance by (a) the Issuer of this Agreement ~~and~~ the Notes and each other Note Document to which it is or will be a party, (b) the Parent Guarantor of this Agreement and each other Note Document to which it is or will be a party and (c) each Subsidiary Guarantor of the Subsidiary Guaranty Agreement and each other Note Document to which it is or will be a party will not (1) 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 the Parent Guarantor or any Subsidiary under, any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter, regulations or by-laws, shareholders agreement or any other agreement or instrument to which the Parent Guarantor or any Subsidiary is bound or by which the Parent Guarantor or any Subsidiary or any of their respective properties may be bound or affected, (2) 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 the Parent Guarantor or any Subsidiary or (3) violate any provision of any statute or other rule or regulation of any Governmental Authority applicable to the Parent Guarantor or any Subsidiary.

**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 (a) the Issuer of this Agreement ~~or~~ the Notes or the other Note Documents to which it is or will be a party, (b) the Parent Guarantor of this Agreement or the other Note Documents to which it is or will be a party or (c) any Subsidiary Guarantor of the Subsidiary Guaranty Agreement or the other Note Documents to which it is or will be a party.

#### **Litigation; Observance of Agreements, Statutes and Orders.**

There are no actions, suits, investigations or proceedings pending or, to the best knowledge of either Constituent Company, threatened against or affecting the Parent Guarantor or any Subsidiary or any property of the Parent Guarantor or any Subsidiary 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.

Neither the Parent Guarantor nor any Subsidiary is (1) in default under any agreement or instrument to which it is a party or by which it is bound, (2) in violation of any order, judgment, decree or ruling of any court, any arbitrator of any kind or any Governmental Authority or (3) in violation of any applicable law, ordinance, rule or regulation of any Governmental Authority (including 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.

#### **Taxes; REIT Status.**

The Parent Guarantor and its Subsidiaries have 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 (1) the amount of which, individually or in the aggregate, is not Material or (2) the

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amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which the Parent Guarantor or a Subsidiary, as the case may be, has established adequate reserves in accordance with GAAP. Neither Constituent 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 Parent Guarantor and its Subsidiaries 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 Parent Guarantor and its Subsidiaries 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 December 31, 2012.

The Parent Guarantor has operated, and intends to continue to operate in a manner so as to permit it to qualify as a REIT. The Parent Guarantor has elected treatment as a REIT. Each Subsidiary of the Parent Guarantor is either (1) a “qualified REIT subsidiary” within the meaning of Section 856(i) of the Code, (2) a REIT, (3) a Taxable REIT Subsidiary within the meaning of Section 856(l) of the Code, (4) a partnership under Treasury Regulation Section 301.7701-3 or (5) an entity disregarded as a separate entity from its owner under Treasury Regulation Section 301.7701-3.

**Title to Property; Leases.** Schedule 5.10 contains, as of the Execution Date, a complete and correct listing of all real estate assets of the Parent Guarantor and its Subsidiaries, setting forth, for each such Property, the current occupancy status of such Property and whether such Property is (a) a Development Property and, if such Property is a Development Property, the status of completion of such Property, (b) a New Property or a Seasoned Property and/or (c) an Unencumbered Property. The Parent Guarantor and its Subsidiaries have good, marketable and legal title to, or a valid leasehold interest in, their respective assets.

#### **Licenses, Permits, Etc.**

The Parent Guarantor and its Subsidiaries own or possess all licenses, permits, franchises, authorizations, patents, copyrights, proprietary software, service marks, trademarks and trade names, or rights thereto, that are necessary to the conduct of its businesses, without known conflict with the rights of others.

To the best knowledge of each Constituent Company, no product or service of the Parent Guarantor or any of its Subsidiaries 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.

To the best knowledge of each Constituent Company, there is no Material violation by any Person of any right of the Parent Guarantor or any of its Subsidiaries with respect to any license, permit, franchise, authorization, patent, copyright, proprietary software, service mark, trademark, trade name or other right owned or used by the Parent Guarantor or any of its Subsidiaries.

#### **Compliance with Employee Benefit Plans.**

The Parent Guarantor 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. Neither the Parent Guarantor 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 the Parent Guarantor or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Parent Guarantor 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.

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The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities. The term **"benefit liabilities"** has the meaning specified in section 4001 of ERISA and the terms **"current value"** and **"present value"** have the meaning specified in section 3 of ERISA.

The Parent Guarantor and its 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.

The expected postretirement benefit obligation (determined as of the last day of the Parent Guarantor'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 Parent Guarantor and its Subsidiaries is not Material.

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 each Constituent 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.

The Parent Guarantor and its Subsidiaries do not have any Non-U.S. Plans.

**Private Offering by the Issuer.** Neither Constituent Company or anyone acting on their behalf has offered the Notes, the Subsidiary Guaranty Agreement or any similar Securities for sale to, or solicited any offer to buy the Notes, the Subsidiary Guaranty Agreement or any similar Securities from, or otherwise approached or negotiated in respect thereof with, any Person other than the Purchasers and not more than 70 other Institutional Investors, each of which has been offered the Notes at a private sale for investment. Neither Constituent Company or anyone acting on their behalf has taken, or will take, any action that would subject the issuance or sale of the Notes or the execution and delivery of the Subsidiary Guaranty Agreement 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.

**Use of Proceeds; Margin Regulations.** The Issuer will apply the proceeds of the sale of the Notes hereunder as set forth in the Memorandum. 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 Issuer 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 Issuer and its Subsidiaries and the Issuer 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.

#### **Existing Indebtedness; Future Liens.**

Except as described therein, Schedule 5.15 sets forth a complete and correct list of all outstanding Indebtedness of the Parent Guarantor and its Subsidiaries as of September 30, 2016 (including descriptions of the obligors and obligees, principal amounts outstanding, any collateral therefor and any Guaranty thereof), since which date there has been no Material change in the amounts, interest rates, sinking funds, installment payments or maturities of the Indebtedness of the Parent Guarantor or its Subsidiaries. Neither the Parent Guarantor nor any Subsidiary 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 Parent Guarantor or such Subsidiary and no event or condition exists with respect to any Indebtedness of the Parent Guarantor or any Subsidiary that would permit

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(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.

Except as disclosed in Schedule 5.15, neither the Parent Guarantor nor any Subsidiary has agreed or consented to cause or permit any of its property, whether now owned or hereafter acquired, to be subject to a Lien not permitted by this Agreement.

Neither the Parent Guarantor nor any Subsidiary is a party to, or otherwise subject to any provision contained in, any instrument evidencing Indebtedness of the Parent Guarantor or such Subsidiary, any agreement relating thereto or any other agreement (including its charter or any other organizational document) which limits the amount of, or otherwise imposes restrictions on the incurring of, Indebtedness of either Constituent Company or any Subsidiary Guarantor, except as disclosed in Schedule 5.15.

#### **Foreign Assets Control Regulations, Etc.**

Neither the Parent Guarantor nor any Controlled Entity (1) is a Blocked Person, (2) has been notified that its name appears or may in the future appear on a State Sanctions List or (3) is a target of sanctions that have been imposed by the United Nations or the European Union.

Neither the Parent Guarantor nor any Controlled Entity (1) has violated, been found in violation of, or been charged or convicted under, any applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws or (2) to either Constituent Company's knowledge, is under investigation by any Governmental Authority for possible violation of any U.S. Economic Sanctions Laws, Anti-Money Laundering Laws or Anti-Corruption Laws.

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 the Parent Guarantor or any Controlled Entity, directly or indirectly, (i) in connection with any investment in, or any transactions or dealings with, any Blocked Person, (ii) for any purpose that would cause any Purchaser to be in violation of any U.S. Economic Sanctions Laws or (iii) otherwise in violation of any U.S. Economic Sanctions Laws;

will be used, directly or indirectly, in violation of, or cause any Purchaser to be in violation of, any applicable Anti-Money Laundering Laws; or

will be used, directly or indirectly, for the purpose of making 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, in each case which would be in violation of, or cause any Purchaser to be in violation of, any applicable Anti-Corruption Laws.

The Parent Guarantor has established procedures and controls which it reasonably believes are adequate (and otherwise comply with applicable law) to ensure that the Parent Guarantor and each Controlled Entity is and will continue to be in compliance with all applicable U.S. Economic Sanctions Laws, Anti-Money Laundering Laws and Anti-Corruption Laws.

**Status under Certain Statutes.** Neither the Parent Guarantor nor any Subsidiary is subject to regulation under the Investment Company Act of 1940, the Public Utility Holding Company Act of 2005, the ICC Termination Act of 1995, or the Federal Power Act.

#### **Environmental Matters.**

Neither the Parent Guarantor nor any Subsidiary has knowledge of any claim or has received any notice of any claim and no proceeding has been instituted asserting any claim against the Parent Guarantor

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or any of its Subsidiaries or any of their 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.

Neither the Parent Guarantor nor any Subsidiary 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.

Neither the Parent Guarantor nor any Subsidiary 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.

Neither the Parent Guarantor nor any Subsidiary 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.

All buildings on all real properties now owned, leased or operated by the Parent Guarantor or any Subsidiary 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.

#### **Notes Rank Pari Passu.**

The obligations of the Issuer under this Agreement and the Notes rank at least *pari passu* in right of payment with all other unsecured and unsubordinated senior Indebtedness (actual or contingent) of the Issuer, including all unsecured and unsubordinated senior Indebtedness of the Issuer described in Schedule 5.15(a).

The obligations of the Parent Guarantor under this Agreement rank at least *pari passu* in right of payment with all other unsecured and unsubordinated senior Indebtedness (actual or contingent) of the Parent Guarantor, including all unsecured and unsubordinated senior Indebtedness of the Parent Guarantor described in Schedule 5.15(a).

The obligations of each Subsidiary Guarantor under the Subsidiary Guaranty Agreement rank at least *pari passu* in right of payment with all other unsecured and unsubordinated senior Indebtedness (actual or contingent) of such Subsidiary Guarantor, including all unsecured and unsubordinated senior Indebtedness of such Subsidiary Guarantor described on Schedule 5.15(a).

**Solvency.** Each Constituent Company and each Subsidiary Guarantor is Solvent.

**Unencumbered Properties.** Each Property included in the calculation of Unencumbered Asset Value satisfies all of the requirements contained in the definition of Unencumbered Property.

#### **REPRESENTATIONS OF THE PURCHASERS.**

**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 Issuer is not required to register the Notes.

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**Accredited Investor.** Each Purchaser severally represents that it is an “accredited investor” (as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D under the Securities Act) acting for its own account (and not for the account of others) or as a fiduciary or agent for others (which others are also “accredited investors”). Each Purchaser further severally represents that such Purchaser has had the opportunity to ask questions of the Issuer and received answers concerning the terms and conditions of the sale of the Notes.

**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:

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

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

the Source is either (1) an insurance company pooled separate account, within the meaning of PTE 90-1 or (2) a bank collective investment fund, within the meaning of the PTE 91-38 and, except as disclosed by such Purchaser to the Issuer 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

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 Issuer that would cause the QPAM and the Issuer to be “related” within the meaning of Part VI(h) of the QPAM Exemption and (1) the identity of such QPAM and (2) 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 Issuer in writing pursuant to this clause (d); or

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 Issuer and (1) the identity of such INHAM and (2) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Issuer in writing pursuant to this clause (e); or

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the Source is a governmental plan; or

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 Issuer in writing pursuant to this clause (g); or

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.

#### **INFORMATION AS TO CONSTITUENT COMPANIES.**

**Financial and Business Information.** The Constituent Companies shall deliver to each Purchaser and each holder of a Note that is an Institutional Investor:

*Quarterly Statements* — within 60 days ~~(or, solely during the Covenant Relief Period, within 75 days if the SEC extends the time for quarterly filing past such date for public companies generally (or, in each case,~~ such shorter period as is the earlier of (x) ~~155~~ days greater than the period applicable to the filing of the Parent Guarantor’s Quarterly Report on Form 10-Q (the “**Form 10-Q**”) with the SEC regardless of whether the Parent Guarantor 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 Guarantor (other than the last quarterly fiscal period of each such fiscal year), duplicate copies of,

a consolidated balance sheet of the Parent Guarantor and its Subsidiaries as at the end of such quarter, and

consolidated statements of income, changes in shareholders’ equity and cash flows of the Parent Guarantor and its Subsidiaries, 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 of the Parent Guarantor 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;

*Annual Statements* — within 105 days ~~(or, solely during the Covenant Relief Period, within 150 days if the SEC extends the time for annual filing past such date for public companies generally (or, in each case,~~ such shorter period as is the earlier of (x) ~~155~~ days greater than the period applicable to the filing of the Parent Guarantor’s Annual Report on Form 10-K (the “**Form 10-K**”) with the SEC regardless of whether the Parent Guarantor 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 Guarantor, duplicate copies of,

a consolidated balance sheet of the Parent Guarantor and its Subsidiaries as at the end of such year, and

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consolidated statements of income, changes in shareholders' equity and cash flows of the Parent Guarantor and its Subsidiaries 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;

*SEC and Other Reports* — promptly upon their becoming available, one copy of (1) each financial statement, report, notice, proxy statement or similar document sent by the Parent Guarantor or any Subsidiary (i) to its creditors under any Material Credit Facility (including information sent to the Bank Agent pursuant to Section 9.4(e) of the Bank Credit Agreement but excluding information sent to such creditors in the ordinary course of administration of a credit facility, such as information relating to pricing and borrowing availability) or (ii) to its public Securities holders generally, and (2) each regular or periodic report, each registration statement (without exhibits except as expressly requested by such Purchaser or holder), each proxy statement and each prospectus and all amendments thereto filed by the Parent Guarantor or any Subsidiary with the SEC and of all press releases and other statements made available generally by the Parent Guarantor or any Subsidiary to the public concerning developments that are Material;

*Notice of Default or Event of Default* — promptly, and in any event within five days after a Responsible Officer of either Constituent Company becoming aware of the existence of (1) 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), or (2) any event which constitutes or which with the passage of time, the giving of notice, or otherwise, would constitute a default or event of default by either Constituent Company, any Subsidiary Guarantor, any Grantor or any other Subsidiary under any Material Contract or the Bank Credit Agreement, a written notice specifying the nature and period of existence thereof and what action the Constituent Companies are taking or propose to take with respect thereto;

(1) *Material Amendment to Bank Credit Agreement* — promptly, and in any event not less than five days prior to the effectiveness thereof, a copy of each material amendment to the Bank Credit Agreement;

(2) *New Equity Issuers* — after the Security Trigger Date and prior to the Security Release Date, promptly after a Responsible Officer of either Constituent Company becoming aware thereof, notice of any Person becoming an Equity Issuer;

(3) ~~(e)~~ *Employee Benefits Matters* — promptly, and in any event within five days after a Responsible Officer of either Constituent Company becoming aware of any of the following, a written notice setting forth the nature thereof and the action, if any, that the Parent Guarantor or an ERISA Affiliate proposes to take with respect thereto:

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;

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

Guarantor 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;

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any event, transaction or condition that could result in the incurrence of any liability by the Parent Guarantor 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 Parent Guarantor 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; or

receipt of notice of the imposition of a Material financial penalty (which for this purpose shall mean any tax, penalty or other liability, whether by way of indemnity or otherwise) with respect to one or more Non-U.S. Plans;

(4) ~~(f)~~ *Notices from Governmental Authority* — promptly, and in any event within 30 days of receipt thereof, copies of any notice to the Parent Guarantor or any Subsidiary from any Governmental Authority relating to any order, ruling, statute or other law or regulation that could reasonably be expected to have a Material Adverse Effect;

(5) ~~(g)~~ *Resignation or Replacement of Independent Auditors* — within 10 days following the date on which the Parent Guarantor's independent auditors resign or the Parent Guarantor elects to change independent auditors, as the case may be, notification thereof, together with such further information as the Required Holders may reasonably request;

(6) ~~(h)~~ *Operating Summaries for Unencumbered Properties* — ~~Within~~within 45 days after the end of each fiscal quarter of the Parent Guarantor, an operating summary with respect to each Unencumbered Property, including a quarterly and year-to-date statement of Net Operating Income;

(7) ~~(i)~~ *Smith Travel Research STAR Reports* — with reasonable promptness upon the request of such Purchaser or holder, the most current Smith Travel Research STAR Report available, which will compare the individual Unencumbered Properties to the primary competitive set;

(8) ~~(j)~~ *Calculation of Ownership Share* — with reasonable promptness upon the request of such Purchaser or holder, evidence of the Parent Guarantor's calculation of the Ownership Share with respect to a Subsidiary or an Unconsolidated Affiliate, such evidence to be reasonably satisfactory to such Purchaser or holder; ~~and~~

(9) *Change in Senior Management* — promptly, notice of any change in the Senior Management; and

(10) ~~(k)~~ *Requested Information* — with reasonable promptness, such other data and information relating to the business, operations, affairs, financial condition, assets or properties of the Parent Guarantor or any of its Subsidiaries or relating to the ability of either Constituent Company or any Subsidiary Guarantor to perform its obligations hereunder, under the Notes ~~or~~, under the Subsidiary Guaranty Agreement or under any other Note Document as from time to time may be reasonably requested by any such Purchaser or holder of a Note.

**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 of the Parent Guarantor:

*Covenant Compliance* — setting forth the information from such financial statements that is required in order to establish whether the Parent Guarantor was in compliance with the requirements of ~~Section 10.8 and each Additional~~Specified Financial Covenant during the quarterly or annual period covered by the financial 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

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case may be, permissible under the terms of such ~~Section or Additional~~ Specified Financial Covenant, and the calculation of the amount, ratio or percentage then in existence. In the event that the Parent Guarantor or any Subsidiary 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) 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;

*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 Parent Guarantor and its Subsidiaries 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 any such event or condition resulting from the failure of the Parent Guarantor or any Subsidiary to comply with any Environmental Law), specifying the nature and period of existence thereof and what action the Constituent Companies shall have taken or proposes to take with respect thereto; and

*Subsidiary Guarantors* – setting forth a list of (1) all Persons that have become (or no longer are) a Significant Subsidiary or an Excluded Subsidiary since the certificate most recently delivered pursuant to this Section 7.2 and (2) all Subsidiaries that are Subsidiary Guarantors, in each case, as of the date of such certificate of such Senior Financial Officer.

During the Covenant Relief Period, the Parent Guarantor shall continue to provide the calculations in an Officer's Certificate pursuant to clause (a) above (but not a certification as to the compliance therewith). Additionally, concurrently with delivery of each such Officer's Certificate with respect to the last fiscal quarter of the Covenant Relief Period and the first two fiscal quarters following the Covenant Relief Period, the Parent Guarantor shall provide the holders of the Notes (for informational purposes only) its calculation of each applicable Specified Financial Covenant for the trailing-twelve month period ended on the last date of such fiscal quarter.

During the Covenant Relief Period, the Parent Guarantor shall deliver to each holder of the Notes a supplemental Officer's Certificate (x) on each Friday evidencing the sum of Unrestricted Cash of the Issuer and its Subsidiaries held in the United States on such day plus the amount of Availability on such day (to the extent available to be drawn in accordance with the Bank Credit Agreement as in effect on the First Amendment Date) equals or exceeds \$150,000,000, and (y) on the 13th day of each month certifying as to (A) the amount of Unrestricted Cash of the Issuer and its Subsidiaries as of the last day of the preceding month and (B) the calculation of and compliance with the Average Monthly Liquidity covenant set forth in Section 10.8(g).

**Visitation.** Each Constituent Company shall permit the representatives of each Purchaser and each holder of a Note that is an Institutional Investor:

*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 such Constituent Company, to visit the principal executive office of such Constituent Company, to discuss the affairs, finances and accounts of such Constituent Company and its Subsidiaries with such Constituent Company's officers, and (with the consent of such Constituent Company, which consent will not be unreasonably withheld, and in the presence of the such Constituent Company) its independent public accountants, and (with the consent of such Constituent Company, which consent will not be unreasonably withheld) to visit the other offices and properties of such Constituent Company and each Subsidiary, all at such reasonable times and as often as may be reasonably requested in writing; and

*Default* — if a Default or Event of Default then exists, at the expense of the Constituent Companies to visit and inspect any of the offices or properties of such Constituent Company or any of its Subsidiaries, to examine all their respective books of account, records, reports and

other papers, to make abstracts therefrom, and to discuss their respective affairs, finances and accounts with their respective officers and

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independent public accountants (and by this provision each Constituent Company authorizes said accountants to discuss the affairs, finances and accounts of such Constituent Company and its Subsidiaries), all at such times and as often as may be requested.

**Electronic Delivery.** Financial statements, opinions of independent certified public accountants, other information and Officer's Certificates that are required to be delivered by a Constituent Company pursuant to Sections 7.1(a), (b), (c), (~~g~~), (~~i~~), (~~k~~) or (~~h~~) and Section 7.2 shall be deemed to have been delivered if such Constituent Company satisfies any of the following requirements with respect thereto:

such financial statements satisfying the requirements of Section 7.1(a) or 7.1(b) and related Officer's Certificate satisfying the requirements of Section 7.2 and any other information required under Section 7.1(c), (~~g~~), (~~i~~), (~~k~~) or (~~h~~) are delivered to each Purchaser and each holder of a Note by e-mail at the e-mail address set forth in such Purchaser's or holder's Purchaser Schedule or as communicated from time to time in a separate writing delivered to the Constituent Companies;

the Parent Guarantor 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 website on the internet, which is located at [www.sunstonehotels.com](http://www.sunstonehotels.com) as of the Execution Date, or on any future website that may take the place of [www.sunstonehotels.com](http://www.sunstonehotels.com) and which has been identified as such to each Purchaser and each holder of Notes;

such financial statements satisfying the requirements of Section 7.1(a) or Section 7.1(b) and related Officer's Certificate satisfying the requirements of Section 7.2 and any other information required under Section 7.1(c), (~~g~~), (~~i~~), (~~k~~) or (~~h~~) are timely posted by or on behalf of such Constituent Company on IntraLinks or on any other similar website to which each Purchaser and each holder of Notes has free access; or

the Parent Guarantor shall have timely filed any of the items referred to in Section 7.1(c), (~~g~~) or (~~h~~) with the SEC on EDGAR (including by means of filing a Current Report on Form 8-K) and shall have made such items available on its website on the internet or on IntraLinks or on any other similar website to which each Purchaser and each holder of Notes has free access;

*provided however*, that in no case shall access to such financial statements, other information and Officer's Certificates be conditioned upon any waiver or other agreement or consent (other than confidentiality provisions consistent with Section 21 of this Agreement); *provided further*, that in the case of each delivery pursuant to clause (b), (c) or (d), such Constituent Company shall have given each Purchaser and each holder of a Note (i) email notice of any filing with the SEC on EDGAR, if such Person shall have registered to receive such notice on the Parent Guarantor's website or shall have provided to the Parent Guarantor its email address on its Purchaser Schedule or any update thereto pursuant to Section 19, or (ii) in the case of any other filing or posting, prior written notice thereof, *provided further*, that upon request of any Purchaser or any holder to receive paper copies of such forms, financial statements, other information and Officer's Certificates or to receive them by e-mail, such Constituent Company will promptly e-mail them or deliver such paper copies, as the case may be, to such Purchaser or holder.

#### **PAYMENT AND PREPAYMENT OF THE NOTES.**

**Maturity.** As provided therein, the entire unpaid principal balance of each Note shall be due and payable on the Maturity Date thereof.

**Optional Prepayments with Make-Whole Amount.** The Issuer may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of, the Notes, in an amount not less than 5% of the aggregate principal amount of the Notes 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 Issuer will give each holder of Notes written notice of each optional prepayment under this Section 8.2 not less than 10 days and not more than 60 days prior to the date fixed for such prepayment unless the Issuer and the

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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 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 of the Issuer as to the estimated Make-Whole Amount due 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 Issuer shall deliver to each holder of Notes a certificate of a Senior Financial Officer of the Issuer specifying the calculation of such Make-Whole Amount as of the specified prepayment date.

**Allocation of Partial Prepayments.** In the case of each partial prepayment of the Notes pursuant to Section 8.2, the principal amount of the Notes to be prepaid shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

**Maturity; Surrender, Etc.** In the case of each 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 Issuer 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 Issuer and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note.

**Purchase of Notes.** The Issuer 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 Issuer 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 the 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 10 Business Days. If the holders of more than 50% of the principal amount of the Notes then outstanding accept such offer, the Issuer 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 10 Business Days from its receipt of such notice to accept such offer. The Issuer will promptly cancel all Notes acquired by it or any Affiliate pursuant to any payment, prepayment or purchase of Notes pursuant to this Agreement and no Notes may be issued in substitution or exchange for any such Notes.

**Make-Whole Amount.**

The term “**Make-Whole Amount**” means, with respect to any Note, 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, 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, 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 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, the sum of (a) 0.50% (50 basis points) *plus* (b) the yield to maturity implied by the “Ask Yield(s)” reported as of 10:00 a.m. (New York City

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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 (1) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (2) interpolating linearly between the “Ask Yields” Reported for the applicable most recently issued actively traded on-the-run U.S. Treasury securities with the maturities (i) closest to and greater than such Remaining Average Life and (ii) 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, the sum of (x) 0.50% (50 basis points) *plus* (y) 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 (A) the U.S. Treasury constant maturity so reported with the term closest to and greater than such Remaining Average Life and (B) 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 (a) such Called Principal into (b) the sum of the products obtained by multiplying (1) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (2) the number of years, computed on the basis of a 360-day year comprised 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, 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, 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, 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.

#### **Offer to Prepay Notes in the Event of a Change in Control.**

*Notice of Change in Control.* The Constituent Companies will, within five Business Days after any Responsible Officer of either thereof has knowledge of the occurrence of any Change in Control, give written notice of such Change in Control to each holder of Notes and such notice shall contain and constitute an offer by the Issuer to prepay Notes as described in Section 8.7(b) and shall be accompanied by the certificate described in Section 8.7(e).

*Offer to Prepay Notes.* The offer to prepay Notes contemplated by Sections 8.7(a) shall be an offer to prepay, in accordance with and subject to this Section 8.7, all, but not less than all, Notes held by each holder on a date specified in such offer (the “**Change in Control Proposed Prepayment Date**”), which date shall be a Business Day not less than 20 days and not more than 60 days after the date of such offer (or if the Change in Control Proposed Prepayment Date

shall not be specified in such offer, the Change in Control Proposed Prepayment Date shall be the Business Day nearest to the 20th day after the date of such offer).

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*Acceptance; Rejection.* A holder of Notes may accept or reject the offer to prepay made pursuant to this Section 8.7 by causing a notice of such acceptance or rejection to be delivered to the Issuer at least five Business Days prior to the Change in Control Proposed Prepayment Date. A failure by a holder of Notes to so 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.

*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 accrued and unpaid interest on such Notes accrued to the date of prepayment but without any Make-Whole Amount. The prepayment shall be made on the Change in Control Proposed Prepayment Date.

*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 Issuer and dated the date of such offer, specifying (1) the Change in Control Proposed Prepayment Date, (2) that such offer is made pursuant to this Section 8.7 and that failure by a holder to respond to such offer by the deadline established in Section 8.7(c) shall result in such offer to such holder being deemed rejected, (3) the principal amount of each Note offered to be prepaid, (4) the interest that would be due on each Note offered to be prepaid, accrued to the Change in Control Proposed Prepayment Date, (5) that the conditions of this Section 8.7 have been fulfilled and (6) in reasonable detail, the nature and date of the Change in Control.

*Change in Control Defined.* “**Change in Control**” means:

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

A “change in control,” “change in management” or similar event in respect of the Parent Guarantor under the Bank Credit Agreement.

**Optional Prepayment at Par.** So long as no Default or Event of Default then exists, the Issuer may, at its option, upon notice as provided below, prepay any series of Notes at any time during the 60-day period immediately preceding the Maturity Date of such series of Notes at 100% of the principal amount of all Notes of such series then outstanding, together with interest accrued thereon to the date of prepayment. The Issuer will give each holder of Notes of the relevant series (with a copy to each holder of Notes of the other series) written notice of each optional prepayment pursuant to this Section 8.8 not less than 10 days and not more than 30 days prior to the date fixed for such prepayment; *provided* that any prepayment of Notes under this Section 8.8 shall not occur prior to the 60th day preceding the Maturity Date of such series of Notes. Each such notice shall specifically refer to this Section 8.8 and shall specify the prepayment date (which shall be a Business Day), the aggregate principal amount of the Notes of the relevant series to be prepaid on such date, the principal amount of each Note held by such holder to be prepaid, and the accrued interest to be paid on the prepayment date with respect to such principal amount being prepaid.

**Payments Due on Non-Business Days.** Anything in this Agreement or the Notes to the contrary notwithstanding, (a) except as set forth in clause (b), 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 (b) 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.

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## AFFIRMATIVE COVENANTS.

From the Execution Date until the Closing and thereafter, so long as any of the Notes are outstanding, the Constituent Companies covenant that:

### **Compliance with Laws and Material Contracts.**

Without limiting Section 10.4, each Constituent Company will, and will cause each of its Subsidiaries to, comply with all laws, ordinances or governmental rules or regulations to which each of them is subject (including 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.

Each Constituent Company will, and will cause each of its Subsidiaries to, duly and punctually perform and comply with any and all representations, warranties, covenants and agreements expressed as binding upon any such Person under any Material Contract which if not performed or complied with could reasonably be expected to result in any party to a Material Contract taking action to terminate such Material Contract.

**Insurance.** Each Constituent Company will, and will cause each of its Subsidiaries to, maintain, with financially sound and reputable insurers, insurance (on a replacement cost basis) with respect to their respective properties and businesses against such casualties and contingencies (including terrorism as applicable), 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.

**Maintenance of Properties.** Each Constituent Company will, and will cause each of its Subsidiaries 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 9.3 shall not prevent the Parent Guarantor or any Subsidiary 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 Parent Guarantor has concluded that such discontinuance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. (the determination of which, in the case of the discontinuation of the operation of any property during the period beginning at the start of the COVID-19 pandemic and ending on the last day of the Covenant Relief Period, shall exclude any event or circumstance resulting from the COVID-19 pandemic as described in the Parent Guarantor's quarterly report on Form 10-Q filed with the SEC on May 11, 2020 and in subsequent public filings of the Parent Guarantor with the SEC in accordance with applicable Securities laws).

**Payment of Taxes and Claims.** Each Constituent Company will, and will cause each of its Subsidiaries 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 Parent Guarantor or any Subsidiary, *provided* that neither the Parent Guarantor nor any Subsidiary need pay any such tax, assessment, charge, levy or claim if (a) the amount, applicability or validity thereof is contested by the Parent Guarantor or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and the Parent Guarantor or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of the Parent Guarantor or such Subsidiary or (b) 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.

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**Corporate Existence, Etc.** Each Constituent Company will at all times preserve and keep its limited liability company or corporate existence in full force and effect. Subject to Section 10.2, each Constituent Company will at all times preserve and keep in full force and effect the corporate or other legal existence of each of its Subsidiaries (unless, except in the case of the Issuer, merged into a Constituent Company or a Wholly-Owned Subsidiary) and all rights and franchises of each Constituent Company and its Subsidiaries unless, in the good faith judgment of the Parent Guarantor, the termination of or failure to preserve and keep in full force and effect such corporate or other legal existence, right or franchise could not, individually or in the aggregate, have a Material Adverse Effect.

**Books and Records.** Each Constituent Company 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 such Constituent Company or such Subsidiary, as the case may be. Each Constituent Company will, and will cause each of its Subsidiaries to, keep books, records and accounts which, in reasonable detail, accurately reflect all transactions and dispositions of assets. Each Constituent Company and its Subsidiaries 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 each Constituent Company will, and will cause each of its Subsidiaries to, continue to maintain such system.

**REIT Status.** The Parent Guarantor shall maintain its status as, and election to be treated as, a REIT under the Code.

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

#### **Subsidiary Guarantors.**

The Parent Guarantor will cause each of its Subsidiaries that (x) during the Covenant Relief Period, owns in fee simple, or leases pursuant to a Ground Lease, an Unencumbered Property or (y) at any time 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 Material Credit Facility to concurrently therewith:

execute a supplement to the Subsidiary Guaranty Agreement in the form of Exhibit A thereto (a “**Subsidiary Guaranty Supplement**”); and

deliver the following to each holder of a Note:

an executed counterpart of such Subsidiary Guaranty Supplement;

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(c), 5.2(c), 5.6(c), 5.7(c) and 5.19(c) of this Agreement (but with respect to such Subsidiary, such Subsidiary Guaranty Supplement and the Subsidiary Guaranty Agreement, as the case may be);

all documents as may be reasonably requested by the Required Holders to evidence the due organization, continuing existence and, where applicable, 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 Supplement and the performance by such Subsidiary of its obligations under the Subsidiary Guaranty Agreement; and

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an opinion of counsel reasonably satisfactory to the Required Holders covering the matters set forth in paragraphs 2, 3, 4 and 5 of Schedule 4.4(a)(1) but relating to such Subsidiary, such Subsidiary Guaranty Supplement and the Subsidiary Guaranty Agreement and which opinion may be subject to assumptions, qualifications and limitations similar to those set forth in said Schedule 4.4(a)(1).

At the request of the Parent Guarantor and by written notice to each holder of Notes, any Subsidiary Guarantor that is a party to the Subsidiary Guaranty Agreement pursuant to Section 9.9(a)(y) (including any Subsidiary Guarantor that becomes a party thereto by virtue of a Subsidiary Guaranty Supplement) shall be discharged from all of its obligations and liabilities under the Subsidiary Guaranty Agreement and shall be automatically released from its obligations thereunder without the need for the execution or delivery of any other document by the holders, *provided* that (1) if such Subsidiary Guarantor is a guarantor or is otherwise liable for or in respect of any Material Credit Facility, then such Subsidiary Guarantor has been released and discharged (or will be released and discharged concurrently with the release of such Subsidiary Guarantor under the Subsidiary Guaranty Agreement) under such Material Credit Facility, (2) at the time of, and after giving effect to, such release and discharge, no Default or Event of Default shall have occurred and be continuing, (3) no amount is then due and payable under the Subsidiary Guaranty Agreement, (4) if in connection with such Subsidiary Guarantor being released and discharged under any Material Credit Facility, any fee or other form of consideration is given to any holder of Indebtedness under such Material Credit Facility principally for such release, the holders of the Notes shall receive equivalent consideration substantially concurrently therewith and (5) each holder shall have received a certificate of a Responsible Officer of the Parent Guarantor certifying as to the matters set forth in clauses (1) through (4).

**Most Favored Lender Provision.** If at any time the Bank Credit Agreement or any Additional Note Purchase Agreement or any Guaranty in respect of any thereof (~~an~~ **“MFL Agreement”**) shall include any Financial Covenant and such provision ~~is not contained in this(x) is different from the~~ subject matter of any covenants in Section 10, or related definitions in Schedule A, or (y) is similar to that of any covenant in Section 10, or related definitions in Schedule A, but contains one or more percentages, amounts, ratios or formulas that is more restrictive than those set forth herein or more beneficial to the lender(s) and/or holder(s) under such MFL Agreement (any such provision, together with any related definitions (including, any term defined therein with reference to the application of GAAP, as identified in such MFL Agreement), an **“Additional ~~Covenant~~”** or More Restrictive Covenant”; *provided that, in the case of the foregoing clause (y), such covenant or similar restriction shall be deemed an Additional or More Restrictive Covenant only to the extent that it is more restrictive or more beneficial*), then the Constituent Companies shall promptly, and in any event within 10 Business Days thereof, provide a Most Favored Lender Notice to each holder of the Notes with respect to each such Additional or More Restrictive Covenant; *provided* that a Most Favored Lender Notice is not required to be given in the case of the Additional or More Restrictive Covenants incorporated herein on the Execution Date or through and including the First Amendment Date. Thereupon, unless waived in writing by the Required Holders within 10 days of the Purchasers’ and holders’ receipt of such notice, such Additional or More Restrictive Covenant shall be deemed incorporated by reference into this Agreement, *mutatis mutandis*, as if set forth fully herein, effective (a) in the case of any Additional or More Restrictive Covenant effective on the Execution Date or through and including the First Amendment Date, as of the ~~Execution~~ First Amendment Date, and (b) in the case of any Additional or More Restrictive Covenant effective after the ~~Execution~~ First Amendment Date, as of the date when such Additional or More Restrictive Covenant became effective under the relevant MFL Agreement. Any Additional or More Restrictive Covenant incorporated into this Agreement pursuant to this provision, (1) shall be deemed automatically waived herein to reflect any waiver of such Additional or More Restrictive Covenant under the relevant MFL Agreement, (2) shall be deemed automatically amended herein to reflect any subsequent amendments agreed and implemented in relation to such Additional or More Restrictive Covenant under the relevant MFL Agreement and (3) shall be deemed deleted from this Agreement at such time as such Additional or More Restrictive Covenant is deleted or otherwise removed from or is no longer in effect under or pursuant to the relevant MFL Agreement or if the relevant MFL Agreement has been terminated; *provided that in no event shall the effect of any event contemplated by clause (1), (2) or (3) above result in any covenant set*

forth in Section 10 being less restrictive than it was on the First Amendment Date or being deleted herefrom; *provided further that* in each case that any consideration paid or provided to any holder of Indebtedness under the relevant MFL Agreement in connection with an event contemplated by clause (1), (2) or (3) above (other than in connection with the extension of the term of the relevant MFL Agreement, refinancing or replacing the relevant MFL Agreement or repayment in full of the relevant

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MFL Agreement in connection with its termination) is paid to each holder of Notes at the same time and on equivalent terms (and for the avoidance of doubt such amounts shall be proportional to the aggregate principal amount of Notes outstanding as compared to the aggregate amount of the Indebtedness outstanding under the relevant MFL Agreement); and *provided further* that no Additional or More Restrictive Covenant shall be so deemed automatically waived, amended or deleted during any time that a Default or Event of Default has occurred and is continuing. In determining whether a breach of any Financial Covenant incorporated by reference into this Agreement pursuant to this Section 9.10 shall constitute an Event of Default, the period of grace, if any, applicable to such Additional or More Restrictive Covenant in the relevant MFL Agreement shall apply.

### **Section 1.2. Excess Leverage Fee**

. The Issuer agrees that, in addition to interest accruing on the Notes, the Issuer will pay to each holder of a Note a fee on the outstanding principal amount of each Note held by such holder, computed on the same basis and payable at the same time as such interest, at a rate per annum equal to (the “Excess Leverage Fee”):

(a) 1.00% from and after June 30, 2020 until the last day of the Covenant Relief Period; and

(b) 0.75% thereafter until the last day of the first fiscal quarter for which the Leverage Ratio determined for the trailing twelve-month period ending on such day is less than or equal to 5.00 to 1.00, as set forth in the Officer’s Certificate delivered pursuant to Section 7.2 for such fiscal quarter.

The accrued and unpaid Excess Leverage Fee, if any, on any principal amount being paid or prepaid shall be paid concurrently with such principal by separate wire transfer. Any overdue payment of an Excess Leverage Fee shall accrue interest at a rate per annum from time to time equal to the Default Rate applicable to the applicable Note, payable in arrears at the same time accrued interest is paid on such Note (or, at the option of the registered holder thereof, on demand). For the avoidance of doubt, each Excess Leverage Fee shall be deemed to constitute a fee for all purposes.

### **Section 1.3. Removal of Unencumbered Properties**

. During the Covenant Relief Period, the Constituent Companies may, upon not less than 10 Business Days’ notice to holders of the Notes with a copy to their special counsel (as specified in Section 19(3)) (or such shorter period as may be acceptable to the Required Holders in their sole discretion), request removal of a Property as an Unencumbered Property, subject to the following conditions: (a) no Default or Event of Default shall exist (other than a Default or Event of Default that would be cured by removal of such Property as an Unencumbered Property) or would result therefrom, (b) the Constituent Companies shall have delivered to the holders of the Notes an Officer’s Certificate, prepared as of the last day of the most recent fiscal quarter for which financial statements have been required to be delivered pursuant to Section 7.1(a) or Section 7.1(b), calculating (and, unless such Property is to be removed during the Covenant Relief Period, evidencing compliance with) the Specified Financial Covenants as if such Property had not been included in as an Unencumbered Property at such time and (c) during the Covenant Relief Period, the Constituent Companies may only request the release of an Unencumbered Property if such release shall occur substantially simultaneously with a sale of such Property and only so long as the proceeds of such sale shall be applied in accordance with the terms of Section 9.14. For the avoidance of doubt, the Constituent Companies shall not, and shall not permit any Subsidiary to, during the Covenant Relief Period, (1) place any Lien (other than a Permitted Lien (but not Permitted Liens described in clause (g) of the definition of the term)) upon, or (2) grant a Negative Pledge on (other than a Negative Pledge that would not cause a Property to cease to be an Eligible Property under clause (g) of the definition thereof) in, a Property that was an Unencumbered

Property on June 30, 2020 or became an Unencumbered Property thereafter (or, if such Property is owned by a Subsidiary, any of the Issuer's direct or indirect ownership interest in such Subsidiary) an Unencumbered Property during the Covenant Relief Period. Upon the confirmation by the Required Holders that the conditions to such removal have been satisfied, the Required Holders shall so notify the Constituent Companies in writing specifying the date of such removal; *provided* that the Required Holders shall be deemed to have confirmed satisfaction of the conditions set forth in this Section 9.12 if they shall have failed

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to respond to the Constituent Companies within five Business Days after receipt of the Officer's Certificate delivered pursuant to clause (b) above.

Section 1.4. Security Trigger Date; Additional Collateral; Release of Collateral; Further Assurances.

