FORM 8-K12B

Notification that a class of securities of successor issuer is deemed to be registered pursuant to section 12(b)

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FILER

KIMCO REALTY CORP
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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) January 3, 2023 (January 1, 2023)

KIMCO REALTY CORPORATION
(Exact name of registrant as specified in its charter)

Maryland	**1-10899**	**13-2744380**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

500 N. Broadway
Suite 201
Jericho, NY 11753
(Address of principal executive offices) (Zip Code)
Registrant's telephone number, including area code: **(516) 869-9000**

Not Applicable
(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, par value $.01 per share.	KIM	New York Stock Exchange
Depositary Shares, each representing one-thousandth of a share of 5.125% Class L Cumulative Redeemable, Preferred Stock, $1.00 par value per share.	KIMprL	New York Stock Exchange
Depositary Shares, each representing one-thousandth of a share of 5.250% Class M Cumulative Redeemable, Preferred Stock, $1.00 par value per share.	KIMprM	New York Stock Exchange

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

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

EXPLANATORY NOTE

As previously disclosed, on December 15, 2022, the company formerly known as Kimco Realty Corporation, a Maryland corporation ("Old Kimco"), entered into an Agreement and Plan of Merger (the "Merger Agreement") with the company formerly known as New KRC Corp., which was a Maryland corporation and wholly-owned subsidiary of Old Kimco ("Holdco"), and KRC Merger Sub Corp., which was a Maryland corporation and wholly-owned subsidiary of Holdco ("Merger Sub"). The purpose of the transactions contemplated by the Merger Agreement was for Old Kimco to implement a corporate reorganization into a new holding company structure commonly referred to as an umbrella partnership real estate investment trust, or UPREIT (the "Reorganization").

Effective as of 12:01 a.m., New York time, on January 1, 2023, pursuant to the Merger Agreement, Merger Sub merged with and into Old Kimco, with Old Kimco continuing as the surviving entity and a wholly-owned subsidiary of Holdco (the "Merger"). In connection with the Merger, Old Kimco's name was changed to KRC Interim Corp., and Holdco's name was changed to Kimco Realty Corporation. In this Current Report, we refer to Holdco after the Merger as "New Kimco."

Effective on January 3, 2023, Old Kimco converted from a Maryland corporation into a Delaware limited liability company known as Kimco Realty OP, LLC (the "LLC Conversion"). In this Current Report, we refer to Old Kimco after the effectiveness of the LLC Conversion as "Kimco OP."

The purpose of this Current Report on Form 8-K is to disclose matters in connection with the completion of the Merger and the LLC Conversion and to provide notice pursuant to Rule 12g-3(f) under the Securities Exchange Act of 1934 (the "Exchange Act") that, following the Merger, New Kimco became the successor issuer to Old Kimco. More specifically, pursuant to Exchange Act Rule 12g-3(a), the shares of New Kimco Common Stock, the New Kimco Class L Depositary Shares and the New Kimco Class M Depositary Shares (each, as defined below) issued in connection with the Merger are deemed registered under Section 12(b) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.

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

Merger

As disclosed above, the Merger became effective on January 1, 2023. The Merger, which was unanimously approved by Old Kimco's board of directors on December 14, 2022, was conducted in accordance with Section 3-106.2 of the Maryland General Corporation Law. Accordingly, the Merger did not require the approval of Old Kimco's stockholders, and the Merger did not give rise to statutory dissenters' rights. The Merger is expected to qualify as a reorganization under Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and Old Kimco's stockholders are not expected to recognize gain or loss for federal income tax purposes as a result of the Merger. Since the Merger, New Kimco has been organized and operated in a manner intended to enable it to qualify as a real estate investment trust (a "REIT") for federal income tax purposes.

Treatment of Outstanding Shares in the Merger

At 12:01 a.m., New York time, on January 1, 2023, the effective time of the Merger (the "Effective Time"), (i) each issued and outstanding share of common stock, par value $0.01, of Old Kimco ("Old Kimco Common

Stock"), 5.125% Class L Cumulative Redeemable Preferred Stock, par value $1.00 per share, of Old Kimco ("Old Kimco Class L Preferred Stock") and 5.25% Class M Cumulative Redeemable Preferred Stock, par value $1.00 per share, of Old Kimco ("Old Kimco Class M Preferred Stock") immediately prior to the Effective Time was converted automatically into one corresponding issued and outstanding share of common stock, par value $0.01 per share, of New Kimco ("New Kimco Common Stock"), one corresponding issued and outstanding share of 5.125% Class L Cumulative Redeemable Preferred Stock, par value $1.00 per share, of New Kimco ("New Kimco Class L Preferred Stock") and one corresponding issued and outstanding share of 5.25% Class M Cumulative Redeemable Preferred Stock, par value $1.00 per share, of New Kimco ("New Kimco Class M Preferred Stock"), respectively, having the same designations, rights, powers and preferences and the qualifications, limitations and restrictions as the corresponding security of Old Kimco, (ii) each share of common stock of Merger Sub outstanding immediately prior to the Effective Time was converted automatically into one corresponding share of common stock of Old Kimco, (iii) each share of common stock of New Kimco outstanding immediately prior to the Effective Time was cancelled, (iv) each outstanding depositary share representing one-thousandth of a share of Old Kimco Class L Preferred Stock (the "Old Kimco Class L Depositary Shares") was deemed to represent one-thousandth of a share of New Kimco Class L Preferred Stock (the "New Kimco Class L Depositary Shares") and (v) each outstanding depositary share representing one-thousandth of a share of Old Kimco Class M Preferred Stock (the "Old Kimco Class M Depositary Shares") was deemed to represent one-thousandth of a share of New Kimco Class M Preferred Stock (the "New Kimco Class M Depositary Shares").

Accordingly, upon consummation of the Merger, Old Kimco's shareholders immediately prior to the consummation of the Merger became shareholders of New Kimco, and Old Kimco became a wholly owned subsidiary of New Kimco. The conversion of stock took place automatically without an exchange of stock certificates at the Effective Time. Accordingly, any certificates representing outstanding shares of Old Kimco Common Stock, Old Kimco Class L Preferred Stock and Old Kimco Class M Preferred Stock will be deemed to represent the same number and type of shares of New Kimco. New Kimco Common Stock will trade on the New York Stock Exchange (the "NYSE") on an uninterrupted basis under the existing symbol "KIM" and will retain the CUSIP number of 49446R109. The New Kimco Class L Depositary Shares and the New Kimco Class M Depositary Shares will also trade on the NYSE on an uninterrupted basis under their respective existing symbols, "KIMprL" and "KIMprM," and will retain their respective existing CUSIP numbers.

The Articles of Amendment and Restatement of New Kimco and Amended and Restated Bylaws of New Kimco from and after the Effective Time are substantially identical to the articles of incorporation and bylaws of Old Kimco immediately before the Effective Time.

Dividends

As previously disclosed on October 27, 2022, the board of directors of Old Kimco declared quarterly dividends with respect to: (i) Old Kimco Class L Depositary Shares (the "Class L Dividend") and (ii) Old Kimco Class M Depositary Shares (the "Class M Dividend"), each of which is payable on January 17, 2023 (the "Dividend Payment Date") to holders of record on December 30, 2022 (the "Dividend Payment Date"). New Kimco will pay on the Dividend Payment Date the Class L Dividend and the Class M Dividend to the applicable holders as of the Dividend Record Date.

Outstanding Equity Plans, Awards and Related Arrangements.

Immediately following the Effective Time, pursuant to the Merger Agreement, Old Kimco assigned to New Kimco, and New Kimco assumed from Old Kimco, all of Old Kimco's rights and obligations under (i) the Kimco Realty Corporation Executive Severance Plan, (ii) the Restated Kimco Realty Corporation 2010 Equity Participation Plan (as amended and/or restated the "2010 Plan") and (iii) the Kimco Realty Corporation Amended and Restated 2020 Equity Participation Plan (as amended and/or restated , the "2020 Plan"), in addition to all outstanding awards and award agreements thereunder. In connection with the Reorganization, the 2020 Plan was amended and restated to permit the issuance of awards in Kimco OP that are intended to qualify as "profits interests" for U.S. federal income tax purposes.

The foregoing descriptions of the Executive Severance Plan, the 2010 Plan and the 2020 Plan, as amended and/or restated, are qualified in their entirety by reference to the Executive Severance Plan, the 2010 Plan and the 2020 Plan filed herewith as Exhibits 10.3 and 10.4; 10.5, 10.6 and 10.7; and 10.8, respectively, and incorporated by reference herein.

Credit Agreement Amendment and Guaranty

On January 3, 2023, Kimco OP, as successor by conversion to Old Kimco, New Kimco and JPMorgan Chase Bank, N.A., as administrative agent (the "Administrative Agent") entered into Amendment No. 3 (the "Amendment") to that certain Amended and Restated Credit Agreement dated as of February 27, 2020 (as previously amended, the "Existing Credit Agreement") among Old Kimco, the Administrative Agent and the other parties thereto. The Amendment provides for certain changes to the Existing Credit Agreement to permit and give effect to the consummation of the Reorganization.

In connection with the Amendment and the Reorganization, New Kimco entered into that certain Parent Guarantee, dated as of January 1, 2023, pursuant to which it agreed to guarantee the obligations of Old Kimco and any other borrowers under the Credit Agreement.

The foregoing summary of the Amendment and the Parent Guarantee does not constitute a complete description of, and is qualified in its entirety by reference to, the terms and conditions of the Amendment and the Parent Guarantee, which are attached hereto as Exhibits 10.1 and 10.2, respectively.

LLC Conversion

As disclosed above, the LLC Conversion became effective as of January 3, 2023. New Kimco is the managing member of, owns 100% of the limited liability company interests of and exercises exclusive control over Kimco OP. In the future, Kimco OP may, from time to time, acquire properties from sellers by issuing limited liability company interests of Kimco OP to such sellers in exchange for a contribution of those properties to Kimco OP, which exchange may be tax-deferred in whole or in part. Such membership interests will generally entitle their holders to receive the same distributions (on a per unit basis) as shares of New Kimco Common Stock (on a per share basis), and the holders of such interests will generally have the right to exchange the interests for cash or shares of New Kimco Common Stock, at New Kimco's option. Kimco OP may also issue certain equity awards in the form of membership interests to directors, officers, employees and certain other service providers of New Kimco, which will also generally be convertible into cash or shares of New Kimco Common Stock in accordance with the terms of such award.

Following the Reorganization, including both the Merger and the LLC Conversion, the consolidated assets and liabilities of New Kimco will be identical to the consolidated assets and liabilities of Old Kimco immediately prior to the Reorganization, and the officers and directors of New Kimco will be identical to the officers and directors of Old Kimco immediately prior to the Reorganization. New Kimco will generally not hold any assets directly other than limited liability interests of Kimco OP and certain *de minimis* assets, including those that may be held for certain administrative functions. None of the properties owned by Old Kimco or its subsidiaries or any interests therein have been or will be transferred as part of the Reorganization. All material indebtedness of Old Kimco immediately prior to the Reorganization is expected to remain indebtedness of Kimco OP after the Reorganization.