(1) Upon the Security Trigger Date, the Constituent Companies will, and will cause each Subsidiary of the Issuer that owns any interest in any Collateral to, grant a first priority Lien in the Collateral to the Collateral Agent for the benefit of the holders of the Notes, the Bank Agent and the Bank Lenders and shall deliver each of the following to the Collateral Agent in form and substance reasonably satisfactory to the Required Holders: (1) the results of a recent UCC, tax, judgment, bankruptcy and lien search in each of the jurisdictions in which UCC financing statements or other filings or recordings should be made to evidence or perfect Liens in the Collateral, (2) the Pledge Agreement duly executed by each Person that owns Collateral, (3) each document (including any UCC financing statement and certificates evidencing the Equity Interest of each Equity Issuer, if any, together with stock powers with respect thereto and any promissory notes or other instruments evidencing any Material Debt Receivables together with allonges thereto) and evidence of the taking of all actions required by the Pledge Agreement or under applicable law or reasonably deemed necessary or appropriate by the Collateral Agent or the Required Holders to be entered into, filed, registered or recorded or taken, in order to create in favor of the Collateral Agent, for the benefit of the holders of the Notes, the Bank Agent and the Bank Lenders, a perfected first-priority Lien in the Collateral, (4) an opinion of counsel to the Constituent Companies and their Subsidiaries relating to the creation, attachment and perfection of the Liens granted pursuant to the Pledge Agreement and the authorization, delivery and enforceability of the Pledge Agreement and (5) the Intercreditor Agreement duly executed by the Bank Agent, the Collateral Agent and the holders of the Notes and acknowledged by the Grantors.

(2) If, after the occurrence of the Security Trigger Date and prior to the Security Release Date, either Constituent Company or any of its Subsidiaries acquires any Collateral, then, within five Business Days following the acquisition thereof, such Constituent Company or the applicable Subsidiary will take such actions as shall be reasonably required to grant to the Collateral Agent for the benefit of the holders of the Notes, the Bank Agent and the Bank Lenders a first priority Lien in such Collateral including, (1) if the owner thereof is not a party to the Pledge Agreement and/or the Intercreditor Agreement, delivering a supplement to the Pledge Agreement and/or the Intercreditor Agreement duly executed by such Person and a UCC financing statement with respect to such Person and (2) taking such actions as may be required pursuant to the Pledge Agreement including delivery to the Collateral Agent of (i) any certificates evidencing the Equity Interest of any applicable Equity Issuer, if any, together with stock powers with respect thereto, (ii) any promissory notes or other instruments evidencing any Material Debt Receivables together with allonges thereto and (iii) any UCC financing statement amendment as may be necessary with respect to such additional Collateral. A Property that is to become an Unencumbered Property after the occurrence of the Security Trigger Date and prior to the Security Release Date shall not be considered to be an Unencumbered Property until such time as the holders of the Notes shall have received (A) if such Property is owned by a Subsidiary that is not a Subsidiary Guarantor, a Subsidiary Guaranty Supplement executed by such Subsidiary together with the other items required by Section 9.9(a), (B) if the improvements on such Property or the furniture, fixtures and equipment utilized in the operation of such Property are owned or leased by a Subsidiary (the "Accommodation Subsidiary") other than the Subsidiary that owns or leases such Property, a Subsidiary Guaranty Supplement executed by such Accommodation Subsidiary, and (C) if such Property is owned directly or indirectly by a Subsidiary whose Equity Interests are required to be subject to the Pledge Agreement, a supplement to the Pledge Agreement together with the other items required by Section 9.13.

(3) The Constituent Companies may request in writing to the holders of the Notes and the Collateral Agent that the Collateral Agent release, and promptly upon

receipt of such request the Collateral Agent shall release, its Lien in the Collateral if (1) the Security Release Date shall have occurred or (2) any assets secured by such Lien are sold (or effective simultaneously with such release, shall be sold) so long as: (i) such sale is permitted by the terms hereof (including Section 9.12) and, if

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applicable, the Equity Issuer has complied (or, upon receipt of the proceeds of such sale) will comply with the terms of Section 9.14; (ii) such assets are no longer required to be pledged as Collateral under the terms hereof; (iii) no Default or Event of Default shall then be in existence or would occur as a result of such release, including and, to the extent then applicable, a Default or Event of Default resulting from a violation of any of the Specified Financial Covenants after the Covenant Relief Period; and (iv) the holders of the Notes shall have received such written request at least five Business Days (or such shorter period as may be acceptable to the Required Holders in their sole discretion) prior to the requested date of release. Delivery by the Constituent Companies to the holders of the Notes of any such request shall constitute a representation by the Constituent Companies that the matters set forth in the preceding sentence (both as of the date of the giving of such request and as of the date of the effectiveness of such request) are true and correct with respect to such request.

(4) At the cost and expense of the Constituent Companies and upon request of the Required Holders, the Constituent Companies will, and will cause each other Subsidiary to, duly execute and deliver or cause to be duly executed and delivered, to the holders of the Notes such further instruments, documents and certificates, and do and cause to be done such further acts that may be reasonably necessary or advisable in the reasonable opinion of the Required Holders to carry out more effectively the provisions of this Agreement and the other Note Documents.

**Section 1.5.** Covenant to Make a Pro Rata Prepayment Offer to Prepay Notes Upon Certain Transactions. The provisions of this Section 9.14 shall be effective from June 30, 2020 to the last day of the Covenant Relief Period.

(1) *Notice of Prepayment Transaction.* The Issuer will, not later than three Business Days after the occurrence of a Prepayment Transaction (or, in the case of any Prepayment Transaction occurring prior to the First Amendment Date, on the First Amendment Date), give a notice of such Prepayment Transaction to each holder of Notes. Such notice shall contain and constitute an offer to prepay Notes as described in Section 9.14(b) and shall be accompanied by the certificate described in Section 9.14(e).

(2) *Offer to Prepay Notes.* The offer to prepay Notes contemplated by Section 9.14(a) shall be an offer to prepay, in accordance with and subject to this Section 9.14, all or a portion of the Notes held by each holder on a date specified in such offer (the “Proposed Prepayment Date”) that is a Business Day not less than 21 days and not more than 30 days after the date of such offer (or if the Proposed Prepayment Date shall not be specified in such offer, the Proposed Prepayment Date shall be the Business Day nearest to the 20th day after the date of such offer). The offer to prepay Notes under this clause (b) shall be made *pro rata* to each holder of Notes (based on the aggregate principal amount of the Notes held by each such holder) in an aggregate amount equal to the Allocation Percentage multiplied by the applicable Net Proceeds (each an “Offered Amount”), and such offer shall not be conditioned upon any agreement by any holder of Note to any amendment, waiver or consent request by either Constituent Company.

(3) *Acceptance; Rejection.* A holder of Notes may accept or reject the offer to prepay made pursuant to this Section 9.14 by causing a notice of such acceptance or rejection to be delivered to the Issuer not more

than 10 days after receipt of the offer to prepay the Notes pursuant to this Section 9.14. A failure by a holder of Notes to respond to an offer to prepay made pursuant to this Section 9.14 shall be deemed

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to constitute a rejection of such offer by such holder. If the holders of more than 25% of the principal amount of the Notes then outstanding accept such offer within the applicable time period set forth above (the “Initial Accepting Holders”), the Issuer shall then notify the holders of the Notes that have either rejected or not then responded to such offer (the “Non-Accepting Holders”) of such fact and each Non-Accepting Holder shall have an additional 10 days from its receipt of such notice to again accept such offer (with the failure of any such Non-Accepting Holder to respond to such second offer to be deemed to constitute a rejection of such offer by such Non-Accepting Holder) (each Non-Accepting Holder that accepts such re-offer a “Subsequent Accepting Holder”). The Offered Amounts allocable to any Notes the holders of which have rejected each such offer shall first be applied ratably to increase the prepayment amount of the Notes of each Initial Accepting Holder and each Subsequent Accepting Holder, and any remaining amount shall (1) be applied on or prior to the Proposed Prepayment Date in accordance with the Bank Credit Agreement to repay the Loans (as defined in the Bank Credit Agreement), but without any requirement of a permanent reduction in the amount of the Revolving Commitments (as defined in the Bank Credit Agreement as in effect on the First Amendment Date) and/or (2) be held as Unrestricted Cash. Notwithstanding anything to the contrary contained in this Section 9.14, all prepayment amounts under this Section 9.14 shall be rounded up to the nearest \$1,000.

(4) *Prepayment.* Prepayment of the Notes to be prepaid pursuant to this Section 9.14 shall be at 100% of the principal amount of such Notes, together with accrued and unpaid interest on such Notes accrued to the date of prepayment but without any Make-Whole Amount. The prepayment shall be made on the Proposed Prepayment Date. For the avoidance of doubt, any prepayment of the Notes made pursuant to this Section 9.14 shall not be a prepayment of the Notes made pursuant to Section 8.2.

(5) *Officer’s Certificate.* Each offer to prepay the Notes pursuant to this Section 9.14 shall be accompanied by a certificate, executed by a Senior Financial Officer of the Parent Guarantor and dated the date of such offer, specifying: (1) the Proposed Prepayment Date; (2) that such offer is made pursuant to this Section 9.14; (3) the principal amount of each Note offered to be prepaid; (4) the interest that would be due on each Note offered to be prepaid, accrued to the Proposed Prepayment Date; (5) the Excess Leverage Fee, if any, that would be due on each Note offered to be prepaid, accrued to the Proposed Prepayment Date; (6) that the conditions of this Section 9.14 have been fulfilled; and (7) in reasonable detail, the nature and date of the relevant Prepayment Transaction.

(6) The Issuer will apply that portion of the Net Proceeds allocable to the Loans (as defined in the Bank Credit Agreement) to repay the Loans on or prior to the Proposed Prepayment Date in accordance with the Bank Credit Agreement, but without any requirement of a reduction in

the Revolving Commitments (as defined in the Bank Credit Agreement as in effect on the First Amendment Date).

(7) *Relevant Definitions.*

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(1) “Allocation Percentage” means, as of any date of determination, (i) the aggregate outstanding principal amount of the Notes on such date divided by (ii) the sum of (A) the aggregate outstanding principal amount of all Loans (as defined in the Bank Credit Agreement on the First Amendment Date) plus (B) the outstanding amount of Letter of Credit Liabilities (as defined in the Bank Credit Agreement on the First Amendment Date) on such date plus (C) the aggregate outstanding principal amount of the Notes on such date.

(2) “Net Proceeds” means (i) the aggregate cash proceeds received by the Parent Guarantor, the Issuer or any of its Subsidiaries in respect of any Asset Sale by the Parent Guarantor, the Issuer or any such Subsidiary (including any cash received upon the sale or other disposition of any non-cash consideration or Cash Equivalents substantially concurrently received in any Asset Sale, but only as and when received), minus (ii) without duplication (A) any deduction of appropriate amounts, including contractual holdbacks, to be provided by the Parent Guarantor, the Issuer or any of its Subsidiaries as a reserve in accordance with GAAP against any liabilities associated with such Asset Sale and retained by the Parent Guarantor, the Issuer or any of its Subsidiaries (or held in escrow with a third party escrow agent) after such Asset Sale; provided that such reserved amounts will be deemed to be Net Proceeds to the extent and at the time of any reversal thereof (to the extent not applied to the satisfaction of any applicable liabilities in cash in a corresponding amount), and (B) any bona fide direct costs incurred in connection with any Asset Sale including legal, accounting and investment banking fees, brokerage and sales commissions, and income taxes payable as a result of any gain recognized in connection therewith, in each case under this clause (ii), to the extent such amounts are not payable to an Affiliate of the Parent Guarantor, the Issuer or its Subsidiaries minus (iii) the amount of such cash proceeds which are used within 10 Business Days of receipt thereof (or deposited with an escrow agent to hold in escrow either (A) in connection with the completion of “like-kind” exchanges being effected in accordance with Section 1031 of the Code for a period of no more than 180 days of receipt thereof or (B) for a period of no more than 30 days of receipt thereof unless the Issuer or applicable Subsidiary has entered into a binding contract to purchase an Eligible Property on or prior to the expiration of such 30 day period in which case, such period may be extended for up to 60 additional days with the written consent of the Bank Agent (for the avoidance of doubt, any amounts placed into escrow and not used within the time periods required by this parenthetical shall be considered Net Proceeds to be applied in accordance with Section 9.14)) for the purchase of Eligible Properties which Eligible Properties are added as Unencumbered Properties within 20 Business Days following the acquisition thereof.

(3) “Prepayment Transaction” means the receipt by either Constituent Company or any Subsidiary of (i) Net Proceeds from any Asset Sale or (ii) cash proceeds from any incurrence of any Indebtedness (including the cash proceeds of any refinancing of existing Indebtedness but excluding Excluded Prepayment Debt) or any Equity Issuance (other than, if both at the time of such Equity Issuance and after giving effect to the purchase of Reinvestment Assets, Availability (to the extent available to be drawn in accordance with the Bank Credit Agreement as in effect on the First Amendment Date) is equal to or greater than \$250,000,000, and the proceeds of such Equity Issuances are applied within 10 Business Days of the receipt thereof to (or held in escrow with a third party escrow agent for no more than 90 days (which period may be extended for up to 60 additional days with the prior written consent of the Required Holders, which consent shall not be unreasonably withheld) prior to) the purchase of Reinvestment Assets), net of, in the case of this clause (ii), underwriting discounts and commissions and other reasonable costs and expenses associated therewith (to the extent not paid to an Affiliate of the Parent Guarantor, the Issuer or its Subsidiaries), including reasonable legal fees and expenses.

**Section 1.6. Government Assistance Indebtedness Provisions.**

(1) The Constituent Companies will, and will cause each applicable Subsidiary to, (1) use all of the proceeds of Government Assistance Indebtedness issued under the CARES Act exclusively

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for CARES Forgivable Uses, if applicable, in the manner required under the CARES Act to obtain forgiveness of the largest possible amount of such Government Assistance Indebtedness, which as of the First Amendment Date requires that the applicable borrower use not less than 75% of the proceeds of Government Assistance Indebtedness for CARES Payroll Costs and (2) use commercially reasonable efforts to conduct their business in a manner that maximizes the amount of the Government Assistance Indebtedness that is forgiven, if any.

(2) Notwithstanding anything contained in this Agreement, the Constituent Companies will, and will cause each applicable Subsidiary to, maintain the proceeds of Government Assistance Indebtedness in an account that does not sweep funds and thereafter apply them to any other Indebtedness.

(3) If either Constituent Company or a Subsidiary incurs Government Assistance Indebtedness, the Constituent Companies will, and will cause each applicable Subsidiary to, (1) maintain all records required to be submitted in connection with the forgiveness of such Government Assistance Indebtedness, (2) apply for forgiveness of such Government Assistance Indebtedness in accordance with regulations implementing Section 1106 of the CARES Act within 30 days after the last day of the eight week period immediately following the date of incurrence of such Government Assistance Indebtedness and (3) provide the holders of the Notes with a copy of its application for forgiveness and all supporting documentation required by the SBA or the lender of such Government Assistance Indebtedness in connection with the forgiveness of such Government Assistance Indebtedness.

Although it will not be a Default or an Event of Default if the Constituent Companies fail to comply with any provision of Section 9 on or after the Execution Date and prior to the Closing, if such a failure occurs, then any of the Purchasers may elect not to purchase the Notes on the date of Closing that is specified in Section 3.

#### **NEGATIVE COVENANTS.**

From the Execution Date until the Closing and thereafter, so long as any of the Notes are outstanding, the Constituent Companies covenant that:

**Transactions with Affiliates.** The Constituent Companies will not, and will not permit any Subsidiary to, enter into directly or indirectly any transaction or group of related transactions (including the purchase, lease, sale or exchange of properties of any kind or the rendering of any service) with any Affiliate, except pursuant to the reasonable requirements of such Constituent Company's or such Subsidiary's business and upon fair and reasonable terms no less favorable to such Constituent Company or such Subsidiary than would be obtainable in a comparable arm's-length transaction with a Person not an Affiliate.

**Merger, Consolidation, Sales of Assets and Other Arrangements.** The Constituent Companies will not, and will not permit any Subsidiary to, (x) enter into any transaction of merger or consolidation, (y) liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution) or (z) convey, sell, lease, sublease, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any substantial part of its business or assets, or the capital stock of or other Equity Interests in any of its Subsidiaries, whether now owned or hereafter acquired; *provided, however*, that:

any of the actions described in the immediately preceding clauses (x) through (z) may be taken with respect to any Subsidiary (other than the Issuer) so long as (1) immediately prior to the taking of such action, and immediately thereafter and after giving effect thereto, no Default or Event of Default is or would be in existence and (2) if such action includes the sale of all Equity Interests in a Subsidiary that is a Subsidiary Guarantor owned directly or indirectly by the Parent Guarantor, such Subsidiary can and will be released from the Guaranty in accordance with Section 9.9(b);

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the Parent Guarantor and its Subsidiaries may lease and sublease their respective assets, as lessor or sublessor (as the case may be), in the ordinary course of their business;

a Person may merge with the Parent Guarantor, the Issuer or a Subsidiary Guarantor so long as (1) the survivor of such merger is the Parent Guarantor, the Issuer or such Subsidiary Guarantor or, solely in the case of a Subsidiary Guarantor, becomes a Subsidiary Guarantor at the time of such merger, and (2) immediately prior to such merger, and immediately thereafter and after giving effect thereto, no Default or Event of Default is or would be in existence, including a Default or Event of Default resulting from a breach of ~~Section 10.8 or any Additional~~any Specified Financial Covenant; and

the Parent Guarantor and its Subsidiaries may sell, transfer or dispose of assets among themselves.

Notwithstanding the foregoing, during the Covenant Relief Period, the Constituent Companies will not, and will not permit any Subsidiary to, enter into any transaction of merger or consolidation or liquidate, windup or dissolve itself (or suffer any liquidation or dissolution), other than, so long as no Default or Event of Default has occurred and is continuing, (1) a transaction of merger or consolidation with a Single Asset Entity which is structured as a merger or consolidation solely to effect an Investment permitted under Section 10.10(b) or (2) the liquidation, windup or dissolution of Sunstone 42nd St. or the sale, transfer or other disposition of all or any of its assets so long as, immediately prior to and after giving effect to such transaction, (i) the holder of the mortgage secured by the hotel owned by Sunstone 42nd St. does not have a claim for repayment of the mortgage loan under a “bad boy” guaranty (the “42nd St. Guaranty”) in excess of the then outstanding principal amount of such mortgage loan (which on the First Amendment Date is \$77,174,971.28), accrued and unpaid interest thereon and the costs and expenses of enforcement required to be paid by the guarantor under the 42nd St. Guaranty or (ii) if the holder of such mortgage has a claim in excess of such amount, such holder shall have waived such liability in writing.

Further, ~~(ix)~~ no Constituent Company or any Subsidiary Guarantor may enter into any sale-leaseback transactions or other transaction by which such Person shall remain liable as lessee (or the economic equivalent thereof) of any real or personal property that it has sold or leased to another Person and ~~(iiv)~~ no Subsidiary that is not the Issuer or a Subsidiary Guarantor may enter into any sale-leaseback transactions or other transaction by which such Person shall remain liable as lessee (or the economic equivalent thereof) of any real or personal property that it has sold or leased to another unless no Default or Event of Default then exists or would result therefrom.

**Line of Business.** The Constituent Companies will not, and will not permit any Subsidiary to, engage in any business if, as a result, the general nature of the business in which the Parent Guarantor and its Subsidiaries, taken as a whole, would then be engaged would be substantially changed from the general nature of the business in which the Parent Guarantor and its Subsidiaries, taken as a whole, are engaged on the Execution Date as described in the Memorandum.

**Economic Sanctions, Etc.** The Constituent Companies will not, and will not permit any Controlled Entity to (a) become (including by virtue of being owned or controlled by a Blocked Person), own or control a Blocked Person or (b) directly or indirectly have any investment in or engage in any dealing or transaction (including any investment, dealing or transaction involving the proceeds of the Notes) with any Person if such investment, dealing or transaction (1) would cause any Purchaser or holder or any affiliate of such Purchaser or holder to be in violation of, or subject to sanctions under, any law or regulation applicable to such Purchaser or holder, or (2) is prohibited by or subject to sanctions under any U.S. Economic Sanctions Laws.

#### **Permitted Liens; Negative Pledge.**

The Constituent Companies will not, and will not permit any Subsidiary to, create, assume, or incur any Lien (other than Permitted Liens) upon any of its properties, assets, income or profits of any character whether now owned or hereafter acquired, if immediately prior to the creation, assumption or incurring of such Lien, or immediately thereafter, a Default or Event

of Default is or would be in existence, including a Default or Event of Default resulting from a violation of any of the ~~covenants contained in Section 10.8~~Specified Financial Covenants. In addition, the Constituent Companies will not, and will not permit any Subsidiary to, secure any Indebtedness outstanding under or pursuant to a Material Credit Facility unless

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and until the Notes (and the Subsidiary Guaranty Agreement and any other 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, an intercreditor agreement and opinions of counsel to the Constituent Companies and/or any such Subsidiary, as the case may be, from counsel that is reasonably acceptable to the Required Holders. The Constituent Companies will not, and will not permit any Subsidiary to, create any Lien (other than Permitted Liens described in clauses (a), (f) and (h) of the definition thereof) on the Collateral (or the property required to become Collateral on or after the Security Trigger Date) or on the Equity Interests of any Excluded Equity Issuer from and after June 30, 2020 to and including the Security Release Date.

The Constituent Companies will not, and will not permit any Subsidiary (other than an Excluded Subsidiary) to, enter into, assume or otherwise be bound by any Negative Pledge except for (1) a Negative Pledge contained in any agreement that evidences unsecured Indebtedness which contains restrictions on encumbering assets that are substantially similar to or less restrictive than those restrictions contained in this Agreement; (2) a Negative Pledge contained in any agreement relating to assets to be sold where the restrictions on encumbering assets relate only to such assets pending such sale; (3) a Negative Pledge contained in a joint venture agreement applicable solely to the assets or Equity Interests of such joint venture; and (4) a Negative Pledge contained in any agreement (i) evidencing Secured Indebtedness of such Person, but only to the extent that no Default or Event of Default is in existence at the time such Secured Indebtedness is created, incurred or assumed, nor would result from the creation, incurrence or assumption of such Secured Indebtedness (including a Default or Event of Default resulting from a violation of any of the ~~covenants contained in Section 10.8~~Specified Financial Covenants), (ii) the Lien securing such Secured Indebtedness is permitted to exist pursuant to this Agreement, and (iii) which prohibits the creation of any other Lien on only the property securing such Secured Indebtedness. Further, the Constituent Companies will not, and will not permit any Subsidiary to, grant a Negative Pledge (other than a Negative Pledge in the Bank Credit Agreement that is substantially identical to this sentence) in the Equity Interests of any Excluded Equity Issuer from and after June 30, 2020 to and including the Security Release Date.

**Restrictions on Intercompany Transfers.** The Constituent Companies will not, and will not permit any Subsidiary (other than an Excluded Subsidiary) to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Subsidiary to: (a) pay dividends or make any other distribution on any of such Subsidiary's capital stock or other Equity Interests owned by the Parent Guarantor or any other Subsidiary; (b) pay any Indebtedness owed to the Parent Guarantor or any other Subsidiary; (c) make loans or advances to the Parent Guarantor or any other Subsidiary; or (d) transfer any of its property or assets to the Parent Guarantor or any other Subsidiary, in each case, other than: (1) with respect to clauses (a) through (d), those encumbrances or restrictions (i) contained in this Agreement or (ii) contained in any other agreement that evidences unsecured Indebtedness containing encumbrances or restrictions on the actions described above that are substantially similar to or less restrictive than those contained in this Agreement, or (2) with respect to clause (d), (i) restrictions contained in any agreement relating to the sale of a Subsidiary (other than the Issuer) or the assets of a Subsidiary pending sale, or relating to Secured Indebtedness secured by a Lien on assets that the Parent Guarantor or any Subsidiary may create, incur, assume, or permit or suffer to exist under this Agreement; *provided* that in any such case, the restrictions apply only to the Subsidiary or the assets that are the subject of such sale or Lien, as the case may be or (ii) customary provisions restricting assignment of any agreement entered into by the Parent Guarantor or any Subsidiary in the ordinary course of business.

**Parent Guarantor Ownership and Management of the Issuer.** The Constituent Companies will not permit the Parent Guarantor or a Wholly-Owned Subsidiary of the Parent Guarantor to (a) cease to be the sole managing member of the Issuer, (b) cease to have the sole and exclusive power to exercise all management and control over the Issuer or (c) cease to own and control, directly or indirectly, at least 80% of the outstanding Equity Interests of the Issuer.

#### **Financial Covenants.**

*Maximum Leverage Ratio.* The Parent Guarantor will not permit the Leverage Ratio to exceed 6.50 to 1.00 at any time; *provided, ~~however, that~~ that (1) notwithstanding the foregoing if the Covenant Relief Period ends as specified in clause (b) of the definition thereof then (i) for the fiscal quarter period*

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ending June 30, 2021, the Leverage Ratio may exceed 6.50 to 1.00 but shall not exceed 7.00 to 1.00 at any time and (ii) for the fiscal quarter period ending September 30, 2021, the Leverage Ratio may exceed 6.50 to 1.00 but shall not exceed 6.75 to 1.00 at any time, and (2) the Parent Guarantor shall have the option, exercisable one time beginning with the fiscal quarter period ending December 31, 2021, to elect that the Leverage Ratio may exceed 6.50 to 1.00 for a period (such period, the “Surge Period”) of one or two consecutive fiscal quarters commencing with the fiscal quarter during which the Issuer delivers the notice referred to below so long as ~~(+A)~~ the Issuer has delivered a written notice to each holder of the Notes that the Parent Guarantor is exercising its option under this subsection (a) and ~~(2B)~~ the Leverage Ratio does not exceed 7.00 to 1.00 at any time during the Surge Period.

*Minimum Fixed Charge Coverage Ratio.* The Parent Guarantor will not permit the ratio of (1) Adjusted EBITDA for the period of four consecutive fiscal quarters most recently ended to (2) Fixed Charges for such period to be less than 1.50 to 1.00 as of the last day of such period. Notwithstanding the foregoing, for purposes of calculating the foregoing, (i) for the last full fiscal quarter period of the Covenant Relief Period (which, (x) if the Covenant Relief Period ends pursuant to clause (a) of the definition thereof will be the period for which the Constituent Companies calculated the Specified Financial Covenants in the Covenant Relief Termination Notice and (y) if the Covenant Relief Period ends pursuant to clause (b) of the definition thereof, will be June 30, 2021), Adjusted EBITDA and Fixed Charges shall be measured as, at the Parent Guarantor’s election, either (A) Adjusted EBITDA and Fixed Charges for the two fiscal quarter period ending on such date multiplied by 2, or (B) Adjusted EBITDA and Fixed Charges for the single fiscal quarter ending on such date multiplied by 4; (ii) for the fiscal quarter period immediately following the fiscal quarter period described in the foregoing clause (i), Adjusted EBITDA and Fixed Charges shall be measured as, either (I) if for such clause (i), Adjusted EBITDA and Fixed Charges was measured based on clause (i)(A) above, then Adjusted EBITDA and Fixed Charges shall be measured as Adjusted EBITDA and Fixed Charges for the three fiscal quarter period ending on such date multiplied by 4/3, or (II) if for such clause (i), Adjusted EBITDA and Fixed Charges was measured based on clause (i) (B) above, then Adjusted EBITDA and Fixed Charges shall be measured as Adjusted EBITDA and Fixed Charges for the two fiscal quarter period ending on such date multiplied by 2; and (iii) for the fiscal quarter period immediately following the fiscal quarter period described in clause (ii), Adjusted EBITDA and Fixed Charges shall be measured as, either (X) if for clause (i) above, Adjusted EBITDA and Fixed Charges was measured based on clause (i)(A) above, then Adjusted EBITDA and Fixed Charges shall be measured as Adjusted EBITDA and Fixed Charges for the four fiscal quarter period ending on such date, or (Y) if for clause (i) above, Adjusted EBITDA and Fixed Charges was measured based on clause (i)(B) above, then Adjusted EBITDA and Fixed Charges shall be measured as Adjusted EBITDA and Fixed Charges for the three fiscal quarter period ending on such date multiplied by 4/3.

*Maximum Unencumbered Leverage Ratio.* The Parent Guarantor will not permit the ratio of (1) Unsecured Indebtedness of the Parent Guarantor and its Subsidiaries determined on a consolidated basis to (2) Unencumbered Asset Value to exceed 0.60 to 1.00 at any time; provided that (1) notwithstanding the foregoing if the Covenant Relief Period ends as specified in clause (b) of the definition thereof then (i) for the fiscal quarter period ending June 30, 2021, such ratio may exceed 0.60 to 1.00 but shall not exceed 0.65 to 1.00 at any time and (ii) for the fiscal quarter period ending September 30, 2021, such ratio may exceed 0.60 to 1.00 but shall not exceed 0.625 to 1.00 at any time. Notwithstanding the foregoing, for purposes of calculating the foregoing, (A) for the last full fiscal quarter period of the Covenant Relief Period (which, (x) if the Covenant Relief Period ends pursuant to clause (a) of the definition thereof will be the period for which the Constituent Companies calculated the Specified Financial Covenants in the Covenant Relief Termination Notice and (y) if the Covenant Relief Period ends pursuant to clause (b) of the definition thereof, will be June 30, 2021), Adjusted NOI for purposes of calculating Unencumbered Asset Value shall be measured as, at the Parent Guarantor’s election, either (I) Adjusted NOI for the two fiscal quarter period ending on such date multiplied by 2, or (II) Adjusted NOI for the single fiscal quarter ending on such date multiplied by 4; (B)

for the fiscal quarter period immediately following the fiscal quarter period described in clause (A), Adjusted NOI shall be measured as, either (I) if for clause (A) above, Adjusted NOI was measured based on clause (A)(I) above, then Adjusted NOI shall be measured as Adjusted NOI for the three fiscal quarter period ending on such date *multiplied by 4/3*, or (II) if for clause (A) above, Adjusted NOI was measured based

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on clause (A)(II) above, then Adjusted NOI shall be measured as Adjusted NOI for the two fiscal quarter period ending on such date multiplied by 2; and (C) for the fiscal quarter period immediately following the fiscal quarter period described in clause (B). Adjusted NOI shall be measured as, either (I) if for clause (A) above, Adjusted NOI was measured based on clause (A)(I) above, then Adjusted NOI shall be measured as Adjusted NOI for the four fiscal quarter period ending on such date, or (II) if for clause (A) above, Adjusted NOI was measured based on clause (A)(II) above, then Adjusted NOI shall be measured as Adjusted NOI for the three fiscal quarter period ending on such date multiplied by 4/3.

*Maximum Secured Indebtedness Ratio.* The Parent Guarantor will not permit the ratio of (1) Secured Indebtedness of the Parent Guarantor and its Subsidiaries determined on a consolidated basis to (2) Total Asset Value to exceed 0.45 to 1.00 at any time; provided that (1) notwithstanding the foregoing if the Covenant Relief Period ends as specified in clause (b) of the definition thereof then (i) for the fiscal quarter period ending June 30, 2021, such ratio may exceed 0.45 to 1.00 but shall not exceed 0.50 to 1.00 at any time and (ii) for the fiscal quarter period ending September 30, 2021, such ratio may exceed 0.45 to 1.00 but shall not exceed 0.475 to 1.00 at any time. Notwithstanding the foregoing, for purposes of calculating the foregoing, (A) for the last full fiscal quarter period of the Covenant Relief Period (which, (x) if the Covenant Relief Period ends pursuant to clause (a) of the definition thereof will be the period for which the Constituent Companies calculated the Specified Financial Covenants in the Covenant Relief Termination Notice and (y) if the Covenant Relief Period ends pursuant to clause (b) of the definition thereof, will be June 30, 2021), Adjusted NOI for purposes of calculating Total Asset Value shall be measured as, at the Parent Guarantor's election, either (I) Adjusted NOI for the two fiscal quarter period ending on such date multiplied by 2, or (II) Adjusted NOI for the single fiscal quarter ending on such date multiplied by 4; (B) for the fiscal quarter period immediately following the fiscal quarter period described in clause (A), Adjusted NOI shall be measured as, either (I) if for clause (A) above, Adjusted NOI was measured based on clause (A)(I) above, then Adjusted NOI shall be measured as Adjusted NOI for the three fiscal quarter period ending on such date multiplied by 4/3, or (II) if for clause (A) above, Adjusted NOI was measured based on clause (A)(II) above, then Adjusted NOI shall be measured as Adjusted NOI for the two fiscal quarter period ending on such date multiplied by 2; and (C) for the fiscal quarter period immediately following the fiscal quarter period described in clause (B), Adjusted NOI shall be measured as, either (I) if for clause (A) above, Adjusted NOI was measured based on clause (A)(I) above, then Adjusted NOI shall be measured as Adjusted NOI for the four fiscal quarter period ending on such date, or (II) if for clause (A) above, Adjusted NOI was measured based on clause (A)(II) above, then Adjusted NOI shall be measured as Adjusted NOI for the three fiscal quarter period ending on such date multiplied by 4/3.

*Minimum Unencumbered Implied Debt Service Coverage Ratio.* The Parent Guarantor will not permit the ratio of (1) Adjusted NOI from Unencumbered Properties to (2) Implied Debt Service for all Unsecured Indebtedness of the Parent Guarantor and its Subsidiaries to be less than 1.20 to 1.00 at any time. Notwithstanding the foregoing, for purposes of calculating the foregoing, (A) for the last full fiscal quarter period of the Covenant Relief Period (which, (x) if the Covenant Relief Period ends pursuant to clause (a) of the definition thereof will be the period for which the Constituent Companies calculated the Specified Financial Covenants in the Covenant Relief Termination Notice and (y) if the Covenant Relief Period ends pursuant to clause (b) of the definition thereof, will be June 30, 2021), Adjusted NOI and Implied Debt Service shall be measured as, at the Parent Guarantor's election, either (I) Adjusted NOI and Implied Debt Service for the two fiscal quarter period ending on such date multiplied by 2, or (II) Adjusted NOI and Implied Debt Service for the single fiscal quarter ending on such date multiplied by 4; (B) for the fiscal quarter period immediately following the fiscal quarter period described in clause (A), Adjusted NOI and Implied Debt Service shall be measured as, either (I) if for clause (A) above, Adjusted NOI and Implied Debt Service was measured based on clause (A)(I) above, then Adjusted NOI and Implied Debt Service shall be measured as Adjusted NOI and Implied Debt Service for the three fiscal quarter period ending on such date multiplied by 4/3, or (II) if for clause (A) above, Adjusted NOI and Implied Debt Service was measured based

on clause (A)(II) above, then Adjusted NOI and Implied Debt Service shall be measured as Adjusted NOI and Implied Debt Service for the two fiscal quarter period ending on such date *multiplied by 2*; and (C) for the fiscal quarter period immediately following the fiscal quarter period described in clause (B), Adjusted NOI and Implied

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Debt Service shall be measured as, either (I) if for clause (A) above, Adjusted NOI and Implied Debt Service was measured based on clause (A)(I) above, then Adjusted NOI and Implied Debt Service shall be measured as Adjusted NOI and Implied Debt Service for the four fiscal quarter period ending on such date, or (II) if for clause (A) above, Adjusted NOI and Implied Debt Service was measured based on clause (A)(II) above, then Adjusted NOI and Implied Debt Service shall be measured as Adjusted NOI and Implied Debt Service for the three fiscal quarter period ending on such date multiplied by 4/3.

*Minimum Unencumbered Property Requirements.* The Parent Guarantor will not permit the number of Unencumbered Properties to be less than seven Properties or the Unencumbered Asset Value to be less than \$500,000,000.

(4) *Liquidity.* At all times during the Covenant Relief Period, the Issuer and its Subsidiaries shall maintain Average Monthly Liquidity of not less than \$150,000,000.

(5) *Dividends and Other Restricted Payments.* The Constituent Companies will not, and will not permit any Subsidiary to, redeem, purchase, repurchase or otherwise acquire any Equity Interests of either Constituent Company or any of its Subsidiaries from any Person other than a Constituent Company or a Subsidiary unless (a) no Default or Event of Default exists or would result therefrom and (b) the Parent Guarantor shall have delivered to the holders of the Notes at least three Business Days prior to any redemption, purchase, repurchase or other acquisition that exceeds \$50,000,000 in the aggregate an Officer's Certificate evidencing that the Parent Guarantor will be in compliance with the Specified Financial Covenants after giving pro forma effect to such redemption, purchase, repurchase or other acquisition. Notwithstanding the foregoing, if an Event of Default exists, the Constituent Companies will not, and will not permit any Subsidiary to, declare or make any Restricted Payments except that (1) the Issuer may declare and make cash distributions to the Parent Guarantor and other holders of Equity Interests in the Issuer with respect to any fiscal year to the extent necessary for the Parent Guarantor to distribute, and the Parent Guarantor may (i) make cash or equity distributions in an aggregate amount not to exceed the minimum amount necessary for the Parent Guarantor to satisfy the requirements for qualification and taxation as a REIT and not be subject to income or excise taxation under sections 857(b)(1), 857(b)(3), 860 or 4981 of the Code and (ii) make additional distributions in common Equity Interests of the Parent Guarantor in an amount under this clause (ii) that, when combined with the distributions under clause (i) above, do not exceed 100% of the taxable income of the Parent Guarantor determined in accordance with section 857(b)(2) of the Code and (2) Subsidiaries of the Issuer may make Restricted Payments to any 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. Notwithstanding the foregoing, during the Covenant Relief Period, the terms of this clause (h) shall be subject to Section 10.10(a).

Notwithstanding the foregoing, during the Covenant Relief Period, the Parent Guarantor shall not be required to comply with (a) the Financial Covenants described in clauses (a) through (f) above, or (b) any Additional or More Restrictive Covenant incorporated from the Bank Credit Agreement that is not required to be complied with during the Covenant Relief Period pursuant to the Bank Credit Agreement, and the Surge Period shall not be deemed to be utilized.

## **Section 1.7. Article 8 Securities**

Notwithstanding any other provision contained in this Agreement or any other Note Document, from and after the date of this Agreement until the earlier of (a) the termination of this Agreement and (b) the Security Release Date, the Constituent Companies will not, and will not permit any Subsidiary to, (1) take any action of any nature whatsoever for any of the Equity Interests in any Equity Issuer to be treated as "securities" within the meaning of, or governed by, Article 8 of the UCC; (2) take any action of any nature whatsoever to enter into, acknowledge or agree to a securities control agreement with respect to the Equity Interests of any Equity Issuer; or (3) consent to or permit the filing of financing statements with respect to Equity Interests in any Equity Issuer except for financing statements filed pursuant to the Pledge Agreement.

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## Section 1.8. Covenant Relief Period Covenants.

Notwithstanding anything to the contrary set forth herein, from June 30, 2020 to the end of the Covenant Relief Period the Constituent Companies will not, and will not permit any Subsidiary to:

(1) Make any Restricted Payment other than (1) the Issuer may declare and make cash distributions to the Parent Guarantor and the Parent Guarantor may make cash and equity distributions to the holders of its Equity Interests to the extent necessary, as determined by the Parent Guarantor, for the Parent Guarantor to satisfy the requirements for qualification and taxation as a REIT and not be subject to income or excise taxation under Sections 857(b)(1), 857(b)(3), 860 or 4981 of the Internal Revenue Code; provided that, during the Covenant Relief Period, the Issuer and the Parent Guarantor shall cause the percentage of such distributions constituting Equity Interests to be the maximum percentage then permitted by applicable law (which shall include any letter ruling issued by the United States Internal Revenue Service), and (2) so long as no Default or Event of Default then exists or would result therefrom, Preferred Dividends (i) in an amount not to exceed \$3,210,000 per fiscal quarter and (ii) quarterly dividends in an amount required pursuant to any Preferred Equity Interests issued pursuant to clause (d)(3) below.

(2) Directly or indirectly make any Investment other than, so long as no Default or Event of Default then exists or would result therefrom and no portion of the cost of acquisition thereof consists of the proceeds of Indebtedness (other than (x) Nonrecourse Indebtedness arising from the assumption of a mortgage on a Property existing at the time of the acquisition thereof and not created in contemplation of such acquisition, (v) Revolving Loans (as defined in the Bank Credit Agreement) and (z) Swingline Loans (as defined in the Bank Credit Agreement)), the acquisition of Properties and Senior Mortgage Receivables (and, solely with respect to clause (2) below, other Mortgage Receivables and Secured Mezz Receivables) (1) in an aggregate amount during the Covenant Relief Period not to exceed \$100,000,000 so long as, at the time of making such Investment and after giving pro forma effect thereto, the Availability (to the extent available to be drawn in accordance with the Bank Credit Agreement as in effect on the earlier of such date and the First Amendment Date) will be equal to or greater than \$250,000,000 and (2) in an aggregate amount during the Covenant Relief Period not to exceed \$250,000,000 (plus, with respect to acquisitions of Eligible Properties that will become Unencumbered Properties, Mortgage Receivables and Secured Mezz Receivables, an amount equal to the proceeds received by the Parent Guarantor from the issuance of common Equity Interests which are not required to be applied as set forth in Section 9.14) so long as, at the time of making such Investment and after giving pro forma effect thereto, the Availability (to the extent available to be drawn in accordance with the Bank Credit Agreement as in effect on the First Amendment Date) is equal to \$500,000,000.