LLC Agreement

At the effective time of the LLC Conversion, New Kimco and Kimco OP entered into the Limited Liability Company Agreement of Kimco Realty OP, LLC (the "LLC Agreement"). A summary of the material terms of the LLC Agreement is set forth below. This summary is not complete and is subject to and qualified in its entirety by reference to the applicable provisions of Delaware law and the LLC Agreement, which is attached hereto as Exhibit 3.5.

General

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

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

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

Purpose, Business and Management

Kimco OP was formed for the purpose of conducting any business, enterprise or activity permitted by or under the Delaware Limited Liability Company Act (6 Del. C. §18-101, et seq.) (the "Act").

In general, board of directors of the managing member manages the business and affairs of Kimco OP by directing its business and affairs (including through the officers of the managing member), in its capacity as the sole managing member of Kimco OP. Except as otherwise expressly provided in the LLC Agreement and subject to the rights of holders of any class or series of membership interest, all management powers over the business and affairs of Kimco OP are exclusively vested in the managing member, in its capacity as the sole managing member of Kimco OP. The managing member may not be removed as the managing member of Kimco OP, with or without cause, without its consent, which it may give or withhold in its sole and absolute discretion.

Restrictions on Managing Member's Authority

The LLC Agreement prohibits the managing member, in its capacity as managing member, from taking any action that would make it impossible to carry out the ordinary business of Kimco OP, except as provided under the LLC Agreement or with the consent of the non-managing members.

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

- adversely modify in any material respect the limited liability of a member;

- alter the rights of any member to receive the distributions to which such member is entitled, or alter the allocations specified in the LLC Agreement, except to the extent permitted by the LLC Agreement including in connection with the creation or issuance of any new class or series of membership interest or to effect or facilitate a permitted termination transaction;

- alter or modify the redemption rights of holders of common units (except as permitted under the LLC Agreement to effect or facilitate a permitted termination transaction);

- alter or modify the provisions governing the transfer of the managing member's membership interest in Kimco OP (except as permitted under the LLC Agreement to effect or facilitate a permitted termination transaction);

- remove certain provisions of the LLC Agreement relating to the requirements for the managing member to qualify as a REIT or permitting the managing member to avoid paying tax under Sections 857 or 4981 of the Code; or

- amend the provisions of the LLC Agreement requiring the consent of each affected member before taking any of the actions described above or the related definitions specified in the LLC Agreement (except as permitted under the LLC Agreement to effect or facilitate a permitted termination transaction).

Additional Members

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

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

Ability to Engage in Other Businesses; Conflicts of Interest

The LLC Agreement provides that the managing member may not conduct any business other than in connection with the ownership, acquisition and disposition of membership interests, the management of the business and affairs of Kimco OP, its operation as a reporting company with a class (or classes) of securities registered under the Exchange Act, its operations as a REIT, the offering, sale, syndication, private placement or public offering of stock, bonds, securities or other interests, financing or refinancing of any type related to Kimco OP or its assets or activities and such activities as are incidental to those activities discussed above. In general, the managing member must contribute any assets or funds that it acquires to Kimco OP whether as capital contributions, loans or otherwise, as appropriate, in exchange for additional membership interests. The managing member may, however, in its sole and absolute discretion, from time to time directly or indirectly hold or acquire assets or conduct property, leasing, construction or other management services or employee-related activities in its own name or otherwise other than through Kimco OP so long as the managing member takes commercially reasonable measures to ensure that the economic benefits and burdens of such property, services or activities are otherwise vested in Kimco OP.

Distributions

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

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

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

Exculpation and Indemnification of Managing Member

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

In addition, the LLC Agreement requires Kimco OP, to the fullest extent a Maryland corporation may indemnify and advance expenses to directors and officers of a Maryland corporation under the laws of the State of Maryland, to indemnify, and to pay or reimburse the reasonable expenses in advance of a final disposition of a proceeding to, the managing member, its directors and officers, officers of Kimco OP and any other person designated by the managing member, who is made or threatened to be made a party to, or witness in, a proceeding by reason of his or her service to Kimco OP. Kimco OP is not required to indemnify or advance funds to any person with respect to any action initiated by the person seeking indemnification without its approval (except for any proceeding brought to enforce such person's right to indemnification under the LLC Agreement) or if the person is found to be liable to Kimco OP on any portion of any claim in the action.

Business Combinations and Dissolution of Kimco OP

Subject to the limitations on the transfer of the managing member's interest in Kimco OP described in the LLC Agreement, the managing member generally have the exclusive power to cause Kimco OP to merge, reorganize, consolidate, sell all or substantially all of its assets or otherwise combine its assets with another entity. The managing member may also elect to dissolve Kimco OP without the consent of any member. However, in connection with the acquisition of properties from persons to whom Kimco OP issues common units or other membership interests as part of the purchase price, in order to preserve such persons' tax deferral, Kimco OP may contractually agree, in general, not to sell or otherwise transfer the properties for a specified period of time, or in some instances, not to sell or otherwise transfer the properties without compensating the sellers of the properties for their loss of the tax deferral.

Redemption Rights of Qualifying Parties

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

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

Transfers of Membership Interests

Restrictions on Transfers by Members. Until the expiration of 14 months after the date on which a member acquires a membership interest, the member generally may not directly or indirectly transfer all or any portion of such membership interest without its consent, which the managing member may give or withhold in its sole and absolute discretion, except for certain permitted transfers to certain affiliates, family members and charities, and certain pledges of membership interests to lending institutions in connection with bona fide loans. After the expiration of such initial holding period, the member will have the right to transfer all or any portion of its membership interest without the managing member's consent to any person that is an "accredited investor," within meaning set forth in Rule 501 promulgated under the Securities Act, upon ten business days prior notice to the managing member, subject to the satisfaction of conditions specified in the LLC agreement, including minimum transfer requirements and the managing member's right of first refusal.

Restrictions on Transfers by the Managing Member. Except as described below, any transfer of all or any portion of the managing member's interest in Kimco OP, whether by sale, disposition, statutory merger or consolidation, liquidation or otherwise, must be approved by the consent of a majority in interest of the members (excluding the managing member and any member 50% or more of whose equity is owned, directly or indirectly, by the managing member). Subject to the rights of holders of any class or series of membership interest, the managing member may transfer all (but not less than all) of its membership interest without the consent of the members in connection with a permitted termination transaction, which is a merger, consolidation or other combination of its assets with another entity, a sale of all or substantially all of the managing member's assets or a reclassification, recapitalization or change in any outstanding shares of its stock or other outstanding equity interests, if:

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

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

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

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

The managing member may not voluntarily withdraw as the managing member of Kimco OP without the consent of a majority in interest of the members (excluding the managing member and any members 50% or more of whose equity is owned, directly or indirectly, by the managing member) other than upon the transfer of its entire interest in Kimco OP and the admission of its successor as a managing member of Kimco OP.

LTIP Units

As the managing member, the managing member is authorized to issue a class of units of membership interest designated as "LTIP Units" to persons who provide services to or for the benefit of Kimco OP, for such consideration or for no consideration as the managing member may determine to be appropriate, and the managing member may admit such persons as members of Kimco OP, without the approval or consent of any member. Unless a capital contribution is made with respect to an LTIP Units or the managing member determined otherwise, each LTIP unit is intended to qualify as a "profits interest" in Kimco OP within the meaning of the Internal Revenue Code of 1986, as amended, the Treasury Regulations, and any published guidance by the IRS with respect thereto. Further, the managing member may cause Kimco OP to issue LTIP Units in one or more classes or series, with such terms as the managing member may determine, without the approval or consent of any member. LTIP Units may be subject to vesting, forfeiture and restrictions on transfer and receipt of distributions pursuant to the terms of any applicable equity-based plan and the terms of any award agreement relating to the issuance of the LTIP Units.

Conversion Rights. Vested LTIP Units are convertible at the option of each member and certain assignees of members (in each case, that hold vested LTIP Units) into common units, upon notice to the managing member and Kimco OP, to the extent that the capital account balance of the LTIP unitholder with respect to all of his or her LTIP Units is at least equal to the managing member's capital account balance with respect to an equal number of common units. The managing member may cause Kimco OP to convert vested LTIP Units eligible for conversion into an equal number of common units at any time, upon a notice given to the holder of the LTIP Units at least 3 calendar days prior to the conversion date specified in the notice.

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

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

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

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

Preferred Units

Kimco OP is authorized to issue Class L and Class M preferred units. Holders of preferred units are entitled to receive preferential cash distributions in an amount to be fixed at the time of issuance of such units that substantially similar those of their corresponding outstanding New Kimco Class L Preferred Stock or New Kimco Class M Preferred Stock, respectively (the "applicable preferred stock"). Holders of Class L and Class M preferred units are also entitled to receive a liquidation preference in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of Kimco OP that are substantially similar to those of the applicable preferred stock (but, in the case of distributions upon the liquidation, dissolution or winding up of the affairs of Kimco OP, only to the extent consistent with a liquidation in accordance with positive capital account balances). Class L and Class M preferred units are also subject to redemption by Kimco OP in connection with the managing member's reacquisition of shares of applicable preferred stock. The Class L and Class M preferred units will not be listed on any exchange nor are they quoted on any national market system. The Class L and Class M preferred units will be held by the managing member.

Conversion Rights. Class L and Class M preferred units will be converted into common units in the event of a conversion of the applicable preferred stock, at the option of holders of shares of such applicable preferred stock pursuant to the articles supplementary designating the terms of such applicable preferred stock.

Transfer. Class L and Class M preferred units are transferrable to the same extent as common units.

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

Supplemental Indentures

In connection with the Reorganization, on January 3, 2023, Old Kimco and New Kimco entered into supplemental indentures (the "Supplemental Indentures") with The Bank of New York Mellon Trust Company, N.A. (the "Trustee"), to (i) the Indenture, dated as of September 3, 1993, by and among Old Kimco (formerly known as Kimco Realty Corporation) and IBJ Schroder Bank & Trust Company (predecessor in interest to the Trustee) (the "Kimco Indenture"), and (ii) the Indenture, dated as of May 1, 1995, by and among Weingarten Realty Investors (predecessor in interest to Old Kimco (formerly known as Kimco Realty Corporation)) and Texas Commerce Bank National Association (predecessor in interest to the Trustee) (the "WRI Indenture" and, together with the Kimco Indenture, the "Indentures") to have New Kimco provide a full and unconditional guarantee of Old Kimco's obligations under each series of senior notes previously issued and outstanding under the Indentures, permit New Kimco to provide such a guarantee in connection with future issuance of senior notes under the Indentures and make certain other changes to the Indentures consistent with the foregoing. The foregoing summary of the Supplemental Indentures does not constitute a complete description of, and is qualified

in its entirety by reference to, the terms and conditions of each of the Supplemental Indentures, which are filed herewith as Exhibits 4.1 and 4.2, respectively.

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

In connection with the Merger, Old Kimco notified the NYSE that the Merger had been completed. As noted above, the shares of New Kimco Common Stock will trade on the NYSE on an uninterrupted basis under the symbol "KIM," the same symbol formerly used for the shares of Old Kimco Common Stock, and the same CUSIP number of 49446R109. The New Kimco Class L Depositary Shares will trade on the NYSE on an uninterrupted basis under the symbol "KIMprL," which is the same symbol formerly used for the Old Kimco Class L Depositary Shares, under the same CUSIP number of 49446R737. The New Kimco Class M Depositary Shares will trade on the NYSE on an uninterrupted basis under the symbol "KIMprM," which is the same symbol formerly used for the Old Kimco Class M Depositary Shares, under the same CUSIP number of 49446R711. The NYSE is expected to file with the Securities and Exchange Commission (the "Commission") an application on Form 25 to delist the shares of Old Kimco Common Stock, the Old Kimco Class L Depositary Shares and the Old Kimco Class M Depositary Shares from the NYSE and to deregister the shares of Old Kimco Common Stock, the Old Kimco Class L Depositary Shares and the Old Kimco Class M Depositary Shares under Section 12(b) of the Exchange Act. Old Kimco intends to file with the Commission a certificate on Form 15 requesting that the shares of Old Kimco Common Stock, the Old Kimco Class L Depositary Shares and the Old Kimco Class M Depositary Shares be deregistered under the Exchange Act, and that Old Kimco's reporting obligations under Section 15(d) of the Exchange Act be suspended (except (i) to the extent of the succession of New Kimco to the Exchange Act Section 12(b) registration and reporting obligations of Old Kimco as noted above under Explanatory Note and (ii) with respect to Old Kimco's (now Kimco OP's) outstanding senior notes and debentures).

Following the Reorganization, including both the Merger and the LLC Conversion, we expect each of New Kimco and Kimco OP to have a separate Exchange Act reporting obligation. We expect New Kimco and Kimco OP to file combined quarterly reports on Form 10-Q and annual reports on Form 10-K beginning with the annual report filed with respect to the fiscal year ending December 31, 2022. New Kimco expects to make filings with the Commission under Old Kimco's prior CIK (0000879101), and Kimco OP will make filings with the Commission under a new CIK (0001959472).

Item 3.03 Material Modification of Rights of Securityholders.

The information set forth under and/or incorporated by reference into Items 1.01 and 3.01 above is incorporated hereunder by reference.

Item 5.01 Changes in Control of the Registrant.

The information set forth under and/or incorporated by reference into Items 1.01 and 3.01 above is incorporated hereunder by reference.

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

The information set forth under and/or incorporated by reference into Item 1.01 above is incorporated hereunder by reference.

As noted above, the management and board of directors of New Kimco immediately after the Merger is identical to the management and board of directors of Old Kimco immediately before the Merger. The executive officers of Old Kimco immediately before the Merger serve in the same positions and hold the same titles with New Kimco immediately after the Merger and with respect to Kimco OP immediately after the LLC Conversion.

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

The information set forth under and/or incorporated by reference into Items 1.01 and 3.01 above is incorporated hereunder by reference.

Forward-Looking Statements

This Current Report on Form 8-K may contain "forward-looking" statements as defined in the Private Securities Litigation Reform Act of 1995. When we use words such as "may," "will," "intend," "should," "believe," "expect," "anticipate," "project," "estimate" or similar expressions that do not relate solely to historical matters, it is making forward-looking statements. Forward-looking statements, including, but not limited to, statements regarding our ability to complete the Reorganization, the impacts of the Reorganization on our financial condition, business operations, financial statements, outstanding securities, material indebtedness and our ability to realize the expected benefits of Reorganization, are not guarantees of future performance and involve risks and uncertainties that may cause our actual results to differ materially from our expectations discussed in the forward-looking statements. This may be a result of various factors, including, but not limited to, those factors discussed in our reports filed from time to time with the Securities and Exchange Commission. Moreover, other risks and uncertainties of which we are not currently aware may also affect the forward-looking statements contained herein and may cause actual results and the timing of events to differ materially from those anticipated. The forward-looking statements made in this communication are made only as of the date hereof or as of the dates indicated in the forward-looking statements, even if they are subsequently made available by us on our website or otherwise. We undertake no obligation to update or revise publicly any forward-looking statements, whether because of new information, future events or otherwise, or to update the reasons why actual results could differ from those projected in any forward-looking statements.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

2.1 Agreement and Plan of Merger, dated December 15, 2022, by and among Old Kimco, New Kimco and Merger Sub (previously filed as Exhibit 2.1 to Old Kimco's Current Report on Form 8-K filed on December 15, 2022 and incorporated herein by reference).

3.1 Articles of Amendment and Restatement of New Kimco.

3.2 Amended and Restated Bylaws of New Kimco.

3.3 Articles of Merger.

3.4 Certificate of Formation of Kimco Realty OP, LLC.

3.5 Limited Liability Company Agreement of Kimco Realty OP, LLC, dated as of January 3, 2023.

4.1 Eighth Supplemental Indenture, dated as of January 3, 2023, between Kimco Realty OP, LLC, as issuer, Kimco Realty Corporation, as guarantor, and The Bank of New York Mellon Trust Company, N.A., as trustee.

4.2 Fourth Supplemental Indenture, dated as of January 3, 2023, between Kimco Realty OP, LLC, as issuer, Kimco Realty Corporation, as guarantor, and The Bank of New York Mellon Trust Company, N.A., as trustee.

10.1 Amendment No. 3 to Amended and Restated Credit Agreement, dated as of January 3, 2023, by and among Kimco Realty OP, LLC, Kimco Realty Corportion, and JPMorgan Chase Bank, N.A., as administrative agent.

10.2 Parent Guarantee, dated as of January 1, 2023, by Kimco Realty Corporation.

10.3 Kimco Realty Corporation Executive Severance Plan, dated March 15, 2010 (previously filed as Exhibit 10.5 to Old Kimco's Current Report on Form 8-K filed on March 19, 2010 and incorporated herein by reference).

10.4 First Amendment to the Kimco Realty Corporation Executive Severance Plan, dated March 20, 2012 (previously filed as Exhibit 10.3 to Old Kimco's Quarterly Report on Form 10-Q filed on May 10, 2012 and incorporated herein by reference).

10.5 Restated Kimco Realty Corporation 2010 Equity Participation Plan (previously filed as Exhibit 10.6 to Old Kimco's Annual Report on Form 10-K filed on February 27, 2017 and incorporated herein by reference).

10.6 Amendment No. 1 to the Restated Kimco Realty Corporation 2010 Equity Participation Plan (previously filed as Exhibit 10.7 to Old Kimco's Annual Report on Form 10-K filed on February 23, 2018 and incorporated herein by reference).

10.7 Amendment No. 2 to the Restated Kimco Realty Corporation 2010 Equity Participation Plan.

10.8 Kimco Realty Corporation Amended and Restated 2020 Equity Participation Plan.

104 Cover Page Interactive Data File (the Cover Page Interactive Data File is embedded within the Inline XBRL document)

SIGNATURES

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

KIMCO REALTY CORPORATION

Date: January 3, 2023

/s/ Glenn G. Cohen

Glenn G. Cohen
Executive Vice President, Chief Financial Officer and Treasurer

Exhibit 3.1

NEW KRC CORP.

ARTICLES OF AMENDMENT AND RESTATEMENT

THIS IS TO CERTIFY THAT:

FIRST: New KRC Corp., a Maryland corporation (the "Corporation"), desires to restate its charter as currently in effect.

SECOND: The following provisions and Exhibits A and B are all the provisions of the charter currently in effect.

ARTICLE I

The name of the corporation shall be New KRC Corp. (the "Corporation").

ARTICLE II

The name of the corporation's registered agent is The Corporation Trust Incorporated, whose address is 2405 York Road, Suite 201, Timonium, Maryland 21093. The address of the principal office of the Corporation in the State of Maryland is c/o The Corporation Trust Incorporated, 2405 York Road, Suite 201, Timonium, Maryland 21093.

ARTICLE III

The purposes for which the Corporation is formed are to engage in any lawful act or activity (including, without limitation or obligation, engaging in business as a real estate investment trust under the Internal Revenue Code of 1986, as amended, or any successor statute (the "Code")) for which corporations may be organized under the general laws of the State of Maryland, as amended. For purposes of these Articles, "REIT" means a real estate investment trust under Sections 856 through 860 of the Code.

ARTICLE IV

A. The total number of shares of all classes of stock that the Corporation shall have authority to issue is one billion one hundred forty-one million one hundred thousand (1,141,100,000) shares, consisting of seven hundred fifty million (750,000,000) shares of Common Stock, $0.01 par value per share (the "Common Stock"), three hundred eighty four million forty six thousand (384,046,000) shares of Excess Stock, $0.01 par value per share (the "Excess Stock"), seven million twelve thousand one hundred forty (7,012,140) shares of Preferred Stock, $1.00 par value per share (the "Preferred Stock"), ten thousand three hundred fifty (10,350) shares of 5.125% Class L Cumulative Redeemable Preferred Stock, $1.00 par value per share ("Class L Redeemable Preferred Stock"), ten thousand three hundred fifty (10,350) shares of Class L Excess Preferred Stock, $1.00 par value per share ("Class L Excess Preferred Stock"), ten thousand five hundred eighty (10,580) shares of 5.25% Class M Cumulative Redeemable Preferred Stock, $1.00 par value per share ("Class M Redeemable Preferred Stock") and ten thousand five hundred eighty (10,580) shares of Class M Excess Preferred Stock, $1.00 par value per share ("Class M Excess Preferred Stock"). The aggregate par value of all authorized shares having a par value is eighteen million three hundred ninety-four thousand four hundred sixty dollars ($18,394,460).

B. Common Stock.

1. Dividend Rights. Subject to the preferential dividend rights, if any, of the Preferred Stock as may be determined by the Board of Directors of the Corporation pursuant to paragraph D of this Article IV, the holders of shares of the Common Stock shall be entitled to receive such dividends as may be authorized and declared by the Board of Directors of the Corporation.