(3) Subject to Section 9.14, (1) directly or indirectly voluntarily prepay (i) Loans under the Bank Credit Agreement (except for prepayments of Revolving Loans and Swingline Loans (each as defined in the Bank Credit Agreement) that were borrowed in the ordinary course of business for general corporate purposes so long as no permanent reduction in the Revolving Commitments (as defined in the Bank Credit Agreement as in effect on the First Amendment Date) occurs in connection therewith) or any (ii) Indebtedness which is secured by Liens which are subordinate to the Liens securing the Notes or is contractually subordinated to the Notes or (2) during the Covenant Relief Period, (i) permanently reduce the Revolving Commitments (as defined in the Bank Credit Agreement as in effect on the First Amendment Date), (ii) permit the Bank Agent or the Bank Lenders to add a borrowing base or similar mechanism that reduces the amount that the Issuer would otherwise be able to borrow under the revolving credit facility thereunder or (iii) cause or permit the Stated Amount of Letters of Credit (each as defined in the Bank Credit Agreement as in effect on the First Amendment Date) to exceed \$30,000,000.

(4) Directly or indirectly issue, assume or otherwise incur any Indebtedness or issue any Preferred Equity Interests other than (1) Nonrecourse Indebtedness (i)

incurred to refinance other Nonrecourse Indebtedness existing on June 30, 2020, so long as the principal amount of such

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refinancing Indebtedness does not exceed the principal amount of the Indebtedness refinanced thereby, and the maturity date of such refinancing Indebtedness is no earlier than the maturity date of the Indebtedness refinanced thereby, (ii) constituting a mortgage on a Property assumed at the time of acquisition thereof (and not created in contemplation thereof) or (iii) to the extent the proceeds thereof are applied as required pursuant to Section 9.14, (2) subject to compliance with Section 9.15, Government Assistance Indebtedness, and (3) Preferred Equity Interests in an aggregate amount of up to \$200,000,000 so long as (i) such Preferred Equity Interests are issued by the Parent Guarantor and are either (A) perpetual preferred Equity Interests or (B) not available for redemption at the election of the holder thereof prior to the date that is one year after the maturity date of the Series B Notes and, in either case, such Preferred Equity Interests do not provide for an increase in the rate of return thereon if not redeemed on or prior to the maturity date of the Series B Notes, and (ii) the proceeds thereof are applied as required pursuant to Section 9.14.

(5) Directly or indirectly make any capital expenditures other than (1) capital expenditures in an amount not exceeding \$110,000,000 in the aggregate for the period commencing May 1, 2020 through the end of the Covenant Relief Period and (2) other capital expenditures in excess of the amount set forth in clause (1) so long as such capital expenditures are necessary for emergency repairs or other expenditures required for the safety of employees or guests.

(6) Sell, transfer of or otherwise dispose any Unencumbered Property, unless the proceeds thereof are applied as required by and in accordance with Section 9.14, including the definition of “Net Proceeds.”

Although it will not be a Default or an Event of Default if the Constituent Companies fail to comply with any provision of Section 10 before or after giving effect to the issuance of the Notes on a *pro forma* basis, if such a failure occurs, then any of the Purchasers may elect not to purchase the Notes on the date of Closing that is specified in Section 3.

#### EVENTS OF DEFAULT.

An “**Event of Default**” shall exist if any of the following conditions or events shall occur and be continuing:

the Issuer defaults in the payment of any principal or Make-Whole Amount, 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

the Issuer defaults in the payment of any interest on any Note for more than three Business Days after the same becomes due and payable; or

either Constituent Company defaults in the performance of or compliance with any term contained in Section 7.1(d), Section 9.14 or Section 10 or any Additional or More Restrictive Covenant; or

either Constituent 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 the Subsidiary Guaranty Agreement or in any other Note Document and such default is not remedied within 30 days after the earlier of (1) a Responsible Officer of either Constituent Company obtaining actual knowledge of such default and (2) either Constituent 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)); or

(1) any representation or warranty made in writing by or on behalf of either Constituent Company or by any officer of either Constituent Company in this Agreement or any other Note

Document 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 (2) any representation or warranty made in writing by or on behalf of any Subsidiary Guarantor or by any officer of such Subsidiary Guarantor in the

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Subsidiary Guaranty Agreement or any other Note Document or any writing furnished in connection with the Subsidiary Guaranty Agreement or any other Note Document proves to have been false or incorrect in any material respect on the date as of which made; or

(1) either Constituent 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 (or, in the case of Nonrecourse Indebtedness, \$175,000,000) (or its equivalent in the relevant currency of payment) beyond any period of grace provided with respect thereto, or (2) either Constituent 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, in the case of Nonrecourse Indebtedness, \$175,000,000) (or its equivalent in the relevant currency of payment) 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 (i) been declared due and payable before its stated maturity or before its regularly scheduled dates of payment or (ii) 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, *provided* that in the case of clause (ii), upon the receipt by each holder of Notes of evidence that such default has been waived in writing by the requisite Person(s) holding such Indebtedness, so long as the Required Holders shall not have then exercised any of their rights or remedies with respect to such default, such event shall automatically cease to constitute an Event of Default hereunder or (3) 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), (i) either Constituent 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, in the case of Nonrecourse Indebtedness, \$175,000,000) (or its equivalent in the relevant currency of payment), or (ii) one or more Persons have the right to require either Constituent Company or any Subsidiary so to purchase or repay such Indebtedness, *provided* that, upon the receipt by each holder of Notes of evidence that such right has been waived in writing by the requisite Person(s) holding such Indebtedness, so long as the Required Holders shall not have then exercised any of their rights or remedies with respect to such right, such event shall automatically cease to constitute an Event of Default hereunder; or

either Constituent Company, any Subsidiary Guarantor or any Significant Subsidiary (1) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (2) 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, (3) makes an assignment for the benefit of its creditors, (4) 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, (5) is adjudicated as insolvent or to be liquidated, or (6) takes corporate action for the purpose of any of the foregoing; or

a court or other Governmental Authority of competent jurisdiction enters an order appointing, without consent by either Constituent Company, any Subsidiary Guarantor or any Significant Subsidiary, 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 either Constituent Company, any Subsidiary Guarantor or any Significant Subsidiary, or any such petition shall be filed against either Constituent Company, any Subsidiary Guarantor or any Significant Subsidiary and such petition shall not be dismissed within 60 days; or

any event occurs with respect either Constituent Company, any Subsidiary Guarantor or any Significant Subsidiary which under the laws of any jurisdiction is analogous to any of the events described in Section 11(g) or Section 11(h), *provided* that the applicable grace period, if

any, which shall apply shall be the one applicable to the relevant proceeding which most closely corresponds to the proceeding described in Section 11(g) or Section 11(h); or

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one or more final judgments or orders for the payment of money aggregating in excess of \$25,000,000 (or its equivalent in the relevant currency of payment), including any such final order enforcing a binding arbitration decision, are rendered against one or more of the Constituent Companies and their 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

(7) prior to the Security Release Date, either Constituent Company or any of its Subsidiaries shall (1) fail to make a payment when due and payable with respect to Indebtedness under the Bank Credit Agreement (after giving effect to any applicable notice or cure periods thereunder), (2) the maturity of any Indebtedness under the Bank Credit Agreement shall have been accelerated in accordance with the terms thereof or any Indebtedness under the Bank Credit Agreement shall be required to be prepaid, repurchased, redeemed or defeased prior to the stated maturity thereof or (z) any other event shall have occurred and be continuing which, with or without the passage of time, the giving of notice, or otherwise, would permit any holder or holders of any Indebtedness under the Bank Credit Agreement, any trustee or agent acting on behalf of such holder or holders or any other Person, to accelerate the maturity of any such Indebtedness or require any such Indebtedness to be prepaid, repurchased, redeemed or defeased prior to its stated maturity; provided that upon receipt by the holders of the Notes of evidence that such event has been waived in writing by the requisite parties under the Bank Credit Agreement, such event shall automatically cease to constitute an Event of Default hereunder;

(8) ~~(4)~~ if (1) 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, (2) 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 Parent Guarantor or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (3) there is any “amount of unfunded benefit liabilities” (within the meaning of section 4001(a)(18) of ERISA) under one or more Plans, determined in accordance with Title IV of ERISA, (4) the aggregate present value of accrued benefit liabilities under all funded Non-U.S. Plans exceeds the aggregate current value of the assets of such Non-U.S. Plans allocable to such liabilities, (5) the Parent Guarantor 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, (6) the Parent Guarantor or any ERISA Affiliate withdraws from any Multiemployer Plan, (7) the Parent Guarantor 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 Parent Guarantor or any Subsidiary thereunder, (8) the Parent Guarantor or any Subsidiary fails to administer or maintain a Non-U.S. Plan in compliance with the requirements of any and all applicable laws, statutes, rules, regulations or court orders or any Non-U.S. Plan is involuntarily terminated or wound up, or (9) the Parent Guarantor or any Subsidiary becomes subject to the imposition of a financial penalty (which for this purpose shall mean any tax, penalty or other liability, whether by way of indemnity or otherwise) with respect to one or more Non-U.S. Plans; and any such event or events described in clauses (1) through (9) 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(k), 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~~

(9) ~~(4)~~ the Subsidiary Guaranty Agreement shall cease to be in full force and effect with respect to any Subsidiary Guarantor, any Subsidiary Guarantor or any Person acting on behalf of such Subsidiary Guarantor shall contest in any manner the validity, binding nature or enforceability of the Subsidiary Guaranty Agreement with respect to such Subsidiary Guarantor, or the obligations of any Subsidiary Guarantor under the Subsidiary Guaranty Agreement are not or cease to be legal, valid, binding and enforceable in accordance with the terms of the Subsidiary Guaranty Agreement-;

(10) the Issuer defaults in the payment of any Excess Leverage Fee for more than three Business Days after the same becomes due and payable; or

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(11) after the occurrence of the Security Trigger Date and prior to the Security Release Date, any Lien purported to be created under any Note Document shall cease to be, or shall be asserted by either Constituent Company, any Subsidiary Guarantor or any Grantor not to be, a valid and perfected Lien on any Collateral having a value, individually or in the aggregate, in excess of \$5,000,000, with the priority required by the applicable Note Documents and the Intercreditor Agreement, except as a result of (1) the sale or other disposition of the applicable Collateral in a transaction permitted under Note Documents or (2) the release of such Lien as a result of the occurrence of the Security Release Date hereunder; or

(12) after the occurrence of the Security Trigger Date and prior to the Security Release Date, the Intercreditor Agreement shall be asserted in writing by either Constituent Company, any Subsidiary Guarantor or any Grantor not to be, in whole or in part, legally valid, binding and enforceable against any party thereto, or the Intercreditor Agreement shall otherwise not be effective to create the rights and obligations purported to be created thereunder (as determined by a court of competent jurisdiction).

Notwithstanding the foregoing provisions of this Section 11, no Default or Event of Default shall be deemed to have occurred under any of clauses (f) through (j) with respect to any event or occurrence described therein relating to Sunstone 42nd St., the non-recourse mortgage loan secured by the hotel owned by Sunstone 42nd St. on the First Amendment Date or the 42nd St. Guaranty so long as, immediately prior to and after giving effect to such event or occurrence, (i) the holder of such mortgage loan does not have a claim for repayment of such mortgage loan under the 42<sup>nd</sup> Street Guaranty in excess of the then outstanding principal amount of such mortgage loan (which on the First Amendment Date is \$77,174,971.28), accrued and unpaid interest thereon and the costs and expenses of enforcement required to be paid by the guarantor under the 42nd St. Guaranty or (ii) if the holder of such mortgage loan has a claim in excess of such amount, such holder shall have waived such liability in writing.

#### **REMEDIES ON DEFAULT, ETC.**

##### **Acceleration.**

If an Event of Default with respect to either Constituent Company described in Section 11(g), (h) or (i) (other than an Event of Default described in clause (1) of Section 11(g) or described in clause (6) of Section 11(g) by virtue of the fact that such clause encompasses clause (1) of Section 11(g)) has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

If any other Event of Default has occurred and is continuing, the Required Holders may at any time at their option, by notice or notices to the Issuer, declare all the Notes then outstanding to be immediately due and payable.

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 Issuer, 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* (1) all accrued and unpaid interest thereon (including interest accrued thereon at the applicable Default Rate) and all accrued and unpaid Excess Leverage Fees (including interest accrued thereon at the applicable Default Rate), and (2) the Make-Whole Amount determined in respect of such principal amount, 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 Issuer acknowledges, 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 Issuer (except as herein specifically provided for) and that the provision for payment of a Make-Whole Amount by the Issuer 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.

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**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 the Subsidiary Guaranty Agreement or in any other Note Document, 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.

**Rescission.** At any time after any Notes have been declared due and payable pursuant to Section 12.1(b) or (c), the Required Holders, by written notice to the Issuer, may rescind and annul any such declaration and its consequences if (a) the Issuer has paid all overdue interest on the Notes, all principal of and Make-Whole Amount, if any, and Excess Leverage Fees, 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 Excess Leverage Fees, 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 Issuer 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 18, 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.

**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, the Subsidiary Guaranty Agreement ~~or~~ any Note or any other Note Document 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 Constituent Companies under Section 16, the Issuer 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 reasonable attorneys' fees, expenses and disbursements.

#### **GUARANTEE.**

**The Guarantee.** The Parent Guarantor hereby absolutely, unconditionally and irrevocably guarantees, as primary obligor and not as surety, to each holder of a Note (a) the full and punctual payment when due, whether at maturity, by acceleration, by redemption or otherwise, of the principal of, Make-Whole Amount, if any, and Excess Leverage Fees, if any, and interest (including any interest accruing after the commencement of any proceeding in bankruptcy and any additional interest that would accrue but for the commencement of such proceeding) on the Notes and all other obligations of the Issuer under this Agreement and (b) the full and prompt performance and observance by the Issuer of each and all of the obligations, covenants and agreements required to be performed or observed by the Issuer under the terms of this Agreement and the Notes (all the foregoing being hereinafter collectively called the "Obligations"). The Parent Guarantor further agrees (to the extent permitted by applicable law) that the Obligations may be extended or renewed, in whole or in part, without notice or further assent from it, and that it shall remain bound under this Section 13 notwithstanding any extension or renewal of any Obligation.

**Waiver of Defenses.** The Parent Guarantor waives presentation to, demand of payment from and protest to the Issuer of any of the Obligations and also waives notice of protest for nonpayment. The Parent Guarantor waives notice of any default under this Agreement, the Notes or the other Obligations. The obligation of the Parent Guarantor hereunder shall not be affected by (a) the failure of any holder of a Note to assert any claim or demand or to enforce any right or remedy against the Issuer or any other Person (including any Subsidiary Guarantor) under this Agreement, the Notes, the Subsidiary Guaranty Agreement, any other Note Document or any other agreement or otherwise; (b) any extension or renewal of any thereof; (c) any rescission, waiver, amendment or modification of any of the terms or provisions of this Agreement, the Notes, the Subsidiary Guaranty Agreement, any other Note Document or any other agreement; (d) the acceptance of any security or Guarantee (including the Subsidiary

Guaranty Agreement) by any holder of a Note for the Obligations or any of them; (e) the release of any security or Guarantee (including the Subsidiary Guaranty Agreement) held by any holder of a Note for the Obligations or any of them; (f) the release of

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the Issuer, any Subsidiary Guarantor or any other Person from its liability with respect to the Obligations; (g) any act or failure to act with regard to the Obligations; (h) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization or arrangement under bankruptcy or similar laws, composition with creditors or readjustment of, or other similar procedure affecting the Issuer, any Subsidiary Guarantor or any other Person or any of the assets of any of them, or any allegation or contest of the validity of this Agreement, the Notes, the Subsidiary Guaranty Agreement, [any other Note Document](#) or any other agreement or the disaffirmance of this Agreement or the Notes or the Subsidiary Guaranty Agreement or any other agreement in any such proceeding; (i) the invalidity or unenforceability of this Agreement, the Notes, the Subsidiary Guaranty Agreement, [any other Note Document](#) or any other agreement; (j) the impossibility or illegality of performance on the part of the Issuer, any Subsidiary Guarantor or any other Person of its obligations under the Notes, this Agreement, the Subsidiary Guaranty Agreement, [any other Note Document](#) or any other instrument or agreement; (k) in respect of the Issuer, any Subsidiary Guarantor or any other Person, any change of circumstances, whether or not foreseen or foreseeable, whether or not imputable to the Issuer, any Subsidiary Guarantor or any other Person, or other impossibility of performance through fire, explosion, accident, labor disturbance, floods, droughts, embargoes, wars (whether or not declared), acts of terrorists, civil commotions, acts of God or the public enemy, delays or failures of suppliers or carriers, inability to obtain materials, action of any Governmental Authority, change of law or any other causes affecting performance, or other *force majeure*, whether or not beyond the control of the Issuer, any Subsidiary Guarantor or any other Person and whether or not of the kind above specified; or (l) any change in the ownership of the Issuer.

It being understood 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 Section 13.2 that the obligations of the Parent Guarantor shall be absolute, unconditional and irrevocable to the extent herein specified and shall not be discharged, impaired or varied except by the payment of the Obligations and then only to the extent of such payment.

**Guaranty of Payment.** The Parent Guarantor further agrees that the Guarantee herein constitutes a guaranty of payment when due (and not a guaranty of collection) and waives any right to require that any resort be had by any holder of a Note to any other Person or to any security held for payment of the Obligations.

**Guaranty Unconditional.** The obligations of the Parent Guarantor hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than payment of the Obligations in full), including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to any defense of setoff, counterclaim, recoupment or termination whatsoever or by reason of the invalidity, illegality or unenforceability of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of the Parent Guarantor herein shall not be discharged or impaired or otherwise affected by the failure of any holder of a Note to assert any claim or demand or to enforce any remedy under this Agreement, the Notes, the Subsidiary Guaranty Agreement, [any other Note Document](#) or any other agreement, by any waiver or modification of any thereof, by any default, failure or delay, willful or otherwise, in the performance of the Obligations, or by any other act or thing or omission or delay to do any other act or thing which may or might in any manner or to any extent vary the risk of the Parent Guarantor or would otherwise operate as a discharge of the Parent Guarantor as a matter of law or equity.

**Reinstatement.** The Parent Guarantor further agrees that the Guarantee herein shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored by any holder of a Note upon the bankruptcy or reorganization of the Issuer or otherwise.

**Payment on Demand.** In furtherance of the foregoing and not in limitation of any other right which any holder of a Note has at law or in equity against the Parent Guarantor by virtue hereof, upon the failure of the Issuer to pay any of the Obligations when and as the same shall become due, whether at maturity, by acceleration, by redemption or otherwise, the Parent Guarantor hereby promises to and shall, upon receipt of written demand by any holder of a Note, forthwith pay, or cause to be paid, in cash, to the holders an amount equal to the sum of (a) the unpaid amount

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of such Obligations then due and owing and (b) accrued and unpaid interest on such Obligations then due and owing (but only to the extent not prohibited by applicable law).

The Parent Guarantor acknowledges and agrees that repeated and successive demands may be made and recoveries may be had hereunder as and when, from time to time, the Issuer shall default under the terms of a Note or this Agreement and that notwithstanding recovery hereunder for or in respect of any given Default or Event of Default, the Guarantee contained in this Section 13 shall remain in full force and effect and shall apply to each and every subsequent Default or Event of Default.

**Stay of Acceleration.** The Parent Guarantor further agrees that, as between itself, on the one hand, and the holders of the Notes, on the other hand, (a) the maturity of the Obligations guaranteed hereby may be accelerated as provided in this Agreement for the purposes of the Guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the Obligations guaranteed hereby and (b) in the event of any such declaration of acceleration of such Obligations, such Obligations (whether or not due and payable) shall forthwith become due and payable by the Parent Guarantor for the purposes of this Guarantee.

**No Subrogation.** Notwithstanding any payment or payments made by the Parent Guarantor hereunder, the Parent Guarantor shall not be entitled to be subrogated to any of the rights of any holder of a Note against the Issuer or any collateral security or Guarantee or right of offset held by any holder for the payment of the Obligations, nor shall the Parent Guarantor seek or be entitled to seek any contribution or reimbursement from the Issuer or any Subsidiary Guarantor in respect of payments made by the Parent Guarantor hereunder, until all amounts owing to the holders of the Notes by the Issuer on account of the Obligations are paid in full. If any amount shall be paid to the Parent Guarantor on account of such subrogation rights at any time when all of the Obligations shall not have been paid in full, such amount shall be held by the Parent Guarantor in trust for the holders of the Notes, segregated from other funds of the Parent Guarantor, and shall, forthwith upon receipt by the Parent Guarantor, be turned over to the holders of the Notes in the exact form received by the Parent Guarantor (duly indorsed by the Parent Guarantor to the holders of the Notes, if required), to be applied against the Obligations.

**Marshalling.** No holder of a Note shall be under any obligation: (a) to marshal any assets in favor of the Parent Guarantor or in payment of any or all of the liabilities of the Issuer under or in respect of the Notes and this Agreement or the obligations of the Parent Guarantor hereunder or (b) to pursue any other remedy that the Parent Guarantor may or may not be able to pursue itself and that may lighten the Parent Guarantor's burden, any right to which the Parent Guarantor hereby expressly waives.

**Transfer of Notes.** All rights of any holder of a Note under this Section 13 shall be considered to be transferred or assigned at any time or from time to time upon the transfer of any Note held by such holder whether with or without the consent of or notice to the Parent Guarantor under this Section 13 or to the Issuer.

**Consideration.** The Parent Guarantor has received, or shall receive, direct or indirect benefits from the making of this Guarantee.

#### **REGISTRATION; EXCHANGE; SUBSTITUTION OF NOTES.**

**Registration of Notes.** The Issuer 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 in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Issuer shall not be affected by any notice or knowledge to the contrary. The Issuer shall give to any holder of a Note that is an Institutional Investor

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promptly upon request therefor, a complete and correct copy of the names and addresses of all registered holders of Notes.

**Transfer and Exchange of Notes.** Upon surrender of any Note to the Issuer at the address and to the attention of the designated officer (all as specified in Section 19(c)), 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 10 Business Days thereafter, the Issuer shall execute and deliver, at the Issuer's expense (except as provided below), one or more new Notes of the same series (as requested by the holder thereof) 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 Schedule 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 Issuer 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 (a) to any Competitor, *provided* that the limitation contained in this clause (a) shall not apply during any period when an Event of Default has occurred and is continuing, and (b) 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 of a series, one Note of such series 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 6.3.

**Replacement of Notes.** Upon receipt by the Issuer at the address and to the attention of the designated officer (all as specified in Section 19(3)) 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

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 \$100,000,000 or a Qualified Institutional Buyer, such Person's own unsecured agreement of indemnity shall be deemed to be satisfactory), or

in the case of mutilation, upon surrender and cancellation thereof,

within 10 Business Days thereafter, the Issuer 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.

#### **PAYMENTS ON NOTES.**

**Place of Payment.** Subject to Section 15.2, payments of principal, Make-Whole Amount, if any, Excess Leverage Fees, if any, and interest becoming due and payable on the Notes shall be made in New York, New York at the principal office of Bank of America, N.A. in such jurisdiction. The Issuer 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 Issuer in such jurisdiction or the principal office of a bank or trust company in such jurisdiction.

**Payment by Wire Transfer.** 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 Issuer will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, Excess Leverage Fees, 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 the Purchaser Schedule, or by such other method or at such other address as such Purchaser shall have from time to time specified to the Issuer 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 Issuer 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 Issuer at its principal executive office or at

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the place of payment most recently designated by the Issuer 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 Issuer in exchange for a new Note or Notes pursuant to Section 14.2. The Issuer 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.

**FATCA Information.** By acceptance of any Note, the holder of such Note agrees that such holder will with reasonable promptness duly complete and deliver to the Issuer, or to such other Person as may be reasonably requested by the Issuer, from time to time (a) in the case of any such holder that is a United States Person, such holder's United States tax identification number or other forms reasonably requested by the Issuer necessary to establish such holder's status as a United States Person under FATCA and as may otherwise be necessary for the Issuer to comply with its obligations under FATCA and (b) in the case of any such holder that is not a United States Person, such documentation prescribed by applicable law (including as prescribed by section 1471(b)(3)(C)(i) of the Code) and such additional documentation as may be necessary for the Issuer to comply with its obligations under FATCA and to determine that such holder has complied with such holder's obligations under FATCA or to determine the amount, if any, to deduct and withhold from any such payment made to such holder. Nothing in this Section 15.3 shall require any holder to provide information that is confidential or proprietary to such holder unless the Issuer is required to obtain such information under FATCA and, in such event, the Issuer shall treat any such information it receives as confidential.

#### **EXPENSES, ETC.**

**Transaction Expenses.** Whether or not the transactions contemplated hereby are consummated, the Constituent Companies 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, the Subsidiary Guaranty Agreement ~~or~~, the Notes or any other Note Document (whether or not such amendment, waiver or consent becomes effective), including: (a) the costs and expenses incurred in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement, the Subsidiary Guaranty Agreement ~~or~~, the Notes or any other Note Document or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement, the Subsidiary Guaranty Agreement ~~or~~, the Notes or any other Note Document, or by reason of being a holder of any Note, (b) the costs and the expenses, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of either Constituent Company or any Subsidiary or in connection with any work-out or restructuring of the transactions contemplated hereby and by the Notes ~~and~~, the Subsidiary Guaranty Agreement and the other Note Documents 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 \$6,500. If required by the NAIC, the Issuer shall obtain and maintain at its own cost and expense a Legal Entity Identifier (LEI).

The Constituent Companies will pay, and will save each Purchaser and each other holder of a Note harmless from, (1) 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), (2) any and all wire transfer fees that any bank or other financial institution 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 and (3) any judgment, liability, claim, order, decree, fine, penalty, cost, fee, expense (including reasonable attorneys' fees and expenses) or obligation resulting from the consummation of the transactions contemplated hereby, including the use of the proceeds of the Notes by the Issuer, *provided* that the Constituent Companies shall have no obligation under this clause (3) to any Purchaser or holder to the extent resulting from the bad faith, gross negligence or willful misconduct of such Purchaser or holder as determined by a court of competent jurisdiction by final and nonappealable judgment.

**Certain Taxes.** The Constituent Companies agree to pay all stamp, documentary or similar taxes or fees which may be payable in respect of the execution and delivery or the enforcement of this Agreement ~~or~~ the Subsidiary Guaranty Agreement or any other Note Document (other than the Notes) or the execution and delivery (but not the transfer) or the enforcement of any of the Notes in the United States or any other jurisdiction where either Constituent

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Company or any Subsidiary Guarantor has assets or of any amendment of, or waiver or consent under or with respect to, this Agreement ~~or~~, the Subsidiary Guaranty Agreement ~~or of~~, any of the Notes or any other Note Document, and to pay any value added tax due and payable in respect of reimbursement of costs and expenses by the Constituent Companies pursuant to this Section 16, and will save each holder of a Note to the extent permitted by applicable law harmless against any loss or liability resulting from nonpayment or delay in payment of any such tax or fee required to be paid by the Constituent Companies hereunder.

**Survival.** The obligations of the Constituent Companies under this Section 16 will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement, the Subsidiary Guaranty Agreement ~~or~~, the Notes or any other Note Document, and the termination of this Agreement.

#### **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 either Constituent Company pursuant to this Agreement shall be deemed representations and warranties of such Constituent Company under this Agreement. Subject to the preceding sentence, this Agreement, the Notes ~~and~~, the Subsidiary Guaranty Agreement and the other Note Documents embody the entire agreement and understanding between each Purchaser and the Constituent Companies and supersede all prior agreements and understandings relating to the subject matter hereof.

#### **AMENDMENT AND WAIVER.**

**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 Constituent Companies and the Required Holders, except that:

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

no amendment or waiver may, without the written consent of each Purchaser and the holder of each Note at the time outstanding, (1) 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 (i) interest on the Notes or (ii) the Make-Whole Amount, (2) 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 (3) amend any of Sections 8 (except as set forth in the second sentence of Section 8.2), 11(a), 11(b), 12, 13, 18 or 21.

#### **Solicitation of Holders of Notes.**

**Solicitation.** The Constituent Companies will provide each Purchaser and each holder of a Note with sufficient information, sufficiently far in advance of the date a decision is required, to enable such Purchaser or 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~~, the Subsidiary Guaranty Agreement or any other Note Document. The Constituent Companies will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to this Section 18 ~~or~~, the Subsidiary Guaranty Agreement or any other Note Document to each Purchaser and each 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.

*Payment.* The Constituent Companies 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

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or provide other credit support, to any Purchaser or any 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 the Subsidiary Guaranty Agreement ~~or~~, any Note or any other Note Document unless such remuneration is concurrently paid, or security is concurrently granted or other credit support concurrently provided, on the same terms, ratably to each holder of a Note even if such Purchaser or holder did not consent to such waiver or amendment.

*Consent in Contemplation of Transfer.* Any consent given pursuant to this Section 18 or the Subsidiary Guaranty Agreement or any other Note Document by a holder of a Note that has transferred or has agreed to transfer its Note to (1) a Constituent Company, (2) any Subsidiary or any other Affiliate or (3) any other Person in connection with, or in anticipation of, such other Person acquiring, making a tender offer for or merging with either Constituent Company and/or any of its Affiliates in each case 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.

**Binding Effect, Etc.** Any amendment or waiver consented to as provided in this Section 18 or the Subsidiary Guaranty Agreement or any other Note Document 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 Constituent Companies 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 either Constituent Company and any Purchaser or any holder of a Note and no delay in exercising any rights hereunder or under any Note ~~or~~, the Subsidiary Guaranty Agreement or any other Note Document shall operate as a waiver of any rights of any Purchaser or any holder of such Note.

**Notes Held by the Constituent Companies, 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, the Subsidiary Guaranty Agreement ~~or~~, the Notes or any other Note Document, or have directed the taking of any action provided herein or in the Subsidiary Guaranty Agreement ~~or~~, the Notes or any other Note Document 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 a Constituent Company or any of its Affiliates shall be deemed not to be outstanding.

#### **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), (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by an internationally recognized overnight delivery service (charges prepaid). Any such notice must be sent:

if to any Purchaser or its nominee, to such Purchaser or nominee at the address specified for such communications in the Purchaser Schedule, or at such other address as such Purchaser or nominee shall have specified to the Constituent Companies in writing; and, in the case of notices and communications delivered pursuant to Section 9.12(b), with a copy to Mark A. Sternberg, Schiff Hardin LLP, 233 South Wacker Drive, Suite 7100, Chicago, IL 60606,

if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Constituent Companies in writing and, in the case of notices and communications delivered pursuant to Section 9.12(b), with a copy

to Mark A. Sternberg, Schiff Hardin LLP, 233 South Wacker Drive, Suite 7100,  
Chicago, IL 60606, or

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if to either Constituent Company, to such Constituent Company at its address set forth at the beginning hereof to the attention of Bryan Giglia, or at such other address as such Constituent Company shall have specified to the Purchaser and holders of the Notes in writing.

Notices under this Section 19 will be deemed given only when actually received.

#### **REPRODUCTION OF DOCUMENTS.**

This Agreement and all documents relating hereto, including (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by any Purchaser on the Execution Date or 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. Each Constituent 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 either Constituent Company or any other Purchaser or 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.

#### **CONFIDENTIAL INFORMATION.**

For the purposes of this Section 21, “**Confidential Information**” means information delivered to any Purchaser by or on behalf of a Constituent 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 such Constituent 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 a Constituent 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 (1) 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), (2) its auditors, financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with this Section 21, (3) any other holder of any Note, (4) 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), (5) any Person from which it offers to purchase any Security of a Constituent Company (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by this Section 21), (6) any federal or state regulatory authority having jurisdiction over such Purchaser, (7) 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 (8) any other Person to which such delivery or disclosure may be necessary or appropriate (i) to effect compliance with any law, rule, regulation or order applicable to such Purchaser, (ii) in response to any subpoena or other legal process, (iii) in connection with any litigation to which such Purchaser is a party or (iv) 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~~ the Subsidiary Guaranty Agreement or any other Note Document. 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 a Constituent 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 Constituent Companies embodying this Section 21.

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In the event that as a condition to receiving access to information relating to a Constituent 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 such Constituent Company, this Section 21 shall supersede any such other confidentiality undertaking.

#### **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 Constituent Companies, 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 Constituent Companies 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.

#### **MISCELLANEOUS.**

**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 any subsequent holder of a Note) whether so expressed or not, except that, subject to Section 10.2, neither Constituent Company may assign or otherwise transfer any of its rights or obligations hereunder or under the Notes without the prior written consent of each holder. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto and their respective successors and assigns permitted hereby) any legal or equitable right, remedy or claim under or by reason of this Agreement.

**Accounting Terms.** 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, (a) all computations made pursuant to this Agreement shall be made in accordance with GAAP, and (b) all financial statements shall be prepared in accordance with GAAP. For purposes of determining compliance with this Agreement (including Section 9, Section 10 and the definition of "Indebtedness"), any election by the Parent Guarantor 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.

**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.

**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.

Defined 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

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“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 (a) any definition of or reference to any agreement, instrument or other document herein 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) and, for purposes of the Notes, shall also include any such notes issued in substitution therefor pursuant to Section 14, (b) subject to Section 23.1, any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Sections, Schedules and Exhibits shall be construed to refer to Sections of, and Schedules and Exhibits to, this Agreement, and (e) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time.

**For all purposes under this Agreement, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction’s laws), (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.**

**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.

**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.

#### **Jurisdiction and Process; Waiver of Jury Trial.**

Each Constituent 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, each Constituent 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.

Each Constituent Company agrees, to the fullest extent permitted by applicable law, that a final judgment in any suit, action or proceeding of the nature referred to in Section 23.7(a) brought in any such court shall be conclusive and binding upon it subject to rights of appeal, as the case may be, and may be enforced in the courts of the United States or the State of New York (or any other courts to the jurisdiction of which it or any of its assets is or may be subject) by a suit upon such judgment.

Each Constituent 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, certified, priority or express mail (or any substantially similar form of mail), postage prepaid, return receipt or delivery confirmation 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. Each Constituent Company agrees that such service upon receipt (1) shall be deemed in every respect effective service of process upon it in any such suit, action or proceeding and (2) 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.

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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 a Constituent 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.

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.

\* \* \* \* \*

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 Constituent Companies, whereupon this Agreement shall become a binding agreement between you and the Constituent Companies.

Very truly yours,

SUNSTONE HOTEL PARTNERSHIP, LLC

By: \_\_\_\_\_  
Its

SUNSTONE HOTEL PARTNERSHIP, LLC

By: \_\_\_\_\_  
Its

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This Agreement is hereby  
accepted and agreed to as  
of the date hereof.

[ADD PURCHASER SIGNATURE BLOCKS]

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## 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:

**“42nd St. Guaranty” is defined in Section 10.2.**

**“Additional Covenant” is defined in Section 9.10 as of the date of the Closing.**

**“Additional or More Restrictive Covenant”** is defined in Section 9.10.

**“Additional Note Purchase Agreement”** means any note purchase agreement or similar agreement entered into by the Issuer and/or the Parent Guarantor after the Execution Date in connection with a private placement debt financing.

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

**“Adjusted NOI”** means, for any Property and for any period (or if no applicable period is stated, the period of 12 consecutive fiscal months then ended), Net Operating Income for such Property for such period *minus* an imputed franchise fee in the amount of 4.00% of the gross revenues for such Property for such period; *provided, however*, for purposes of this definition, no imputed franchise fee shall be deducted from Net Operating Income with respect to any Property that is not subject to a Franchise Agreement.

**“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, such first Person. Unless the context otherwise clearly requires, any reference to an “Affiliate” is a reference to an Affiliate of the Parent Guarantor.

**“Agreement”** means this Note and Guarantee Agreement, including all Schedules and Exhibits attached to this Agreement.

**“Anti-Corruption Laws”** means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding bribery or any other corrupt activity, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010.

**“Anti-Money Laundering Laws”** means any law or regulation in a U.S. or any non-U.S. jurisdiction regarding money laundering, drug trafficking, terrorist-related activities or other money laundering predicate crimes, including the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act) and the USA PATRIOT Act.

**“Asset Sale” means any conveyance, sale, lease, transfer or other disposition (including by way of merger or consolidation and including any sale and leaseback transaction) of any of following (whether owned on June 30, 2020 or thereafter acquired): (a) any Unencumbered Property and (b) the Equity Interests of any Subsidiary that directly or indirectly owns any Unencumbered Property.**

**“Availability” has the meaning specified in the Bank Credit Agreement on the First Amendment Date.**

**“Average Monthly Liquidity” means (a) the sum of the following for each day of any calendar month (1) the Unrestricted Cash of the Issuer and its Subsidiaries held in the United States as of such day, plus (2) an amount equal to Availability as of such day (to the extent available to be drawn in accordance with the Bank Credit Agreement as in effect on the First Amendment Date) divided by (b) the number of days in such month; provided that with respect to the property-level operating accounts, “Average Monthly Liquidity” shall mean the Unrestricted Cash held in such accounts on the first and last day of each month divided by 2.**



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**“Bank Agent” means the Person then acting as administrative agent under the Bank Credit Agreement.**

**“Bank Credit Agreement”** means that certain Credit Agreement dated as of April 2, 2015 by and among the Constituent Companies, the financial institutions party thereto and Wells Fargo Bank, National Association, as administrative agent, Bank of America, N.A. and JPMorgan Chase Bank, N.A., as syndication agents, and Citibank, N.A., PNC Bank, National Association, and U.S. Bank National Association, as documentation agents, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancings thereof; *provided* that if no Bank Credit Agreement then exists, the largest Material Credit Facility then in effect shall be deemed to be the Bank Credit Agreement.

**“Bank Lenders” means the lenders from time to time party to the Bank Credit Agreement.**

**“Blocked Person”** means (a) a Person whose name appears on the list of Specially Designated Nationals and Blocked Persons published by OFAC, (b) a Person, entity, organization, country or regime that is blocked or a target of sanctions that have been imposed under U.S. Economic Sanctions Laws or (c) a Person that is an agent, department or instrumentality of, or is otherwise beneficially owned by, controlled by or acting on behalf of, directly or indirectly, any Person, entity, organization, country or regime described in clause (a) or (b).

**“Boston Park Plaza Hotel”** means the Boston Park Plaza Hotel located in Boston, Massachusetts.

**“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 Los Angeles, California or New York, New York are required or authorized to be closed.

**“Capitalization Rate”** means (a) 7.25% for (1) upscale select-service, upper-upscale or above full-service Properties developed with hotels and located within the central business districts of Boston, Massachusetts; Chicago, Illinois; Manhattan, New York City; Washington, D.C.; and San Francisco, California and (2) the Wailea Beach Marriott or (b) 8.00% for all other Properties, *provided* that, if the Bank Credit Agreement ~~provides for~~uses a “capitalization rate” ~~for~~to value the Property or types of Properties described in clause (a) or clause (b) ~~that~~for purpose of its financial covenants, and such “capitalization rate” is higher or lower than the rate set forth in such clause, then the applicable rate for such Property or types of Properties shall be such higher or lower rate, *provided, however*, that in no event may the capitalization rate used for the Property or types of Properties described in clause (a) or clause (b) be less than 6.25% and 7.00%, respectively.

**“Capitalized Lease Obligations”** means obligations under a lease (or other arrangement conveying the right to use property) to pay rent or other amounts that are required to be capitalized for financial reporting purposes in accordance with GAAP. The amount of a Capitalized Lease Obligation is the capitalized amount of such obligation as would be required to be reflected on a balance sheet of the applicable Person prepared in accordance with GAAP as of the applicable date. The obligations of Sunstone St. Clair, LLC, a Delaware limited liability company and Subsidiary of the Issuer, under the Hyatt Chicago Capital Lease shall not constitute Capitalized Lease Obligations. Notwithstanding the reclassification of ground or building leases as capitalized leases or lease liabilities under FASB ASC 842, obligations of the ~~Company~~Parent Guarantor or any Subsidiary under a ground or building lease shall not constitute Capitalized Lease Obligations so long as the lease payments under such ground or building lease are deducted from EBITDA.

**“CARES Act” means the Coronavirus Aid, Relief, and Economic Security Act, or the CARES Act and applicable rules and regulations.’**

**“CARES Payroll Costs” means “payroll costs” as defined in 15 U.S.C. 636(a)(36)(A)(viii) (as added to the Small Business Act by Section 1102 of the CARES Act).**

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**“CARES Forgivable Uses” means uses of proceeds of Government Assistance Indebtedness that are eligible for forgiveness under Section 1106 of the CARES Act.**

**“Cash Equivalents” means: (a) securities issued, guaranteed or insured by the United States or any of its agencies with maturities of not more than one year from the date acquired; (b) certificates of deposit with maturities of not more than one year from the date acquired issued by a United States federal or state chartered commercial bank of recognized standing, or a commercial bank organized under the laws of any other country which is a member of the Organisation for Economic Cooperation and Development, or a political subdivision of any such country, acting through a branch or agency, which bank has capital and unimpaired surplus in excess of \$500,000,000 and which bank or its holding company has a short term commercial paper rating of at least “A-2” or the equivalent by S&P or at least “P-2” or the equivalent by Moody’s; and (c) investments in money market funds registered under the Investment Company Act of 1940 which have net assets of at least \$500,000,000 and at least 85% of whose assets consist of securities and other obligations of the type described in clauses (a) through (c) above.**

**“Change in Control”** is defined in Section 8.7(f).

**“Change in Control Proposed Prepayment Date”** defined in Section 8.7(b).

**“Closing”** is defined in Section 3.

**“Code”** means the Internal Revenue Code of 1986 and the rules and regulations promulgated thereunder from time to time.