2. Rights Upon Liquidation. Subject to the preferential rights, if any, of the Excess Preferred Stock and of the Preferred Stock, if any, as may be determined by the Board of Directors of the Corporation pursuant to paragraph D of this Article IV, in the event of any voluntary or involuntary liquidation, dissolution or winding up of, or any distribution of the assets of, the Corporation, each holder of shares of the Common Stock shall be entitled to receive, ratably with each other holder of shares of Common Stock and Excess Stock, that portion of the assets of the Corporation available for distribution to its stockholders as the number of shares of Common Stock held by such holder bears to the total number of shares of Common Stock and Excess Stock then outstanding.

3. Voting Rights. The holders of shares of the Common Stock shall be entitled to vote on all matters at all meetings of the stockholders of the Corporation, and shall be entitled to one vote for each share of the Common Stock entitled to vote at such meeting, voting together with the holders of shares of the Preferred Stock who are entitled to vote (except as otherwise may be determined by the Board of Directors pursuant to paragraph D of this Article IV).

4. Restriction on Transfer to Preserve Tax Benefit; Exchange For Excess Shares.

(a) Definitions. For the purpose of paragraphs B and C of this Article IV, the following terms shall have the following meanings:

"Acquisition Option Agreements" shall mean those certain Acquisition Option Agreements between the Corporation and its subsidiaries and KC Holdings, Inc., a Delaware corporation, and its subsidiaries relating to the option by the Corporation and its subsidiaries and KC Holdings, Inc. and its subsidiaries to acquire certain real estate properties, as those agreements may be amended from time to time.

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

"Beneficiary" shall mean the beneficiary of the Trust as determined pursuant to subparagraph C(5) of this Article IV.

"Board of Directors" shall mean the Board of Directors of the Corporation.

"Common Equity Stock" shall mean stock that is either Common Stock or Excess Stock.

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

"Existing Holder" shall mean (i) any Person who is the Beneficial Owner of Common Stock in excess of the Ownership Limit both immediately before and after the Initial Public Offering, so long as, but only so long as, such Person Beneficially Owns Common Stock in excess of the Ownership Limit and (ii) any Person (other than another existing Holder) to whom an Existing Holder Transfers Beneficial Ownership of Common Stock causing such transferee to Beneficially Own Common Stock in excess of the Ownership Limit.

"Existing Holder Limit" (i) for any Existing Holder who is an Existing Holder by virtue of clause (i) of the definition thereof, shall mean, initially, the percentage of the outstanding shares of Common Equity Stock Beneficially Owned by such Existing Holder on the date of the Initial Public Offering, and after any adjustment pursuant to subparagraph B(4)(i) of this Article IV, shall mean such percentage of the outstanding shares of Common Equity Stock as so adjusted; and (ii) for any Existing Holder who becomes an Existing Holder by virtue of clause (ii) of the definition thereof, shall mean, initially, the percentage of the value of the outstanding shares of Common Equity Stock Beneficially Owned by such Existing Holder at the time that such Existing Holder becomes an Existing Holder, and after any adjustment pursuant to subparagraph B(4)(i) of this Article IV, shall mean such percentage of the Outstanding Common Equity Stock as so adjusted. From the date of the Initial Public Offering and prior to the Restriction Termination Date, the Secretary of the Corporation shall maintain and, upon request, make available to each Existing Holder, a schedule which sets forth the then current Existing Holder Limits for each Existing Holder.

"Initial Public Offering" means the issuance of shares of Common Stock pursuant to the merger of Kimco Realty Corporation with KRC Merger Sub Corp.

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

"Ownership Limit" shall initially mean 9.8% in value of the outstanding shares of Common Equity Stock of the Corporation, and after any adjustment as set forth in subparagraph B(4)(j) of this Article IV, shall mean such greater percentage (but not more than 9.8%) of the outstanding shares of Common Equity Stock as so adjusted.

"Person" shall mean an individual, corporation, partnership, estate, trust (including a trust qualified under Section 401(a) or 501(c)(17) of the Code), a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, association, private foundation within the meaning of Section 509(a) of the Code, joint stock company or other entity and also includes a group as that term is used for purposes of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended; but does not include an underwriter which participates in a public offering of the Common Stock for a period of 25 days following the purchase by such underwriter of the Common Stock provided that the ownership of Common Stock by such underwriter would not result in the Company being "closely held" within the meaning of Section 856(b) of the Code or otherwise result in the Company failing to qualify as a REIT.

"Purported Beneficial Transferee" shall mean, with respect to any purported Transfer which results in Excess Stock, the purported beneficial transferee for whom the Purported Record Transferee would have acquired shares of Common Stock, if such Transfer had been valid under subparagraph B(4)(b) of this Article IV.

"Purported Record Transferee" shall mean, with respect to any purported Transfer which results in Excess Stock, any record holder of the Common Equity Stock if such Transfer had been valid under subparagraph B(4)(b) of this Article IV.

"REIT" shall mean a real estate investment trust under Section 856 of the Code.

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

"Transfer" shall mean any sale, transfer, gift, assignment, devise or other disposition of Common Equity Stock (including (i) the granting of any option or entering into any agreement for the sale, transfer or other disposition of Common Equity Stock or (ii) the sale, transfer, assignment or other disposition of any securities or rights convertible into or exchangeable for Common Equity Stock), whether voluntary or involuntary, whether of record or beneficially and whether by operation of law or otherwise.

"Trust" shall mean the trust created pursuant to subparagraph C(1) of this Article IV.

"Trustee" shall mean the Corporation as trustee for the Trust, and any successor trustee appointed by the Corporation.

(b) Restriction on Transfers.

(i) Except as provided in subparagraph B(4)(1) of this Article IV, from the date of the Initial Public Offering and prior to the Restriction Termination Date, no Person (other than an Existing Holder) shall Beneficially Own shares of Common Stock in excess of the Ownership Limit, no Existing Holder shall Beneficially Own shares of Common Stock in excess of the Existing Holder Limit for such Existing Holder and no Person shall Constructively Own shares of Common Stock in excess of 9.8% in value of the outstanding Common Equity Stock.

(ii) Except as provided in subparagraph B(4)(1) of this Article IV, from the date of the Initial Public Offering and prior to the Restriction Termination Date, any Transfer that, if effective, would result in any Person (other than an Existing Holder) Beneficially Owning Common Stock in excess of the Ownership Limit shall be void ab initio as to the Transfer of such shares of Common Stock which would be otherwise Beneficially Owned by such Person in excess of the Ownership Limit; and the intended transferee shall acquire no rights in such shares of Common Stock.

(iii) Except as provided in subparagraph B(4)(1) of this Article IV, from the date of the Initial Public Offering and prior to the Restriction Termination Date, any Transfer that, if effective, would result in any Existing Holder Beneficially Owning Common Stock in excess of the applicable Existing Holder Limit shall be void ab initio as to the Transfer of such shares of Common Stock which would be otherwise Beneficially Owned by such Existing Holder in excess of the applicable Existing Holder Limit; and such Existing Holder shall acquire no rights in such shares of Common Stock.

(iv) Except as provided in subparagraph B(4)(1) of this Article IV, from the date of the Initial Public Offering and prior to the Restriction Termination Date, any Transfer that, if effective, would result in any Person Constructively Owning Common Stock in excess of 9.8% in value of the outstanding shares of Common Equity Stock shall be void ab initio as to the Transfer of such shares of Common Stock which would be otherwise Constructively Owned by such person in excess of such amount; and the intended transferee shall acquire no rights in such shares of Common Stock.

(v) Except as provided in subparagraph B(4)(1) of this Article IV, from the date of the Initial Public Offering and prior to the Restriction Termination Date, any Transfer that, if effective, would result in the Common Stock being Beneficially Owned by less than 100 Persons (determined without reference to any rules of attribution) shall be void ab initio as to the Transfer of such shares of Common Stock which would be otherwise Beneficially Owned by the transferee; and the intended transferee shall acquire no rights in such shares of Common Stock.

(vi) From the date of the Initial Public Offering and prior to the Restriction Termination Date, any Transfer that, if effective, would result in the Corporation being "closely held" within the meaning of the Section 856(h) of the Code shall be void ab initio as to the Transfer of the shares of Common Stock which would cause the Corporation to be "closely held" within the meaning of Section 856(h) of the Code; and the intended transferee shall acquire no rights in such shares of Common Stock.

(c) Exchange For Excess Stock.

(i) If, notwithstanding the other provisions contained in this Article IV, at any time after the date of the Initial Public Offering and prior to the Restriction Termination Date, there is a purported Transfer or other change in the capital structure of the Corporation such that any Person would Beneficially Own Common Stock in excess of the applicable Ownership Limit or Existing Holder Limit, then, except as otherwise provided in subparagraph B(4)(1)(i), such shares of Common Stock in excess of such Ownership Limit or Existing Holder Limit (rounded up to the nearest whole share) shall be automatically exchanged for an equal number of shares of Excess Stock. Such exchange shall be effective as of the close of business on the business day prior to the date of the Transfer or change in capital structure.

(ii) If, notwithstanding the other provisions contained in this Article IV, at any time after the date of the Initial Public Offering and prior to the Restriction Termination Date, there is a purported Transfer or other change in the capital structure of the Corporation such that any Person Constructively Owns shares of Common Stock in excess of 9.8% in value of the outstanding shares of Common Equity Stock, then, except as otherwise provided in subparagraph B(4)(1)(ii), such shares of Common Stock in excess of such amount (rounded up to the nearest whole share) shall be automatically exchanged for an equal number of shares of Excess Stock. Such exchange shall be effective as of the close of business on the business day prior to the date of the Transfer.

(iii) If, notwithstanding the other provisions contained in this Article IV, at any time after the date of the Initial Public Offering and prior to the Restriction Termination Date, there is a purported Transfer or other change in the capital structure of the Corporation which, if effective, would cause the Corporation to become "closely held" within the meaning of Section 856(h) of the Code, then the shares of Common Stock being Transferred which would cause the Corporation to be "closely held" within the meaning of Section 856(h) of the Code (rounded up to the nearest whole share) shall be automatically exchanged for an equal number of shares of Excess Stock. Such exchange shall be effective as of the close of business on the business day prior to the date of the Transfer.

(d) Remedies For Breach. If the Board of Directors or its designees shall at any time determine in good faith that a Transfer has taken place in violation of subparagraph B(4)(b) of this Article IV or that a Person intends to acquire or has attempted to acquire beneficial ownership (determined without reference to any rules of attribution), Beneficial Ownership or Constructive Ownership of any shares of stock of the Corporation in violation of subparagraph B(4)(b) of this Article IV, the Board of Directors or its designees shall take such action as it deems advisable to refuse to give effect or to prevent such Transfer, including, but not limited to, refusing to give effect to such Transfer on the books of the Corporation or instituting proceedings to enjoin such Transfer; provided, however, that any Transfers or attempted Transfers in violation of subparagraphs B(4)(b)(ii) through (iv) or subparagraph B(4)(b)(vi) of this Article IV shall automatically result in the exchange described in subparagraph B(4)(c), irrespective of any action (or non-action) by the Board of Directors.

(e) Notice of Restricted Transfer. Any Person who acquires or attempts to acquire shares in violation of subparagraph B(4) of this Article IV, or any Person who is a transferee such that Excess Stock results under subparagraph B(4)(c) of this Article IV, shall immediately given written notice to the Corporation of such event and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such Transfer or attempted Transfer on the Corporation's status as a REIT.

(f) Owners Required To Provide Information. From the date of the Initial Public Offering and until the Restriction Termination Date:

(i) every Beneficial Owner of more than 5% (or such other percentage, between ½ of 1% and 5%, as provided in the Income Tax Regulations promulgated under the Code) of the outstanding shares of Common Equity Stock of the Corporation shall, within 30 days after January 1 of each year, give written notice to the Corporation stating the name and address of such Beneficial Owner, the number of shares Beneficially Owned, and a description of how such shares are held. Each such Beneficial Owner shall provide to the Corporation such additional information as the Corporation may request in order to determine the effect, if any, of such Beneficial Ownership on the Corporation's status as a REIT.

(ii) each Person who is a Beneficial Owner or Constructive Owner of shares of Common Stock and each Person (including the shareholder of record) who is holding shares of Common Stock for a Beneficial Owner or Constructive Owner shall provide to the Corporation such information that the Corporation may request, in good faith, in order to determine the Corporation's status as a REIT.

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

(h) Ambiguity. In the case of an ambiguity in the application of any of the provisions of subparagraph B(4) of this Article IV, including any definition contained in subparagraph B(4)(a), the Board of Directors shall have the power to determine the application of the provisions of this subparagraph B(4) with respect to any situation based on the facts known to it.

(i) Modification of Existing Holder Limits. Subject to the 9.8% ownership limit set forth in subparagraph B(4)(b)(i), the Existing Holder Limits may be modified as follows:

(i) Subject to the limitations provided in subparagraph B(4)(k), any Existing Holder may transfer shares of Common Stock to a Person who is already an Existing Holder up to the number of shares of Common Stock Beneficially Owned by such transferor Existing Holder in excess of the Ownership Limit. Any such Transfer will decrease the Existing Holder Limit for such transferor Existing Holder and increase the Existing Holder Limit for such transferee Existing Holder by the percentage of the outstanding Common Equity Stock so Transferred. The transferor Existing Holder shall give the Board of Directors prior written notice of any such Transfer.

(ii) Upon any exercise of any option pursuant to the Acquisition Option Agreements, the Existing Holder Limits for each affected Existing Holder shall be increased, pro rata in accordance with the number of shares to be received among such Existing Holders, to the maximum extent possible under subparagraph B(4)(k) to permit the Beneficial Ownership of the shares of Common Stock issuable upon such exercise.

(iii) Subject to the limitations provided in subparagraph B(4)(k), the Board of Directors may grant stock options which result in Beneficial Ownership of shares of Common Stock by an Existing Holder pursuant to a stock option plan approved by the stockholders of the Corporation. Any such grant shall increase the Existing Holder Limit for the affected Existing Holder to the maximum extent possible under subparagraph B(4)(k) to permit the Beneficial Ownership of the shares of Common Stock issuable upon the exercise of such stock option.

(iv) The Board of Directors may reduce the Existing Holder Limit for any Existing Holder, with the written consent of such Existing Holder, after any Transfer permitted in this subparagraph B(4) by such Existing Holder to a Person other than an Existing Holder or after the lapse (without exercise) of a stock option described in subparagraph B(4)(i)(iii).

(j) Modification of Ownership Limit. Subject to the limitations provided in subparagraph B(4)(k), the Board of Directors may from time to time increase the Ownership Limit.

(k) Limitations on Modifications.

(i) Neither the Ownership Limit nor any Existing Holder Limit may be increased (nor may any additional Existing Holder Limit be created) if, after giving effect to such increase (or creation), five Beneficial Owners of Common Stock (including all of the then Existing Holders) Beneficially Own, in the aggregate, more than 49.6% in value of the outstanding shares of Common Equity Stock.

(ii) Prior to the modification of any Existing Holder Limit or Ownership Limit pursuant to subparagraphs B(4)(i) or B(4)(j) of this Article IV, the Board of Directors may require such opinions of counsel, affidavits, undertakings or agreements as it may deem necessary or advisable in order to determine or ensure the Corporation’s status as a REIT.

(iii) No Existing Holder Limit shall be reduced to a percentage which is less than the Ownership Limit.

(iv) The Ownership Limit may not be increased to a percentage which is greater than 9.8%.

(l) Exceptions.

(i) The Board of Directors, with a ruling from the Internal Revenue Service or an opinion of counsel, may exempt a Person from the Ownership Limits or the Existing Holder Limits, as the case may be, if such Person is not an individual for purposes of Section 542(a)(2) of the Code and the Board of Directors obtains such representations and undertakings from such Person as are reasonably necessary to ascertain that no individual's Beneficial Ownership of such Common Stock will violate the Ownership Limit or the applicable Existing Holder Limit, as the case may be, and agrees that any violation or attempted violation will result in such Common Stock being exchanged for Excess Shares in accordance with subparagraph B(4)(c) of this Article IV.

(ii) The Board of Directors, with a ruling from the Internal Revenue Service or an opinion of counsel, may exempt a Person from the limitation on a Person Constructively Owning shares of Common Stock in excess of 9.8% of the outstanding shares of Common Equity Stock, if such Person does not and agrees that it will not own, directly or constructively (by virtue of the application of Section 318 of the Code, as modified by Section 856(d)(5) of the Code), more than a 9.8% interest (as set forth in Section 856(d)(2)(B)) in a tenant of the Corporation and the Corporation obtains such representations and undertakings from such Person as are reasonably necessary to ascertain this fact and agrees that any violation or attempted violation will result in such shares of Common Stock in excess of 9.8% of the outstanding shares of Common Equity Stock being exchanged for Excess Shares in accordance with subparagraph B(4)(c) of this Article IV.

(m) NYSE Settlement. Nothing in this charter shall preclude the settlement of any transaction entered into through the facilities of the New York Stock Exchange, Inc.

5. Legend. Each certificate for Common Stock shall bear the following legend:

"The shares of Common Stock represented by this certificate are subject to restrictions on transfer for the purpose of maintenance of the Corporation's status as a real estate investment trust under the Internal Revenue Code of 1986, as amended. No Person may Beneficially Own shares of Common Stock in excess of 9.8% (or such greater percentage as may be determined by the Board of Directors of the Corporation) in value of the outstanding shares of Common Equity Stock of the Corporation (unless such Person is an Existing Holder) and no Person may Constructively Own shares of Common Stock in excess of 9.8% in value of the outstanding Common Equity Stock of the Corporation. Any Person who attempts to Beneficially Own or Constructively Own shares of Common Stock in excess of the above limitations must immediately notify the Corporation. All capitalized terms in this legend have the meanings defined in the charter of the Corporation, a copy of which, including the restrictions on transfer, will be sent without charge to each stockholder who so requests. If the restrictions on transfer are violated, the shares of Common Stock represented hereby may be automatically exchanged for shares of Excess Stock which will be held in trust by the Corporation."

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

C. Excess Stock.

1. Ownership in Trust. Upon any purported Transfer that results in shares of Excess Stock pursuant to subparagraph B(4)(c) of this Article IV, such Excess Stock shall be deemed to have been transferred to the Corporation, as Trustee of a Trust for the exclusive benefit of such Beneficiary or Beneficiaries to whom an interest in such Excess Stock may later be transferred pursuant to subparagraph C(5). Shares of Excess Stock so held in trust shall be issued and outstanding stock of the Corporation. The Purported Record Transferee shall have no rights in such Excess Stock except the right to designate a transferee of such Excess Stock upon the terms specified in subparagraph C(5) of this Article IV. The Purported Beneficial Transferee shall have no rights in such Excess Stock except as provided in subparagraph C(5).

2. Dividend Rights. Holders of shares of Excess Stock shall not be entitled to any dividends or distributions (except as provided in subparagraph C(3) of this Article IV). Any dividend or distribution paid prior to the discovery by the Corporation that the shares of Common Stock have been exchanged for Excess Stock shall be repaid to the Corporation upon demand.

3. Rights Upon Liquidation. Subject to the preferential rights of the Preferred Stock, if any, as may be determined by the Board of Directors of the Corporation pursuant to paragraph D of this Article IV, in the event of any voluntary or involuntary liquidation, dissolution or winding up of, or any distribution of the assets of, the Corporation, each holder of shares of Excess Stock shall be entitled to receive, ratably with each other holder of shares of Common Stock and Excess Stock, that portion of the assets of the Corporation available for distribution to its stockholders as the number of shares of the Excess Stock held by such holder bears to the total number of shares of Common Stock and Excess Stock then outstanding. The Corporation, as holder of the Excess Stock in trust, or if the Corporation shall have been dissolved, any trustee appointed by the Corporation prior to its dissolution, shall distribute ratably to the Beneficiaries of the Trust, when determined, any such assets received in respect of the Excess Stock in any liquidation, dissolution or winding up of, or any distribution of the assets of the Corporation.

4. Voting Rights. The holder of shares of Excess Stock shall not be entitled to vote on any matter.

5. Restrictions on Transfer; Designation of Beneficiary. (a) Shares of Excess Stock shall not be transferrable. The Purported Record Transferee may freely designate a Beneficiary of an interest in the Trust (representing the number of shares of Excess Stock held by the Trust attributable to the purported Transfer that resulted in the shares of Excess Stock), if (i) the shares of Excess Stock held in the Trust would not be Excess Stock in the hands of such Beneficiary and (ii) the Purported Beneficial Transferee does not receive a price for designating such Beneficiary that reflects a price per share for such Excess Stock that exceeds (x) the price per share such Purported Beneficial Transferee paid for the shares of Common Stock in the purported Transfer that resulted in shares of Excess Stock, or (y) if the Purported Beneficial Transferee did not give value for such Excess Shares (through a gift, devise or other transaction), a price per share equal to the Market Price on the date of the purported Transfer that resulted in shares of Excess Stock. Upon such transfer of an interest in the Trustee, the corresponding shares of Excess Stock in the Trust shall be automatically exchanged for an equal number of shares of Common Stock and such shares of Common Stock shall be transferred of record to the transferee of the interest in the Trust if such shares of Common Stock would not be Excess Stock in the hands of such transferee. Prior to any transfer of any interest in the Trust, the Purported Record Transferee must give advance notice to the Corporation of the intended transfer and the Corporation must have waived in writing its purchase rights under subparagraph C(6) of this Article IV.

(b) Notwithstanding the foregoing, if a Purported Beneficial Transferee receives a price for designating a Beneficiary of an interest in the Trust that exceeds the amounts allowable under subparagraph C(5)(a) of this Article IV, such Purported Beneficial Transferee shall pay, or cause such Beneficiary to pay, such excess to the Corporation.