**“Collateral” means (a) the Equity Interests of each Equity Issuer, Material Debt Receivables, and all products and proceeds thereof and other related interests as more fully described as “Pledged Collateral” in the form of Pledge Agreement attached hereto as Exhibit PA and (b) any other assets required to be pledged to the Bank Agent or any Bank Lender to secure the obligations thereunder.**

**“Collateral Agent” means Wells Fargo Bank, National Association, in its capacity as collateral agent under the applicable Note Documents.**

**“Competitor”** means any Person that is a real estate investment trust, real property fund or a listed property trust; *provided, however*, that the term “Competitor” shall exclude any Person that is an Institutional Investor and that, but for this proviso, would fall within the definition of “Competitor” solely through the holding of passive investments in a Competitor.

**“Confidential Information”** is defined in Section 21.

**“Constituent Companies”** and **“Constituent Company”** are defined in the first paragraph of this Agreement.

**“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise; and the terms **“Controlled”** and **“Controlling”** shall have meanings correlative to the foregoing.

**“Controlled Entity”** means (a) any of the Subsidiaries of the Parent Guarantor and any of their or the Parent Guarantor’s respective Controlled Affiliates and (b) if the Parent Guarantor has a parent company, such parent company and its Controlled Affiliates.

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**“Covenant Relief Period” means the period commencing on June 30, 2020 and ending on the date which is the earlier of (a) the date the Constituent Companies have delivered a notice (the “Covenant Relief Termination Notice”) to the holders of the Notes electing to terminate the Covenant Relief Period which notice shall attach calculations demonstrating that the Parent Guarantor would have been in compliance with the Specified Financial Covenants (as if the Covenant Relief Period was not in effect) for the immediately preceding fiscal quarter for which financial statements have been delivered pursuant to Section 7.1(a) or 7.1(b) (which fiscal quarter shall not be prior to the fiscal quarter ending September 30, 2020) and (b) April 1, 2021.**

**“Covenant Relief Termination Notice” has the meaning given to that term in the definition of “Covenant Relief Period”.**

**“Credit Rating”** means the rating assigned by S&P or Moody’s to the senior unsecured long term Indebtedness of a Person.

**“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, with respect to any Note, that rate of interest per annum that is the greater of (a) 2.00% above the rate of interest stated in clause (a) of the first paragraph of such Note or (b) 2.00% over the rate of interest publicly announced by Bank of America, N.A. in New York, New York as its “base” or “prime” rate.

**“Derivatives Contract”** means a “swap agreement” as defined in Section 101 of the United States Bankruptcy Code of 1978.

**“Derivatives Termination Value”** means, in respect of any one or more Derivatives Contracts, after taking into account the effect of any legally enforceable netting agreement or provision relating to such Derivatives Contracts, (a) for any date on or after the date such Derivatives Contracts have been terminated or closed out, the termination amount or value(s) determined in accordance therewith, 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 Derivatives Contracts, as determined based upon one or more mid-market or other readily available quotations or estimates provided by any recognized dealer in Derivatives Contracts.

**“Development Property”** means, as of any date of determination, any Property on which the existing building or other improvements are undergoing renovation and redevelopment that will either (a) disrupt the occupancy of at least 10% of the rentable rooms of such Property or (b) temporarily reduce the Net Operating Income of such Property by more than 10% as compared to the immediately preceding comparable prior period. A Property that satisfies the foregoing requirements shall constitute a Development Property unless the Issuer in its discretion notifies each holder of Notes in writing that such Property shall not constitute a Development Property. ~~Notwithstanding the foregoing in the case of the Boston Park Plaza Hotel or the Wailea Beach Marriott, during planned renovations of such Property, such Property shall not be treated as a Development Property if the Issuer has provided written notice to each holder of Notes (a) that such renovations have commenced, (b) that the Issuer elects to have such Property not treated as a Development Property and (c) of the date on which such election is to become effective. Upon the effective date of such an election, the Operating Property Value of such Property shall be deemed to be equal to the purchase price paid by the Issuer (or any applicable Subsidiary) for such Property less any amounts paid to the Issuer (or such Subsidiary) as a purchase price adjustment, held in escrow, retained as a contingency reserve, or in connection with other similar arrangements. Such election shall cease to be effective upon the earlier of (1) the date six months following the date all improvements related to the renovation of such Property have been substantially completed and (2) June 30, 2017. Once such election shall cease to be effective, such Property shall be valued as a Seasoned Property.~~ A Property shall cease to be a Development Property once all improvements related to the renovation or redevelopment of such Property has been substantially completed.

**“Disclosure Documents”** is defined in Section 5.3.

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**“EBITDA”** means, with respect to a Person for any period (without duplication): (a) net income (loss) of such Person for such period determined on a consolidated basis exclusive of the following (but only to the extent included in determination of such net income (loss)): (1) depreciation and amortization expense; (2) Interest Expense; (3) income tax expense; (4) extraordinary or non-recurring gains, losses, revenues and expenses, including, without limitation, initial costs associated with resuming operations at each Property impacted by COVID-19 as disclosed in the public disclosures of the Parent (“Resuming Operation Costs”); and (5) other non-cash charges including impairment charges (other than non-cash charges that constitute an accrual of a reserve for future cash payments) *plus* (b) such Person’s Ownership Share of EBITDA of its Unconsolidated Affiliates. EBITDA shall be adjusted to remove any impact from (i) non-cash amortization of stock grants to members of the Parent Guarantor’s management, (ii) straight line rent leveling adjustments required under GAAP and (iii) amortization of intangibles pursuant to Financial Accounting Standards Board Accounting Standards Codification Topic 805. For purposes of determining compliance with the Leverage Ratio, (A) EBITDA attributable to Properties disposed of by the Issuer or any Subsidiary during the period of four consecutive fiscal quarters most recently ended for which financial statements are required to have been delivered pursuant to Section 7.1(a) or Section 7.2(b), or disposed of after such period but on or before the applicable date of determination, shall be excluded and (B) EBITDA attributable to any Property acquired by the Issuer or any Subsidiary during the period of four consecutive fiscal quarters most recently ended for which financial statements are required to have been delivered pursuant to Section 7.1(a) or Section 7.1(b), or acquired after such period but on or before the applicable date of determination, shall be utilized regardless of the date such Property was acquired by the Issuer or such Subsidiary.

**“EDGAR”** means the SEC’s Electronic Data Gathering, Analysis and Retrieval System or any successor SEC electronic filing system for such purposes.

**“Eligible Property”** means a Property which satisfies all of the following requirements: (a) such Property is fully developed as (1) an upscale, upper-upscale or luxury (as defined by Smith Travel Research) full-service hotel with not less than 150 keys or (2) a select-service (as defined by Smith Travel Research) hotel located in a top 25 market (or major resort market); (b) such Property is located in a top 50 MSA or a destination resort; (c) such Property is free of all structural defects, architectural deficiencies, title defects, environmental conditions or other adverse matters except for defects, deficiencies, conditions or other matters which, individually or collectively, are not material to the profitable operation of such Property; (d) such Property is owned in fee simple, or leased under a Ground Lease, entirely by the Issuer or a Subsidiary that is a Subsidiary Guarantor; (e) such Property is located in one of the 48 contiguous states of the United States or in Hawaii or the District of Columbia; (f) all material occupancy and operating permits and customary licenses required under applicable law for such Property are in effect and such Property is covered by insurance in amounts and upon terms that satisfy the criteria set forth in Section 9.2; (g) neither such Property, nor if such Property is owned by a Subsidiary, any of the Issuer’s direct or indirect ownership interest in such Subsidiary, is subject to (1) any Lien other than Permitted Liens (but not Permitted Liens described in clause (g) of the definition of that term) or (2) any Negative Pledge other than a Negative Pledge described in Section 10.5(b)(1) or (2); (h) regardless of whether such Property is owned by the Issuer or a Subsidiary, the Issuer has the right directly, or indirectly through a Subsidiary, to take the following actions without the need to obtain the consent of any Person: (1) to create Liens on such Property as security for Indebtedness of the Issuer or such Subsidiary, as applicable, and (2) to sell, transfer or otherwise dispose of such Property; (i) such Property is currently open for business to the public and (j) such Property is (1) branded by a nationally recognized hotel company (such as Marriott, Hilton, Hyatt, Fairmont, or Intercontinental-~~or~~ **Starwood**) or an Affiliate of such a company or (2) operated as an independent upscale or above hotel in a central business district or in Hawaii or another location not objected to by the Required Holders acting reasonably.

**“Environmental Laws”** means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to Hazardous Materials.



**“Equity Interest”** means, with respect to any Person, any share of capital stock of (or other ownership or profit interests in) such Person, any warrant, option or other right for the purchase or other acquisition from such Person of any share of capital stock of (or other ownership or profit interests in) such Person, whether or not certificated, any security convertible into or

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exchangeable for any share of capital stock of (or other ownership or profit interests in) such Person or warrant, right or option for the purchase or other acquisition from such Person of such shares (or such other interests), and any other ownership or profit interest in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such share, warrant, option, right or other interest is authorized or otherwise existing on any date of determination.

**“Equity Issuance” means any issuance by a Person of any Equity Interest in such Person and shall in any event include (a) the issuance of any Equity Interest upon the conversion or exchange of any security constituting Indebtedness that is convertible or exchangeable, or is being converted or exchanged, for Equity Interests, (b) the issuance of any Preferred Equity Interests, (c) any capital contribution made to a Constituent Company and (d) the offering of “securities” (as defined under the Securities Act) in a public offering registered under the Securities Act or an offering not required to be registered under the Securities Act (including a private placement under Section 4(2) of the Securities Act, an exempt offering pursuant to Rule 144A and/or Regulation S of the Securities Act and an offering of exempt securities).**

**“Equity Issuer” means each Subsidiary of the Issuer that directly or indirectly owns an Unencumbered Property; provided that “Equity Issuer” shall not include any Excluded Equity Issuer.**

**“ERISA”** means the Employee Retirement Income Security Act of 1974 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 Parent Guarantor under section 414 of the Code.

**“Event of Default”** is defined in Section 11.

**“Exchange Act”** is defined in Section 8.7(h)(1).

**“Excluded Equity Issuer” means any Subsidiary that (a) indirectly (but not directly) owns an Unencumbered Property and (b) directly or indirectly owns Property that is not an Unencumbered Property.**

**“Excluded Prepayment Debt” means (a) Nonrecourse Indebtedness described in Section 10.10(d)(1)(i) or 10.10(d)(1)(ii), (b) the proceeds of Revolving Loans and Swingline Loans (each as defined in the Bank Credit Agreement), (c) Government Assistance Indebtedness, (d) Nonrecourse Indebtedness secured by a mortgage on a Property and assumed at the time of acquisition of such Property (and not created in contemplation thereof) and (e) Indebtedness incurred in the ordinary course of business in an aggregate amount for all such Indebtedness under this clause (e), not to exceed \$5,000,000.**

**“Excluded Subsidiary”** means any Subsidiary as to which both of the following apply (a) such Subsidiary holds title to, or beneficially owns, assets which are or are intended to become collateral for any Secured Indebtedness of such Subsidiary, or is a direct or indirect beneficial owner of a Subsidiary holding title to or beneficially owning such assets (but having no material assets other than such beneficial ownership

interests); and (b) which (1) is, or is expected to be, prohibited from Guarantying the Indebtedness of any other Person pursuant to any document,

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instrument or agreement evidencing such Secured Indebtedness or (2) is prohibited from Guarantying the Indebtedness of any other Person pursuant a provision of such Subsidiary's organizational documents which provision was included in such Subsidiary's organizational documents as a condition to the extension of such Secured Indebtedness.

**“Execution Date”** is defined in Section 3.

**“FATCA”** means (a) sections 1471 through 1474 of the Code, as of the Execution Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), together with any current or future regulations or official interpretations thereof, (b) any treaty, law or regulation of any other jurisdiction, or relating to an intergovernmental agreement between the United States and any other jurisdiction, which (in either case) facilitates the implementation of the foregoing clause (a), and (c) any agreements entered into pursuant to section 1471(b)(1) of the Code.

**“FF&E Reserves”** means, for any period and with respect to a Property, an amount equal to the greater of (a) 4.00% of total gross revenues for such Property for such period and (b) the aggregate amount of reserves in respect to furniture, fixtures and equipment required under any Property Management Agreement or Franchise Agreement applicable to such Property for such period. If the term FF&E Reserves is used without reference to a specific Property, then the amount shall be determined on an aggregate basis with respect to all Properties of the Parent Guarantor and its Subsidiaries and the applicable Ownership Share of all Properties of all Unconsolidated Affiliates of the Parent Guarantor.

**“Financial Covenant”** means any covenant (whether set forth as a covenant, undertaking, event of default, restriction, prepayment event, reduction or “haircut” of a component of a covenant calculation or other such provision) that requires the Parent Guarantor and/or any Subsidiary to:

(a) maintain a specified level of net worth, shareholders' equity, total assets, unencumbered assets, unencumbered properties, cash flow, net income, occupancy rate or lease term;

maintain any relationship of any component of its capital structure to any other component thereof (including the relationship of indebtedness, subsidiary indebtedness, senior indebtedness, secured indebtedness, unsecured indebtedness, or subordinated indebtedness to total capitalization, total assets, unencumbered assets or to net worth);

maintain any measure of its ability to service its indebtedness (including exceeding any specified ratio of revenues, cash flow, operating income or net income to indebtedness, interest expense, rental expense, capital expenditures and/or scheduled payments of indebtedness);

restricts the amount of distributions; or

restrict the amount or type of its investments;

but in all cases excluding any such covenant that amounts to a negative pledge or a sale of assets limitation.

**“First Amendment Date”** means July 15, 2020.

**“Fixed Charges”** means, for any period, the sum of the following (without duplication): (a) Interest Expense of the Parent Guarantor and its Subsidiaries determined on a consolidated basis for such period, (b) all regularly scheduled principal payments made with respect to Indebtedness of the Parent Guarantor and its Subsidiaries during such period, other than any balloon, bullet or similar principal payment due upon the stated maturity of such Indebtedness, (c) all Preferred Dividends paid during such period on Preferred Equity Interests not owned by the Parent Guarantor or any of its Subsidiaries and (d) payments in respect of Capitalized Lease Obligations. The Parent

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Guarantor's Ownership Share of the Fixed Charges of Unconsolidated Affiliates of the Parent Guarantor shall be included in determinations of Fixed Charges.

**"Form 10-K"** is defined in Section 7.1(b).

**"Form 10-Q"** is defined in Section 7.1(a).

**"Franchise Agreement"** means an agreement permitting the use of the applicable hotel brand name, hotel system trademarks, trade names and any related rights in connection with the ownership or operation of a Property.

**"GAAP"** means (a) generally accepted accounting principles as in effect from time to time in the United States and (b) for purposes of Section 9.6, with respect to any Subsidiary, generally accepted accounting principles (including International Financial Reporting Standards, as applicable) as in effect from time to time in the jurisdiction of organization of such Subsidiary.

**"Government Assistance Indebtedness" means Indebtedness of the Parent Guarantor, the Issuer or its Subsidiaries incurred pursuant to federal, state or local stimulus plans in response to the COVID-19 pandemic (including loans provided by the U.S. Small Business Administration) so long as such Indebtedness ranks on a *pari passu* or junior basis with the Notes in right of payment.**

**"Governmental Authority"** means

(b) the government of

the United States or any state or other political subdivision thereof, or

any other jurisdiction in which the Parent Guarantor or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Parent Guarantor or any Subsidiary, or

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.

**"Grantor" means each Person that owns Collateral.**

**"Ground Lease"** means a ground lease containing terms and conditions customarily required by mortgagees making a loan secured by the interest of the holder of the leasehold estate demised pursuant to a ground lease, including the following: (a) a remaining term (inclusive of any unexercised extension or renewal options that are exercisable without condition (other than a condition that no default exists under such ground lease at the time of exercise of such extension or renewal option)) of 50 years or more from the Execution Date or, in the event that such remaining term is less than 50 years, such ground lease either (1) contains an unconditional end-of-term purchase option in favor of the lessee for consideration that is *de minimus* or (2) provides that the lessee's leasehold interest therein automatically becomes a fee-owned interest at the end of the term; (b) the right of the lessee to mortgage and encumber its interest in the leased property, and to amend the terms of any such mortgage or encumbrance, in each case, without the consent of the lessor or, if consent is required, such consent has been obtained or is required to be given

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upon the satisfaction of customary conditions; (c) the obligation of the lessor to give the holder of any mortgage Lien on such leased property written notice of any defaults on the part of the lessee and agreement of such lessor that such lease will not be terminated until such holder has had a reasonable opportunity to cure or complete foreclosures, and fails to do so; (d) acceptable transferability of the lessee's interest under such lease, including ability to sublease; (e) acceptable limitations on the use of the leased property; and (f) clearly determinable rental payment terms which in no event contain profit participation rights. ~~So long as the ground lease for the Hyatt Regency Newport Beach located in Newport Beach, California satisfies the requirements of the preceding clauses (b) through (f), such ground lease shall be deemed to be a Ground Lease.~~

**“Guaranty,” “Guaranteed,” “Guarantying” or to “Guarantee”** as applied to any obligation means and includes: (a) a guaranty (other than by endorsement of negotiable instruments for collection or deposit in the ordinary course of business), directly or indirectly, in any manner, of any part or all of such obligation, or (b) an agreement, direct or indirect, contingent or otherwise, and whether or not constituting a guaranty, the practical effect of which is to assure the payment or performance (or payment of damages in the event of nonperformance) of any part or all of such obligation whether by: (1) the purchase of securities or obligations, (2) the purchase, sale or lease (as lessee or lessor) of property or the purchase or sale of services primarily for the purpose of enabling the obligor with respect to such obligation to make any payment or performance (or payment of damages in the event of nonperformance) of or on account of any part or all of such obligation, or to assure the owner of such obligation against loss, (3) the supplying of funds to or in any other manner investing in the obligor with respect to such obligation, (4) repayment of amounts drawn down by beneficiaries of letters of credit, or (5) the supplying of funds to or investing in a Person on account of all or any part of such Person's obligation under a Guaranty of any obligation or indemnifying or holding harmless, in any way, such Person against any part or all of such obligation. Obligations in respect of customary performance guaranties and Guaranties constituting Nonrecourse Indebtedness shall not be deemed to give rise to Indebtedness or otherwise constitute a Guaranty except as otherwise provided in the definition of “Nonrecourse Indebtedness.”

**“Hazardous Materials”** means any and all pollutants, toxic or hazardous wastes or other substances that might pose a hazard to health and safety, the removal of which may be required or the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage or filtration of which is or shall be restricted, prohibited or penalized by any applicable law, including asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum products, lead based paint, radon gas or similar restricted, prohibited or penalized substances.

**“holder”** means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Issuer pursuant to Section 14.1, *provided, however*, that if such Person is a nominee, then for the purposes of Sections 7, 8.7, [9.14](#), 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.

**“Hyatt Chicago Capital Lease”** means that certain Lease dated December 15, 1997 between Chicago Title Land Trust Company, as trustee, as successor trustee to LaSalle Bank National Association, as successor trustee to American National Bank and Trust Company of Chicago, and Sunstone St. Clair, LLC, a Delaware limited



liability company, as assignee of Patriot Mortgage Borrower, L.L.C., as assignee of Oxford Wyn 633 Investment Company, L.L.C.

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**“Implied Debt Service”** means (a) a given principal balance of Unsecured Indebtedness *multiplied* by (b) the greatest of (1) 10% per annum, (2) the highest per annum interest rate then applicable to any of the outstanding principal balance of any form of loan then outstanding under the Bank Credit Agreement and (3) a mortgage debt constant for a loan calculated using a per annum interest rate equal to the yield on a 10-year United States Treasury Note at such time *plus* 3.50% and amortizing in full in a 25-year period.

**“Indebtedness”** means, with respect to a Person, at the time of computation thereof, all of the following (without duplication): (a) all obligations of such Person in respect of money borrowed or for the deferred purchase price of property or services (other than trade debt incurred in the ordinary course of business which is not more than 180 days past due); (b) all obligations of such Person, whether or not for money borrowed (1) represented by notes payable, or drafts accepted, in each case representing extensions of credit, (2) evidenced by bonds, debentures, notes or similar instruments, or (3) constituting purchase money indebtedness, conditional sales contracts, title retention debt instruments or other similar instruments, upon which interest charges are customarily paid or that are issued or assumed as full or partial payment for property or for services rendered; (c) Capitalized Lease Obligations of such Person; (d) all reimbursement obligations (contingent or otherwise) of such Person under or in respect of any letters of credit or acceptances (whether or not the same have been presented for payment); (e) all Off-Balance Sheet Obligations of such Person; (f) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Mandatorily Redeemable Stock issued by such Person or any other Person, valued at the greater of its voluntary or involuntary liquidation preference *plus* accrued and unpaid dividends; (g) all obligations of such Person in respect of any (1) purchase obligation, repurchase obligation or takeout commitment, in each case evidenced by a binding agreement and to the extent such obligation is to acquire Equity Interests of another Person, assets of another Person that constitute the business or a division or operating unit of such Person, real estate, bonds, debentures, notes or similar instruments or (2) forward equity commitment evidenced by a binding agreement (*provided, however* that this clause (g) shall exclude (i) any such obligation to the extent the obligation can be satisfied by the issuance of Equity Interests (other than Mandatorily Redeemable Stock) and (ii) in the case of the Parent Guarantor, obligations incurred in the ordinary course of the business of the Issuer and its Subsidiaries to acquire developed Properties within 6 months of the incurrence of such obligations); (h) net obligations under any Derivatives Contract not entered into as a hedge against interest rate risk in respect of existing Indebtedness, in an amount equal to the Derivatives Termination Value thereof at such time (but in no event less than zero); (i) all Indebtedness of other Persons which such Person has Guaranteed or is otherwise recourse to such Person (except for Guaranties constituting Nonrecourse Indebtedness); and (j) all Indebtedness of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property or assets owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness or other payment obligation. Indebtedness of any Person shall include Indebtedness of any partnership or joint venture in which such Person is a general partner or joint venturer to the extent of such Person’s Ownership Share of the ownership of such partnership or joint venture (except if such Indebtedness, or portion thereof, is recourse (other than in respect of

exceptions referred to in the definition of Nonrecourse Indebtedness) to such Person, in which case the greater of such Person's Ownership Share of such Indebtedness or the amount of such recourse portion of the Indebtedness, shall be included as Indebtedness of such Person). ~~The~~For the avoidance of doubt, the Notes

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shall constitute Indebtedness of the Issuer, and Government Assistance Indebtedness shall (except to the extent of forgiveness thereof) constitute Indebtedness of the Constituent Company or Subsidiary that is the obligor with respect thereto.

“INHAM Exemption” is defined in Section 6.3(e).

“Intercreditor Agreement” means the Intercreditor and Collateral Agency Agreement substantially in the form of Exhibit ICA attached hereto to be entered into on or prior to the Security Trigger Date by and among the Bank Agent, the Collateral Agent and the holders of the Notes.

“Interest Expense” means, with respect to a Person and for any period, and without duplication (a) all paid, accrued or capitalized interest expense (including capitalized interest expense) other than (1) capitalized interest funded from a construction loan interest reserve account held by another lender and not included in the calculation of cash for balance sheet reporting purposes and (2) interest expense attributable to Capitalized Lease Obligations of such Person, and in any event shall include all letter of credit fees and all interest expense with respect to any Indebtedness in respect of which such Person is wholly or partially liable whether pursuant to any repayment, interest carry, performance guarantee or otherwise, *plus* (b) to the extent not already included in the foregoing clause (a), such Person’s Ownership Share of all paid, accrued or capitalized interest expense for such period of Unconsolidated Affiliates of such Person. The term “Interest Expense” shall exclude all costs and expenses, including any prepayment penalties, of defeasing, or otherwise paying or prepaying, any Indebtedness encumbering any Property or amortization of deferred financing fees or the write-off of any deferred financing fees following the acquisition, disposition or refinancing thereof.

“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 \$2,000,000 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.

“Investment” means, with respect to any Person, any acquisition or investment (whether or not of a controlling interest) by such Person, by means of any of the following: (a) the purchase or other acquisition of any Equity Interest in another Person, (b) a loan, advance or extension of credit to, capital contribution to, Guaranty of Indebtedness of, or purchase or other acquisition of any Indebtedness of, another Person, including any partnership or joint venture interest in such other Person, ~~or~~ (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute the business or a division or operating unit of another Person. (d) the purchase of any Property with the proceeds of the Asset Sale of an Unencumbered Property or the Equity Interests of any Subsidiary that directly or indirectly owns an Unencumbered Property, provided that, so long as such purchased Property is then added as an Unencumbered Property, only the difference between the value of such purchased Property and the value of the Unencumbered Property subject to such Asset Sale shall be included as an Investment. Any commitment to make an Investment in any other Person, as well as any option of another Person to require an Investment in such Person, shall constitute

an Investment. Except as expressly provided otherwise, for purposes of determining compliance with any covenant contained this Agreement, the amount of any Investment shall be the amount

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actually invested, without adjustment for subsequent increases or decreases in the value of such Investment. Notwithstanding anything to the contrary, the issuing of Equity Interests or the use of cash or Cash Equivalents to repay an existing mortgage on a Property owned by a Constituent Company or a Subsidiary shall not be deemed to be an “Investment” so long as such Property becomes and remains an Unencumbered Property.

“**Issuer**” is defined in the first paragraph of this Agreement.

“**Lien**” as applied to the property of any Person means: (a) any security interest, encumbrance, mortgage, deed to secure debt, deed of trust, assignment of leases and rents, pledge, lien, hypothecation, assignment, charge or lease constituting a Capitalized Lease Obligation, conditional sale or other title retention agreement, or other security title or encumbrance of any kind in respect of any property of such Person, or upon the income, rents or profits therefrom; (b) any arrangement, express or implied, under which any property of such Person is transferred, sequestered or otherwise identified for the purpose of subjecting the same to the payment of Indebtedness or performance of any other obligation in priority to the payment of the general, unsecured creditors of such Person; (c) the filing of any financing statement under the UCC or its equivalent in any jurisdiction, other than any precautionary filing not otherwise constituting or giving rise to a Lien, including a financing statement filed (1) in respect of a lease not constituting a Capitalized Lease Obligation pursuant to Section 9-505 (or a successor provision) of the UCC or its equivalent as in effect in an applicable jurisdiction or (2) in connection with a sale or other disposition of accounts or other assets not prohibited by this Agreement in a transaction not otherwise constituting or giving rise to a Lien; and (d) any agreement by such Person to grant, give or otherwise convey any of the foregoing.

“**Leverage Ratio**” means, as of a given date, the ratio of (a)(1) Total Indebtedness as of such date *minus* (2) the lesser of (i) the amount, if any, by which Unrestricted Cash exceeds \$25,000,000 on such date and (ii) the lowest maximum amount, if any, of Unrestricted Cash then permitted to be subtracted from “total indebtedness” for purposes of determining the leverage ratio covenant under any Material Credit Facility to (b) EBITDA of the Parent Guarantor and its Subsidiaries for the period of four consecutive fiscal quarters most recently ended for which financial statements are required to have been delivered pursuant to Section 7.1(a) or Section 7.1(b). Notwithstanding the foregoing, for purposes of calculating the Leverage Ratio (other than for purposes of determining whether any Excess Leverage Fee is payable), (A) for the last full fiscal quarter of the Covenant Relief Period (which, (x) if the Covenant Relief Period ends pursuant to clause (a) of the definition thereof will be the period for which the Parent Guarantor calculated the Financial Covenants in the Covenant Relief Termination Notice and (y) if the Covenant Relief Period ends pursuant to clause (b) of the definition thereof, will be June 30, 2021), EBITDA shall be measured as, at Parent Guarantor’s election, either (I) EBITDA for the two fiscal quarter period ending on such date *multiplied by 2*, or (II) EBITDA for the single fiscal quarter ending on such date *multiplied by 4*; (B) for the fiscal quarter period immediately following the fiscal quarter period described in clause (A), EBITDA shall be measured as, either (I) if for clause (A) above, EBITDA was measured based on clause (A)(I) above, then EBITDA shall

be measured as EBITDA for the three fiscal quarter period ending on such date multiplied by 4/3, or (II) if for clause (A) above, EBITDA was measured based on clause (A)(II) above, then EBITDA shall be measured as EBITDA for the two fiscal quarter period ending on such date multiplied by 2; and (C) for the fiscal

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quarter period immediately following the fiscal quarter period described in clause (B), EBITDA shall be measured as, either (I) if for clause (A) above, EBITDA was measured based on clause (A)(I) above, then EBITDA shall be measured as EBITDA for the four fiscal quarter period ending on such date, or (II) if for clause (A) above, EBITDA was measured based on clause (A)(II) above, then EBITDA shall be measured as EBITDA for the three fiscal quarter period ending on such date multiplied by 4/3.

“Make-Whole Amount” is defined in Section 8.6.

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

“**Marketable Securities**” means: (a) common or preferred Equity Interests of Persons located in, and formed under the laws of, any State of the United States or the District of Columbia, which Equity Interests are subject to price quotations (quoted at least daily) on The NASDAQ Stock Market’s National Market System or have trading privileges on the New York Stock Exchange, the American Stock Exchange or another recognized national United States Securities exchange and (b) Securities evidencing Indebtedness issued by Persons located in, and formed under the laws of, any State of the United States or the District of Columbia, which Persons have a Credit Rating of “BBB-” or “Baa3” or better.

“**Material**” means material in relation to the business, operations, affairs, financial condition, assets, properties, or prospects of the Parent Guarantor and its Subsidiaries taken as a whole.

“**Material Adverse Effect**” means a material adverse effect on (a) the business, operations, affairs, financial condition, assets or properties of the Parent Guarantor and its Subsidiaries taken as a whole, (b) the ability of either Constituent Company, any Subsidiary Guarantor or any Grantor to perform its obligations under this Agreement ~~and/or~~ the Notes, ~~(c) the ability of any Subsidiary Guarantor to perform its obligations under~~ the Subsidiary Guaranty Agreement, or any other Note Document or ~~(d)~~ the validity or enforceability of this Agreement, the Notes ~~or~~ the Subsidiary Guaranty Agreement or any other Note Document.

“**Material Collateral Indebtedness**” means Indebtedness described under clause (a), (b), (c) (d), (f), (i) and (j) of the definition thereof in an amount in excess of \$50,000,000 (individually or in the aggregate with other such Indebtedness) and shall include, in any event, Indebtedness under the Bank Credit Agreement and any Preferred Equity Interests. Notwithstanding the foregoing, Material Collateral Indebtedness shall not include Secured Indebtedness which is Nonrecourse Indebtedness to the extent such Secured Indebtedness is not secured by the Collateral.

“**Material Contract**” means any contract or other arrangement (other than this Agreement, the Notes ~~or~~ the Subsidiary Guaranty Agreement and the other Note Documents), whether written



or oral, to which either Constituent Company or any Subsidiary is a party as to which the breach, nonperformance, cancellation or failure to renew by any party thereto could reasonably be expected to have a Material Adverse Effect.

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**“Material Credit Facility”** means, as to the Constituent Companies and their Subsidiaries,

(c) the Bank Credit Agreement;

(d) that certain Term Loan Agreement dated as of December 17, 2015 by and among the Constituent Companies, the financial institutions party thereto, PNC Bank, National Association, as administrative agent, PNC Bank, National Association and U.S. Bank National Association, as joint lead arrangers and joint bookrunners, and U.S. Bank National Association, as syndication agent, including any renewals, extensions, amendments, supplements, restatements, replacements or refinancings thereof; and

(e) any other agreement(s) creating or evidencing indebtedness for borrowed money (excluding any Nonrecourse Indebtedness) entered into on or after the Execution Date by either Constituent Company or any Subsidiary, or in respect of which either Constituent Company or any Subsidiary is an obligor or otherwise provides a guarantee or other credit support (other than a guaranty of customary recourse exceptions) (**“Credit Facility”**), in a principal amount outstanding or available for borrowing equal to or greater than \$100,000,000 (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); 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 Debt Receivables” means Mortgage Receivables and Secured Mezz Receivables of the Parent Guarantor, the Issuer or its Subsidiaries which, individually or in the aggregate with other Mortgage Receivables and Secured Mezz Receivables, exceed \$5,000,000.**

**“Maturity Date”** with respect to any Note is defined in the first paragraph of such Note.

**“Memorandum”** is defined in Section 5.3.

**“MFL Agreement”** is defined in Section 9.10.

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

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

**“Mortgage Receivable”** means a promissory note (other than a promissory note issued by the Parent Guarantor or a Subsidiary) secured by a Mortgage of which the Parent Guarantor or a Subsidiary is the holder and retains the rights of collection of all payments thereunder.

**“Most Favored Lender Notice”** means, in respect of any Additional or More Restrictive Covenant, a written notice from the Constituent Companies giving notice of such Additional or More Restrictive Covenant, including therein a verbatim statement of such Additional or More Restrictive Covenant, together with any definitions incorporated therein.

**“MSA”** means a Metropolitan Statistical Area as listed in Budget Bulletin No. 09-01 issued by the Executive Office of the President of the United States ~~of America~~, Office of Management and Budget.

**“Multiemployer Plan”** means any Plan that is a “multiemployer plan” (as such term is defined in section 4001(a)(3) of ERISA).

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“NAIC” means the National Association of Insurance Commissioners.

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

“**Net Operating Income**” or “**NOI**” means, for any Property and for a given period, the sum of the following (without duplication and determined on a consistent basis with prior periods): (a) gross revenues received in the ordinary course from such Property *minus* (b) all expenses paid (excluding interest but including an appropriate accrual for property taxes and insurance) related to the ownership, operation or maintenance of such Property, including property taxes, assessments and the like, insurance, utilities, payroll costs, maintenance, repair and landscaping expenses, marketing expenses, and general and administrative expenses (including an appropriate allocation for legal, accounting, advertising, marketing and other expenses incurred in connection with such Property, but specifically excluding general overhead expenses of the Issuer or any Subsidiary and any property management fees) *minus* (c) the FF&E Reserves for such Property as of the end of such period *minus* (d) an imputed management fee in the amount of 3.00% of the gross revenues for such Property for such period. For purposes of determining Adjusted NOI, Operating Property Value, Total Asset Value and Unencumbered Asset Value, (1) NOI from Properties disposed of by the Issuer or any Subsidiary during the period of four consecutive fiscal quarters most recently ended for which financial statements are required to have been delivered pursuant to Section 7.1(a) or Section 7.1(b) shall be excluded and (2) NOI for the period of four consecutive fiscal quarters most recently ended for which financial statements are required to have been delivered pursuant to Section 7.1(a) or Section 7.1(b) for any Property acquired by the Issuer or any Subsidiary during such period shall be utilized regardless of the date such Property was acquired by the Issuer or such Subsidiary. Notwithstanding anything to the contrary, any Resuming Operation Costs shall not be deducted as expenses relating to a Property in accordance with clause (b) above.

“**New Property**” means each Property on which a hotel is located acquired by the Parent Guarantor, any Subsidiary or any Unconsolidated Affiliate from the date of acquisition until the Seasoned Date in respect thereof; *provided, however*, that, upon the Seasoned Date for any New Property, such New Property shall be converted to a Seasoned Property and shall cease to be a New Property.

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

encumbered by a Lien securing such Indebtedness or (b) if such Person is a Single Asset Entity, any Indebtedness for borrowed money of such Person.

**“Non-U.S. Plan”** means any plan, fund or other similar program that (a) is established or maintained outside the United States by the Parent Guarantor or any Subsidiary primarily for the benefit of employees of the Parent

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Guarantor or one or more Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and (b) is not subject to ERISA or the Code.

**“Note Documents” means this Agreement, each Note, the Subsidiary Guaranty Agreement, the Pledge Agreement (if and when required to be executed and delivered in accordance with the terms hereof), the Intercreditor Agreement (if and when required to be executed and delivered in accordance with the terms hereof) and all other documents evidencing, securing or pertaining to the foregoing as shall, from time to time, be executed and/or delivered by either Constituent Company, any Subsidiary Guarantor, any Grantor or any other party to the holders of the Notes pursuant to this Agreement or any other Note Document (in each case as the same may be amended, modified, restates, supplemented, extended, renewed or replaced from time to time).**

**“Notes”** is defined in Section 1.

**“Obligations”** is defined in Section 13.1.

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

**“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>.

**“Off-Balance Sheet Obligations”** means, in the case of the Parent Guarantor or any of its Subsidiaries, liabilities and obligations of the Parent Guarantor, any such Subsidiary or any other Person in respect of “off-balance sheet arrangements” (as defined in Item 303(a)(4)(ii) of Regulation S-K promulgated under the Securities Act) which the Parent Guarantor would be required to disclose in the “Management’s Discussion and Analysis of Financial Condition and Results of Operations” section of the Parent Guarantor’s report on Form 10-Q or Form 10-K (or their equivalents) which the Parent Guarantor is required to file with the SEC.

**“Officer’s Certificate”** means, with respect to any Person, a certificate of a Senior Financial Officer or of any other officer of such Person whose responsibilities extend to the subject matter of such certificate.

**“Operating Property Value”** means, at any date of determination, (a) for each New Property (until the Seasoned Date), or Development Property (that is not a Seasoned Property), the purchase price of the Property less any amounts paid to the Issuer (or such Subsidiary) as a purchase price adjustment, held in escrow, retained as a contingency reserve, or in connection with other similar arrangements; or (b) for each Seasoned Property, (1) the Adjusted NOI of such Property for the period of four consecutive fiscal quarters most recently ended for which financial statements are required to have been delivered pursuant to Section 7.1(a) or Section 7.1(b) *divided by* (2) the applicable Capitalization Rate. ~~**Notwithstanding the foregoing, the Operating Property Value of the Wailea Beach Marriott and the Boston Park Plaza Hotel may be determined in accordance with the applicable provisions of the definition of “Development Property.”**~~

**“Ownership Share”** means, with respect to any Subsidiary of a Person (other than a Wholly-Owned Subsidiary) or any Unconsolidated Affiliate of a Person, the

greater of (a) such Person's relative nominal direct and indirect ownership interest (expressed as a percentage) in such Subsidiary or Unconsolidated Affiliate or (b) such Person's relative direct and indirect economic interest (calculated as a percentage) in such Subsidiary or Unconsolidated Affiliate determined in

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accordance with the applicable provisions of the declaration of trust, articles or certificate of incorporation, articles of organization, partnership agreement, joint venture agreement or other applicable organizational document of such Subsidiary or Unconsolidated Affiliate.

**“Parent Guarantor”** is defined in the first paragraph of the Agreement.

**“PBGC”** means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

**“Permitted Liens”** means, with respect to any asset or property of a Person, (a) Liens securing taxes, assessments and other charges or levies imposed by any Governmental Authority (excluding any Lien imposed pursuant to any of the provisions of ERISA or pursuant to any Environmental Laws) which, in each case, are not at the time required to be paid or discharged under Section 9.4, (b) the claims of materialmen, mechanics, carriers, warehousemen or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business, which, in each case, are not at the time required to be paid or discharged under Section 9.4; (c) Liens consisting of deposits or pledges made, in the ordinary course of business, in connection with, or to secure payment of, obligations under workers’ compensation, unemployment insurance or similar applicable laws; (d) Liens consisting of encumbrances in the nature of zoning restrictions, easements, and rights or restrictions of record on the use of real property, which do not materially detract from the value of such property or impair the intended use thereof in the business of such Person; (e) the rights of tenants under leases or subleases not interfering with the ordinary conduct of business of such Person; ~~and~~ (f) Liens in favor of the holders of the Notes ~~and~~; (g) Liens in existence on the Execution Date and set forth on Schedule 10.5; and (h) after the Security Trigger Date and prior to the Security Release Date, Liens on the Collateral in favor of the Collateral Agent for the benefit of the Bank Agent, the Bank Lenders, certain affiliates thereof and the holders of the Notes and subject to the terms of the Intercreditor Agreement.

**“Person”** means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, business entity or Governmental Authority.

**“Plan”** means an “employee benefit plan” (as defined in section 3(3) of ERISA) subject to Title I of ERISA that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by the Parent Guarantor or any ERISA Affiliate or with respect to which the Parent Guarantor or any ERISA Affiliate may have any liability.

**“Pledge Agreement” means a pledge agreement substantially in the form of Exhibit PA attached hereto to be entered into on or prior to the Security Trigger Date by and among the Collateral Agent and each Grantor together with any other security document now or hereafter granted to secure the Obligations.**

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



the redemption of Preferred Equity Interests, other than scheduled redemptions not constituting balloon, bullet or similar redemptions in full.

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

**“Property”** means any parcel (or group of related parcels) of real property owned or leased (in whole or in part) or operated by the Parent Guarantor, any Subsidiary or any Unconsolidated Affiliate of the Parent Guarantor.

**“property”** or **“properties”** means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

**“Property Management Agreement”** means, collectively, all agreements entered into by a Constituent Company or a Subsidiary Guarantor pursuant to which such Person engages a Person to advise it with respect to the management of an Unencumbered Property or to provide management services with respect to the same.

**“PTE”** is defined in Section 6.3(a).

**“Purchaser”** or **“Purchasers”** means each of the purchasers that has executed and delivered this Agreement to the Constituent Companies 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.

**“Purchaser Schedule”** means the Purchaser Schedule to this Agreement listing the Purchasers of the Notes and including their notice and payment information.

**“QPAM Exemption”** is defined in Section 6.3(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.

**“Reinvestment Asset” means (a) Eligible Properties which are added as Unencumbered Properties within 20 Business Days following the acquisition thereof; provided that, for purposes herein, the repayment of Nonrecourse Indebtedness on a Property, such that after such repayment such Property becomes an Eligible Property, shall be included as a “Reinvestment Asset” so long as such Eligible Property is added as an Unencumbered Property pursuant to this clause (a), and (b) so long as (1) after the Security Trigger Date and prior to the Security Release Date, any Material Debt Receivables are pledged as Collateral under the Pledge Agreement and (2) the Investment in such assets is permitted by Section 10.10(b), Senior Mortgage Receivables, other Mortgage Receivables and Secured Mezz Receivables.**

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

**“Related Fund”** means, with respect to any holder of any Note, any fund or entity that (a) invests in Securities or bank loans, and (b) 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.

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**“Required Holders”** means at any time (a) prior to the Closing, the Purchasers and (b) on or after the Closing, the holders of more than 50% in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by either Constituent Company or any of its Affiliates).

**“Responsible Officer”** means, with respect to any Person, any Senior Financial Officer and any other officer of such Person with responsibility for the administration of the relevant portion of this Agreement.

**“Restricted Payment”** means (a) any dividend or other distribution, direct or indirect, on account of any Equity Interest of the Parent Guarantor or any Subsidiary now or hereafter outstanding, except a dividend payable solely in Equity Interests; (b) any redemption, conversion, exchange, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Equity Interest of the Parent Guarantor or any Subsidiary now or hereafter outstanding; and (c) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire any Equity Interests of the Parent Guarantor or any Subsidiary now or hereafter outstanding.

**“Resuming Operation Costs” shall have the meaning given to such term in the definition of “EBITDA”.**

**“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business.**

**“SBA” means the United States Small Business Administration.**

**“Seasoned Date”** means the first day on which an acquired Property on which a hotel is located has been owned for four full fiscal quarters following the date of acquisition by the Parent Guarantor, a Subsidiary or an Unconsolidated Affiliate of the Parent Guarantor.

**“Seasoned Property”** means Property on which a hotel is located that is not a New Property.

**“SEC”** means the Securities and Exchange Commission of the United States ~~of America~~.

**“Secured Indebtedness”** means, with respect to a Person as of a given date, the aggregate principal amount of all Indebtedness of such Person outstanding on such date that is secured in any manner by any Lien on any property and, in the case of the Parent Guarantor, shall include the Parent Guarantor’s Ownership Share of the Secured Indebtedness of its Unconsolidated Affiliates; provided that after the Security Trigger Date and prior to the Security Release Date, Secured Indebtedness shall not include the Notes or the obligations under the Bank Credit Agreement.

**“Secured Mezz Receivable” means a promissory note (other than a promissory note issued by the Parent Guarantor or any Subsidiary of the Parent Guarantor) which is not a senior obligation of the issuer thereof and which is secured by a pledge of Equity Interests in the owner of a Property of which promissory note the Parent Guarantor, the Issuer or another Subsidiary is the holder and retains the rights of collection of all payments thereunder.**

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“**Securities Act**” means the Securities Act of 1933 and the rules and regulations promulgated thereunder from time to time in effect.

“**Securities**” or “**Security**” shall have the meaning specified in section 2(1) of the Securities Act.

“**Security Release Date**” means the date upon which the Constituent Companies have delivered a notice to the holders of the Notes certifying that the following has occurred: (a) the Covenant Relief Period shall have ended and the Issuer shall have demonstrated compliance (in its regular quarterly and/or annual reporting) of, at the Parent Guarantor’s election, either (1) for the two immediately prior fiscal quarters, a Leverage Ratio of not more than 6.50 to 1.00 or (2) for the immediately prior fiscal quarter a Leverage Ratio of not more than 6.00 to 1.00, (b) no Default or Event of Default shall have occurred and be continuing and (c) the liens, if any, securing the obligations under the Bank Credit Agreement and any other Material Collateral Indebtedness have been released or shall be released substantially simultaneously therewith. The Collateral Agent shall be authorized to release all liens securing the Notes on the Security Release Date.

“**Security Trigger Date**” means the earliest date any of the following shall occur (a) Availability (to the extent available to be drawn in accordance with the Bank Credit Agreement as in effect on the First Amendment Date) is, at any time, less than \$350,000,000, (b) the Issuer and its Subsidiaries have aggregate Unrestricted Cash on the balance sheet of less than \$200,000,000 or (c) the Parent Guarantor, the Issuer or any of its Subsidiaries grant a Lien (or agree to grant a Lien) to secure any of the obligations under the Bank Credit Agreement, any Preferred Equity or other Material Collateral Indebtedness. The Security Trigger Date shall not in any event be deemed to occur after the occurrence of the Security Release Date.

“**Senior Financial Officer**” means, with respect to any Person, the chief financial officer, principal accounting officer, treasurer or comptroller of such Person.

“**Senior Management**” means the named executive officers (or “NEOs”) identified in the Parent Guarantor’s most recently filed proxy statement in respect of its annual meeting and shall include each person that replaces any such NEO after the filing of such proxy statement and prior to the filing of its next such proxy statement.

“**Senior Mortgage Receivables**” means Mortgage Receivables which constitute senior debt of the issuer thereof.

“**Series A Notes**” is defined in Section 1.

“**Series B Notes**” is defined in Section 1.

“**Significant Subsidiary**” means any Subsidiary to which more than \$10,000,000 of Total Asset Value is attributable.

“**Single Asset Entity**” means a Person (other than an individual) that (a) only owns a single Property; (b) is engaged only in the business of owning, developing and/or leasing such Property; and (c) receives substantially all of its gross revenues from such Property. In addition, if the assets of a Person consist solely of (1) Equity Interests in one or more Single Asset Entities that directly or indirectly own such single Property and (2) cash and other assets of nominal value incidental to such Person’s ownership of the other Single Asset Entity, such Person shall also be deemed to be a Single Asset Entity for purposes of this Agreement.

“**Small Business Act**” means the Small Business Act (15 U.S. Code Chapter 14A – Aid to Small Business).

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**“Smith Travel Research”** means Smith Travel Research or, if Smith Travel Research shall no longer exist, any other Person that provides competitive benchmarking, information services and research to the hotel industry and is acceptable to the Required Holders.

**“Source”** is defined in Section 6.3.

**“Solvent”** means, when used with respect to any Person (or group of Persons), that (a) the fair value and the fair salable value of its (or their) assets (excluding any Indebtedness due from any Affiliate of such Person (or group of Persons)) are each in excess of the fair valuation of its (or their) total liabilities (including all contingent liabilities computed at the amount which, in light of all facts and circumstances existing at such time, represents the amount that could reasonably be expected to become an actual and matured liability); (b) such Person is (or group of Persons are) able to pay its (or their) debts or other obligations in the ordinary course as they mature; and (c) such Person (or group of Persons) has capital not unreasonably small to carry on its (or their) business and all business in which it proposes (or they propose) to be engaged

**“Specified Financial Covenants” means the covenants set forth in Section 10.8 and each Additional or More Restrictive Covenant.**

**“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC.**

**“State Sanctions List”** means a list that is adopted by any state Governmental Authority within the United States 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 Laws.

**“Subsidiary”** means, as to any Person, any other Person in which such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such second Person, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such first Person or one or more of its Subsidiaries or such first Person and one or more of its Subsidiaries (unless such partnership or joint venture can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a “Subsidiary” is a reference to a Subsidiary of the Parent Guarantor.

**“Subsidiary Guarantor”** means each Subsidiary that has executed and delivered the Subsidiary Guaranty Agreement or a Subsidiary Guaranty Supplement and has not been released from the Subsidiary Guaranty Agreement pursuant to Section 9.9(b).

**“Subsidiary Guaranty Agreement”** is defined in Section 2.2(b).

**“Subsidiary Guaranty Supplement”** is defined in Section 9.9(a)(1).

**“Substitute Purchaser”** is defined in Section 22.

**~~“S&P” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC.~~**

**“Sunstone 42nd St.” means Sunstone 42<sup>nd</sup> St. LLC, a Delaware limited liability company.**



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**“Surge Period”** is defined in Section 10.8(a).

**“SVO”** means the Securities Valuation Office of the NAIC.

**“Total Asset Value”** means the sum of all of the following of the Parent Guarantor and its Subsidiaries on a consolidated basis determined in accordance with GAAP applied on a consistent basis: (a) Unrestricted Cash and Marketable Securities, *plus* (b) the Operating Property Value of all Properties of the Parent Guarantor and its Subsidiaries on which a hotel is located, *plus* (c) the book value of Unimproved Land, Mortgage Receivables and other promissory notes, *plus* (d) the ~~Parent’s Guarantor~~ Parent Guarantor’s Ownership Share of the preceding items for its Unconsolidated Affiliates (excluding assets of the type described in the immediately preceding clause (a)), *plus* (e) in the case of any property subject to a purchase obligation, repurchase obligation or takeout commitment which at such time (1) could not be specifically enforced by the seller of such property, the aggregate amount of due diligence deposits, earnest money payments and other similar payments made under the applicable contract which, at such time, would be subject to forfeiture upon termination of the contract or (2) could be specifically enforced by the seller of such property, the contractual purchase price of such property, but, in either case, only to the extent the amount of the applicable purchase obligation, repurchase obligation or takeout commitment is included in the Indebtedness of the Issuer and its Subsidiaries on a consolidated basis. Notwithstanding the foregoing, for purposes of determining Total Asset Value, the amount, if any, by which the value of Marketable Securities included under the immediately preceding clause (a) would account for more than 15% of Total Asset Value shall be excluded. The percentage of Total Asset Value attributable to a given Subsidiary shall be equal to the ratio expressed as a percentage of (x) an amount equal to Total Asset Value calculated solely with respect to assets owned directly by such Subsidiary to (y) Total Asset Value.

**“Total Indebtedness”** means without duplication: (a) all Indebtedness of the Parent Guarantor and its Subsidiaries determined on a consolidated basis *plus* (b) the Parent Guarantor’s Ownership Share of the Indebtedness of all Unconsolidated Affiliates of the Parent Guarantor.

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

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

**“Unencumbered Asset Value”** means at any time the sum of (a) the aggregate Operating Property Values of the Unencumbered Properties at such time and (b) the lesser of (1) the amount, if any, by which Unrestricted Cash at such time exceeds \$25,000,000 and (2) ~~the lowest amount, if any, of Unrestricted Cash then permitted to be added to “operating property values” for purposes of determining the “unencumbered asset value” under any Material Credit Facility~~ \$400,000,000. For purposes of this definition (other than for the period commencing on the First

Amendment Date and ending January 1, 2022), the Adjusted NOI for any Unencumbered Property shall be reduced by an amount equal to (i) the amount by which the Adjusted NOI of such Unencumbered Property would exceed 30% of the aggregate Adjusted NOI

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of all Unencumbered Properties and (ii) the amount by which the Adjusted NOI of Unencumbered Properties located in the same MSA as such Property would exceed 40% of the aggregate Adjusted NOI of all Unencumbered Properties. In addition ~~(A) to the extent that Unencumbered Asset Value attributable to Properties leased under Ground Leases would exceed 25% of Unencumbered Asset Value, such excess shall be excluded and (B) if the Wailea Beach Marriott or the Boston Park Plaza Hotel is an Unencumbered Property and the Issuer has elected that such Property not be treated as a Development Property in accordance with the applicable provisions of the definition of such term, then to the extent that the Unencumbered Asset Value attributable to such Property would exceed 25% of Unencumbered Asset Value, such excess shall be excluded.~~

**“Unencumbered Property”** means an Eligible Property that is included in the calculation of Unencumbered Asset Value. A Property shall cease to be an Unencumbered Property if at any time such Property shall (a) cease to be an Eligible Property (unless such Property has been approved or been deemed to have been approved as an Unencumbered Property by the Required Holders) or (b) for any reason be excluded as an “unencumbered property” under any Material Credit Facility.

**“Unimproved Land”** means land on which no development (other than improvements that are not material and are temporary in nature) has occurred. Unimproved Land shall not include any undeveloped parcels of a Property that has been developed unless and until the Issuer provides written notice to the holders of Notes that the Issuer intends to develop such parcel.

**“United States” or “U.S.”** means the United States of America.

**“United States Person”** has the meaning set forth in Section 7701(a)(30) of the Code.

**“Unrestricted Cash”** means cash and ~~cash equivalents~~ Cash Equivalents held by the Issuer and its Subsidiaries other than tenant deposits and other cash and cash equivalents that are subject to a Lien or a Negative Pledge or the disposition of which is restricted in any way.

**“Unsecured Indebtedness”** means with respect to a Person as of any given date, the aggregate principal amount of all Indebtedness of such Person outstanding at such date that is not Secured Indebtedness and, in the case of the Parent Guarantor, shall include the Parent Guarantor’s Ownership Share of Unsecured Indebtedness of its Unconsolidated Affiliate.

**“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 and the rules and regulations promulgated thereunder from time to time in effect.

**“U.S. Economic Sanctions Laws”** means those laws, executive orders, enabling legislation or regulations administered and enforced by the United States pursuant to which economic sanctions have been imposed on any Person, entity, organization, country or regime, including the Trading with the Enemy Act, the International Emergency Economic Powers Act, the Iran Sanctions Act, the Sudan Accountability and Divestment Act and any other OFAC Sanctions Program.

**“Wailea Beach Marriott”** means the Wailea Beach Marriott Resort & Spa located in Maui, Hawaii.

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**“Wholly-Owned Subsidiary”** means, at any time, any Subsidiary all of the Equity Interests (except directors’ qualifying shares) and voting interests of which are owned by any one or more of the Parent Guarantor and the Parent Guarantor’s other Wholly-Owned Subsidiaries at such time.

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## FORM OF SERIES A NOTE

### SUNSTONE HOTEL PARTNERSHIP, LLC

#### 4.69% Series A Guaranteed Senior Notes due January 10, 2026

No. AR- \_\_\_\_\_  
\$ \_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_  
PPN 86801F A\*7

FOR VALUE RECEIVED, the undersigned, SUNSTONE HOTEL PARTNERSHIP, LLC (herein called the “**Issuer**”), a limited liability company organized and existing under the laws of the State of Delaware, hereby promises to pay to \_\_\_\_\_, or registered assigns, the principal sum of \_\_\_\_\_ DOLLARS (or so much thereof as shall not have been prepaid) on January 10, 2026 (the “**Maturity Date**”), with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance hereof at the rate of 4.69% per annum from the date hereof, payable semiannually, on the tenth day of January and July in each year, commencing with the January 10 or July 10 next succeeding the date hereof, and on the Maturity Date, until the principal hereof shall have become due and payable, and (b) to the extent permitted by law, (1) on any overdue payment of interest and (2) during the continuance of an Event of Default, on such unpaid balance and on any overdue payment of any Make-Whole Amount, at a rate per annum from time to time equal to the greater of (i) 6.69% or (ii) 2.00% over the rate of interest publicly announced by the principal office of Bank of America, N.A from time to time in New York, New York as its “base” or “prime” rate, payable semiannually as aforesaid (or, at the option of the registered holder hereof, on demand).

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at Bank of America, N.A. in New York, New York or at such other place as the Issuer shall have designated by written notice to the holder of this Note as provided in the Note and Guarantee Agreement referred to below.

This Note is one of a series of Senior Notes (herein called the “**Notes**”) issued pursuant to the Note and Guarantee Agreement dated as of December 20, 2016 (as from time to time amended, the “**Note and Guarantee Agreement**”) between the Issuer, Sunstone Hotel Investors, Inc., a corporation organized and existing under the laws of the State of Maryland, and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have (i) agreed to the confidentiality provisions set forth in Section 21 of the Note and Guarantee Agreement and (ii) made the representation set forth in Section 6.3 of the Note and Guarantee Agreement. Unless otherwise indicated, capitalized terms used in this Note shall have the respective meanings ascribed to such terms in the Note and Guarantee Agreement.

This Note is a registered Note and, as provided in the Note and Guarantee Agreement, upon surrender of this Note for registration of transfer accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder’s attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Issuer may treat the Person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Issuer will not be affected by any notice to the contrary.

This Note is subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note and Guarantee Agreement, but not otherwise.

If an Event of Default occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note and Guarantee Agreement.

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This Note shall be construed and enforced in accordance with, and the rights of the Issuer and the holder of this Note 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.

SUNSTONE HOTEL PARTNERSHIP, LLC

By: \_\_\_\_\_  
Its

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## FORM OF SERIES B NOTE

### SUNSTONE HOTEL PARTNERSHIP, LLC

#### 4.79% Series B Guaranteed Senior Notes due January 10, 2028

No. BR- \_\_\_\_\_  
\$ \_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_  
PPN 86801F A@5

FOR VALUE RECEIVED, the undersigned, SUNSTONE HOTEL PARTNERSHIP, LLC (herein called the “**Issuer**”), a limited liability company organized and existing under the laws of the State of Delaware, hereby promises to pay to \_\_\_\_\_, or registered assigns, the principal sum of \_\_\_\_\_ DOLLARS (or so much thereof as shall not have been prepaid) on January 10, 2028 (the “**Maturity Date**”), with interest (computed on the basis of a 360-day year of twelve 30-day months) (a) on the unpaid balance hereof at the rate of 4.79% per annum from the date hereof, payable semiannually, on the tenth day of January and July in each year, commencing with the January 10 or July 10 next succeeding the date hereof, and on the Maturity Date, until the principal hereof shall have become due and payable, and (b) to the extent permitted by law, (1) on any overdue payment of interest and (2) during the continuance of an Event of Default, on such unpaid balance and on any overdue payment of any Make-Whole Amount, at a rate per annum from time to time equal to the greater of (i) 6.79% or (ii) 2.00% over the rate of interest publicly announced by the principal office of Bank of America, N.A. in New York, New York from time to time in New York, New York as its “base” or “prime” rate, payable semiannually as aforesaid (or, at the option of the registered holder hereof, on demand).

Payments of principal of, interest on and any Make-Whole Amount with respect to this Note are to be made in lawful money of the United States of America at Bank of America, N.A. in New York, New York or at such other place as the Issuer shall have designated by written notice to the holder of this Note as provided in the Note and Guarantee Agreement referred to below.

This Note is one of a series of Senior Notes (herein called the “**Notes**”) issued pursuant to the Note and Guarantee Agreement dated as of December 20, 2016 (as from time to time amended, the “**Note and Guarantee Agreement**”) between the Issuer, Sunstone Hotel Investors, Inc., a corporation organized and existing under the laws of the State of Maryland, and the respective Purchasers named therein and is entitled to the benefits thereof. Each holder of this Note will be deemed, by its acceptance hereof, to have (i) agreed to the confidentiality provisions set forth in Section 21 of the Note and Guarantee Agreement and (ii) made the representation set forth in Section 6.3 of the Note and Guarantee Agreement. Unless otherwise indicated, capitalized terms used in this Note shall have the respective meanings ascribed to such terms in the Note and Guarantee Agreement.

This Note is a registered Note and, as provided in the Note and Guarantee Agreement, upon surrender of this Note for registration of transfer accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder’s attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Issuer may treat the Person in whose name this Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Issuer will not be affected by any notice to the contrary.

This Note is subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note and Guarantee Agreement, but not otherwise.

If an Event of Default occurs and is continuing, the principal of this Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note and Guarantee Agreement.

This Note shall be construed and enforced in accordance with, and the rights of the Issuer and the holder of this Note 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.

SUNSTONE HOTEL PARTNERSHIP, LLC

By: \_\_\_\_\_  
Its

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## DISCLOSURE MATERIALS

NONE.

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**SUBSIDIARIES OF THE PARENT GUARANTOR AND  
OWNERSHIP OF SUBSIDIARY STOCK**

(1) Subsidiaries:

<b><u>Entity</u></b>	<b><u>Jurisdiction of Organization</u></b>	<b><u>Ownership</u></b>	<b><u>Subsidiary Classification</u></b>
Boston 1927 Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Boston 1927 Owner, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary Guarantor
EP Holdings, LLC	Delaware	100% Sunstone East Pratt, LP	Significant Subsidiary
One Park Boulevard, LLC	Delaware	75% Sunstone Park, LLC; 25% HHC One Park Boulevard, LLC	Excluded Subsidiary
Sun CHP I, Inc.	Delaware	100% Sunstone Hotel Investors, Inc.	Significant Subsidiary
Sun SHP II, LLC	Delaware	90.9092% Sunstone Hotel Investors, Inc.; 9.0908% Sun CHP I, Inc.	Significant Subsidiary
Sunstone 42 <sup>nd</sup> Street Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone 42 <sup>nd</sup> Street, LLC	Delaware	100% Sunstone Holdco 5, LLC	Excluded Subsidiary
Sunstone Broadway, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary
Sunstone Canal Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Canal, LLC	Delaware	100% Sunstone Holdco 9, LLC	Excluded Subsidiary
Sunstone Center Court, LLC	Delaware	100% Sunstone Holdco 8, LLC	Subsidiary
Sunstone Center Court Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Century, LLC	Delaware	100% Sunstone Holdco 8, LLC	Subsidiary Guarantor
Sunstone Century Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary

Sunstone Cowboy, LP	Delaware	99.5% Sunstone Holdco 3, LLC, 0.5% Sunstone Cowboy GP, LLC	Significant Subsidiary
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<b><u>Entity</u></b>	<b><u>Jurisdiction of Organization</u></b>	<b><u>Ownership</u></b>	<b><u>Subsidiary Classification</u></b>
Sunstone Cowboy GP, LLC	Delaware	100% Sunstone Holdco 3, LLC	Significant Subsidiary
Sunstone Cowboy Lessee, LP	Delaware	99.5% Sunstone Hotel TRS Lessee, Inc.; 0.5% Sunstone Cowboy Lessee GP, LLC	Subsidiary
Sunstone Cowboy Lessee GP, LLC	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Significant Subsidiary
Sunstone East Grand, LLC	Delaware	100% Sunstone Holdco 6, LLC	Subsidiary Guarantor
Sunstone East Grand Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone East Pratt, LP	Delaware	99% Sunstone Holdco 4, LLC; 1% Sunstone East Pratt GP, LLC	Significant Subsidiary
Sunstone East Pratt GP, LLC	Delaware	100% Sunstone Holdco 4, LLC	Significant Subsidiary
Sunstone East Pratt Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone EC5, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary Guarantor
Sunstone EC5 Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Hawaii 3-0, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary Guarantor
Sunstone Hawaii 3-0 Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Holdco 3, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Significant Subsidiary
Sunstone Holdco 4, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary Guarantor
Sunstone Holdco 5, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary Guarantor



Sunstone Holdco 6, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary Guarantor
Sunstone Holdco 8, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary Guarantor
Sunstone Holdco 9, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Significant Subsidiary
Sunstone Holdco 10, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Significant Subsidiary
Sunstone Hotel Acquisitions, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Significant Subsidiary

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<b><u>Entity</u></b>	<b><u>Jurisdiction of Organization</u></b>	<b><u>Ownership</u></b>	<b><u>Subsidiary Classification</u></b>
Sunstone Hotel Partnership, LLC	Delaware	98.9% Sunstone Hotel Investors, Inc., 1.1% Sun SHP II, LLC	Issuer
Sunstone Hotel TRS Lessee, Inc.	Delaware	100% Sunstone Hotel Partnership, LLC	Significant Subsidiary
Sunstone Jamboree, LLC	Delaware	100% Sunstone Holdco 8, LLC	Subsidiary Guarantor
Sunstone Jamboree Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone K9, LLC	Delaware	100% Sunstone Holdco 5, LLC	Excluded Subsidiary
Sunstone K9 Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone LA Airport, LLC	Delaware	100% Sunstone Holdco 8, LLC	Subsidiary Guarantor
Sunstone LA Airport Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Leesburg, LLC	Delaware	100% Sunstone Holdco 3, LLC	Significant Subsidiary
Sunstone Leesburg Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Longhorn, LP	Delaware	99.5% Sunstone Pledgeco, LLC; 0.5% Sunstone Longhorn GP, LLC	Significant Subsidiary
Sunstone Longhorn GP, LLC	Delaware	100% Sunstone Pledgeco, LLC	Significant Subsidiary
Sunstone Longhorn Holdco, LLC	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Significant Subsidiary
Sunstone Longhorn Lessee, LP	Delaware	99.5% Sunstone Longhorn Holdco, LLC; 0.5% Sunstone Longhorn Lessee GP, LLC	Subsidiary
Sunstone Longhorn Lessee GP, LLC	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Significant Subsidiary
Sunstone MacArthur, LLC	Delaware	100% Sunstone Holdco 8, LLC	Subsidiary Guarantor

Sunstone MacArthur Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone North State Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone North State, LLC	Delaware	100% Sunstone Pledgeco, LLC	Excluded Subsidiary

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<b><u>Entity</u></b>	<b><u>Jurisdiction of Organization</u></b>	<b><u>Ownership</u></b>	<b><u>Subsidiary Classification</u></b>
Sunstone Ocean, LLC	Delaware	100% Sunstone Holdco 4, LLC	Subsidiary Guarantor
Sunstone Ocean Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Outparcel, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Subsidiary
Sunstone Park, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Significant Subsidiary
Sunstone Park Lessee, LLC	Delaware	75% Sunstone Hotel TRS Lessee, Inc.; 25% HLT JV Acquisition, LLC	Subsidiary
Sunstone Philly, LP	Delaware	99.5% Sunstone Holdco 3, LLC; 0.5% Sunstone Philly GP, LLC	Significant Subsidiary
Sunstone Philly GP, LLC	Delaware	100% Sunstone Holdco 3, LLC	Significant Subsidiary
Sunstone Philly Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Pledgeco, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Significant Subsidiary
Sunstone Quincy, LLC	Delaware	100% Sunstone Holdco 8, LLC	Subsidiary Guarantor
Sunstone Quincy Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Red Oak, LLC	Delaware	100% Sunstone Holdco 8, LLC	Subsidiary Guarantor
Sunstone Red Oak Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Saint Clair, LLC	Delaware	100% Sunstone Holdco 6, LLC	Subsidiary Guarantor
Sunstone Saint Clair Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Sea Harbor Holdco, LLC	Delaware	100% Sunstone Holdco 4, LLC	Significant Subsidiary

Sunstone Sea Harbor Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Sea Harbor, LLC	Delaware	100% SWW No. 1, LLC	Excluded Subsidiary
Sunstone Sidewinder, LLC	Delaware	100% Sunstone Holdco 3, LLC	Significant Subsidiary
Sunstone Sidewinder Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary

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<b><u>Entity</u></b>	<b><u>Jurisdiction of Organization</u></b>	<b><u>Ownership</u></b>	<b><u>Subsidiary Classification</u></b>
Sunstone St. Charles, LLC	Delaware	100% Sunstone Holdco 10, LLC	Subsidiary Guarantor
Sunstone St. Charles Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Top Gun Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Top Gun, LLC	Delaware	100% Sunstone Holdco 5, LLC	Excluded Subsidiary
Sunstone Von Karman, LLC	Delaware	100% Sunstone Hotel Partnership, LLC	Significant Subsidiary
Sunstone Westwood, LLC	Delaware	100% Sunstone Holdco 8, LLC	Significant Subsidiary
Sunstone Wharf Lessee, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
Sunstone Wharf, LLC	Delaware	100% Sunstone Holdco 6, LLC	Excluded Subsidiary
SWW No. 1, LLC	Delaware	85% Sunstone Sea Harbor Holdco, LLC; 15% HSH of Orlando, Inc.	Excluded Subsidiary
WB Sunstone-Portland, LLC	Delaware	100% Sunstone Holdco 8, LLC	Subsidiary Guarantor
WB Sunstone-Portland, Inc.	Delaware	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
WHP Bevflow, LLC	Texas	100% Sunstone Longhorn Lessee, LP	Subsidiary
WHP Texas Beverage 1, Inc.	Texas	100% Sunstone Hotel TRS Lessee, Inc.	Subsidiary
WHP Texas Beverage 2, Inc.	Texas	100% WHP Bevflow, LLC	Subsidiary

(2) Affiliates:

None other than as listed above.

(3) Issuer's Directors and Senior Officers:

Sunstone Hotel Investors, Inc., managing member

John Arabia, President & Chief Executive Officer

Bryan Giglia, Chief Financial Officer

Robert C. Springer, Senior Vice President & Treasurer

(4) Parent Guarantor's Directors and Senior Officers:

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John V. Arabia, President & Chief Executive Officer and Director

Marc A. Hoffman, Executive Vice President & Chief Operating Officer

Bryan Giglia, Executive Vice President & Chief Financial Officer

Robert C. Springer, Executive Vice President & Chief Investment Officer

Douglas M. Pasquale, Chairman of the Board of Directors

Andrew Batinovich, Director

Keith P. Russell, Director

Z. Jamie Behar, Director

W. Blake Baird, Director

Thomas A. Lewis, Jr., Director

Murray J. McCabe, Director

Keith M. Locker, Director





## FINANCIAL STATEMENTS

FINANCIAL STATEMENTS INCLUDED IN THE PARENT GUARANTOR'S FORM 10-K FOR THE YEAR ENDED DECEMBER 31, 2015, FILED WITH THE SEC ON FEBRUARY 23, 2016

FINANCIAL STATEMENTS INCLUDED IN THE PARENT GUARANTOR'S FORM 10-K FOR THE YEAR ENDED DECEMBER 31, 2014, FILED WITH THE SEC ON FEBRUARY 19, 2015

FINANCIAL STATEMENTS INCLUDED IN THE PARENT GUARANTOR'S FORM 10-K FOR THE YEAR ENDED DECEMBER 31, 2013, FILED WITH THE SEC ON FEBRUARY 25, 2014

FINANCIAL STATEMENTS INCLUDED IN THE PARENT GUARANTOR'S FORM 10-K FOR THE YEAR ENDED DECEMBER 31, 2012, FILED WITH THE SEC ON FEBRUARY 25, 2013

FINANCIAL STATEMENTS INCLUDED IN THE PARENT GUARANTOR'S FORM 10-K FOR THE YEAR ENDED DECEMBER 31, 2011, FILED WITH THE SEC ON FEBRUARY 28, 2012

FINANCIAL STATEMENTS INCLUDED IN THE PARENT GUARANTOR'S FORM 10-Q FOR THE QUARTER ENDED JUNE 30, 2016, FILED WITH THE SEC ON AUGUST 8, 2016

SUPPLEMENTAL FINANCIAL INFORMATION OF THE PARENT GUARANTOR FOR THE QUARTER ENDED JUNE 30, 2016

CONSOLIDATED MONTHLY STR REPORT FOR THE PARENT GUARANTOR FOR THE MONTH OF JUNE 2016

CONSOLIDATED MONTHLY STR REPORT FOR THE PARENT GUARANTOR FOR THE MONTH OF DECEMBER 2015

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## REAL ESTATE ASSETS

PROPERTY NAME	ADDRESS	FEE AND/OR LEASEHOLD OWNER	OCCUPANCY STATUS <sup>1</sup>	Property Classification	Encumbered
Hilton Garden Inn Chicago	10 E. Grand Ave., Chicago, IL 60611	Sunstone East Grand, LLC	79.9%	Seasoned	No
Courtyard LAX	6161 W Century Blvd., Los Angeles, CA 90045	Sunstone Century, LLC	97.4%	Seasoned	No
Hilton New Orleans	333 St. Charles Ave., New Orleans, LA 70130	Sunstone St. Charles, LLC	84.1%	Seasoned	No
Hyatt Chicago	633 N St. Clair St, Chicago, IL 60611	Sunstone Saint Clair, LLC	79.7%	Seasoned	No
Marriott Portland	520 SW Broadway, Portland, Oregon 97205	WB Sunstone-Portland, LLC	89.1%	Seasoned	No
Marriott Boston Quincy	1000 Marriott Dr., Quincy, MA 02169	Sunstone Quincy, LLC	80.3%	Seasoned	No
Hyatt Newport Beach	1107 Jamboree Rd., Newport Beach, CA 92660	Sunstone Jamboree, LLC	83.9%	Seasoned	No
Renaissance Long Beach	111 E. Ocean Blvd., Long Beach, CA 90802	Sunstone Ocean, LLC	80.5%	Seasoned	No
Fairmont Newport Beach	4500 MacArthur Blvd., Newport Beach, CA 92660	Sunstone MacArthur, LLC	79.6%	Seasoned	No
Renaissance LAX	9620 Airport Blvd, Los Angeles, CA 90045	Sunstone LA Airport, LLC	90.4%	Seasoned	No

- 1 Occupancy percentages as shown reflect the average occupancy rates for each property for the nine months ended September 30, 2016.
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PROPERTY NAME	ADDRESS	FEE AND/OR LEASEHOLD OWNER	OCCUPANCY STATUS	Property Classification	Encumbered
Renaissance Westchester	80 W Red Oak Ln., West Harrison, NY 10604	Sunstone Red Oak, LLC	77.7%	Seasoned	No
Hyatt Regency SF	5 Embarcadero Center, San Francisco, CA 94111	Sunstone EC5, LLC	91.1%	Seasoned	No
Marriott Maui (Wailea)	3700 Wailea Alanui Drive, Maui, HI 96753	Sunstone Hawaii 3-0, LLC	73.8%	Development	No
Marriott Tysons Corner	8028 Leesburg Pike, Tysons Corner, VA 22182	Sunstone Leesburg, LLC	81.9%	Seasoned	No
Marriott Philadelphia	111 Crawford Avenue, West Conshohocken, PA 19428	Sunstone Philly, LP	73.0%	Seasoned	No
Marriott Park City	1895 Sidewinder Dr., Park City, UT 84060	Sunstone Sidewinder, LLC	69.8%	Seasoned	No
Marriott Houston	255 N. Sam Houston Pkwy. East, Houston, TX 77060	Sunstone Cowboy, LP	84.6%	Seasoned	No
Renaissance Harborplace	202 E. Pratt Street, Baltimore, MD 21202	Sunstone East Pratt, LLC	77.4%	Seasoned	No
Boston Park Plaza	50 Park Plaza, Boston, MA 02116	Boston 1927 Owner, LLC	78.1%	Seasoned	No
Marriott Boston Long Wharf	296 State Street, Boston, MA 02109	Sunstone Wharf, LLC	87.1%	Seasoned	Yes
Embassy Suites Chicago	600 North State Street, Chicago, IL 60654	Sunstone North State, LLC	87.7%	Seasoned	Yes
Hilton North Houston	12400 Greenspoint, Houston, TX 77060	Sunstone Longhorn, LP	79.7%	Seasoned	No
Embassy Suites La Jolla	4550 La Jolla Village Drive, San Diego, CA 92122	Sunstone Top Gun, LLC	86.2%	Seasoned	Yes

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PROPERTY NAME	ADDRESS	FEE AND/OR LEASEHOLD OWNER	OCCUPANCY STATUS	Property Classification	Encumbered
JW Marriott New Orleans	614 Canal Street, New Orleans, LA 70130	Sunstone Canal, LLC	83.3%	Seasoned	Yes
Renaissance Orlando at SeaWorld	6677 Sea Harbor Drive, Orlando, FL 32821	Sunstone Sea Harbor, LLC	81.6%	Seasoned	No
Hilton San Diego Bayfront	One Park Blvd., San Diego, CA 92101	One Park Boulevard, LLC	89.3%	Seasoned	Yes
Hilton Times Square	234 West 42nd St., New York, NY 10036	Sunstone 42nd Street, LLC	99.2%	Seasoned	Yes
Renaissance Washington D.C.	999 9th Street NW, Washington, DC 20001	Sunstone K9, LLC	82.5%	Seasoned	Yes

**EXISTING INDEBTEDNESS OF THE PARENT GUARANTOR AND ITS SUBSIDIARIES**

<b><u>Mortgage Loans Payable</u></b>	<b><u>Borrower</u></b>	<b><u>Lender</u></b>	<b><u>Outstanding<sup>1</sup></u></b>
Mortgage loan (fixed) secured by Embassy Suites Chicago	Sunstone North State, LLC	Bear Sterns Commercial Mortgage	\$66,507,000
Mortgage loan (fixed) secured by Marriott Boston Long Wharf	Sunstone Wharf, LLC	Wells Fargo Bank	\$176,000,000
Mortgage loan (fixed) secured by Hilton Times Square	Sunstone 42nd Street, LLC	Bank of America	\$83,734,000
Mortgage loan (fixed) secured by Renaissance Washington D.C.	Sunstone K9, LLC	TIAA-CREF	\$120,076,000
Mortgage loan (fixed) secured by JW Marriott New Orleans	Sunstone Canal, LLC	Wells Fargo Bank	\$87,360,000
Mortgage loan (fixed) secured by Embassy Suites La Jolla	Sunstone Top Gun, LLC	Deutsche Bank	\$63,173,000
Mortgage loan (variable) secured by Hilton San Diego Bayfront	One Park Boulevard, LLC	MUFG Union Bank, Compass Bank, CIBC Inc.	\$223,124,000

<b><u>Term Loans Payable<sup>2</sup></u></b>			<b><u>Outstanding</u></b>
Unsecured term loan (fixed) #1	Sunstone Hotel Partnership, LLC	Wells Fargo Bank, PNC Bank, U.S. Bank, BB&T	\$85,000,000
Unsecured term loan (fixed) #2	Sunstone Hotel Partnership, LLC	PNC Bank, U.S. Bank, BB&T	\$100,000,000
Bank Credit Agreement	Sunstone Hotel Partnership, LLC	Wells Fargo Securities, LLC, Merrill Lynch, Pierce, Fenner & Smith, Incorporated and J.P. Morgan Securities LLC	\$0

<sup>1</sup> Loan balances as of September 30, 2016.

<sup>2</sup> Loan swapped to fixed interest rate.

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## **CERTAIN PERMITTED LIENS**

None.

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## INFORMATION RELATING TO PURCHASER

NAME AND ADDRESS OF PURCHASER

PRINCIPAL AMOUNT OF  
NOTES TO BE PURCHASED

[NAME OF PURCHASER]

\$

- (1) All payments by wire transfer of immediately  
available  
funds to:

with sufficient information to identify the  
source and application of such funds.

- (2) All notices of payments and written confirmations  
of  
such wire transfers:

- (3) E-mail address for Electronic Delivery:

- (4) All other communications:

- (5) U.S. Tax Identification Number:

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## **FORM OF SUBSIDIARY GUARANTY AGREEMENT**

(See Attached)

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## FORM OF PLEDGE AGREEMENT

### PLEDGE AGREEMENT

THIS PLEDGE AGREEMENT dated as of [\_\_\_\_\_] , 20[\_\_\_\_\_] , is executed and delivered by each of the undersigned parties identified as “Pledgors” on the signature pages hereto and the other Persons who may become Pledgors hereunder pursuant to the execution and delivery of a Pledge Agreement Supplement substantially in the form of Annex 1 hereto (each a “Pledgor” and collectively, the “Pledgors”) in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, in its capacity as Collateral Agent (the “Collateral Agent”) for the benefit of (i) WELLS FARGO BANK, NATIONAL ASSOCIATION in its capacity as administrative agent (the “Administrative Agent”), and the other Lender Parties (as defined in the Credit Agreement), under that certain Amended and Restated Credit Agreement, dated as of October 17, 2018, by and among SUNSTONE HOTEL PARTNERSHIP, LLC, a limited liability company formed under the laws of the State of Delaware (the “Borrower”), SUNSTONE HOTEL INVESTORS, INC., a corporation formed under the laws of the State of Maryland, (“Parent”), the financial institutions party thereto and their assignees under Section 13.5 thereof (the “Lenders”), the Administrative Agent, and the other parties thereto (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”) and (ii) the holders from time to time (the “Noteholders”; and together with the Administrative Agent, the Lender Parties and the Collateral Agent, collectively, the “Secured Parties”) of notes issued pursuant to that certain Note and Guarantee Agreement, dated as of December 20, 2016, by and among the Borrower, the Parent and the purchasers named therein (as amended, restated, supplemented or otherwise modified from time to time, the “Note Agreement”).

WHEREAS, pursuant to the Credit Agreement and the Note Agreement, the Lenders and the Noteholders have each made available to the Borrower certain financial accommodations on terms and conditions set forth in the Credit Agreement and the Note Agreement, respectively;

WHEREAS, the Borrower, Parent and each of the other Pledgors, though separate legal entities, are mutually dependent on each other in the conduct of their respective businesses as an integrated operation and have determined it to be in their mutual best interests to continue to obtain financing from the Lenders and the Noteholders, respectively, through their collective efforts;

WHEREAS, each Pledgor acknowledges that it will receive direct and indirect benefits from the Lenders and the Noteholders continuing to make such financial accommodations available to the Borrower under the Credit Agreement and the Note Agreement, respectively;

WHEREAS, it is required pursuant to Section 8.14 of the Credit Agreement and Section 9.13 of the Note Agreement that the Pledgors execute and deliver

this Agreement on or prior to the Security Trigger Date in order to, among other things, grant to the Collateral

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Agent for the benefit of the Secured Parties a security interest in the Pledged Collateral as security for the Senior Indebtedness (hereinafter, as defined in the Intercreditor Agreement).