6. Purchase Right in Excess Stock. Shares of Excess Stock shall be deemed to have been offered for sale to the Corporation, or its designee, at a price per share equal to the lesser of (i) the price per share in the transaction that created such Excess Stock (or, in the case of a devise or gift, the Market Price at the time of such devise or gift) and (ii) the Market Price on the date the Corporation, or its designee, accepts such offer. The Corporation shall have the right to accept such offer for a period of ninety days after the later of (i) the date of the Transfer which resulted in such Excess Shares and (ii) the date the Board of Directors determines in good faith that a Transfer resulted in Excess Shares has occurred, if the Corporation does not receive a notice of such Transfer pursuant to subparagraph B(4)(a) of this Article IV.

D. Preferred Stock. The Board of Directors is hereby expressly vested with authority to provide for the issuance of the shares of Preferred Stock in one or more classes or one or more series, with such preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, or terms or conditions of redemption, if any, as shall be stated and expressed in the resolution or resolutions providing for such shares adopted by the Board of Directors under the Maryland General Corporation Law. Except as otherwise provided by law, the holders of the Preferred Stock of the Corporation shall only have such voting rights as are provided for or expressed in the resolutions of the Board of Directors relating to such Preferred Stock adopted pursuant to the authority contained in the charter of the Corporation.

E. Extraordinary Actions. Notwithstanding any provision of law permitting or requiring any action to be taken or approved by the affirmative vote of stockholders entitled to cast a greater number of votes, any such action shall be effective and valid only if declared advisable by the Board of Directors and taken or approved by the affirmative vote of stockholders entitled to cast a majority of all the votes entitled to be cast on the matter.

ARTICLE V

The business and affairs of the Corporation shall be managed under the direction of the Board of Directors. The Corporation shall have a board of eight (8) directors, unless the number is increased or decreased in accordance with the Bylaws of the Corporation. However, the number of directors shall never be less than the minimum number required by Maryland General Corporation Law. The directors are:

Milton Cooper
David B. Henry
Richard G. Dooley
Philip E. Coviello
Joe Grills
F. Patrick Hughes
Frank Lourenso
Richard B. Saltzman

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the Corporation.

ARTICLE VI

The election of directors of the Corporation need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE VII

The Board of Directors shall use its reasonable best efforts to cause the Corporation and the stockholders to qualify for federal income tax treatment in accordance with Sections 856 through 860 of the Code. In furtherance of the foregoing, the Board of Directors shall use its reasonable best efforts to take such actions as are necessary, and may take such actions as in its sole judgment and discretion are desirable, to preserve the status of the Corporation as a REIT; provided, however, that if the Board of Directors determines that it is no longer in the best interests of the Corporation for it to continue to qualify as a REIT, the Board of Directors may revoke or otherwise terminate the Corporation's REIT election.

ARTICLE VIII

To the maximum extent that Maryland law in effect from time to time permits limitation of the liability of directors and officers, no director or officer of the Corporation shall be liable to the Corporation or its stockholders for money damages. Neither the amendment nor repeal of this Article, nor the adoption or amendment of any other provision of the charter or Bylaws inconsistent with this Article, shall apply to or affect in any respect the applicability of the preceding sentence with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

ARTICLE IX

The Corporation shall have the power, to the maximum extent permitted by Maryland law in effect from time to time, to obligate itself to indemnify, and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to, (i) any individual who is a present or former director or officer of the Corporation or (ii) any individual who, while a director of the Corporation and at the request of the Corporation, serves or has served another corporation, partnership, joint venture, trust, employee benefit plan or any other enterprise as a director, officer, partner or trustee of such corporation, partnership, joint venture, trust, employee benefit plan or other enterprise. The Corporation shall have the power, with the approval of its Board of Directors, to provide such indemnification to a person who served a predecessor of the Corporation in any of the capacities described in (i) or (ii) above and to any employee or agent of the Corporation or a predecessor of the Corporation.

ARTICLE X

The Corporation reserves the right from time to time to make any amendment to its charter, now or hereafter authorized by law, including any amendment altering the terms or contract rights, as expressly set forth in this charter, of any outstanding shares of stock. All rights and powers conferred by the charter of the Corporation on stockholders, directors and officers are granted subject to this reservation.

ARTICLE XI

No holder of shares of stock of any class shall have any preemptive right to subscribe or to purchase any additional shares of any class, or any bonds or convertible securities of any nature; provided, however, that the Board of Directors may, in authorizing the issuance of shares of stock of any class or series, confer any preemptive right that the Board of Directors may deem advisable in connection with such issuance.

ARTICLE XII

The Board of Directors may authorize the issuance from time to time of shares of its stock of any class or series whether now or hereafter authorized, or securities convertible into shares of its stock of any class or series, whether now or hereafter authorized, for such consideration as the Board of Directors may deem advisable, subject to such restrictions or limitations, if any, as may be set forth in the charter or Bylaws of the Corporation or in the general laws of the State of Maryland.

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

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

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

SIXTH: The number of directors of the Corporation and the names of those currently in office are as set forth in Article V of the foregoing amendment and restatement of the charter.

SEVENTH: The total number of shares of stock which the Corporation had authority to issue immediately prior to this amendment and restatement was 100,000 shares of Common Stock, $0.01 par value per share. The aggregate par value of all shares of stock having par value was $1,000.

EIGHTH: The total number of shares of stock which the Corporation has authority to issue pursuant to the foregoing amendment and restatement of the charter is one billion one hundred forty-one million one hundred thousand (1,141,100,000) shares, consisting of seven hundred fifty million (750,000,000) shares of Common Stock, $0.01 par value per share, three hundred eighty four million forty six thousand (384,046,000) shares of Excess Stock, $0.01 par value per share, seven million twelve thousand one hundred forty (7,012,140) shares of Preferred Stock, $1.00 par value per share, ten thousand three hundred fifty (10,350) shares of 5.125% Class L Cumulative Redeemable Preferred Stock, $1.00 par value per share, ten thousand three hundred fifty (10,350) shares of Class L Excess Preferred Stock, $1.00 par value per share, ten thousand five hundred eighty (10,580) shares of 5.25% Class M Cumulative Redeemable Preferred Stock, $1.00 par value per share, and ten thousand five hundred eighty (10,580) shares of Class M Excess Preferred Stock, $1.00 par value per share. The aggregate par value of all authorized shares having a par value is eighteen million three hundred ninety-four thousand four hundred sixty dollars ($18,394,460).

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

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IN WITNESS WHEREOF, the Corporation has caused these Articles of Amendment and Restatement of the Corporation to be signed in its name and on its behalf by its Executive Vice President, Chief Financial Officer and Treasurer and attested to by its Assistant Secretary on this 27th day of December, 2022.

ATTEST:

/s/ Kathleen M. Gazerro
Kathleen M. Gazerro
Assistant Secretary

NEW KRC CORP.

By: /s/ Glenn G. Cohen
Glenn G. Cohen
Executive Vice President, Chief Financial Officer and Treasurer

EXHIBIT A
CLASS L PREFERRED STOCK

In accordance with Article IV.D. of the charter of the Corporation (the "Charter"), 10,350 shares (the "Shares") of Preferred Stock are classified as 5.125% Class L Cumulative Redeemable Preferred Stock, $1.00 par value per share ("Class L Preferred Stock"), and 10,350 shares (the "Class L Excess Shares") of Preferred Stock are classified as Class L Excess Preferred Stock, $1.00 par value per share ("Class L Excess Preferred Stock"), each with the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, and terms and conditions of redemption set forth below:

5.125% CLASS L CUMULATIVE REDEEMABLE PREFERRED STOCK

A. Certain Definitions.

Unless the context otherwise requires, the terms defined in this paragraph (A) shall have, for all purposes of the provisions of the Charter in respect of the Preferred Equity Stock, the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

Aggregate Stock Ownership Limit. The term "Aggregate Stock Ownership Limit" shall mean not more than 9.8% of the value of the outstanding shares of Capital Stock of the Corporation.

Beneficial Ownership. The term "Beneficial Ownership" shall mean ownership of stock by a Person who is or would be treated as an owner of stock either directly or constructively through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. In addition, "Beneficial Ownership" shall include ownership of Capital Stock by a Person who meets any one of its tests for beneficial ownership as set forth under Rule 13d-3 of the Securities Exchange Act of 1934, as amended. The terms "Beneficial Owner," "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

Beneficiary. The term "Beneficiary" shall mean the beneficiary of the Trust as determined pursuant to subparagraph (11)(d)(1) of paragraph (F) below.

Business Day. The term "Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

Capital Gains Amount. The term "Capital Gains Amount" shall have the meaning set forth in subparagraph (7) of paragraph (B) below.

Capital Stock. The term "Capital Stock" shall mean all classes of series of stock of the Corporation, including, without limitation, Common Equity, Class L Preferred Stock and Class M Preferred Stock.

Class M Preferred Stock. The term "Class M Preferred Stock" shall mean the 5.25% Class M Cumulative Redeemable Preferred Stock, $1.00 par value per share, of the Corporation.

Code. The term "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

Common Equity. The term "Common Equity" shall mean all shares now or hereafter authorized of any class of common stock of the Corporation, including the Common Stock, and any other stock of the Corporation, howsoever designated, authorized after the Initial Issue Date, which has the right (subject always to prior rights of any class or series of preferred stock) to participate in the distribution of the assets and earnings of the Corporation without limit as to per share amount.

Common Stock. The term "Common Stock" shall mean the common stock, $.01 par value per share, of the Corporation.

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

Depositary Shares. The term "Depositary Shares" shall mean the Depositary Shares each representing a one-one thousandth (1/1000) fractional interest in a share of Class L Preferred Stock.

Dividends. The term "Dividends" shall have the meaning set forth in subparagraph (7) of paragraph (B) below.

Dividend Payment Date. The term "Dividend Payment Date" shall have the meaning set forth in subparagraph (2) of paragraph (B) below.

Dividend Period. The term "Dividend Period" with respect to a share of Class L Preferred Stock shall mean the period from, and including, January 15, 2023 to, but excluding, the first Dividend Payment Date and thereafter, each quarterly period from, and including, the Dividend Payment Date commencing such period to, but excluding, the succeeding Dividend Payment Date.

Individual. The term "Individual" shall mean an individual, trust qualified under Section 401(a) or 501(c)(17) of the Code, a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, or a private foundation within the meaning of Section 509(a) of the Code, provided that a trust described in Section 401(a) of the Code and exempt from tax under Section 501(a) of the Code shall be excluded from this definition.

Initial Issue Date. The term "Initial Issue Date" shall mean the date that shares of Class L Preferred Stock are first issued by the Corporation.

IRS. The term "IRS" means the United States Internal Revenue Service.

Junior Stock. The term "Junior Stock" shall mean, as the case may be, (i) the Common Equity and any other class or series of stock of the Corporation which is not entitled to receive any dividends in any Dividend Period unless all dividends required to have been paid or declared and set apart for payment on the Class L Preferred Stock shall have been so paid or declared and set apart for payment or (ii) the Common Equity and any other class or series of stock of the Corporation, which is not entitled to receive any assets upon liquidation, dissolution or winding up of the affairs of the Corporation until the Class L Preferred Stock shall have received the entire amount to which such Class L Preferred Stock is entitled upon such liquidation, dissolution or winding up.

Liquidation Preference. The term "Liquidation Preference" shall mean $25,000.00 per share of Class L Preferred Stock.

Market Price. The term "Market Price" shall mean the price of the Class L Preferred Stock (i) as determined by multiplying by one thousand the last reported sales price of the Depositary Shares reported on the NYSE on the trading day immediately preceding the relevant date or, (ii) if the Depositary Shares are not then traded on the NYSE, as determined by multiplying by one thousand the last reported sales price of the Depositary Shares on the trading day immediately preceding the relevant date as reported on any exchange or quotation system over which the Depositary Shares may be traded or, (iii) if the Depositary Shares are not then traded over any exchange or quotation system, as determined in good faith by the Board of Directors.

Notice. The term "Notice" shall have the meaning set forth in subparagraph (4) of paragraph (D) below.

NYSE. The term "NYSE" shall mean New York Stock Exchange, Inc., including any successor thereto.

Ownership Limit. The term "Ownership Limit" shall mean not more than 9.8% of the outstanding shares of Preferred Equity Stock.

Parity Stock. The term "Parity Stock" shall mean, as the case may be, (i) any class or series of stock of the Corporation which is entitled to receive payment of dividends on a parity with the Class L Preferred Stock or (ii) any class or series of stock of the Corporation which is entitled to receive assets upon liquidation, dissolution or winding up of the affairs of the Corporation on a parity with the Class L Preferred Stock. The term "Parity Stock" shall include, without limitation, the Class M Preferred Stock.

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

Preferred Equity Stock. The term "Preferred Equity Stock" shall mean shares of stock that are either Class L Preferred Stock or Class L Excess Preferred Stock.

Purported Beneficial Transferee. The term "Purported Beneficial Transferee" shall mean, with respect to any purported Transfer or other event which results in Class L Excess Preferred Stock, the purported beneficial transferee or owner for whom the Purported Record Transferee would have acquired or owned shares of Class L Preferred Stock if such Transfer or ownership had been valid under subparagraph (1) of paragraph (F) below.

Purported Record Transferee. The term "Purported Record Transferee" shall mean, with respect to any purported Transfer or other event which results in Class L Excess Preferred Stock, the record holder of the Preferred Equity Stock if such Transfer or ownership had been valid under subparagraph (1) of paragraph (F) below.

Record Date. The term "Record Date" shall mean the date designated by the Board of Directors at the time a dividend is authorized as the date for determining stockholders entitled to payment of the dividend; provided, however, that such Record Date shall be the first day of the calendar month in which the applicable Dividend Payment Date falls or such other date designated by the Board of Directors that is not more than thirty (30) days nor less than ten (10) days prior to such Dividend Payment Date.

Redemption Date. The term "Redemption Date" shall have the meaning set forth in subparagraph (2) of paragraph (D) below.

Redemption Price. The term "Redemption Price" shall mean a price per share equal to $25,000.00 plus accrued and unpaid dividends thereon, if any, to, but excluding, the Redemption Date, and as adjusted in subparagraph (2) of paragraph (D) below.

REIT. The term "REIT" shall mean a real estate investment trust under Section 856 of the Code.

Senior Stock. The term "Senior Stock" shall mean, as the case may be, (i) any class or series of stock of the Corporation created after the Initial Issue Date in accordance with subparagraph (1) of paragraph (E) ranking senior to the Class L Preferred Stock in respect of the right to receive dividends or (ii) any class or series of stock of the Corporation created after the Initial Issue Date in accordance with subparagraph (1) of paragraph (E) ranking senior to the Class L Preferred Stock in respect of the right to participate in any distribution upon liquidation, dissolution or winding up of the affairs of the Corporation.

Total Dividends. The term "Total Dividends" shall have the meaning set forth in subparagraph (7) of paragraph (B) below.

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

Trust. The term "Trust" shall mean the trust created pursuant to subparagraph (11)(a) of paragraph (F).

Trustee. The term "Trustee" shall mean the Corporation as trustee for the Trust, and any successor trustee appointed by the Corporation.

B. Dividends.

1. The record holders of Class L Preferred Stock shall be entitled to receive dividends, when, as and if authorized by the Board of Directors and declared by the Corporation, out of funds legally available for payment of dividends. Such dividends shall be payable by the Corporation in cash at the rate of 5.125% per annum of the Liquidation Preference.

2. Dividends on each outstanding share of Class L Preferred Stock shall accrue as set and be cumulative from, and including, January 15, 2023. Dividends shall be payable quarterly in arrears when, as and if authorized by the Board of Directors and declared by the Corporation on January 15, April 15, July 15 and October 15 of each year, commencing on April 15, 2023 (each, a "Dividend Payment Date"). If any Dividend Payment Date occurs on a day that is not a Business Day, any accrued dividends otherwise payable on such Dividend Payment Date shall be paid on the next succeeding Business Day. The amount of dividends payable for each Dividend Period will be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends shall be paid to the holders of record of the Class L Preferred Stock as their names shall appear on the stock transfer records of the Corporation at the close of business on the Record Date for such dividends. Dividends in respect of any past Dividend Periods that are in arrears may be declared and paid at any time to holders of record on the Record Date therefor. Any dividend payment made on shares of Class L Preferred Stock shall be first credited against the earliest accrued but unpaid dividend due with respect to the Class L Preferred Stock which remains payable.

3. If any shares of Class L Preferred Stock are outstanding, no full dividends shall be declared or paid or set apart for payment on any Parity Stock or Junior Stock for any period unless full cumulative dividends have been or contemporaneously are declared and paid (contemporaneously with the respective dates that the dividends on the Parity Stock or Junior Stock are so declared and so paid) or declared and a sum sufficient for the payment thereof set apart for such payment on the Class L Preferred Stock for all past Dividend Periods. When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the shares of the Class L Preferred Stock and any Parity Stock, all dividends declared upon the shares of the Class L Preferred Stock and any such Parity Stock shall be declared pro rata so that the amount of dividends declared per share on the Class L Preferred Stock and all other such Parity Stock shall in all cases bear to each other the same ratio that accrued and unpaid dividends per share on the shares of the Class L Preferred Stock and all other such Parity Stock bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Class L Preferred Stock which may be in arrears.

4. Except as provided in subparagraph (3) of this paragraph (B), unless full cumulative dividends on the Class L Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods, no dividends (other than in the form of Common Stock or other Junior Stock) shall be declared or paid or set apart for payment or other distribution shall be declared or made upon any Junior Stock or Parity Stock or any excess stock nor shall any Junior Stock or Parity Stock or any excess stock be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such Junior Stock or Parity Stock or any excess stock) by the Corporation (except by conversion into or exchange for Junior Stock).

5. Notwithstanding anything contained herein to the contrary, no dividends on shares of Class L Preferred Stock shall be authorized by the Board of Directors or declared by the Corporation or paid or set apart for payment by the Corporation at such time as the terms and provisions of any agreement of the Corporation, including any agreement relating to its indebtedness, prohibits such authorization, declaration, payment or setting apart for payment or provides that such authorization, declaration, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or to the extent such declaration or payment shall be restricted or prohibited by law.

6. Notwithstanding anything contained herein to the contrary, dividends on the Class L Preferred Stock will accrue whether or not the Corporation has earnings, whether or not there are funds legally available for the payment of the dividends and whether or not the dividends are authorized or declared. Accrued but unpaid dividends on the Class L Preferred Stock will not bear interest.

7. If, for any taxable year, the Corporation elects to designate as "capital gain dividends" (as defined in Section 857 of the Code) any portion (the "Capital Gains Amount") of the dividends (as determined for federal income tax purposes) (the "Dividends") paid or made available for the year to holders of all classes of stock (the "Total Dividends") then, except as required by law, the portion of the Capital Gains Amount that shall be allocable to holders of the Class L Preferred Stock shall be the amount that the aggregate Dividends paid or made available to the holders of the Class L Preferred Stock for the year bears to the Total Dividends.

C. Distributions Upon Liquidation, Dissolution or Winding Up.

1. Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, subject to the prior preferences and other rights of any Senior Stock as to the distribution of assets upon liquidation, dissolution or winding up of the affairs of the Corporation, but before any distribution or payment shall be made to the holders of any Junior Stock or any excess stock, the holders of Class L Preferred Stock shall be entitled to be paid out of the assets of the Corporation legally available for distribution to its stockholders liquidating distributions in cash or property at its fair market value as determined by the Board of Directors in the amount of the Liquidation Preference plus an amount equal to all accrued and unpaid dividends to, but excluding, the date of such liquidation, dissolution or winding up. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Class L Preferred Stock will have no right or claim to any of the remaining assets of the Corporation and shall not be entitled to any other distribution in the event of liquidation, dissolution or winding up of the affairs of the Corporation.

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2. In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, the legally available assets of the Corporation are insufficient to pay the amount of the Liquidation Preference plus an amount equal to all accrued and unpaid dividends on the Class L Preferred Stock and the corresponding amounts payable on Parity Stock upon any such liquidation, dissolution or winding up, then the holders of the Class L Preferred Stock and the holders of such Parity Stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they otherwise would be respectively entitled. Neither the consolidation or merger of the Corporation into or with another entity or entities nor the sale, lease, transfer or conveyance of all or substantially all of the property or business of the Corporation to another corporation or any other entity, individually or as part of a series of transactions, shall be deemed a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this paragraph (C).

D. Redemption by the Corporation.

1. The Class L Preferred Stock may be redeemed for cash, in whole or from time to time in part, on any date on or after the Initial Issue Date at the option of the Corporation at the Redemption Price.

2. Each date fixed for redemption pursuant to subparagraph (1) of this paragraph (D) is called a "Redemption Date." If the Redemption Date is after the Record Date and before the related Dividend Payment Date, the dividend payable on such Dividend Payment Date shall be paid to the holder in whose name the Class L Preferred Stock to be redeemed is registered at the close of business on such Record Date notwithstanding the redemption thereof between such Record Date and the related Dividend Payment Date or the Corporation's default in the payment of the dividend due, and the Redemption Price shall not include the amount of such dividend payable on such Dividend Payment Date.