NOW, THEREFORE, in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Pledge. As security for the prompt performance and payment in full of the Senior Indebtedness, each Pledgor hereby pledges, hypothecates, assigns, transfers, sets over and delivers unto the Collateral Agent, for the benefit of the Secured Parties, and grants to the Collateral Agent, for the benefit of the Secured Parties, a security interest in, all of such Pledgor's right, title and interest in, to and under the following (collectively, the "Pledged Collateral"):

(a) the Pledged Interests;

(b) the Material Debt Receivables;

(c) all distributions, cash, securities, interest, dividends, rights and other property at any time and from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all thereof to which such Pledgor shall at any time be entitled in respect of the Pledged Interests and the Material Debt Receivables;

(d) all other payments due or to become due to such Pledgor in respect of any of the foregoing;

(e) all of such Pledgor's claims, rights, powers, privileges, authority, puts, calls, options, security interests, liens and remedies, if any, in respect of any of the foregoing;

(f) all of such Pledgor's rights to exercise and enforce any and every right, power, remedy, authority, option and privilege of such Pledgor relating to any of the foregoing including, without limitation, any power to (i) terminate, cancel or modify any agreement, (ii) execute any instruments and to take any and all other action on behalf of and in the name of such Pledgor in respect of any of the foregoing and the applicable Issuer thereof, (iii) exercise voting rights or make determinations, (iv) exercise any election (including, but not limited to, election of remedies), (v) exercise any "put", right of first offer or first refusal, or other option, (vi) exercise any right of redemption or repurchase, (vii) give or receive any notice, consent, amendment, waiver or approval, (viii) demand, receive, enforce, collect or receipt for any of the foregoing, (ix) enforce or execute any checks, or other instruments or orders, (x) file any claims and to take any action in connection with any of the foregoing, or (xi) otherwise act as if such Pledgor were the absolute owner of such Pledged Interests and Material Debt Receivables and all rights associated therewith;

(g) all certificates and instruments representing or evidencing any of the foregoing;

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(h) all other property hereafter delivered in substitution for or in addition to any of the foregoing;

(i) all other rights, titles, interests, powers, privileges and preferences pertaining to any of the foregoing; and

(j) all products and Proceeds of any of the foregoing.

provided, that, notwithstanding any of the foregoing to the contrary, the Pledged Collateral shall not include (i) insurance policies the proceeds of which are required, by the terms of such policies, to be paid to Persons other than any Pledgor, and rights related to such policies; (ii) [reserved] or (iii) any other property the pledge of which, or granting of a Lien in which, would be prohibited or restricted by (x) Applicable Law (including any requirement to obtain the consent of any Governmental Authority) or (y) a term, provision or condition of any contract, property right or agreement applicable to such Pledgor or such Unencumbered Property and described on Exhibit A; provided, however, that the Pledged Collateral shall include (and such security interest shall attach) immediately at such time as such prohibition and/or restriction shall no longer be applicable and to the extent severable, shall attach immediately to any such property not subject to the prohibitions and/or the restrictions specified in clause (iii) above.

Section 2. Representations and Warranties. Each Pledgor hereby represents and warrants to the Collateral Agent and the Secured Parties as follows:

(a) Title and Liens. Such Pledgor is, and will at all times continue to be, the legal and beneficial owner of the Pledged Collateral of such Pledgor. None of the Pledged Collateral is subject to any adverse claim or other Lien (other than Permitted Liens of the types described in (x) clause (a), (f) or (i) of the definition of such term in the Credit Agreement and (y) clause (a), (f) or (h) of the definition of such term in the Note Agreement). No Person has control of any of the Pledged Collateral other than the Pledgors and, pursuant to the terms of this Agreement, Collateral Agent.

(b) Authorization. Such Pledgor has the right and power, and has taken all reasonably necessary action to authorize such Pledgor, to execute, deliver and perform this Agreement in accordance with its terms. Subject to the terms of this Agreement, the execution, delivery and performance of this Agreement in accordance with its terms, including the granting of the security interest hereunder, do not and will not, by the passage of time, the giving of notice, or both: (i) require any governmental approval or violate any Applicable Law relating to such Pledgor; (ii) conflict with, result in a breach of or constitute a default under the Organizational Documents of such Pledgor, or, subject to Section 2(i), any indenture, agreement or other instrument to which such Pledgor is a party or by which it or any of the Pledged Collateral of such Pledgor or its other property may be bound; or (iii) result in or require the creation or imposition of any Lien (other than Permitted Liens of the types described in (x) clauses (a), (f) or (i) of the



definition of such term in the Credit Agreement and (v) clauses (a), (f) and (h) of the definition of such term in the Note

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Agreement) upon or with respect to any of the Pledged Collateral of such Pledgor or such Pledgor's other property whether now owned or hereafter acquired.

(c) Validity and Perfection of Security Interest. This Agreement is effective to create in favor of the Collateral Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Pledged Collateral. Such security interest will be perfected (i) with respect to any such Pledged Collateral that is a "security" (as such term is defined in the UCC) and is evidenced by a certificate, when such Pledged Collateral is delivered to the Collateral Agent or any Person acting as bailee for the Collateral Agent for purposes of perfecting the security interests in such Pledged Collateral with duly executed stock powers with respect thereto, (ii) with respect to any such Pledged Collateral that is a "security" (as such term is defined in the UCC) but is not evidenced by a certificate, when UCC financing statements in appropriate form are filed in the appropriate filing offices in the jurisdiction of organization of the Pledgors or when control is established by the Collateral Agent over such interests in accordance with the provision of Section 8-106 of the UCC, or any successor provision, (iii) with respect to any such Pledged Collateral that is not a "security" (as such term is defined in the UCC) when UCC financing statements in appropriate form are filed in the appropriate filing offices in the jurisdiction of organization of the Pledgors and (iv) with respect to any Mortgage Receivables, when each promissory note or other Instrument evidencing such Mortgage Receivable is delivered to the Collateral Agent or any Person acting as bailee for the Collateral Agent for purposes of perfecting the security interests in such Mortgage Receivable with duly executed allonges with respect thereto. Except as set forth in this subsection, no action is necessary to perfect the security interest granted by any Pledgor under this Agreement.

(d) Pledged Collateral. The information set forth on Schedule 1 attached hereto and incorporated herein by reference with respect to the Pledged Collateral of such Pledgor is true and correct.

(e) Name, Organization, Etc. Such Pledgor's exact legal name, type of legal entity, jurisdiction of formation, organizational identification number and location of its chief executive office are as set forth on Schedule 1 attached hereto. Except as set forth on such Schedule, within the five years preceding the date hereof, such Pledgor has not changed its name or merged with or otherwise combined its business with any other Person.

(f) Validly Issued, etc. All of the Pledged Interests are duly authorized, validly issued, fully paid and nonassessable and are not subject to preemptive rights of any Person.

(g) Interests in Partnerships and LLCs. None of the Pledged Collateral consisting of an interest in a partnership or in a limited liability company (i) is dealt in or traded on a securities exchange or in securities markets, (ii) by its terms expressly provides that it is a security governed by Article 8 of the UCC, (iii) is an investment company security, (iv) otherwise constitutes a security or (v) constitutes a financial asset.

(h) No Judgments; No Litigation. There are no judgments presently outstanding and unsatisfied against any Pledgor or any of its assets that would constitute an Event of

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Default under the Credit Agreement or the Note Agreement, and there are no actions, suits, investigations or proceedings pending (nor to the knowledge of any Pledgor, are there any actions, suits or proceedings threatened) against or in any other way relating adversely to or affecting any Pledgor or any of its property in any court or before any arbitrator of any kind or before or by any other Governmental Authority which could reasonably be expected to have a Material Adverse Effect.

(i) No Restrictions on Transfer. Other than restrictions contained in Franchise Agreements, Property Management Agreements, Ground Leases, owner agreements and the guaranties associated with each of the preceding agreements as such agreements are (x) in effect on the First Amendment Date or (y) entered into after the First Amendment Date with respect to any Property which becomes an Unencumbered Property after the First Amendment Date if the subject restrictions in such agreements are substantially similar to the restrictions in Hotel Agreements (as defined below) in effect on the First Amendment Date and are required by the counterparty to the Hotel Agreement (collectively, the “Hotel Agreements”) relating to the Property owned by certain Issuers restricting the transfer of Pledged Interests of such Issuers which restrictions may be applicable upon an exercise of remedies hereunder (provided that such restrictions do not prohibit the pledge of such Pledged Interests hereunder), and subject to Applicable Law and in accordance with this Agreement, there are no restrictions on the transfer of the Pledged Interests or the Material Debt Receivables to the Collateral Agent and/or the Secured Parties hereunder, or with respect to any subsequent transfer thereof or realization thereupon by the Collateral Agent and/or the Secured Parties (or, if there are any such restrictions, Pledgors shall use commercially reasonable efforts to assist Collateral Agent and the Secured Parties in complying with any such transfer restrictions by all required parties), and, as set forth in the Acknowledgement and Consents in the form of Schedule 2 attached hereto and delivered by any Issuer, except as set forth above in this clause (i), each of the Pledgors has obtained all consents needed in connection with any such transfer or subsequent transfer, if any, subject to matters resulting from operation of law.

Section 3. Covenants. Each Pledgor hereby unconditionally covenants and agrees as follows:

(a) No Liens; No Sale of Pledged Collateral. Such Pledgor will not create, assume, incur or permit or suffer to exist or to be created, assumed or incurred, any Lien (other than Permitted Liens of the types described in (x) clause (a), (f) or (i) of the definition of such term in the Credit Agreement and (y) clause (a), (f) or (h) of the definition of such term in the Note Agreement) on any of the Pledged Collateral (or any interest therein) or sell, lease, assign, transfer or otherwise dispose of all or any portion of the Pledged Collateral (or any interest therein) except as expressly permitted under the Credit Agreement and the Note Agreement.

(b) Change of Name, Etc. Without giving the Collateral Agent at least 30-days’ prior written notice and to the extent such action is not otherwise

prohibited by any of the Loan Documents or the Note Agreement, such Pledgor shall not: (i) change its name; (ii) reorganize or otherwise become formed under the laws of another jurisdiction or

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(iii) become bound by a security agreement in favor of of another Person within the meaning of Section 9-203(d) of the UCC.

(c) Defense of Title. Such Pledgor will use commercially reasonable efforts to warrant and defend its title to and ownership of the Pledged Collateral of such Pledgor, at its sole cost and expense, against the claims of all Persons.

(d) Delivery of Certificates, Etc. If a Pledgor shall become entitled to receive or shall receive any certificate (including, without limitation, any certificate representing a stock and/or liquidating dividends, other distributions in property, return of capital or other distributions made on or in respect of the Pledged Collateral, whether resulting from a subdivision, combination or reclassification of outstanding Equity Interests or received in exchange for Pledged Collateral or any part thereof or as a result of any merger, consolidation, acquisition or other exchange of assets or on the liquidation, whether voluntary or involuntary, or otherwise), promissory note, instrument, option or rights in respect of any Pledged Collateral, whether in addition to, in substitution of, as a conversion of, or in exchange for, any Pledged Collateral, or otherwise in respect thereof, such Pledgor shall hold the same in trust for the Collateral Agent and the Secured Parties and promptly deliver the same to the Collateral Agent in the exact form received, duly indorsed by such Pledgor to the Collateral Agent, if required, together with an undated stock power covering such certificate or allonge covering such promissory note, as the case may be (or other appropriate instrument of transfer) duly executed in blank by such Pledgor and with, if the Collateral Agent so requests, signature guaranteed, to be held by the Collateral Agent, subject to the terms of this Agreement, as Pledged Collateral.

(e) Uncertificated Securities. With respect to any Pledged Collateral that constitutes a security and is not represented or evidenced by a certificate or instrument, such Pledgor shall cause the Issuer thereof either (i) to register the Collateral Agent as the registered owner of such security or (ii) to agree in writing with the Collateral Agent and such Pledgor that such Issuer will comply with the instructions with respect to such security originated by the Collateral Agent without further consent of such Pledgor.

(f) Additional Shares. Such Pledgor shall not permit any Issuer to issue any additional Equity Interests unless such Equity Interests are pledged hereunder as provided herein. Further, such Pledgor shall not permit any Issuer to amend or modify its articles or certificate of incorporation, articles of organization, certificate of limited partnership, by-laws, operating agreement, partnership agreement or other comparable organizational instrument in a manner which would adversely affect the voting, liquidation, preference or other similar rights of any holder of the Equity Interests pledged hereunder in any material respect.

(g) Issuer Acknowledgment. Such Pledgor shall cause each Issuer of Pledged Collateral and which Issuer is not a Pledgor itself, to execute and deliver to the Collateral Agent an Acknowledgment and Consent substantially in the form of Schedule 2 attached hereto.

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(h) Investment Property. Such Pledgor shall not, and shall not allow any issuer of any Pledged Collateral, to the extent such issuer is a limited liability company or a partnership, to, elect that the Pledged Interests, except as directed or requested by the Collateral Agent, be securities governed by Article 8 of the UCC.

(i) Additional Pledged Collateral. If any Pledgor acquires any Pledged Collateral after executing this Agreement, it shall promptly thereafter deliver to the Collateral Agent a supplement to Schedule 1 attached hereto, and Schedule 1 shall thereby be amended to add the additional Pledged Collateral set forth in such supplement.

(j) UCC Financing Statements. The Borrower shall prepare, execute, file, record or deliver notices, assignments, financing statements, continuation statements, applications for registration or like papers that are necessary to perfect and preserve the Collateral Agent's security interest in the Pledged Collateral or any of the documents, instruments, certificates and agreements described in Section 12(b) of this Agreement; provided, that the Borrower shall prepare, execute, file, record or deliver any continuation statement as required under this Section 3(j) six (6) months prior to date by which such continuation statement is required to be filed in accordance with the UCC in the necessary and appropriate jurisdiction.

Section 4. Registration in Nominee Name, Denominations. The Collateral Agent shall have the right to hold any Equity Interests which are part of the Pledged Collateral in its own name as pledgee, the name of its nominee (as Collateral Agent or as sub-agent) or the name of the Pledgor thereof, endorsed or assigned in blank or in favor of the Collateral Agent. Such Pledgor will promptly give to the Collateral Agent copies of any notices or other communications received by it with respect to any Equity Interests constituting Pledged Collateral registered in the name of such Pledgor.

#### Section 5. Voting Rights; Dividends, etc.

(a) So long as no Event of Default exists:

(i) each Pledgor shall be entitled to exercise any and all voting and/or consensual rights and powers accruing to an owner of the Pledged Collateral or any part thereof for any purpose not in violation of the terms and conditions of the Note Agreement, any of the other Note Documents or any of the Loan Documents, including the Intercreditor Agreement, or any of such Pledgor's Organizational Documents; provided, however, that no Pledgor shall exercise, or refrain from exercising, any such right or power if any such action would have a material adverse effect on the value of such Pledged Collateral in the reasonable determination of the Collateral Agent; and

(ii) each Pledgor shall be entitled to retain and use any and all cash distributions paid on the Pledged Collateral, but any and all equity and/or liquidating distributions, other distributions in property, return of



capital or other distributions made on or in respect of Pledged Collateral,  
whether resulting from a subdivision,

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combination or reclassification of outstanding Equity Interests which are pledged hereunder or received in exchange for Pledged Collateral or any part thereof or as a result of any merger, consolidation, acquisition or other exchange of assets or on the liquidation, whether voluntary or involuntary, of any Issuer, or otherwise, shall be and become part of the Pledged Collateral pledged hereunder and, if received by such Pledgor, shall forthwith be delivered to the Collateral Agent to be held as collateral subject to the terms and conditions of this Agreement.

The Collateral Agent agrees to execute and deliver to each Pledgor, or cause to be executed and delivered to such Pledgor, as appropriate, at the sole cost and expense of such Pledgor, all such proxies, powers of attorney, dividend orders and other instruments as such Pledgor may reasonably request for the purpose of enabling such Pledgor to exercise the voting and/or consensual rights and powers which such Pledgor is entitled to exercise pursuant to clause (i) above and/or to receive the distributions and other amounts which such Pledgor is authorized to retain pursuant to clause (ii) above.

(b) Subject to the terms of this Agreement, if an Event of Default exists, all rights of the Pledgors to exercise the voting and/or consensual rights and powers which the Pledgors are entitled to exercise pursuant to subsection (a)(i) above and/or to receive the distributions and other amounts which the Pledgors are authorized to receive and retain pursuant to subsection (a)(ii) above shall cease, and all such rights thereupon shall become immediately vested in the Collateral Agent, which shall have the sole and exclusive right and authority to exercise such voting and/or consensual rights and powers which the Pledgors shall otherwise be entitled to exercise pursuant to subsection (a)(i) above and/or to receive and retain the distributions and other amounts which the Pledgors shall otherwise be authorized to retain pursuant to subsection (a)(ii) above. Any and all money and other property paid over to or received by the Collateral Agent pursuant to the provisions of this subsection (b) shall be retained by the Collateral Agent as additional collateral hereunder and shall be applied in accordance with the provisions of Section 8 of this Agreement. If any Pledgor shall receive any distributions or other property which it is not entitled to receive under this Section, such Pledgor shall hold the same in trust for the Collateral Agent and the Secured Parties, without commingling the same with other funds or property of or held by such Pledgor, and shall promptly deliver the same to the Collateral Agent in the identical form received, together with any necessary endorsements.

Section 6. Event of Default Defined. For purposes of this Agreement, “Event of Default” shall mean any of the following events, whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment or order of any court or any order, rule or regulation of any governmental or nongovernmental body: (i) the failure of any Pledgor to comply in all material respects with any of the terms and provisions of this Agreement beyond any applicable notice and cure periods; (ii) the occurrence of an “Event of Default” as such term is defined in the Credit Agreement; (iii) the occurrence of an “Event of Default” as such term is defined in the Note Agreement; or (iv) any action is taken by the Issuer of any Pledged

Interests or the partners, shareholders, managers, members or trustees thereof to amend or modify the Organizational Documents in a manner that would (A) materially adversely affect the voting, liquidation,

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preference, redemption or other similar rights of any holder of the Pledged Interests or, (B) adversely affect the Collateral Agent's or the Secured Parties' rights or remedies under this Agreement.

#### Section 7. Remedies upon Default.

(a) In addition to any right or remedy that the Collateral Agent or any of the Secured Parties may have under the Credit Agreement, the Note Agreement, any other Note Document, any other Loan Document or any Specified Derivatives Contract or otherwise under Applicable Law, and in accordance with the Intercreditor Agreement, if an Event of Default shall exist, the Collateral Agent may immediately exercise any and all the rights and remedies of a Secured Party under the UCC and may otherwise sell, assign, transfer, endorse and deliver the whole or, from time to time, any part of the Pledged Collateral at one or more public or private sales or on any securities exchange, for cash, upon credit or for other property, for immediate or future delivery, and for such price or prices and on such terms as the Collateral Agent shall deem appropriate. The Collateral Agent shall be authorized at any sale (if it deems it advisable to do so) to restrict the prospective bidders or purchasers to Persons who will represent and agree that they are purchasing the Pledged Collateral for their own account in compliance with the Securities Act and upon consummation of any such sale the Collateral Agent shall have the right to assign, transfer, endorse and deliver to the purchaser or purchasers thereof the Pledged Collateral so sold. Each purchaser at any sale of Pledged Collateral shall take and hold the property sold absolutely free from any claim or right on the part of any Pledgor, and each Pledgor hereby waives (to the fullest extent permitted by Applicable Law) all rights of redemption, stay and/or appraisal which such Pledgor now has or may at any time in the future have under any Applicable Law now existing or hereafter enacted. Each Pledgor agrees that, to the extent notice of sale shall be required by Applicable Law, at least ten (10) days' prior written notice to such Pledgor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification, but notice given in any other reasonable manner or at any other reasonable time shall also constitute reasonable notification. Such notice, in case of public sale, shall state the time and place for such sale, and, in the case of sale on a securities exchange, shall state the exchange on which such sale is to be made and the day on which the Pledged Collateral, or portion thereof, will first be offered for sale at such exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as the Collateral Agent may fix and shall state in the notice or publication (if any) of such sale. At any such sale, the Pledged Collateral, or portion thereof to be sold, may be sold in one lot as an entirety or in separate parcels, as the Collateral Agent may determine. Neither the Collateral Agent nor any of the Secured Parties shall be obligated to make any sale of the Pledged Collateral if it shall determine not to do so regardless of the fact that notice of sale of the Pledged Collateral may have been given. The Collateral Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice, be made at the time and place to which the same was so adjourned. In case the sale of all or any part of the Pledged Collateral is made on credit or for

future delivery, the Pledged Collateral so sold may be retained by the Collateral Agent until the sale price is paid by the purchaser or purchasers thereof, but

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neither the Collateral Agent nor any of the Secured Parties shall incur any liability to any Pledgor in case any such purchaser or purchasers shall fail to take up and pay for the Pledged Collateral so sold and, in case of any such failure, such Pledged Collateral may be sold again upon like notice. At any public sale made pursuant to this Agreement, the Collateral Agent or any of the Secured Parties and any other holder of any of the Senior Indebtedness, to the extent permitted by Applicable Law, may bid for or purchase, free from any right of redemption, stay and/or appraisal on the part of any Pledgor (all said rights being also hereby waived and released to the extent permitted by Applicable Law), any part of or all the Pledged Collateral offered for sale and may make payment on account thereof by using any claim then due and payable to the Collateral Agent or any of the Secured Parties from any Pledgor as a credit against the purchase price, and the Collateral Agent may, upon compliance with the terms of sale and to the extent permitted by Applicable Law, hold, retain and dispose of such property without further accountability to any Pledgor therefor. For purposes hereof, a written agreement to purchase all or any part of the Pledged Collateral shall be treated as a sale thereof; the Collateral Agent shall be free to carry out such sale pursuant to such agreement and no Pledgor shall be entitled to the return of any Pledged Collateral subject thereto, notwithstanding the fact that after the Collateral Agent shall have entered into such an agreement all Events of Default may have been remedied or the Senior Indebtedness may have been paid in full as herein provided. Each Pledgor hereby waives any right to require any marshaling of assets and any similar right.

(b) In addition to exercising the power of sale herein conferred upon it, the Collateral Agent shall also have the option to proceed by suit or suits at law or in equity to foreclose this Agreement and sell the Pledged Collateral or any portion thereof pursuant to judgment or decree of a court or courts having competent jurisdiction.

(c) The rights and remedies of the Collateral Agent and the Secured Parties under this Agreement are cumulative and not exclusive of any rights or remedies which they would otherwise have.

Section 8. Application of Proceeds of Sale and Cash. The proceeds of any sale of the whole or any part of the Pledged Collateral, together with any other moneys held by the Collateral Agent or any of the Secured Parties under the provisions of this Agreement, shall be applied in accordance with the Intercreditor Agreement. The Pledgors shall remain liable and will pay, on demand, any deficiency remaining in respect of the Senior Indebtedness.

Section 9. Collateral Agent Appointed Attorney-in-Fact. Subject to the terms of the Intercreditor Agreement, each Pledgor hereby constitutes and appoints the Collateral Agent as the attorney-in-fact of such Pledgor with full power of substitution either in the Collateral Agent's name or in the name of such Pledgor to do any of the following upon the occurrence and during the continuance of an Event of Default at the direction of the Required Senior Lenders (hereinafter, as defined in the Intercreditor Agreement): (a) to perform any obligation of such Pledgor hereunder in such Pledgor's name or otherwise; (b) to ask for, demand,

sue for, collect, receive, receipt and give acquittance for any and all moneys due or to become due under and by virtue of any Pledged Collateral; (c) [reserved]; (d) to verify facts concerning the Pledged Collateral in its own name or a fictitious name; (e) to endorse

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checks, drafts, orders and other instruments for the payment of money payable to such Pledgor, representing any interest or dividend or other distribution payable in respect of the Pledged Collateral or any part thereof or on account thereof and to give full discharge for the same; (f) to exercise all rights, powers and remedies which such Pledgor would have, but for this Agreement, under the Pledged Collateral; and (g) to carry out the provisions of this Agreement and to take any action and execute any instrument which the Collateral Agent may deem reasonably necessary or advisable to accomplish the purposes hereof, and to do all acts and things and execute all documents in the name of the Pledgor or otherwise, deemed by the Collateral Agent as reasonably necessary, proper and convenient in connection with the preservation, perfection or enforcement of its rights hereunder. Nothing herein contained shall be construed as requiring or obligating the Collateral Agent or the Secured Parties to make any commitment or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim or notice, or to take any action with respect to the Pledged Collateral or any part thereof or the moneys due or to become due in respect thereof or any property covered thereby, and no action taken by the Collateral Agent or of the Secured Parties or omitted to be taken with respect to the Pledged Collateral or any part thereof shall give rise to any defense, counterclaim or offset in favor of any Pledgor or to any claim or action against the Collateral Agent or any of the Secured Parties. The power of attorney granted herein is irrevocable and coupled with an interest.

Section 10. Collateral Agent's Duty of Care. Other than the exercise of reasonable care to ensure the safe custody of the Pledged Collateral while being held by the Collateral Agent hereunder, the Collateral Agent shall have no duty or liability to preserve rights pertaining thereto, it being understood and agreed that each Pledgor shall be responsible for preservation of all rights of such Pledgor in the Pledged Collateral. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Pledged Collateral in its possession if such Pledged Collateral is accorded treatment substantially equal to that which the Collateral Agent accords similar property for the account of other customers in similar transactions, it being understood that the Collateral Agent shall not have responsibility for (a) ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relating to any Pledged Collateral, whether or not the Collateral Agent has or is deemed to have knowledge of such matters or (b) taking any necessary steps to preserve rights against any parties with respect to any Pledged Collateral. The Collateral Agent is hereby authorized and directed to accept signature pages from any other Persons who may become Pledgors hereunder pursuant to the execution and delivery of a Pledge Agreement Supplement substantially in the form of Annex 1 hereto without further direction by the Secured Parties.

Section 11. Reimbursement of Collateral Agent. Each Pledgor agrees to pay within two (2) Business Days after written demand to the Collateral Agent the amount of any and all reasonable out of pocket expenses, including the reasonable fees disbursements and other charges of its counsel and of any experts or agents, excluding any internal costs, that the Collateral Agent may incur in connection with (a) the administration of this Agreement, (b) the custody or preservation of,



or any sale of, collection from, or other realization upon, any of the Pledged Collateral, (c) the exercise or enforcement of any of the rights of the Collateral Agent or the Secured Parties hereunder, or (d) the failure by such Pledgor to

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perform or observe any of the provisions hereof. Any such amounts payable as provided hereunder shall be Senior Indebtedness.

Section 12. Further Assurances. Each Pledgor shall, at its sole cost and expense, take all action that may be necessary in the Collateral Agent's reasonable determination, so as at all times to maintain the validity, perfection, enforceability and priority of the Collateral Agent's security interest in the Pledged Collateral, or to enable the Collateral Agent or the Secured Parties to exercise or enforce their respective rights hereunder, including, without limitation (a) delivering to the Collateral Agent, endorsed or accompanied by such instruments of assignment as the Collateral Agent may specify, any and all chattel paper, instruments, letters of credit and all other advices of guaranty and documents evidencing or forming a part of the Pledged Collateral and (b) executing and delivering pledges, designations, notices and assignments, in each case in form and substance reasonably satisfactory to the Collateral Agent, relating to the creation, validity, perfection, priority or continuation of the security interest granted hereunder. Each Pledgor agrees to take, and authorizes the Collateral Agent to take on such Pledgor's behalf, any or all of the following actions with respect to any Pledged Collateral as the Collateral Agent shall deem reasonably necessary to perfect the security interest and pledge created hereby or to enable the Collateral Agent to enforce its rights and remedies hereunder at the direction of the Required Senior Lenders: (i) to register in the name of the Collateral Agent any Pledged Collateral in certificated or uncertificated form; (ii) to endorse in the name of the Collateral Agent any Pledged Collateral issued in certificated form; and (iii) by book entry or otherwise, identify as belonging to the Collateral Agent a quantity of securities or partnership interests that constitutes all or part of the Pledged Collateral registered in the name of the Collateral Agent. Notwithstanding the foregoing, each Pledgor agrees that Pledged Collateral which is not in certificated form or is otherwise in book-entry form shall be held for the account of the Collateral Agent. Each of each Pledgor and the Collateral Agent hereby constitutes and appoints the Administrative Agent, the other Lender Parties and the Noteholders as the attorney-in-fact of such Pledgor with full power of substitution in the name of such Pledgor to file from time to time in all necessary and appropriate jurisdictions one or more financing or continuation statements or any other document or instrument referred to in the immediately preceding clause (b) or in Section 3(j) hereof in favor of the Collateral Agent so as at all times to maintain the validity, perfection, enforceability and priority of the Collateral Agent's security interest in the Pledged Collateral. To the extent permitted by Applicable Law, a carbon, photographic, xerographic or other reproduction of this Agreement or any financing statement is sufficient as a financing statement. Any property comprising part of the Pledged Collateral required to be delivered to the Collateral Agent pursuant to this Agreement shall be accompanied by proper instruments of assignment duly executed by the Pledgors and by such other instruments or documents as the Collateral Agent may reasonably request.

Section 13. Securities Act. In view of the position of any Pledgor in relation to the Pledged Collateral, or because of other current or future circumstances, a question may arise under the Securities Act or any similar Applicable Law hereafter enacted analogous in purpose or effect (such Act and any such similar

Applicable Law as from time to time in effect being called the “Federal Securities Laws”) with respect to any disposition of the

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Pledged Collateral permitted hereunder. Each Pledgor understands that compliance with the Federal Securities Laws might very strictly limit the course of conduct of the Collateral Agent if the Collateral Agent were to attempt to dispose of all or any part of the Pledged Collateral in accordance with the terms hereof, and might also limit the extent to which or the manner in which any subsequent transferee of any Pledged Collateral could dispose of the same. Similarly, there may be other legal restrictions or limitations affecting the Collateral Agent in any attempt to dispose of all or part of the Pledged Collateral in accordance with the terms hereof under applicable "Blue Sky" or other state securities laws or similar Applicable Law analogous in purpose or effect. Each Pledgor recognizes that in light of the foregoing restrictions and limitations the Collateral Agent may, with respect to any sale of the Pledged Collateral, limit the purchasers to those who will agree, among other things, to acquire such Pledged Collateral for their own account, for investment, and not with a view to the distribution or resale thereof. Each Pledgor acknowledges and agrees that in light of the foregoing restrictions and limitations, the Collateral Agent, in its reasonable determination, may, in accordance with Applicable Law, (a) proceed to make such a sale whether or not a registration statement for the purpose of registering such Pledged Collateral or part thereof shall have been filed under the Federal Securities Laws and (b) approach and negotiate with a single potential purchaser to effect such sale. Each Pledgor acknowledges and agrees that any such sale might result in prices and other terms less favorable to the seller than if such sale were a public sale without such restrictions. In the event of any such sale, neither the Collateral Agent nor any of the Secured Parties shall incur any responsibility or liability for selling all or any part of the Pledged Collateral in accordance with the terms hereof at a price that the Collateral Agent may deem reasonable under the circumstances, notwithstanding the possibility that a substantially higher price might have been realized if the sale were deferred until after registration as aforesaid or if more than a single purchaser were approached. The provisions of this Section will apply notwithstanding the existence of public or private market upon which the quotations or sales prices may exceed substantially the price at which the Collateral Agent sell.

Section 14. Security Interest Absolute. Subject to the terms of this Agreement, all rights of the Collateral Agent hereunder, the grant of a security interest in the Pledged Collateral and all obligations of the Pledgor hereunder, shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of any Loan Document, the Note Agreement, any other Note Document, any other agreement with respect to any of the Senior Indebtedness or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of the payment of, or in any other term of, all or any of the Senior Indebtedness, or any other amendment or waiver of or any consent to any departure from any of the documents, instruments or agreements evidencing any of the Senior Indebtedness, (c) any exchange, release or nonperfection of any other collateral, or any release or amendment or waiver of or consent to or departure from any guaranty, for all or any of the Senior Indebtedness or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Pledgor in respect of the Senior Indebtedness or in respect

of this Agreement (other than the indefeasible payment in full of all the Senior Indebtedness).

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Section 15. Continuing Security Interest. This Agreement constitutes an authenticated record, shall create a continuing security interest in the Pledged Collateral and shall remain in full force and effect until it terminates in accordance with Section 22. Subject to the terms of the Credit Agreement, the Note Agreement and the Intercreditor Agreement, the Pledgors and the Collateral Agent hereby agree that the security interest created by this Agreement in the Pledged Collateral shall not terminate and shall continue and remain in full force and effect notwithstanding the transfer by the Pledgors or any person designated by it of all or any portion of the Pledged Collateral.

Section 16. No Waiver. Neither the failure on the part of the Collateral Agent or any of the Secured Parties to exercise, nor the delay on its part in exercising any right, power or remedy hereunder, nor any course of dealing between the Collateral Agent or any of the Secured Parties and any Pledgor shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy hereunder preclude any other or the further exercise thereof or the exercise of any other right, power or remedy.

Section 17. Notices. All notices, requests and other communications hereunder shall be in writing (including facsimile transmission or similar writing) and shall be given (a) to a Pledgor at its address set forth below its signature hereto, (b) to the Collateral Agent at its address for notices provided under its signature to this Agreement, or (c) as to each such party at such other address as such party shall designate in a written notice to the other parties. All such notices and other communications shall be effective: (i) if mailed, when received; (ii) if telecopied, when transmitted; (iii) if hand delivered or sent by overnight courier, when delivered; or (iv) if delivered in accordance with each of Section 13.1 of the Credit Agreement and Section 19 of the Note Agreement to the extent applicable; provided, however, that, in the case of the immediately preceding clauses (i), (ii) and (iii), non-receipt of any communication as the result of any change of address of which the sending party was not notified or as the result of a refusal to accept delivery shall be deemed receipt of such communication.

SECTION 18. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

SECTION 19. WAIVER OF JURY TRIAL; CONSENT TO JURISDICTION; VENUE.

(a) EACH PLEDGOR, AND EACH OF THE COLLATERAL AGENT AND THE SECURED PARTIES BY ACCEPTING THE BENEFITS HEREOF, ACKNOWLEDGES THAT ANY DISPUTE OR CONTROVERSY BETWEEN SUCH PLEDGOR, THE COLLATERAL AGENT OR ANY OF THE SECURED PARTIES WOULD BE BASED ON DIFFICULT AND COMPLEX ISSUES OF LAW AND FACT AND WOULD RESULT IN DELAY AND EXPENSE TO THE PARTIES. ACCORDINGLY, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PLEDGORS, AND THE COLLATERAL AGENT AND THE SECURED PARTIES BY ACCEPTING THE BENEFITS HEREOF HEREBY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT OR TRIBUNAL IN WHICH AN ACTION MAY BE COMMENCED BY OR AGAINST ANY PARTY HERETO ARISING OUT OF THIS AGREEMENT OR BY REASON OF ANY OTHER SUIT, CAUSE OF ACTION OR DISPUTE WHATSOEVER BETWEEN OR AMONG THE PLEDGORS, THE COLLATERAL AGENT OR ANY OF THE SECURED PARTIES OF ANY KIND OR NATURE RELATING TO THIS AGREEMENT.

(b) EACH PLEDGOR IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE COLLATERAL AGENT, ANY SECURED PARTY, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR THE TRANSACTIONS RELATING HERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY, AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT SHALL AFFECT ANY RIGHT THAT THE COLLATERAL AGENT OR ANY SECURED PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AGAINST ANY PLEDGOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION. EACH PARTY FURTHER WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF ANY SUCH ACTION OR PROCEEDING IN ANY SUCH COURT OR THAT SUCH

**ACTION OR PROCEEDING WAS BROUGHT IN AN INCONVENIENT  
FORUM, AND EACH**

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AGREES NOT TO PLEAD OR CLAIM THE SAME. THE CHOICE OF FORUM SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE BRINGING OF ANY ACTION BY THE COLLATERAL AGENT OR ANY SECURED PARTY OR THE ENFORCEMENT BY THE COLLATERAL AGENT OR ANY SECURED PARTY OF ANY JUDGMENT OBTAINED IN SUCH FORUM IN ANY OTHER APPROPRIATE JURISDICTION.

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

Section 20. Amendments. No amendment or waiver of any provision of this Agreement nor consent to any departure by any Pledgor herefrom shall in any event be effective unless the same shall be in writing and signed by the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 21. Binding Agreement; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, except that no Pledgor shall be permitted to assign this Agreement or any interest herein or in the Pledged Collateral, or any part thereof, or any cash or property held by the Collateral Agent or any of the Secured Parties as collateral under this Agreement, and any such assignment by a Pledgor shall be null and void absent the prior written consent of the Collateral Agent, which consent may be withheld, conditioned or delayed in the Collateral Agent's reasonable determination.

Section 22. Termination. Upon the earlier of (a) the Security Release Date under each of the Credit Agreement and the Note Agreement and (b) indefeasible payment and performance in full of all of the Senior Indebtedness, this Agreement shall terminate. Upon termination of this Agreement in accordance with its terms the Collateral Agent agrees to take such actions as the Pledgors may reasonably request, and at the sole cost and expense of the Pledgors, to evidence the termination of this Agreement, all without any recourse, representation or warranty by the Collateral Agent.

Section 23. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under Applicable Law, but if any provision of this Agreement shall be prohibited by or invalid under Applicable Law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement.

Section 24. Headings. Section headings used herein are for convenience only and are not to affect the construction of or be taken into consideration in interpreting this Agreement.

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Section 25. Counterparts. To facilitate execution, this Agreement and any amendments, waivers, consents or supplements may be executed in any number of counterparts as may be convenient or required (which may be effectively delivered by facsimile or in portable document format (“PDF”)). It shall not be necessary that the signature of, or on behalf of, each party, or that the signature of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single document. It shall not be necessary in making proof of this document to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, each of the parties hereto.

Section 26. Definitions.

(a) Unless otherwise specified, as used herein, the following terms have the indicated meanings:

“Event of Default” has the meaning set forth in Section 6 of this Agreement.

“Excluded Issuer” means any Subsidiary that (i) indirectly (but not directly) owns an Unencumbered Property and (ii) directly or indirectly owns Property that is not an Unencumbered Property.

“Issuer” means each Subsidiary of the Borrower that directly or indirectly owns an Unencumbered Property; provided that “Issuer” shall not include any Excluded Issuer.

“Material Debt Receivables” has the meaning set forth in the Credit Agreement and the Note Agreement, and shall include the Mortgage Receivables and Secured Mezz Receivables described on Schedule 1 attached hereto.

“Organizational Documents” means any declaration of trust, operating agreement, partnership agreement, by-laws, articles or certificate of incorporation, articles of organization, certificate of limited partnership, or other similar agreement or document.

“Pledged Interests” means, with respect to each Pledgor, such Pledgor’s right, title and interest in the Equity Interests of any Issuer, including the Equity Interests described on Schedule 1 attached hereto, including, without limitation, all economic interests and rights to vote or otherwise control such Issuers and all rights as a partner, shareholder, member, or trustee thereof, whether now owned or hereafter acquired.

“Proceeds” means all proceeds (including proceeds of proceeds) of any of the Pledged Collateral including all: (a) rights, benefits, distributions, premiums, profits, dividends, interest, cash, instruments, documents of title, accounts, contract rights, inventory, equipment, general intangibles, payment intangibles, deposit accounts, chattel paper, and other property from time to time received, receivable, or otherwise distributed in respect of or in exchange for, or as a replacement of or a substitution for, any of the Pledged Collateral, or proceeds

thereof (including any cash, Equity Interests, or other instruments issued after any recapitalization, readjustment, reclassification, merger or consolidation with respect to

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the Issuers and any security entitlements, as defined in Section 8-102(a)(17) of the UCC, with respect thereto); (b) “proceeds,” as such term is defined in Section 9-102(a)(64) of the UCC; (c) proceeds of any insurance, indemnity, warranty, or guaranty (including guaranties of delivery) payable from time to time with respect to any of the Pledged Collateral, or proceeds thereof; and (d) payments (in any form whatsoever) made or due and payable to a Pledgor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Pledged Collateral, or proceeds thereof.

“UCC” means the Uniform Commercial Code as in effect in any applicable jurisdiction.

(b) Terms not otherwise defined herein are used herein with the respective meanings given to them in the Intercreditor Agreement. Terms which are defined in the UCC have the meanings given such terms therein.

Section 27. Intercreditor Agreement. The provisions of this Agreement are in all respects subject to the terms and provisions of that certain Intercreditor and Collateral Agency Agreement, dated as of the date hereof (the “Intercreditor Agreement”), by and among Wells Fargo Bank, National Association, as the Collateral Agent, Wells Fargo Bank, National Association, as the Bank Agent, and the Noteholders, as the [Noteholders], and acknowledged by the Borrower and the Parent and the other Pledgors, including the relative rights, obligations and priorities with respect to the Pledged Collateral and proceeds thereof. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern. The Collateral Agent is a party to this Agreement solely in its capacity as Collateral Agent pursuant to the Intercreditor Agreement and the Collateral Agent shall have all the rights, privileges and immunities afforded to it as Collateral Agent under the Intercreditor Agreement. The exercise of the Collateral Agent’s rights and remedies under this Agreement shall be performed in accordance with the Intercreditor Agreement.

[Signatures on Next Page]

IN WITNESS WHEREOF, each Pledgor has executed and delivered this Pledge Agreement under seal as of this the date first written above.

PLEDGORS:

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_

Agreed to, accepted and acknowledged  
as of the date first written above,

COLLATERAL AGENT:

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Collateral Agent

By: \_\_\_\_\_

Name:

Title:

Address for Notices:

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## ANNEX 1 TO PLEDGE AGREEMENT

### FORM OF PLEDGE AGREEMENT SUPPLEMENT

THIS PLEDGE AGREEMENT SUPPLEMENT dated as of \_\_\_\_\_,  
20\_\_\_\_ (this "Supplement") is executed and delivered by \_\_\_\_\_,  
a \_\_\_\_\_ (the "New Pledgor") in favor of WELLS FARGO BANK,  
NATIONAL ASSOCIATION, in its capacity as Collateral Agent (the "Collateral  
Agent").

WHEREAS, pursuant to (i) that certain Amended and Restated Credit  
Agreement dated as of October 17, 2018 (as amended, restated, supplemented or  
otherwise modified from time to time, the "Credit Agreement"), by and among  
SunStone Hotel Partnership, LLC, a limited liability company formed under the  
laws of the State of Delaware (the "Borrower"), SunStone Hotel Investors, Inc.,  
a corporation formed under the laws of the State of Maryland, ("Parent"), the  
financial institutions party thereto and their assignees under Section 13.5 thereof  
(the "Lenders"), Wells Fargo Bank, National Association, as administrative agent  
and the other parties thereto and (ii) that certain Note and Guarantee Agreement,  
dated as of December 20, 2016 (as amended, restated, supplemented or otherwise  
modified from time to time, the "Note Agreement"), by and among the Borrower,  
Parent, and the purchasers named therein, the Lenders and the Noteholders (as  
defined in the Pledge Agreement referred to below) have made available to the  
Borrower certain financial accommodations on the terms and conditions set forth  
in the Credit Agreement and the Note Agreement, respectively;

WHEREAS, to secure obligations owing by certain parties under the Note  
Agreement, the Credit Agreement and the other Loan Documents, the "Pledgors"  
thereunder have executed and delivered that certain Pledge Agreement dated as of  
\_\_\_\_\_, 20\_\_\_\_ (as amended, restated, supplemented or otherwise modified from  
time to time, the "Pledge Agreement") in favor of the Collateral Agent;

WHEREAS, it is a condition precedent to the continued extension by the  
Lenders and the Noteholders, respectively, of such financial accommodations that  
the New Pledgor execute this Supplement to become a party to the Pledge  
Agreement.

NOW, THEREFORE, in consideration of the above premises and for other  
good and valuable consideration, the receipt and sufficiency of which are hereby  
acknowledged by the New Pledgor, the New Pledgor hereby agrees as follows:

Section 1. Accession to Pledge Agreement; Grant of Security Interest.  
The New Pledgor agrees that it is a "Pledgor" under the Pledge Agreement  
and assumes all obligations of a "Pledgor" thereunder, all as if the New Pledgor  
had been an original signatory to the Pledge Agreement. Without limiting the  
generality of the foregoing, the New Pledgor hereby:



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(a) pledges to the Collateral Agent for the benefit of the Secured Parties, and grants to the Collateral Agent for the benefit of the Secured Parties a security interest in, all of the New Pledgor's right, title and interest in, to and under the Pledged Collateral, including the Equity Interests and Material Debt Receivables described on Schedule 1 attached hereto which shall be appended to Schedule 1 attached to the Pledge Agreement and become a part thereof, as security for the Senior Indebtedness (as defined in the Intercreditor Agreement);

(b) makes to the Collateral Agent and the Secured Parties as of the date hereof each of the representations and warranties contained in Section 2 of the Pledge Agreement and agrees to be bound by each of the covenants contained in the Pledge Agreement, including without limitation, those contained in Section 3 thereof; and

(c) consents and agrees to each other provision set forth in the Pledge Agreement.

SECTION 2. GOVERNING LAW. THIS SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS EXECUTED, AND TO BE FULLY PERFORMED, IN SUCH STATE.

Section 3. Definitions. Capitalized terms used herein and not otherwise defined herein shall have their respective defined meanings given them in the Pledge Agreement.

[Signatures on Next Page]

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IN WITNESS WHEREOF, the New Pledgor has caused this Pledge Agreement Supplement to be duly executed and delivered under seal by its duly authorized officers as of the date first written above.

[NEW PLEDGOR]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for notices:  
\_\_\_\_\_

Accepted:

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Collateral Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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## SCHEDULE 1 TO PLEDGE AGREEMENT

## SCHEDULE 1 TO PLEDGE AGREEMENT

### Pledged Equity Interests:<sup>1</sup>

<u>Pledgor</u>	<u>Jurisdiction of Formation of Pledgor</u>	<u>Organizational ID No. of Pledgor</u>	<u>Location of Chief Executive Office</u>	<u>Issuer</u>	<u>Jurisdiction of Formation of Issuer</u>	<u>Organizational ID No. of Issuer</u>	<u>Class of Equity Interest</u>

### Material Debt Receivables

1.

<sup>1</sup> NTD: To be Equity Interests of each Subsidiary of Borrower that directly or indirectly owns an Unencumbered Property.

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## SCHEDULE 2 TO PLEDGE AGREEMENT

### Form of Acknowledgement and Consent

The undersigned hereby acknowledges receipt of a copy of the Pledge Agreement dated as of \_\_\_\_\_, 20\_\_\_\_ (the "Pledge Agreement"), made by \_\_\_\_\_ and the other Pledgors party thereto in favor of Wells Fargo Bank, National Association, as Collateral Agent. Terms not otherwise defined herein have the respective meanings given them in the Pledge Agreement.

The undersigned agrees for the benefit of the Collateral Agent and the Secured Parties as follows:

(a) The undersigned will be bound by, and comply with, the terms of the Pledge Agreement applicable to the undersigned, including without limitation, Sections 3(e) and 3(f).

(b) The undersigned will notify the Collateral Agent in writing promptly of the occurrence of any of the events described in Section 3(d) of the Pledge Agreement.

[(c) The undersigned will not permit any of the Equity Interests issued by it (i) to be dealt in or traded on a securities exchange or in securities markets; or (ii) to provide by its terms that it is a security governed by Article 8 of the UCC.]<sup>1</sup>

IN WITNESS WHEREOF, the undersigned has executed and delivered this Acknowledgement and Consent under seal as of this the date first written above.

[ISSUER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

<sup>1</sup> Include only if the Issuer is a partnership or limited liability company.

Exhibit A  
Restrictions on Pledges

1. Any consent required to be given to an Issuer in connection with the giving of a pledge of the Pledged Collateral under the Hotel Agreements for the “Portland Marriott” hotel; and
  2. Any consent required to be given to an Issuer in connection with the giving of a pledge of the Pledged Collateral under the Hotel Agreements for the “Chicago Hyatt” hotel.
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## FORM OF INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

### INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

This Intercreditor and Collateral Agency Agreement (this “Agreement”), dated as of this            day of           , 20   , is by and among the Bank Agent, the Collateral Agent, the Noteholders listed on Exhibit A attached hereto (the “Initial Noteholders”), and each of the other Noteholders and Persons that become parties hereto pursuant to Section 20 hereof. All terms used herein which are defined in Section 1 hereof or in the text of any other Section hereof shall have the meanings given therein.

#### WITNESSETH:

WHEREAS, pursuant to the Credit Agreement the Banks have heretofore made and the Banks may from time to time hereafter make Term Loans, Revolving Loans and Swingline Loans to the Borrower and issue Letters of Credit for the account of the Borrower; and

WHEREAS, pursuant to the Note Agreement the Initial Noteholders currently hold on the date hereof certain Senior Notes of the Borrower; and

WHEREAS, pursuant to the Guaranty Agreements the Guarantors have guaranteed the Senior Indebtedness; and

WHEREAS, pursuant to the Collateral Documents the Pledgors are concurrently herewith granting to the Collateral Agent liens upon and security interests in the Collateral to secure the Senior Indebtedness; and

WHEREAS, the Initial Noteholders and the Bank Agent desire to appoint Wells Fargo Bank, National Association as Collateral Agent under and in accordance with the terms and provisions of this Agreement; and

WHEREAS, the Initial Noteholders and the Bank Agent desire to agree upon the priorities for the application of any proceeds from the Collateral and the Guaranty Agreements and to agree upon various other matters with respect to their respective agreements with the Loan Parties and their rights thereunder.

NOW, THEREFORE, for the above reasons, in consideration of the mutual covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

#### 1.     Definitions.

For the purposes of this Agreement, the following terms shall have the meanings specified with respect thereto below. Any plural term that is used

herein in the singular shall be taken to mean each entity or item of the defined class and any singular term

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that is used herein in the plural shall be taken to mean all of the entities or items of the defined class, collectively.

“Affiliate” shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such first Person. A Person shall be deemed to control a corporation or other entity if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such corporation or other entity, whether through the ownership of voting securities, by contract or otherwise.

“Bankruptcy Code” means Title 11 of the United States Code, as amended.

“Bankruptcy Law” means the Bankruptcy Code and any similar Federal, state or foreign law for the relief of debtors.

“Bankruptcy Proceeding” shall mean, with respect to any Person:

(a) any case or proceeding or process commenced by or against such Person under any Bankruptcy Law, any other proceeding or process for the reorganization, recapitalization, restructuring, arrangement or adjustment or marshaling of the assets or liabilities of such Person, any receivership, compromise, power of sale, foreclosure or assignment for the benefit of creditors (or any class thereof) relating to such Person or, with respect to any Loan Party, any similar case or proceeding or process relative to such Loan Party or its creditors, as such, in each case whether or not voluntary;

(b) any composition, compromise, assignment, scheme or arrangement made or entered into with the creditors (or any class thereof) of such Person, or any liquidation, dissolution, marshaling of assets or liabilities or other winding up of or relating to such Person, in each case whether or not voluntary and whether or not involving bankruptcy or insolvency (except, with respect to any Loan Party, for any voluntary liquidation, dissolution or other winding up to the extent permitted by the Credit Agreement and the Note Agreement); or

(c) any other proceeding of any type or nature in which substantially all claims of creditors of such Person are determined and any payment or distribution is or may be made on account of such claims.

“Banks” shall mean each Person party to the Credit Agreement as a “Lender” or “Issuing Bank” thereunder as such terms are defined in the Credit Agreement as in effect on the First Amendment Date.

“Bank Agent” shall mean Wells Fargo Bank, National Association, in its capacity as the “Administrative Agent” under the Credit Agreement, and its successors and assigns in that capacity.

“Borrower” shall mean Sunstone Hotel Partnership, LLC, a Delaware limited liability company.

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“Business Day” shall mean 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.

“Collateral” shall mean all property and assets, and interests in property and assets, upon or in which any Loan Party has granted a lien or security interest to the Collateral Agent to secure the Senior Indebtedness.

“Collateral Agent” shall mean Wells Fargo Bank, National Association, solely in its capacity as Collateral Agent for the Secured Parties pursuant to this Agreement, together with any successor or replacement collateral agent which may be appointed pursuant to this Agreement.

“Collateral Agent Obligations” shall mean all liabilities, obligations, covenants and duties of the Loan Parties or the Senior Lenders to the Collateral Agent arising under this Agreement or any Collateral Document, whether direct or indirect, absolute or contingent, due or not due, contractual or tortious, liquidated or unliquidated and whether or not evidenced by any promissory note, now existing or hereafter arising and including interest and fees that accrue after the commencement of any proceeding under any debtor relief laws, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the foregoing, the Collateral Agent Obligations include the obligations of the Loan Parties under Sections 2(c), 2(d) and 2(e) of this Agreement and the obligations of the Senior Lenders under Section 2(f) of this Agreement.

“Collateral Documents” shall mean the Pledge Agreement and each other agreement, document or instrument in effect on the date hereof or executed by any Loan Party in accordance with the terms of the Credit Agreement or the Note Agreement after the date hereof under which such Loan Party has granted a lien upon or security interest in any property or assets to the Collateral Agent to secure all or any part of the Senior Indebtedness, all financing statements, certificates, documents and instruments relating thereto or executed or provided in connection therewith, each as amended, restated, supplemented or otherwise modified from time to time.

“Commitment” of any Bank shall mean a “Revolving Commitment” of such Bank as defined in the Credit Agreement.

“Credit Agreement” shall mean the Amended and Restated Credit Agreement, dated as of October 17, 2018, among the Borrower, the Parent, the Banks, the Bank Agent and the joint lead arrangers, joint bookrunners, syndication agents and documentations agents named therein, as amended by that certain First Amendment to Amended and Restated Credit Agreement dated as of July 15, 2020 and as it may be further amended, restated, supplemented or otherwise modified from time to time.

“Enforcement” shall mean the occurrence of any of the following:  
(a) after the occurrence of an Event Default, the Bank Agent or any Senior Lender  
(i) makes demand for payment prior to the scheduled payment date, if any, of or accelerates the time for payment of any Loan and Reimbursement Obligations or

Note Document Obligations or (ii) calls for the funding of any risk participation in or collateral for any Letter of Credit prior to being

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presented with a draft drawn thereunder (or, in the event the draft is a time draft, prior to its due date) pursuant to Section 11.2.(a) of the Credit Agreement or a similar provision, (b) the Banks holding more than 50% of the aggregate Commitments of all Banks at the time thereof terminate their Commitments pursuant to the Credit Agreement (but not including (x) the expiration of such Commitments on the relevant Termination Date or (y) for the avoidance of doubt, the refusal of the Banks to fund loans or issue letters of credit if the conditions precedent thereto have not been satisfied), (c) the Bank Agent or any Senior Lender commences the judicial enforcement of any rights or remedies under or with respect to any Loan Document or any Note Document, or sets off against or otherwise appropriates any balances held by it for the account of any Loan Party or any other property at any time held or owing by it to or for the credit or for the account of any Loan Party, in each case if such set off or appropriation is to be applied to satisfy the Loan and Reimbursement Obligations or the Note Document Obligations, (d) the Collateral Agent commences the judicial enforcement of any rights or remedies under any Collateral Document (other than an action solely for the purpose of establishing or defending the lien or security interest intended to be created by any Collateral Document upon or in any Collateral as against or from claims of third parties on or in such Collateral), or otherwise takes any action (whether judicial or non-judicial) to realize upon the Collateral, or (e) the commencement by, against or with respect to any Loan Party of any Bankruptcy Proceeding for such Loan Party or its assets.

“Event of Default” shall mean an “Event of Default,” as defined in the Credit Agreement, or an “Event of Default,” as defined in the Note Agreement.

“Excess Leverage Fee” shall mean the “Excess Leverage Fee” as defined in the Note Agreement as in effect on the First Amendment Date.

“First Amendment Date” shall mean July 15, 2020.

“Guaranteed Obligations” shall have the meaning set forth in the Credit Agreement as in effect on the First Amendment Date.

“Guarantors” shall mean (a) the Parent, (b) each of the Persons listed on Schedule A hereto and (c) each other subsidiary of the Parent hereafter executing a Guaranty Agreement or joinder thereto in accordance with the provisions of Section 9.9(a) of the Note Agreement and/or Section 8.13. of the Credit Agreement.

“Guaranty Agreements” shall mean (a) the Guaranty, dated as of October 17, 2018, made by the Parent and each of the other Guarantors in favor of the Banks, (b) the Subsidiary Guaranty Agreement, (c) the guarantee of the Parent pursuant to Section 13 of the Note Agreement and (d) each other guaranty hereafter made by a subsidiary of the Parent in favor of the Noteholders or the Banks in accordance with the provisions of Section 9.9(a) of the Note Agreement and/or Section 8.13. of the Credit Agreement, each as amended, restated, supplemented or otherwise modified from time to time.

“Indemnitee” shall have the meaning given in Section 2(e) hereof.

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“IRS” shall mean the United States Internal Revenue Service and any successor thereto.

“Lender Party” shall mean a “Lender Party” as defined in the Credit Agreement as in effect on the First Amendment Date.

“Letters of Credit” shall mean a “Letter of Credit” as defined in the Credit Agreement.

“Letter of Credit Collateral Obligations” shall mean all of the obligations of the Borrower under Section 11.2.(a) of the Credit Agreement to deposit cash with the Bank Agent with respect to Outstanding Letters of Credit Exposure.

“Loan Documents” shall mean the “Loan Documents” as defined in the Credit Agreement as in effect on the First Amendment Date.

“Loan Parties” shall mean the Borrower, the Parent, the Guarantors and the Pledgors.

“Loan and Reimbursement Obligations” shall mean the Guaranteed Obligations now existing or hereafter occurring, including interest and fees that accrue after the commencement of any proceeding under any debtor relief laws, regardless of whether such interest and fees are allowed claims in such proceeding.

“Loan” shall have the meaning set forth in the Credit Agreement as in effect on the First Amendment Date.

“Make-Whole Amount” shall mean the “Make-Whole Amount,” as defined in the Note Agreement as in effect on the First Amendment Date.

“Note Agreement” shall mean the Note and Guarantee Agreement dated as of December 20, 2016 originally between the Borrower, the Parent and the purchasers listed on the Purchaser Schedule thereto, as amended by that certain First Amendment dated as of July 15, 2020, and as may be further amended, restated, supplemented or otherwise modified from time to time.

“Note Documents” shall mean the “Note Documents,” as defined in the Note Agreement as in effect on the First Amendment Date.

“Note Document Obligations” shall mean the aggregate principal amount of, Make-Whole Amount, if any, and accrued and unpaid interest and Excess Leverage Fee, if any, on, the Senior Notes, and all of the other present or future indebtedness, liabilities, obligations, covenants and duties of any Loan Party now or hereafter owed to any or all of the Noteholders of every kind, nature and description, under or in respect of the Note Documents, whether direct or indirect, absolute or contingent, due or not due, contractual or tortious, liquidated or unliquidated and whether or not evidenced by any promissory note, now existing or hereafter arising and including interest and fees that accrue after the

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commencement of any proceeding under any debtor relief laws, regardless of whether such interest and fees are allowed claims in such proceeding.

“Noteholders” shall mean the holders of the Senior Notes from time to time.

“Other Shared Amounts” shall have the meaning given in Section 5(a) hereof.

“Outstanding Letters of Credit Exposure” at any time shall mean the “Letter of Credit Liabilities” as defined in the Credit Agreement as in effect on the First Amendment Date and any fees owing with respect thereto under the terms of the Credit Agreement.

“Parent” shall mean Sunstone Hotel Investors, Inc., a Maryland corporation.

“Person” shall mean and include an individual, a partnership, a joint venture, a corporation, a trust, a limited liability company, an unincorporated organization and a government or any department or agency thereof.

“Pledge Agreement” shall mean the Pledge Agreement, dated as of the date hereof, made by each Pledgor in favor of the Collateral Agent, and any supplement or joinder to the Pledge Agreement hereafter made by any subsidiary of the Parent in favor of the Collateral Agent in accordance with Section 9.13 of the Note Agreement and/or Section 8.14. of the Credit Agreement, each as amended, restated, supplemented or otherwise modified from time to time.

“Pledgor” shall mean each of the Persons listed on Schedule B hereto and each other subsidiary of the Parent hereafter executing a Pledge Agreement or joinder thereto in accordance with the provisions of Section 9.13 of the Note Agreement and Section 8.14. of the Credit Agreement.

“Pro Rata Expenses Share” with respect to any Senior Lender shall mean (a) prior to the occurrence of a Sharing Date (i) at any time before the time all Commitments of the Banks have been terminated, the ratio of (1) the sum of the amount of such Senior Lender’s Commitment and the aggregate outstanding principal amount of the Term Loans held by such Senior Lender at such time, if such Senior Lender is a Bank, or the aggregate outstanding principal amount of the Senior Notes held by such Senior Lender at such time, if such Senior Lender is a Noteholder, to (2) the sum of the Commitments, the aggregate outstanding principal amount of the Term Loans and the aggregate outstanding principal amount of all of the Senior Notes at such time, or (ii) at any time on and after the time all Commitments of the Banks have been terminated, the ratio of (1) the sum of the amount of such Senior Lender’s Revolving Credit Exposure and the aggregate outstanding principal amount of the Term Loans held by such Senior Lender at such time, if such Senior Lender is a Bank, or the aggregate outstanding principal amount of the Senior Notes held by such Senior Lender at such time, if such Senior Lender is a Noteholder, to (2) the sum of the Revolving Credit

Exposure, the aggregate outstanding principal amount of the Term Loans and the aggregate outstanding principal amount of all of the Senior Notes at such time, and (b) on and after the occurrence of a Sharing Date, the ratio set forth in clause (a)(ii) above.

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“Reimbursement Obligation” shall have the meaning set forth in the Credit Agreement.

“Required Holders” shall mean the holders of more than 50% in principal amount of the Senior Notes at the time outstanding (exclusive of Senior Notes then owned by either Constituent Company (as defined in the Note Purchase Agreement) or any of its Affiliates).

“Required Senior Lenders” shall mean, at any time, both (a) the Requisite Lenders and (b) the Required Holders; provided that if the Collateral Agent shall have received (i) inconsistent written requests or directions from the Required Lenders and the Required Holders or (ii) a written request or direction from only one such group and the Collateral Agent shall have notified the Bank Agent and the Noteholders to such effect but shall not have received a written request or direction from the Required Senior Lenders within 30 days of such notice, “Required Senior Lenders” shall mean the Supermajority Lenders.

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

“Revolving Credit Exposure” shall have the meaning set forth in the Credit Agreement as in effect on the First Amendment Date.

“Revolving Loan” shall mean a “Revolving Loan,” as defined in the Credit Agreement.

“Secured Parties” shall mean the Collateral Agent, the Bank Agent and the Senior Lenders.

“Senior Indebtedness” shall mean the Collateral Agent Obligations, the Loan and Reimbursement Obligations and the Note Document Obligations; provided that no separate dollar amount shall be ascribed to “covenants and duties” when determining such Collateral Agent Obligations, Loan and Reimbursement Obligations and Note Document Obligations.

“Senior Lenders” shall mean the Banks, the other Lender Parties and the Noteholders.

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“Senior Notes” shall mean the Borrower’s (a) 4.69% Series A Guaranteed Senior Notes due January 10, 2026 and (b) 4.79% Series B Guaranteed Senior Notes due January 10, 2028, in each case, issued pursuant to the Note Agreement.

“Sharing Date” with respect to an Enforcement shall mean the first date which a Sharing Event with respect to such Enforcement has occurred; provided that, if an Enforcement does not occur within 90 days of the date of the occurrence of a Sharing Event, the applicable Sharing Event and any Sharing Date with respect to such Sharing Event shall be deemed not to have occurred and the applicable Senior Lender can retain any Other Shared Amounts, if any, received after such Sharing Date and prior to the next Sharing Date and shall not be required to apply such Other Shared Amounts as set forth in clauses (i) – (iii) of Section 5.1(a) upon the occurrence of any subsequent Enforcement.

“Sharing Event” shall mean (a) an Enforcement, (b) the occurrence of any Specified Event of Default, or (c) any refusal by Banks holding more than 50% of the aggregate Commitments of all Banks at the time to make any Revolving Loan requested by the Borrower if the conditions precedent thereto specified in the Credit Agreement have been satisfied.

“Specified Event of Default” shall mean (a) any default in the payment of any principal of or interest on any Senior Indebtedness when due, (b) an Event of Default arising from a default in the performance or observance of Section 10.1(i) of the Credit Agreement or Section 10.8(g) of the Note Agreement as in effect on the First Amendment Date, (c) an Event of Default described in Section 11.1(e) or 11.1(f) of the Credit Agreement as in effect on the First Amendment Date, or (d) an Event of Default described in Section 11(g), 11(h) or 11(i) of the Note Agreement as in effect on the First Amendment Date.

“Subsidiary Guaranty Agreement” shall mean the Subsidiary Guaranty Agreement, dated as of December 16, 2016, made by each of the Persons listed on Schedule A hereto in favor of the Noteholders, as heretofore supplemented and as may be further supplemented, amended, restated or otherwise modified from time to time.

“Supermajority Lenders” shall mean, as of any date of determination, Senior Lenders that hold, in the aggregate, in excess of 66-2/3% of the sum of (a) the aggregate principal amount of all outstanding Loan and Reimbursement Obligations (other than Loan and Reimbursement Obligations arising from clause (b) of the definition of Guaranteed Obligations, as determined in good faith by the Bank Agent) as of such date and (b) the aggregate principal amount of the Senior Notes outstanding as of such date.

“Swingline Loan” shall mean a “Swingline Loan,” as defined in the Credit Agreement.

“Term Loan” shall mean a “Term Loan,” as defined in the Credit Agreement.

**“Termination Date” shall mean a “Termination Date,” as defined in the Credit Agreement.**

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2. Appointment of Wells Fargo Bank, National Association as Collateral Agent for the Secured Parties; Collateral Document Amendments; Fees, Expenses and Indemnification.

(a) Appointment of Collateral Agent. Subject in all respects to the terms and provisions of this Agreement, the Senior Lenders and the Bank Agent hereby appoint Wells Fargo Bank, National Association, and Wells Fargo Bank, National Association accepts such appointment, to act as Collateral Agent for the Secured Parties under this Agreement and the Collateral Documents to which the Collateral Agent is a party, and authorizes the Collateral Agent to take such actions on their behalf and to exercise such powers as are specifically delegated to the Collateral Agent by the terms hereof or thereof. It is understood and agreed that the use of the term “agent” herein or in any Collateral Documents (or any other similar term) with reference to the Collateral 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. The appointment of the Collateral Agent pursuant to this Agreement shall be effective with respect to all financing statements filed in any filing office in favor of the Bank Agent or any Senior Lender with respect to any Loan Party prior to the date of this Agreement on and as of the date such financing statements were filed. The agency created hereby shall in no way impair or affect any of the rights and powers of, or impart any duties or obligations upon, Wells Fargo Bank, National Association in its individual capacity as a Bank or as Bank Agent. To the extent legally necessary to enable the Collateral Agent to enforce or otherwise foreclose and realize upon any of the liens or security interests in the Collateral in any legal proceeding which the Collateral Agent either commences or joins as a party in accordance with the terms hereof, the Bank Agent and each of the Senior Lenders agree to join as a party in such proceeding and take such action therein concurrently to enforce and obtain a judgment for the payment of the Senior Indebtedness held by it

(b) Collateral Document Amendments. An amendment, supplement, modification, restatement or waiver of any provision of any Collateral Document, any consent to any departure by any Loan Party therefrom, or the execution or acceptance by the Collateral Agent of any Collateral Document not in effect on the date hereof shall be effective if, and only if, consented to in writing by the Required Senior Lenders; provided, however, that (i) no such amendment, supplement, modification, restatement, waiver, consent or Collateral Document not in effect on the date hereof which in any case imposes any additional responsibilities upon the Collateral Agent or adversely affects the rights, privileges and immunities of the Collateral Agent or increases its duties shall be effective without the written consent of the Collateral Agent, (ii) no such amendment, supplement, modification, waiver or consent shall release any Collateral from the lien or security interest created by any Collateral Document or narrow the scope of the property or assets in which a lien or security interest is granted pursuant to any Collateral Document or change the description of the obligations secured thereby without the written consent of all Senior Lenders and (iii) no such consent of the Required Senior Lenders shall be required for the execution

and acceptance of any additional Collateral Documents in accordance with the provisions of Section 9.13 of the Note Agreement and Section 8.14. of the Credit Agreement; provided that in the case of this clause (iii), the Borrower shall have delivered to the

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Collateral Agent a certificate of an officer of the Borrower stating that the execution by the Collateral Agent of such additional Collateral Documents is authorized and permitted by this Section 2(b) and the Collateral Agent shall be entitled to rely on such certificate without any further direction or consent of the Senior Lenders.

(c) Fees. The Loan Parties, by their consent hereto, jointly and severally, agree to pay to the Collateral Agent for its own account fees in the amounts and at the times agreed by the Borrower and the Collateral Agent. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(d) Costs and Expenses. The Loan Parties, by their consent hereto, jointly and severally, agree to pay (i) all reasonable out-of-pocket expenses incurred by the Collateral Agent and its affiliates (including the fees, charges and disbursements of counsel for the Collateral Agent), in connection with the preparation, negotiation, execution, delivery and administration of this Agreement and the Collateral 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 Collateral Agent and its affiliates (including the fees, charges and disbursements of counsel for the Collateral Agent), in connection with the enforcement or protection of its rights under this Agreement and the Collateral Documents, including its rights under this Section, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Senior Indebtedness.

(e) Indemnification of Collateral Agent. The Loan Parties, by their consent hereto, jointly and severally agree to indemnify and hold the Collateral Agent, its officers, directors, employees and agents (including, but not limited to, any attorneys acting at the direction or on behalf of the Collateral Agent) (each such Person being called an "Indemnitee" and collectively, the "Indemnitees") harmless against any and all fees, losses, claims, damages, liabilities and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and all fees, expenses and costs incurred by any Indemnitee in connection with any dispute, action, claim or suit brought to enforce the right to indemnification) incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Loan Parties) arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any Collateral Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Senior Indebtedness or the use or proposed use of the proceeds therefrom or (iii) 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 Loan Parties or by any other Person, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or expenses 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. The obligations of the Loan Parties under this Section 2(e) shall survive the payment in full of the Senior Indebtedness, the resignation or replacement of the Collateral Agent and the termination of this Agreement.

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(f) Indemnification by the Senior Lenders. To the extent that the Loan Parties for any reason fail to pay any amount required under paragraph (d) or (e) of this Section 2, each Senior Lender severally agrees to pay to the Collateral Agent or such other Indemnitee, as the case may be, such Senior Lender's Pro Rata Expenses Share of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Senior Lender); provided that, the indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or expenses 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; provided further that no action taken in accordance with the written direction or consent (which written direction or consent may be in the form of an email) of the requisite Senior Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 2(f). If any indemnity in favor of the Collateral Agent shall be or become in its reasonable good faith determination inadequate, the Collateral Agent may call for additional indemnification from the Senior Lenders and cease to do the acts indemnified against hereunder until such additional indemnity is given. The obligations of the Senior Lenders under this Section 2(f) shall survive the payment in full of the Senior Indebtedness, the resignation or replacement of the Collateral Agent and the termination of this Agreement. If any Loan Party shall reimburse the Collateral Agent for any amounts indemnified by the Senior Lenders pursuant to this Section 2(f), the Collateral Agent shall share such reimbursement with each Senior Lender on the basis of such Senior Lender's Pro Rata Expenses Share of the indemnified amount then being reimbursed actually paid by such Senior Lender.

3. Lien Priorities. The parties hereto expressly agree that the security interests and liens granted to the Collateral Agent in the Collateral shall secure the Senior Indebtedness on a *pari passu* basis for the benefit of the Secured Parties and that, notwithstanding the relative priority or the time of grant, creation, attachment or perfection under applicable law of any security interests and liens, if any, of any of the Secured Parties upon or in any of the Collateral to secure any Senior Indebtedness, whether such security interests and liens are now existing or hereafter acquired or arising and whether such security interests and liens are in or upon now existing or hereafter arising Collateral, such security interests and liens shall be first and prior security interests and liens in favor of the Collateral Agent to secure the Senior Indebtedness on a *pari passu* basis for the benefit of the Secured Parties.

4. Certain Notices. The Bank Agent and each Senior Lender agrees to use its best efforts to give to the others and to the Collateral Agent (a) copies of any notice of the occurrence or existence of a Specified Event of Default sent to any Loan Party, simultaneously with the sending of such notice to such Loan Party, (b) notice of the occurrence or existence of a default in the payment of principal or interest on any Reimbursement Obligation or any of such Person's outstanding Senior Indebtedness or a Specified Event of Default, in either case, of which such party has knowledge, promptly after obtaining knowledge thereof, (c) notice of the refusal of Banks holding more than 50% of the aggregate Commitments of all Banks at the time to make any Revolving Loan requested by

the Borrower if the conditions precedent thereto specified in the Credit Agreement have been satisfied, promptly after such refusal, and (d) notice of an Enforcement by such party, prior to commencing such Enforcement, but the failure to give any of the foregoing notices shall

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not affect the validity of such notice of an Event of Default given to a Loan Party or create a cause of action against or cause a forfeiture of any rights of the party failing to give such notice or create any claim or right on behalf of any third party; provided that, if the Noteholders fail to give notice to the Bank Agent of the occurrence of a Sharing Event arising under or with respect to the Note Agreement as set forth above, then a Sharing Date solely as it relates to Other Shared Amounts received with respect to the Loan and Reimbursement Obligations shall be deemed not to have occurred and the requirement of the second paragraph of Section 5(a) to turn over payments received with respect to the Loan and Reimbursement Obligations on and after such Sharing Date shall not be effective until such time as such notice is received; provided further that, if the Bank Agent fails to give notice to the Noteholders of the occurrence of a Sharing Event under or with respect to the Credit Agreement as set forth above, then a Sharing Date solely as it relates to Other Shared Amounts received with respect to the Note Document Obligations shall be deemed not to have occurred and the requirement of the second paragraph of Section 5(a) to turn over payments received with respect to the Note Document Obligations on and after such Sharing Date shall not be effective until such time as such notice is received.

5. Distribution of Proceeds of Collateral After Enforcement.

(a) On and after the occurrence of an Enforcement, (x) all proceeds of Collateral held or received by any Secured Party, (y) any other payments (all such other payments being hereinafter referred to as “Other Shared Amounts”) received, directly or indirectly, by the Bank Agent or any Senior Lender on or with respect to any Senior Indebtedness on and after such Enforcement (which shall be deemed to include, without limitation, (i) any payment under any Guaranty Agreement, (ii) any payment in an insolvency or reorganization proceeding, (iii) the proceeds from any sale of any Senior Indebtedness or any interest therein to any Loan Party or any affiliate of any Loan Party and (iv) any amount received by the Bank Agent or any Senior Lender as a result of its rights of setoff or appropriation made by the Bank Agent or such Senior Lender intending to be applied to any Senior Indebtedness) (but excluding (1) the proceeds of any cash collateral that was deposited with the Bank Agent prior to the Sharing Date to Cash Collateralize Letters of Credit outstanding under the Credit Agreement, (2) except as otherwise provided in paragraph (b) of this Section 5, amounts on deposit in the Special Cash Collateral Account provided for in such paragraph (b) and (3) the proceeds of any assignment or participation effected by a Bank pursuant to Section 13.5 of the Credit Agreement or proceeds received by any Bank as a result of a refinancing of the Loan and Reimbursement Obligations) and (z) all Other Shared Amounts required to be shared as a result of the occurrence of a Sharing Event pursuant to the immediately following paragraph of this Section 5(a) shall be delivered to the Collateral Agent and distributed as follows:

(i) First, to the Collateral Agent in the amount of all unpaid Collateral Agent Obligations;

(ii) Next, to the extent proceeds remain, to the Senior Lenders in the amount of any unreimbursed amounts paid by the Senior

Lenders to any Indemnitee pursuant to Section 2(f) hereof, pro rata in proportion to the respective unreimbursed amounts thereof paid by each Senior Lender;

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(iii) Next, to the extent proceeds remain, to the Bank Agent on behalf of the Bank Agent, the Banks and any other Lender Party (to be further distributed in accordance with the terms of the Credit Agreement) and to the Noteholders in the amount of all unpaid Senior Indebtedness, pro rata in proportion to the respective amounts thereof owed to each Senior Lender (and, for this purpose, Letter of Credit Collateral Obligations shall be considered to have been paid to the extent of any amount then on deposit in the Special Cash Collateral Account provided for in paragraph (b) of this Section 5).

Pursuant to the foregoing clause (z) in the immediately preceding paragraph, any Other Shared Amounts received by any Senior Lender on or after a Sharing Date and no more than 90 days prior to the date of the occurrence of the applicable Enforcement, shall be turned over to the Collateral Agent for distribution in accordance with provisions of clauses (i) through (iii) above upon the occurrence of an Enforcement relating to the Sharing Event causing such Sharing Date to occur but only to the extent that the principal amount of the Senior Indebtedness owed to such Senior Lender on the date of such Enforcement is less than the principal amount of the Senior Indebtedness owed to such Senior Lender on the date of the Sharing Event causing such Sharing Date to occur. For the purposes of the preceding sentence, any collection or payment received by the Bank Agent on behalf of the Banks and the other Lender Parties shall be considered to have been received by the Banks and such other Lender Parties, and applied to pay the Senior Indebtedness owed to the Banks and the other Lender Parties to which such payment or collection relates, whether or not distributed by the Bank Agent to the Banks and the other Lender Parties.

After the Senior Indebtedness has been finally paid in full in cash and all commitments thereunder have been terminated, the balance of proceeds of the Collateral, if any, shall be paid to the Loan Parties, as applicable, or as otherwise required by law.

(b) Any payment pursuant to clause (a)(iii) above with respect to Letter of Credit Collateral Obligations shall be paid to the Bank Agent for deposit in an account (the "Special Cash Collateral Account") to Cash Collateralize (as defined in, and in the amount required by, the Credit Agreement as in effect on the First Amendment Date) the Outstanding Letters of Credit Exposure pursuant to the terms of the Credit Agreement. On each date after the occurrence of an Enforcement on which a payment is made to a beneficiary pursuant to a draw on a Letter of Credit, the Bank Agent shall distribute funds from the Special Cash Collateral Account in an amount not to exceed the amount drawn thereunder and in accordance with the terms of the Credit Agreement. On each date after the occurrence of an Enforcement on which a reduction in the Outstanding Letters of Credit Exposure occurs other than on account of a payment made to a beneficiary pursuant to a draw on a Letter of Credit, then the Bank Agent shall distribute to the Collateral Agent from the Special Cash Collateral Account an amount (determined in good faith by the Bank Agent) equal to the amount of such reduction, which amount shall be distributed as provided in clause (a)(iii), above. At such time as the amount of the Outstanding Letters of Credit Exposure is

reduced to zero (as determined in good faith by the Bank Agent), any amount remaining in the Special Cash Collateral Account, after the distribution therefrom as provided above, shall be distributed by the Bank Agent to the Collateral Agent for distribution as provided in clause (a)(iii), above.

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(c) Each Loan Party, by its acknowledgment hereto, agrees that in the event any payment is made with respect to any Senior Indebtedness that is delivered to the Collateral Agent pursuant to this Section 5, (i) the Senior Indebtedness discharged by such payment shall be the amount or amounts of the Senior Indebtedness with respect to which such payment is distributed pursuant to this Section 5 notwithstanding that the payment may have initially been made by a Loan Party with respect to other Senior Indebtedness, and (ii) such payment shall be deemed to reduce the Senior Indebtedness of any Senior Lenders receiving any distributions from such payment under Section 5(a) or (b) in the amount of such distributions and shall be deemed to restore and reinstate the Senior Indebtedness of any Senior Lender making any such payment under Section 5(a) in the amount of such payment; provided that if for any reason such restoration and reinstatement shall not be binding against any Loan Party, the Senior Lenders agree to take actions as shall have the effect as placing them in the same relative positions as they would have been if such restoration and reinstatement had been binding against the Loan Parties.

6. [Reserved].

7. [Reserved].

8. Certain Credit Extensions and Amendments to Agreements by the Senior Lenders; Actions Related to Collateral and Guaranty Agreements; Other Liens and Security Interests.

(a) The Bank Agent and each Bank agrees that, without the consent in writing of the Required Holders, it will not (i) except for the Guaranty Agreements, retain or obtain the primary or secondary obligations of any other obligor or obligors with respect to all or any part of the Senior Indebtedness, or (ii) from and after the institution of any Bankruptcy Proceeding involving any Loan Party, as respects the Collateral enter into any agreement with such Loan Party with respect to post-petition usage of cash collateral, post-petition financing arrangements or adequate protection. Each Noteholder agrees that, without the consent in writing of the Requisite Lenders, it will not (i) except for the Guaranty Agreements, retain or obtain the primary or secondary obligations of any other obligor or obligors with respect to all or any part of the Senior Indebtedness, or (ii) from and after the institution of any Bankruptcy Proceeding involving any Loan Party, as respects the Collateral enter into any agreement with such Loan Party with respect to post-petition usage of cash collateral, post-petition financing arrangements or adequate protection.

(b) Each of the Bank Agent and each Senior Lender agrees that it will have recourse to the Collateral only through the Collateral Agent, that it shall have no independent recourse thereto and that it shall refrain from exercising any rights or remedies under the Collateral Documents which have or may have arisen or which may arise as a result of an Event of Default or an acceleration of the maturities of the Senior Indebtedness.

(c) None of the Secured Parties shall take or receive a security interest in or lien upon any of the property or assets of any Loan Party as

security for the payment of any Senior Indebtedness other than (i) liens and security interests granted to the Collateral Agent in the Collateral pursuant to the Collateral Documents, (ii) any judgment lien on any

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assets of the Loan Parties other than the Collateral as contemplated by Section 8(d), (iii) liens and security interests of the Bank Agent and the Banks on Cash Collateral (as defined in the Credit Agreement as in effect on the First Amendment Date) securing obligations in respect of Letters of Credit pursuant to the terms of the Credit Agreement as in effect on the First Amendment Date or on account of any Defaulting Lender's (as defined in the Credit Agreement) obligations in respect of Letters of Credit and (iv) any set off rights of the Bank Agent and the Banks arising pursuant to the terms of the Credit Agreement as in effect on the First Amendment Date and, if any such security interest or lien is granted in violation of this paragraph (c), the grantee of such security interest or lien agrees that such security interest or lien shall be deemed to have been granted to the Collateral Agent for the benefit of the Secured Parties. The existence of a common law lien and setoff rights on deposit accounts shall not be prohibited by the provisions of this paragraph (c); provided that any realization on such lien or set off rights and the application of the proceeds thereof after a Sharing Event shall be subject to the provisions of this Agreement.

(d) Nothing contained in this Agreement shall (i) prevent any Senior Lender from imposing a default rate of interest in accordance with the Credit Agreement or the Note Agreement or any Senior Notes, as applicable, or prevent a Senior Lender from raising any defenses in any action in which it has been made a party defendant or has been joined as a third party, except that the Collateral Agent may direct and control any defense directly relating to the Collateral or any one or more of the Collateral Documents as directed by the Required Senior Lenders, which shall be governed by the provisions of this Agreement, (ii) affect or impair the right any Senior Lender may have under the terms and conditions governing the Senior Indebtedness to accelerate and demand repayment of such Senior Indebtedness or (iii) prevent any Senior Lender from agreeing to new or modified covenants and other terms under, or otherwise amending, the Loan Documents or the Note Documents. Subject only to the express limitations set forth in this Agreement, each Senior Lender retains the right to freely exercise its rights and remedies as a general creditor of the Loan Parties in accordance with applicable law and agreements with the Loan Parties, including without limitation the right to file a lawsuit and obtain a judgment therein against the Loan Parties and to enforce such judgment against any assets of the Loan Parties other than the Collateral, provided that the application of the proceeds thereof shall be subject to the provisions of this Agreement. Nothing contained in this Agreement shall be construed as an amendment of, or a waiver of a consent to the departure by any Loan Party from, any provision of a Loan Document or a Note Document.

(e) Subject to the provisions set forth in this Agreement, each Secured Party and its affiliates may (without having to account therefor to any other Secured Party) own, sell, acquire and hold equity and debt securities of the Loan Parties and lend money to and generally engage in any kind of business with the Loan Parties (as if, in the case of Wells Fargo Bank, National Association, it was not acting as Collateral Agent), and, subject to the provisions of this Agreement, the Secured Parties and their affiliates may accept dividends, interest, principal payments, fees and other consideration from the Loan Parties for

services in connection with this Agreement or otherwise without having to account for the same to the other Secured Parties.

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## 9. Accounting; Adjustments.

(a) Each Secured Party agrees to render an accounting to any of the other Secured Parties of the amounts of the outstanding Senior Indebtedness, receipts of payments from the Loan Parties or from the Collateral and of other items relevant to the provisions of this Agreement upon the reasonable request from one of the others as soon as reasonably practicable after such request, giving effect to the application of payments and the proceeds of Collateral as provided in this Agreement.

(b) Each party hereto agrees that (i) to the extent any amount distributed to it hereunder is in excess of the amount due to be distributed to it hereunder, it shall pay to the other parties hereto such amounts so that, after giving effect to such payments, the amounts received by all parties hereto are equal to the amounts to be paid to them hereunder, and (ii) in the event any payment made to any party hereto is subsequently invalidated, declared fraudulent or preferential, set aside or required to be paid to a trustee, receiver, or any other party under any bankruptcy act, state or federal law, common law or equitable cause, then each of the other parties hereto shall pay to such party such amounts so that, after giving effect to the payments hereunder by all such other parties, the amounts received by all parties are not in excess of the amounts to be paid to them hereunder as though any payment so invalidated, declared to be fraudulent or preferential, set aside or required to be repaid had not been made.

10. Notices. Except as otherwise expressly provided herein, any notice required or desired to be served, given or delivered hereunder shall be in writing, and shall be deemed to have been validly served, given or delivered one Business Day after delivery to a courier for next day delivery, upon delivery by courier or upon transmission during business hours (otherwise on the next Business Day) by electronic mail, telecopy or other similar electronic medium to the addresses set forth below the signatures hereto (or such other address as any party hereto shall have notified the other parties in writing in accordance with this Section 10), with a copy to any person or persons set forth below such signature shown as to receive a copy, or to such other address as any party designates to the others in the manner herein prescribed. Any party giving notice to any other party hereunder shall also give copies of such notice to all other parties.

11. Contesting Liens or Security Interests; No Partitioning or Marshalling of Collateral; Contesting Senior Indebtedness.

(a) None of the Secured Parties shall contest the validity, perfection, priority or enforceability of or seek to avoid, have declared fraudulent or have put aside any lien or security interest granted to the Collateral Agent as contemplated hereby, and each Secured Party hereby agrees to cooperate in the defense of any action contesting the validity, perfection, priority or enforceability of such liens or security interests. Each Senior Lender and, by its consent hereto, each Loan Party, shall also use its best efforts to notify the other Secured Parties of any change in the location of any of the Collateral or principal place of business, chief executive office or jurisdiction or organization of any Loan Party or of any change in law which would make it necessary or advisable to file additional

financing statements in another location as against any Loan Party with respect to the liens and

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security interests intended to be created by the Collateral Documents, but the failure of any Senior Lender to do so shall not create a cause of action against the party failing to give such notice or create any claim or right on behalf of any other party hereto and any third party.

(b) Notwithstanding anything to the contrary in this Agreement or in any Collateral Document, neither the Bank Agent nor any Senior Lender shall have the right to have any of the Collateral partitioned, or to file a complaint or institute any proceeding at law or in equity to have any of the Collateral partitioned and each of the Bank Agent and each Senior Lender hereby waives any such right. The Secured Parties hereby waive any and all rights to have the Collateral, or any part thereof, marshalled upon any foreclosure of any of the liens or security interests securing the Senior Indebtedness.

(c) None of the Secured Parties shall contest the validity or enforceability of or seek to avoid, have declared fraudulent or have set aside any Senior Indebtedness. In the event any Senior Indebtedness is invalidated, avoided, declared fraudulent or set aside for the benefit of any Loan Party, the Secured Parties agree that such Senior Indebtedness shall nevertheless be considered to be outstanding for all purposes of this Agreement.

12. No Additional Rights for Loan Parties Hereunder; Senior Indebtedness Held By Borrower and its Affiliates; Credit Bidding. Each Loan Party, by its consent hereto, acknowledges that it shall have no rights under this Agreement. If any Secured Party shall violate the terms of this Agreement, each Loan Party agrees, by its consent hereto, that it shall not use such violation as a defense to any enforcement by any such party against such Loan Party nor assert such violation as a counterclaim or basis for setoff or recoupment against any such party. Each Secured Party and, by its consent hereto, each Loan Party agrees, that any Senior Indebtedness that may at any time be held by any Loan Party or any Affiliate of any Loan Party shall not be considered to be outstanding for any purpose under this Agreement, such Loan Party or Affiliate shall not be a "Senior Lender", "Bank" or "Noteholder" under this Agreement and such Loan Party or Affiliate shall not be entitled to the benefit of any provision of this Agreement. Each Loan Party further agrees that it will not object to, contest or oppose (or cause any other Person to object to, contest or oppose or support any other Person in objecting to, contesting or opposing) in any manner any "credit bid" by any Secured Party of any or all the Senior Indebtedness in any sale of assets of any Loan Party pursuant to Section 363 of the Bankruptcy Code, a plan of reorganization under the Bankruptcy Code or otherwise under any other provision of the Bankruptcy Code or in a similar process in any proceeding under any bankruptcy, reorganization, compromise, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar law.

13. Bankruptcy Proceedings. Nothing contained herein shall limit or restrict the independent right of the Bank Agent or any Senior Lender to initiate an action or actions in any Bankruptcy Proceeding in its individual capacity and to appear or be heard on any matter before the bankruptcy or other applicable court in any such proceeding, including, without limitation, with

respect to any question concerning the post-petition usage of Collateral and post-petition financing arrangements. The Collateral Agent is not entitled to initiate such actions on behalf of the Bank Agent or any Senior Lender or to appear and be heard on any matter before the bankruptcy or other applicable court in any such proceeding as the representative of the Bank Agent or any Senior Lender. The Collateral

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Agent is not authorized in any such proceeding to enter into any agreement for, or give any authorization or consent with respect to, any determination of adequate protection with respect to the Senior Indebtedness or the post-petition usage of Collateral, unless such agreement, authorization or consent has been directed in writing by the Required Senior Lenders. This Agreement shall survive the commencement of any such Bankruptcy Proceeding.

14. Independent Credit Investigation. None of the Secured Parties, nor any of their respective directors, officers, agents or employees, shall be responsible to any of the others for the solvency or financial condition of any Loan Party or the ability of any Loan Party to repay any of the Senior Indebtedness, or for the value, sufficiency, existence or ownership of any of the Collateral, or for the perfection or vesting of any lien or security interest, or for the statements of any Loan Party, oral or written, or for the validity, sufficiency or enforceability of any of the Senior Indebtedness, this Agreement, any Collateral Document, any Loan Document or any Note Document or any other document or agreement executed in connection with or pursuant to any of the foregoing, or for the liens or security interests granted by the Loan Parties to the Collateral Agent in connection therewith. Each of the Bank Agent and each Senior Lender has entered into its respective financial agreements with the Loan Parties based upon its own independent investigation, and makes no warranty or representation to the other Secured Parties, nor does it rely upon any representation by any of the others, with respect to the matters identified or referred to in this Section.

15. Supervision of Obligations. Except to the extent otherwise expressly provided herein, each of the Bank Agent and each Senior Lender shall be entitled to manage and supervise the obligations of the Loan Parties to it in accordance with applicable law and the Bank Agent's or such Senior Lender's practices in effect from time to time without regard to the existence of any other Senior Lender.

16. Turnover of Collateral. If the Bank Agent or any Senior Lender acquires custody, control or possession of any Collateral or any proceeds thereof or any other amounts described in Section 5(a), including, without limitation, Other Shared Amounts, after a Sharing Date other than pursuant to the terms of this Agreement, the Bank Agent or such Senior Lender, as the case may be, shall, subject to the penultimate paragraph of Section 5(a), upon the occurrence of an Enforcement, promptly cause such Collateral or the proceeds thereof to be delivered to or put in the custody, possession or control of the Collateral Agent for disposition and distribution in each case in accordance with the provisions of Section 5 of this Agreement. Until such time as the Bank Agent or such Senior Lender, as the case may be, shall have complied with the provisions of the immediately preceding sentence, the Bank Agent or such Senior Lender, as the case may be, shall be deemed to hold such Collateral and the proceeds thereof and such other amounts described in Section 5(a) in trust for the parties entitled thereto under this Agreement.

17. [Reserved].

18. Amendment. This Agreement and the provisions hereof may be amended, modified or waived only by a writing signed by the Collateral Agent (acting at the

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direction of the Requisite Lenders and the Required Holders), the Bank Agent (with the authorization of the Requisite Lenders) and the Required Holders.

19. Bank Agent Authorized to Act for Banks. The Bank Agent represents, warrants and covenants to the other parties hereto that it is and, the Person acting in the capacity of Bank Agent shall at all times while this Agreement is in effect remain, authorized pursuant to the Credit Agreement to execute this Agreement on behalf of itself and each other Bank and the execution, delivery and performance by the Bank Agent of this Agreement will result in a valid and legally binding obligation of each Bank enforceable in accordance with its terms. It shall be sufficient for all purposes under this Agreement that any distributions, payments or notices to be made or given by the Collateral Agent to the Banks or the Lender Parties shall be given to the Bank Agent on behalf of the Banks and such other Lender Parties, and the Collateral Agent is hereby authorized and directed to make and give such distributions, payments and notices to the Bank Agent.

20. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of each of the parties hereto, including any replacement Collateral Agent, subsequent holders of the Senior Indebtedness and Persons subsequently becoming parties to the Credit Agreement as a "Bank" thereunder or becoming parties to the Note Agreement as a "holder of a Note" thereunder, provided that no Noteholder shall assign or transfer any interest in any Senior Indebtedness or permit such Person to become such a party to the Note Agreement unless such transferee, assignee or Person executes and delivers to the Collateral Agent, the Bank Agent and each other Senior Lender an Assumption Agreement in the form of Exhibit B hereto under which such transferee, assignee or Person assumes the obligations of the transferor or assignor or the obligations of a "Noteholder," hereunder from and after the time of such transfer or assignment or the time such Person becomes a party to the Note Agreement.

21. Limitation Relative to Other Agreements. Nothing contained in this Agreement is intended to impair (a) as between the Noteholders and the Loan Parties, the rights of the Noteholders and the obligations of the Loan Parties under the Note Documents, or (b) as between the Banks and the Loan Parties, the rights of the Banks and the obligations of the Loan Parties under the Loan Documents.

22. Counterparts; Facsimile or Electronic Signatures. This Agreement may be executed in several counterparts and by each party on a separate counterpart, each of which, when so executed and delivered, shall be an original, but all of which together shall constitute but one and the same instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or electronic transmission (pdf) shall be effective as delivery of a manually executed counterpart of this Agreement.

23. Governing Law. THIS AGREEMENT SHALL BE GOVERNED AS TO VALIDITY, INTERPRETATION, ENFORCEMENT AND EFFECT BY THE LAWS OF THE STATE OF NEW YORK (EXCLUDING ANY CONFLICTS OF LAW RULES

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WHICH WOULD OTHERWISE CAUSE THIS AGREEMENT TO BE GOVERNED BY THE LAWS OF ANY OTHER JURISDICTION).

24. Jurisdiction; Waiver of Jury Trial.

(a) Each Secured Party and, by its consent hereto, each Loan Party 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. To the fullest extent permitted by applicable law, each Secured Party and, by its consent hereto, each Loan Party 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) Each Secured Party and, by its consent hereto, each Loan Party agrees, to the fullest extent permitted by applicable law, that a final judgment in any suit, action or proceeding of the nature referred to in Section 24(a) brought in any such court shall be conclusive and binding upon it subject to rights of appeal, as the case may be, and may be enforced in the courts of the United States or the State of New York (or any other courts to the jurisdiction of which it or any of its assets is or may be subject) by a suit upon such judgment.

(c) Each Secured Party and, by its consent hereto, each Loan Party hereby waives trial by jury in any action brought on or with respect to this Agreement or any other document executed in connection herewith.

25. Collateral Agent.

(a) The Collateral Agent shall not have any duties or obligations except those expressly set forth herein and in the Collateral Documents to which the Collateral Agent is a party, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Collateral Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a default, Event of Default, Specified Event of Default or Enforcement has occurred and is continuing;

(ii) 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 Collateral Documents to which the Collateral Agent is as party that the Collateral Agent is required to exercise as directed in writing by the Required Senior Lenders (or such other number or percentage of the Senior Lenders as shall be expressly provided for herein or in the Collateral Documents); provided that the Collateral Agent shall not be required to take any action that, in its opinion or the opinion

of its counsel, may expose the Collateral Agent to liability or that is  
contrary to this

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Agreement or any Collateral 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; and

(iii) shall not, except as expressly set forth herein and in the Collateral Documents to which the Collateral Agent is a party, have any duty to disclose, and shall not be liable for the failure to disclose, in its capacity as Collateral Agent, any information relating to the Loan Parties or any of their Affiliates that is communicated to or obtained by the Collateral Agent or any of its Affiliates.

(b) Notwithstanding any other provision of this Agreement or the Collateral Documents, the Collateral Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request or direction of the Required Senior Lenders (or such other number or percentage of the Senior Lenders as shall be expressly provided for herein or in the Collateral Documents) 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 Collateral Agent shall be deemed not to have knowledge of any default, Event of Default, Specified Event of Default, Sharing Event or Enforcement unless and until notice describing such occurrence is given to a responsible officer of the Collateral Agent within Corporate Trust Services in writing by a Senior Lender or the Bank Agent referring to this Agreement, describing such occurrence and stating that such notice is a “notice of default” or “notice of enforcement.”

(c) The Collateral 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 Collateral Document, (ii) the contents of any certificate, report or other document delivered hereunder or under any Collateral Document or in connection herewith or therewith, (iii) the performance or observance by any person other than the Collateral Agent of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any default, Event of Default, Specified Event of Default or Enforcement, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any Collateral Document or any other agreement, instrument or document or (v) the terms or provisions of the Loan Documents or the Note Documents.

(d) Each Senior Lender and the Bank Agent authorizes and directs the Collateral Agent to enter into the Collateral Documents to which it is a party on the date hereof on behalf of and for the benefit of the Secured Parties.

(e) The Collateral Agent shall never be required to use, risk or advance its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties or the exercise of any of its rights and powers under this Agreement or the Collateral Documents.

(f) In no event shall the Collateral Agent be liable for any consequential, indirect, punitive or special loss or damage of any kind whatsoever (including loss of profit)

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relating to its performance of its duties under this Agreement or any Collateral Document irrespective of whether the Collateral Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

(g) In no event shall the Collateral Agent be responsible or liable for delays or failures in performance resulting from acts beyond its control. Such acts shall include, but not be limited to, acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes, terrorist attacks or other disasters.

(h) Delivery of reports, documents and other information to the Collateral Agent is for informational purposes only and the Collateral Agent's receipt of the foregoing shall not constitute constructive knowledge of any event or circumstance or any information contained therein or determinable from information contained therein. Information contained in notices, reports or other documents delivered to the Collateral Agent and other publicly available information shall not constitute actual or constructive knowledge.

(i) Knowledge of or notices or other documents delivered to Wells Fargo Bank, National Association in any capacity other than as Collateral Agent hereunder shall not constitute knowledge of or delivery to Wells Fargo Bank, National Association in its capacity as Collateral Agent under this Agreement or the Collateral Documents. Knowledge of or notices or other documents delivered to Wells Fargo Bank, National Association in any capacity other than as Bank Agent or Senior Lender hereunder shall not constitute knowledge of or delivery to Wells Fargo Bank, National Association in its capacity as Bank Agent or Senior Lender under this Agreement or the Collateral Documents.

(j) Notwithstanding any provision of this Agreement or any Collateral Document to the contrary, (i) before taking or omitting any action to be taken or omitted by the Collateral Agent hereunder or thereunder, the Collateral Agent may seek the written direction of the Required Senior Lenders (which written direction may be in the form of an email), and the Collateral Agent shall be entitled to rely (and is fully protected in so relying) upon such direction and (ii) whenever reference is made herein or in any Collateral Document to any discretionary action by, consent, designation, specification, requirement or approval of, notice, request or other communication from, or other direction given or action to be undertaken or to be (or not to be) suffered or omitted by the Collateral Agent or to any election, decision, opinion, acceptance, use of judgment, expression of satisfaction or other exercise of discretion, rights or remedies to be made (or not to be made) by the Collateral Agent, it is understood that the Collateral Agent shall be acting at the direction of the Required Senior Lenders and shall be fully protected in acting pursuant to such directions. The Collateral Agent is not liable with respect to any action taken or omitted to be taken by it in accordance with any such direction. If the Collateral Agent requests any such direction, the Collateral Agent shall be entitled to refrain from such action unless and until the Collateral Agent has received such direction, and the Collateral Agent shall not incur liability to any Person by reason of so refraining. In the

absence of an express statement in this Agreement or the Collateral Documents regarding which Senior Lenders shall direct in any circumstance, the direction of the Required Senior Lenders shall apply and be sufficient for all purposes. If the Collateral Agent requests, it must first be indemnified to its

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reasonable satisfaction by the Loan Parties or the Senior Lenders against any and all fees, losses, liabilities and expenses which may be incurred by the Collateral Agent by reason of taking or continuing to take, or omitting, any action directed by any Senior Lender. Any provision of this Agreement or the Collateral Documents authorizing the Collateral Agent to take any action shall not obligate the Collateral Agent to take such action.

(k) If at any time the Collateral Agent is served with any judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process (including, but not limited to, orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of any Collateral), the Collateral Agent is authorized to comply therewith in any manner as it or legal counsel selected by it with due care deems appropriate; and if the Collateral Agent complies with any such judicial or administrative order, judgment, decree, writ or other form of judicial or administrative process, the Collateral Agent shall not be liable to any of the parties hereto or to any other Person even though such order, judgment, decree, writ or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

(l) Whether or not so expressly stated therein, in entering into, or taking (or forbearing from) any action under pursuant to, the Collateral Documents, the Collateral Agent shall have all of the rights, immunities, indemnities and other protections granted to it under this Agreement (in addition to those that may be granted to it under the terms of such other agreement or agreements).

(m) Each party agrees and acknowledges that Wells Fargo Bank, National Association is acting in separate and distinct roles and capacities under this Agreement and the Collateral Documents. In no event shall Wells Fargo Bank, National Association in any role or capacity have any duty or liability for any other role or capacity.

(n) The Collateral 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) reasonably believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Collateral Agent also may rely upon any statement made to it orally or by telephone and reasonably believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel, independent accountants and other experts selected by it with due care, 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.

(o) The Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any Collateral Document by or through any one or more sub agents appointed by the Collateral Agent. The exculpatory provisions of this Section 25 shall apply to any such sub agent.

The Collateral Agent shall not be responsible for the action or inaction or the supervision, negligence or misconduct of any sub-agents that it selects with due care.

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(p) The Collateral Agent may at any time (i) give notice of its resignation to the Bank Agent and the Noteholders or (ii) be removed upon the written request of the Required Senior Lenders sent to the Collateral Agent and the other Senior Lenders. Upon receipt of any such notice of resignation or the removal of the Collateral Agent, the Required Senior Lenders shall appoint a successor Collateral Agent; provided that such successor Collateral Agent is a bank or trust company having capital, surplus and undivided profits of at least \$250,000,000; provided further that, if at any time after the resignation or removal of the Collateral Agent and prior to the appointment of a successor Collateral Agent by the Required Senior Lenders the Collateral Agent, the Requisite Lenders or the Required Holders notify the others that one of the Persons listed on Schedule 25(p) hereto has agreed to serve as successor Collateral Agent on the terms set forth in this Agreement, then the Required Senior Lenders shall be deemed to have agreed to the appointment of such Person as successor Collateral Agent and shall enter into such documentation as is reasonably necessary to evidence such appointment. No resignation or removal of the Collateral Agent shall become effective until a successor Collateral Agent shall have been selected as provided herein and shall have assumed in writing the obligations of the Collateral Agent hereunder and under the Collateral Documents. In the event that a successor Collateral Agent shall not have been selected as provided herein or shall not have assumed such obligations within 30 days after the resignation or removal of the Collateral Agent, then the Collateral Agent may apply to a court of competent jurisdiction for the appointment of a successor Collateral Agent (at the sole cost and expense of the Loan Parties). Upon the acceptance of a successor's appointment as Collateral Agent hereunder, the retiring Collateral Agent shall assign all of the liens upon and security interests in all Collateral under this Agreement and the Collateral Documents, and all right, title and interest of the Collateral Agent under this Agreement and all the Collateral Documents, to the successor Collateral Agent, without recourse to the Collateral Agent or any Senior Lender and at the sole expense of the Loan Parties, and such successor Collateral Agent shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Collateral Agent (other than any rights to indemnity or other payments owed to the retiring Collateral Agent), and the retiring Collateral Agent shall be discharged from all of its duties and obligations hereunder or under the Collateral Documents. After the retiring Collateral Agent's resignation or removal hereunder, the provisions of this Section 25 and Sections 2(c), 2(d), 2(e) and 2(f) shall continue in effect for the benefit of such retiring Collateral Agent in respect of any actions taken or omitted to be taken by it while the retiring Collateral Agent was acting as Collateral Agent. Any Person into which the Collateral Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Collateral Agent shall be a party, or any Person succeeding to the business of the Collateral Agent shall be the successor of the Collateral Agent hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto, except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

(g) The Collateral Agent shall not have any obligation whatsoever to assure that the Collateral exists or is owned (whether in fee or by leasehold) by the Person purporting to own it or is cared for, protected, or insured or has been encumbered or that the Liens granted to the Collateral Agent herein or pursuant to the Collateral Documents have been properly or sufficiently or lawfully created, perfected, protected, or enforced, or

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are entitled to any particular priority. Notwithstanding anything contained in this Agreement or the Collateral Documents or otherwise to the contrary, the Collateral Agent shall not have any duty to (i) file or prepare any financing or continuation statements or record any documents or instruments in any public office for purposes of creating, perfecting or maintaining any Lien or security interest created under the Collateral Documents; (ii) take any necessary steps to preserve rights against any parties with respect to any Collateral (except as directed by the Required Senior Lenders in accordance with this Agreement); or (iii) take any action to protect against any diminution in value of the Collateral (except as directed by the Required Senior Lenders in accordance with this Agreement). The Collateral Agent shall not be responsible for the value of any of the Collateral or for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral. The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under the UCC or otherwise, shall be to deal with it in the same manner as the Collateral Agent deals with similar property for the account of other customers in similar transactions. The Collateral Agent shall be accountable only for amounts that it actually receives as a result of the exercise of its rights and powers.

(r) Not less than five Business Days (or such shorter period as may be agreed to by the Collateral Agent) prior to any payment, distribution or transfer of funds by the Collateral Agent to any Person, the payee shall provide to the Collateral Agent such documentation and information as may be requested by the Collateral Agent (unless such Person has previously provided the documentation or information, and so long as such documentation or information remain accurate and true); provided that the Collateral Agent shall make any such request at least five Business Days before the due date of any such documentation and information. The Collateral Agent shall have no duty, obligation or liability to make any payment to any Person unless it has timely received such documentation and information with respect to such Person, which documentation and information shall be reasonably satisfactory to the Collateral Agent.

(s) The Collateral Agent shall act as the withholding agent under this Agreement. The Collateral Agent shall have the right to withhold taxes from any payments under this Agreement, and shall not be liable for such withholding, as required to comply with applicable law. The Senior Lenders, the Bank Agent and the Loan Parties, as applicable, shall each provide to the Collateral Agent an accurate, correct and complete IRS Form W-9 or IRS Form W-8 (together with any applicable certifications and exhibits), as may be applicable in connection with becoming parties to this Agreement. Wells Fargo Bank, National Association, both in its individual capacity and in its capacity as the Collateral Agent, shall have no liability to any Senior Lender, the Bank Agent or any Loan Party in connection with any tax withholding amounts paid or withheld pursuant to applicable law arising from a failure by such Senior Lender, the Bank Agent or such Loan Party to timely provide an accurate, correct and complete IRS Form W-9 or IRS Form W-8 (together with any applicable documentation). In the event any IRS form, certification or other documentation expires or becomes obsolete or inaccurate in any respect, the Senior Lenders, the Bank Agent or the Loan Parties, as applicable, shall promptly provide to

the Collateral Agent an updated version of such form, certificate or other documentation or promptly notify the Collateral Agent in writing of its legal inability to do so.

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(t) The Collateral Agent shall have no responsibility for interest or income on any funds held by it under this Agreement or any Collateral Document and any funds so held shall be held un-invested pending distribution thereof.

Section 26. Patriot Act. The parties hereto acknowledge that in accordance with the Customer Identification Program (CIP) requirements under the 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 and its implementing regulations, the Collateral Agent, in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Collateral Agent. The parties hereto shall provide the Collateral Agent with such information as it may reasonably request including each party's name, physical address, tax identification number and other information that is necessary to enable the Collateral Agent to identify and verify each party's identity such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information.

Section 27. Termination of this Agreement. Upon the earlier of (i) indefeasible payment and performance in full of the Loan and Reimbursement Obligations and/or the Note Document Obligations, in each case, after giving effect to any refinancing thereof that is secured by a Lien on the Collateral and (ii) the "Security Release Date" as defined in both the Credit Agreement and the Note Agreement, this Agreement shall terminate without further action on the part of the parties hereto, provided that the Collateral is concurrently released under each of the Collateral Documents.

Section 28. Determinations with respect to Required Senior Lenders and Obligations.

(a) Whenever, in connection with the exercise of rights or the performance of its obligations hereunder or under the Collateral Documents, the Collateral Agent shall be required to determine the existence or amount of any Loan and Reimbursement Obligations (including determination of Commitments, Guaranteed Obligations, Revolving Loans, Term Loans, Swing Line Loans or Outstanding Letters of Credit Exposure) or any Note Document Obligations (including the aggregate outstanding amount under the Senior Notes) or to determine if any consent, direction, request, other communication or action has been made or given by the Required Senior Lenders or the Supermajority Lenders or to make any payment or distribution to the Bank Agent or the Senior Lenders, the Collateral Agent may request in writing that such information be furnished to it in writing by the Bank Agent (with respect to the Loan and Reimbursement Obligations or any other information related to the Banks or Lender Parties) or each Noteholder (with respect to the Note Document Obligations or any other information related to such Noteholder) and shall be entitled to make such determination on the basis of the information so furnished; provided that if, notwithstanding such request, the Bank Agent or a Noteholder shall refuse to provide, or fails to provide within 10 Business Days of such request, the requested

information, the Collateral Agent shall be entitled (but not obligated) to make any such determination by such reasonable method as it may determine, including by reliance upon a certificate of a responsible officer of the Borrower. The Collateral Agent may rely conclusively, and shall be fully protected in so relying, on any determination made by it in accordance with the

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provisions of the preceding sentence (or as otherwise directed by a court of competent jurisdiction) and shall have no liability to any Loan Party, any Secured Party or any other Person as a result of such determination or any action taken or not taken pursuant thereto.

(b) Notwithstanding the terms of this Agreement or any Collateral Document, in no event shall the Collateral Agent have any duty, responsibility or liability with respect to (i) the identity of any Bank or other Lender Party, (ii) the identity of any Noteholder, other than any Noteholder that has executed and delivered this Agreement or an Assumption Agreement delivered to the Collateral Agent, (iii) any requirements of the Loan Documents or the Note Documents regarding voting or otherwise taking action, including voting percentages or entitlement to vote, (iv) whether any Senior Indebtedness is held by the Loan Parties any Affiliate of the Loan Parties, or (v) whether any Senior Lender should be disregarded for purposes of voting, and in all such matters, the Bank Agent and the Noteholders shall be solely responsible for ensuring that votes comply with the Loan Documents and the Note Documents, respectively.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

Wells Fargo Bank, National Association, in its capacity as Bank Agent

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

Wells Fargo Bank, National Association, in its capacity as Collateral Agent

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Address for notices:

Wells Fargo Bank, National Association  
Corporate Trust Services  
9062 Old Annapolis Road  
Columbia, Maryland 21045  
Attention of: Jason Prisco or Lance Yeagle-Sunstone  
Hotel  
Email: [ctsbankdebtadministrationteam@wellsfargo.com](mailto:ctsbankdebtadministrationteam@wellsfargo.com)

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**[Initial Noteholders]**

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Address for notices:**

\_\_\_\_\_  
**[include email]**

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**LIST OF NOTEHOLDERS**

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FORM OF ASSUMPTION AGREEMENT

Assumption Agreement

Reference is made to the Intercreditor and Collateral Agency Agreement, dated as of \_\_\_\_\_, 20\_\_ by and among Wells Fargo Bank, National Association (“WFB”) in its capacity as Bank Agent, WFB in its capacity as Collateral Agent and the Noteholders party thereto (the “Intercreditor Agreement”). Terms used in this Assumption Agreement and not otherwise defined herein shall have the meanings given in the Intercreditor Agreement.

The undersigned hereby advises the Collateral Agent, the Bank Agent and the other Senior Lenders that as of the date set forth below the undersigned [is the assignee or transferee of [describe Senior Indebtedness assigned or transferred] from [name of assigning or transferring Senior Lender]] became a party to the Note Agreement as a “holder” thereunder and, pursuant to the provisions of Section 20 of the Intercreditor Agreement, the undersigned hereby assumes the obligations of [[name of assigning or transferring Senior Lender] with respect to [describe Senior Indebtedness assigned or transferred]] a Noteholder under the Intercreditor Agreement from and after the date hereof.

Please be advised that for the purposes of Section 10 of the Intercreditor Agreement the address for notices to the undersigned is as follows:

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

IN WITNESS WHEREOF, the undersigned has caused this Assumption Agreement to be duly executed as of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGMENT OF AND CONSENT AND AGREEMENT  
TO INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT**

**(this "Acknowledgment")**

The undersigned, the Loan Parties described in the Intercreditor and Collateral Agency Agreement, dated as of \_\_\_\_\_, 20\_\_ (the "Intercreditor Agreement"), among the Collateral Agent, the Bank Agent and the Noteholders (each as defined therein), acknowledge and, to the extent required, consent to the terms and conditions of the Intercreditor Agreement. The undersigned Loan Parties do hereby further acknowledge and agree to their joint and several agreements under Sections 2(c), 2(d), 2(e), 5(c) and 12 of the Intercreditor Agreement and acknowledge and agree that no Loan Party is a third-party beneficiary of, or has any rights under, the Intercreditor Agreement. The undersigned hereby further agree that any proceeds or any payment made by any Loan Party to any Senior Lender which is required to be delivered to the Collateral Agent and distributed in accordance with the provisions of Section 5(a) of the Intercreditor Agreement shall be deemed to have been delivered by the Loan Parties to pay the Senior Indebtedness in the amounts in which any such proceeds or payments are allocated under such Section 5(a) notwithstanding the amount initially paid to or received by any particular Senior Lender which such Senior Lender delivered to the Collateral Agent.

This Acknowledgment and any amendment hereof may be executed in several counterparts and by each party on a separate counterpart, each of which, when so executed and delivered, shall be an original, but all of which together shall constitute but one of the same instrument. In proving this Acknowledgment it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. Delivery of an executed counterpart of a signature page to this Acknowledgment by facsimile or electronic transmission shall be effective as a delivery of a manually executed counterpart of this Acknowledgment.

IN WITNESS WHEREOF, the parties below have caused this Acknowledgment to be executed by their respective duly authorized officers as of \_\_\_\_\_, 20\_\_.

**SUNSTONE HOTEL PARTNERSHIP,  
LLC, as Borrower**

**By: \_\_\_\_\_**  
**Title: \_\_\_\_\_**

**SUNSTONE HOTEL INVESTORS, INC.,  
as the Parent**

**By: \_\_\_\_\_**  
**Title: \_\_\_\_\_**



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## [SUBSIDIARY GUARANTORS]

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SUBSIDIARY GUARANTORS

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PLEDGORS

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ACCEPTABLE SUCCESSOR COLLATERAL AGENTS

- Bank of America, N.A.
  - Bank of New York Mellon
  - Citibank, N.A.
  - JPMorgan Chase Bank, N.A.
  - KeyBank National Association
  - PNC Bank, National Association
  - State Street Bank and Trust Company
  - UMB Bank, National Association
  - U.S. Bank National Association
  - Wilmington Trust, National Association
-



For Additional Information:

Bryan Giglia  
Sunstone Hotel Investors, Inc.  
(949) 382-3036

Aaron Reyes  
Sunstone Hotel Investors, Inc.  
(949) 382-3018

**SUNSTONE HOTEL INVESTORS SUCCESSFULLY AMENDS UNSECURED DEBT AGREEMENTS AND ACHIEVES ADDITIONAL FLEXIBILITY TO NAVIGATE THE CURRENT ENVIRONMENT**

IRVINE, CA – July 16, 2020 – Sunstone Hotel Investors, Inc. (the “Company” or “Sunstone”) (NYSE: SHO) announced today that it has completed amendments to the agreements governing its in-place unsecured debt, including the Company’s \$500 million revolving credit facility, \$185 million of funded term loan facilities and \$240 million of outstanding private placement senior notes.

Key terms of the amended agreements include:

- Waiver of required financial covenants through the end of the first quarter of 2021, with quarterly testing resuming for the period ending June 30, 2021 (the “Covenant Relief Period”). The Company can elect to terminate the Covenant Relief Period early, subject to the achievement of certain financial covenants;
- Modification of the required quarterly-tested financial covenants to ease compliance for the three quarters following the end of the Covenant Relief Period;
- Continued payment of existing preferred stock dividends and the ability to issue up to \$200 million of additional preferred stock subject to satisfaction of certain conditions;
- Unlimited ability to fund future acquisitions with proceeds from the issuance of common equity or through the sale of unencumbered assets;
- Flexibility to invest up to \$250 million into acquisitions (in addition to equity funded or sale proceeds acquisitions) subject to maintaining certain minimum liquidity thresholds;
- Ability to invest up to \$110 million into capital improvements through the end of the Covenant Relief Period;
- Ability to pay dividends on common stock subject to the minimum amount required to maintain REIT status and comply with IRS regulations;
- Addition of a 25-basis point LIBOR floor for the remaining term of the revolving credit facility and term loan facilities. The applicable LIBOR spread for each of the facilities will be fixed during the

Covenant Relief Period. In addition, there will be a 1.00% increase in the annual interest rate of the senior notes during the Covenant Relief Period which will decrease to 0.75% following the Covenant Relief Period until the Company's leverage ratio is below 5.0x;

- Addition of certain restrictions and covenants during the Covenant Relief Period including, but not limited to, restrictions on share repurchase, certain required mandatory debt prepayments on asset sales and equity issuances (if funds are not used to purchase assets), and restrictions on the incurrence of new indebtedness.

Prior to the closing of the unsecured debt agreement amendments, the Company repaid \$250 million of the previously outstanding \$300 million balance on its revolving credit facility.

John Arabia, President and CEO, stated, "We are pleased to announce the favorable amendment of our unsecured debt agreements and appreciate the overwhelming support from our long-standing lender and noteholder relationships, especially during this challenging time period. The amended agreements provide the Company with the necessary near-term covenant relief and the flexibility to invest in acquisition opportunities that arise."

#### **About Sunstone Hotel Investors, Inc.**

Sunstone Hotel Investors, Inc. is a real estate investment trust ("REIT") that invests in Long-Term Relevant Real Estate® within the hospitality sector. Sunstone's hotels are primarily in the urban and resort upper upscale segment and are predominantly operated under nationally recognized brands such as Marriott, Hilton and Hyatt. For further information, please visit Sunstone's website at [www.sunstonehotels.com](http://www.sunstonehotels.com).

#### **Forward-Looking Statements**

This press release contains forward-looking statements within the meaning of federal securities laws and regulations. These forward-looking statements are identified by their use of terms and phrases such as "anticipate," "believe," "continue," "could," "estimate," "expect," "intend," "may," "plan," "predict," "project," "should," "will" and other similar terms and phrases, including opinions, references to assumptions and forecasts of future results. Forward-looking statements are not guarantees of future performance and involve known and unknown risks, uncertainties and other factors that may cause the actual results to differ materially from those anticipated at the time the forward-looking statements are made. These risks include, but are not limited to: the short-term and long-term impact on the Company's business of the COVID-19 global pandemic and the response of governments and the Company to the outbreak; general economic and business conditions, including a U.S. recession, trade conflicts and tariffs between the U.S. and its trading partners, changes in the European Union or global economic slowdown, which may diminish the desire for leisure travel or the need for business travel, as well as any type of flu or disease-related pandemic or the adverse effects of climate change, affecting the lodging and travel industry, internationally, nationally and locally; the Company's need to operate as a REIT and comply with other applicable laws and regulations, including new laws, interpretations or court decisions that may change the federal or state tax laws or the federal or state income tax consequences of the Company's qualification as a REIT; rising hotel operating costs due to labor costs, workers' compensation and health-care related costs, including the impact of the Patient Protection and Affordable Care Act or its potential replacement, utility costs, insurance and unanticipated costs such as acts of nature and their consequences and other factors that may not be offset by increased room rates; relationships with, and the requirements and reputation of, the Company's franchisors and hotel brands; relationships with, and the requirements, performance and reputation of, the managers of the Company's hotels; the ground, building or airspace leases for four of the 19 Hotels the Company has interests in as of the date of this release; competition for the acquisition of hotels, and the Company's ability to complete acquisitions and dispositions; performance of hotels after they are acquired; new hotel supply, or alternative lodging options such as timeshare, vacation rentals or sharing services such as Airbnb, in the Company's markets, which could harm its occupancy levels and revenue at its hotels; competition from hotels not owned by the Company; the need for renovations, repositionings and other capital expenditures for the Company's hotels; the impact, including any delays, of renovations and repositionings on hotel operations; changes in the Company's business strategy or acquisition or disposition plans; the Company's level of debt, including secured, unsecured, fixed and variable rate debt; financial and other covenants in the Company's debt and preferred stock; the Company's hotels may become impaired, or its hotels which have previously become impaired may become further impaired in the future, which may adversely affect its financial condition and results of operations; volatility in the capital markets and the effect on lodging demand or the Company's ability to obtain capital on favorable terms or at all; potential adverse tax consequences in the event that the Company's operating leases with its taxable REIT subsidiaries are not held to have been made on an arm's-length basis; system security risks, data protection breaches, cyber-attacks, including those impacting the Company's hotel managers or other third parties, and systems integration issues; other events beyond the Company's control, including natural disasters, terrorist attacks or civil unrest; and other risks and uncertainties associated with our business described in the Company's filings with the Securities and



Exchange Commission. Although the Company believes the expectations reflected in such forward-looking statements are based upon reasonable assumptions, it can give no assurance that the expectations will be attained or that any deviation will not be material. All forward-looking information provided herein is as of the date of this release, and the Company undertakes no obligation to update any forward-looking statement to conform the statement to actual results or changes in the Company's expectations.

This release should be read together with the consolidated financial statements and notes thereto included in our most recent reports on Form 10-K and Form 10-Q. Copies of these reports are available on our website at [www.sunstonehotels.com](http://www.sunstonehotels.com) and through the SEC's Electronic Data Gathering Analysis and Retrieval System ("EDGAR") at [www.sec.gov](http://www.sec.gov).

**Document and Entity  
Information**

**Jul. 15, 2020**

<a href="#">Document Type</a>	8-K
<a href="#">Amendment Flag</a>	false
<a href="#">Document Period End Date</a>	Jul. 15, 2020
<a href="#">Entity Registrant Name</a>	Sunstone Hotel Investors, Inc.
<a href="#">Entity Central Index Key</a>	0001295810
<a href="#">Entity Incorporation, State or Country Code</a>	MD
<a href="#">Entity File Number</a>	001-32319
<a href="#">Entity Tax Identification Number</a>	20-1296886
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<a href="#">Entity Address, Address Line Two</a>	21st Floor
<a href="#">Entity Address, City or Town</a>	Irvine
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<a href="#">Local Phone Number</a>	330-4000
<a href="#">Written Communications</a>	false
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<a href="#">Security Exchange Name</a>	NYSE
<a href="#">Series E Cumulative Redeemable Preferred Stock</a>	
<a href="#">Title of 12(b) Security</a>	Series E Cumulative Redeemable Preferred Stock, \$0.01 par value
<a href="#">Trading Symbol</a>	SHO.PRE
<a href="#">Security Exchange Name</a>	NYSE
<a href="#">Series F Cumulative Redeemable Preferred Stock</a>	
<a href="#">Title of 12(b) Security</a>	Series F Cumulative Redeemable Preferred Stock, \$0.01 par value
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