3. In case of redemption of less than all shares of Class L Preferred Stock at the time outstanding, the shares to be redeemed shall be selected by the Corporation pro rata from the holders of record of such shares in proportion to the number of shares held by such holders (with adjustments to avoid redemption of fractional shares) or by any other equitable method prescribed by the Board of Directors that will not result in the issuance of any Class L Excess Preferred Stock.

4. In order to exercise its redemption option, the Corporation shall give written notice ("Notice") of such redemption to each holder of record of the shares of Class L Preferred Stock to be redeemed not less than 30 days or more than 60 days prior to the Redemption Date. The Notice will be mailed by the Corporation, postage prepaid, addressed to the respective holders of record of the Class L Preferred Stock to be redeemed at their respective addresses as they appear on the stock transfer records of the Corporation. The notice of redemption may be contingent on the occurrence of a future event. No failure to give such Notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of Class L Preferred Stock, except as to any holder to whom the Corporation has failed to give Notice or except as to any holder to whom Notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Class L Preferred Stock may be listed or admitted to trading, such Notice shall state: (i) the Redemption Date; (ii) the Redemption Price; (iii) the number of shares of Class L Preferred Stock to be redeemed and, if less than all shares held by the particular holder are to be redeemed, the number of such shares to be redeemed from such holder; (iv) the place or places where certificates for such shares are to be surrendered for payment of the Redemption Price; and (v) that dividends on the shares to be redeemed will cease to accrue on the Redemption Date.

5. Notice having been mailed in accordance with subparagraph (4) of this paragraph (D), from and after the Redemption Date (unless the Corporation shall fail to make available an amount of cash necessary to pay the Redemption Price), (i) except as otherwise provided herein, dividends on the shares of Class L Preferred Stock so called for redemption shall cease to accrue, (ii) said shares shall no longer be deemed to be outstanding, and (iii) all rights of the holders thereof as holders of Class L Preferred Stock of the Corporation shall cease (except the rights to receive the Redemption Price in cash). The Corporation's obligation to provide cash in accordance with the preceding sentence shall be deemed fulfilled if, on or before the Redemption Date, the Corporation shall deposit with a bank or trust company (which may be an affiliate of the Corporation), cash necessary for such redemption, in trust, with irrevocable instructions that such cash be applied to the redemption of the shares of Class L Preferred Stock so called for redemption. In this case, the Corporation's Notice shall (i) specify the office of such bank or trust company as the place of payment of the Redemption Price and (ii) call upon respective holders of record of the Class L Preferred Stock to surrender certificates for such shares, on the Redemption Date fixed in the Notice, for payment of the Redemption Price. No interest shall accrue for the benefit of any holder of shares of Class L Preferred Stock to be redeemed on any cash so set aside by the Corporation. Subject to applicable escheat laws, any such cash unclaimed at the end of two years from the Redemption Date shall revert to the general funds of the Corporation, after which reversion, the holders of such shares so called for redemption shall look only to the general funds of the Corporation for the payment of such cash.

6. As promptly as practicable after the surrender of the certificates for any such shares of Class L Preferred Stock so redeemed (properly endorsed or assigned for transfer, if the Corporation shall so require and if the Notice shall so state) in accordance with said Notice, the Corporation (or the related bank or trust company, if applicable) shall pay to the applicable holders the Redemption Price in cash (without interest thereon). In the event of the redemption of less than all shares of Class L Preferred Stock at the time outstanding, the shares to be redeemed shall be selected by the Corporation pro rata from the holders of record of such shares in proportion to the number of shares held by such holders (with adjustments to avoid redemption of fractional shares) or by any other equitable method determined by the Board of Directors that will not result in the issuance of any Class L Excess Preferred Stock. If fewer than all the shares of Class L Preferred Stock represented by any certificate are redeemed, then new certificates representing the unredeemed shares of Class L Preferred Stock shall be issued without cost to the holder thereof.

7. Unless full cumulative dividends on all outstanding shares of Class L Preferred Stock shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods, (i) no shares of any Class L Preferred Stock shall be redeemed, unless all outstanding shares of Class L Preferred Stock are simultaneously redeemed and (ii) the Corporation shall not purchase or otherwise acquire directly or indirectly any shares of Class L Preferred Stock (except by conversion into or exchange for Junior Stock); provided, however, that the foregoing shall not prevent the purchase or acquisition of shares of Class L Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Class L Preferred Stock.

8. All shares of Class L Preferred Stock redeemed pursuant to this paragraph (D) shall be retired and shall be reclassified as authorized and unissued shares of Preferred Stock, without designation as to class or series, and may thereafter be reissued as shares of any class or series of Preferred Stock.

E. Voting Rights.

1. The holders of record of shares of Class L Preferred Stock shall not be entitled to any voting rights except as hereinafter provided in this paragraph (E) or as required by applicable law. So long as any shares of Class L Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least two-thirds (2/3) of the shares of the Class L Preferred Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (such Class L Preferred Stock voting separately as a class): (i) authorize or create, or increase the authorized or issued amount of, any class or series of Senior Stock, or reclassify any authorized stock into Senior Stock, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any Senior Stock; or (ii) amend, alter or repeal the provisions of the Charter, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of the Class L Preferred Stock; except that (1) with respect to the occurrence of any of the events described in (ii) above, so long as the Class L Preferred Stock remains outstanding with the terms of the Class L Preferred Stock materially unchanged or is converted into a security in another entity with the terms materially unchanged, the occurrence of such event will not be deemed to materially and adversely affect the rights, preferences, privileges or voting powers of the Class L Preferred Stock and (2) (A) any increase in the amount of the authorized shares of Class L Preferred Stock or the authorization or issuance of any Parity Stock or Junior Stock or (B) any increase in the number of authorized shares of Class L Preferred Stock or Parity Stock or Junior Stock shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

2. If and whenever dividends payable on Class L Preferred Stock shall be in arrears for six (6) or more Dividend Periods, whether or not consecutive, then the holders of Class L Preferred Stock (voting together as a class with Parity Stock upon which like voting rights have been conferred and are exercisable as provided in subparagraph (5) of this paragraph (E)) shall be entitled at the next annual meeting of the stockholders or at any special meeting of stockholders called for the purpose of electing directors to elect two (2) additional directors. Upon election, such directors shall become directors of the Corporation and the authorized number of directors of the Corporation shall thereupon be automatically increased by two.

3. Whenever the voting right described in subparagraph (2) of this paragraph (E) shall have vested, such right may be exercised initially either at a special meeting of the holders of Class L Preferred Stock and any Parity Stock entitled to vote as provided in subparagraph (5) of this paragraph (E), called as hereinafter provided, or at any annual meeting of stockholders held for the purpose of electing directors and, thereafter, at such annual meetings or by the written consent of the holders of Class L Preferred Stock and any such Parity Stock. Such right of the holders of Class L Preferred Stock to elect directors together with the holders of any such Parity Stock may be exercised until all dividends to which the holders of Class L Preferred Stock shall have been entitled for (i) all previous Dividend Periods and (ii) the current Dividend Period shall have been paid in full, at which time the right of the holders of Class L Preferred Stock to elect directors together with holders of any such Parity Stock shall cease, the term of such directors previously elected shall thereupon terminate, and the authorized number of directors of the Corporation shall thereupon return to the number of authorized directors otherwise in effect, but subject always to the same provisions for the renewal and divestment of such special voting rights in the case of any such future dividend default or defaults.

4. At any time when the voting right described in subparagraph (2) of this paragraph (E) shall have vested in the holders of Class L Preferred Stock and if such right shall not already have been initially exercised, a proper officer of the Corporation shall, upon the written request of any holder of record of Class L Preferred Stock then outstanding, addressed to the Secretary of the Corporation, call a special meeting of holders of Class L Preferred Stock together with the holders of any Parity Stock entitled to vote as provided in subparagraph (5) of this paragraph (E). Such meeting shall be held on the earliest practicable date upon the notice required for annual meetings of stockholders at the place for holding annual meetings of stockholders of the Corporation or, if none, at a place designated by the Secretary of the Corporation. If such meeting shall not be called by a proper officer of the Corporation within thirty (30) days after the personal service of such written request upon the Secretary of the Corporation, or within thirty (30) days after mailing the same within the United States, by registered mail, addressed to the Secretary of the Corporation at its principal office (such mailing to be evidenced by the registry receipt issued by the postal authorities), then the holders of record of ten percent (10%) of the shares of Class L Preferred Stock then outstanding may designate in writing a holder of Class L Preferred Stock to call such meeting at the expense of the Corporation, and such meeting may be called by such person so designated upon the notice required for annual meetings of stockholders and shall be held at the place for holding annual meetings of the Corporation or, if none, at a place designated by such holder. Any holder of Class L Preferred Stock that would be entitled to vote at such meeting shall have access to the stock transfer records of the Corporation for the purpose of causing a meeting of stockholders to be called pursuant to the provisions of this paragraph (E). Notwithstanding the provisions of this paragraph (E), however, no such special meeting shall be called if any such request is received less than ninety (90) days before the date fixed for the next ensuing annual or special meeting of stockholders.

5. If, at any time when the holders of Class L Preferred Stock are entitled to elect directors pursuant to the foregoing provisions of this paragraph (E), the holders of any one or more classes or series of Parity Stock are entitled to elect one or more directors by reason of any default or event specified in the Charter, as in effect at the time, and if the terms for such classes or series of Parity Stock so provide, then the voting rights of the Class L Preferred Stock and the one or more classes or series of Parity Stock then entitled to vote shall be combined (with each having a number of votes proportional to the aggregate liquidation preference of its outstanding shares). In such case, the holders of Class L Preferred Stock and of all such classes or series of Parity Stock then entitled to so vote, voting together as a class, shall elect such directors. If the holders of any such classes or series of Parity Stock have elected such directors prior to the happening of the default or event providing for the election of directors by the holders of Class L Preferred Stock, or prior to a written request for the holding of a special meeting being received by the Secretary of the Corporation as elsewhere required in subparagraph (4) of paragraph (E) above, then a new election shall be held with all such classes or series of Parity Stock and the Class L Preferred Stock voting together as a single class for such director(s), resulting in the termination of the term of such previously elected director(s) upon the election of such new director(s). If the holders of any such classes or series of Parity Stock are entitled to elect two directors, the Class L Preferred Stock shall not participate in the election of more than two such directors, and such directors whose terms first expire shall be deemed to be the directors elected by the holders of Class L Preferred Stock; provided, that if at the expiration of such terms the holders of Class L Preferred Stock are entitled to vote in the election of directors pursuant to the provisions of this paragraph (E), then the Secretary of the Corporation shall call a meeting (which meeting may be the annual meeting or a special meeting of stockholders referred to in subparagraph (3) of this paragraph (E)) of holders of Class L Preferred Stock for the purpose of electing replacement directors (in accordance with the provisions of this paragraph (E)) to be held at or prior to the time of expiration of the expiring terms referred to above.

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6. If and for so long as the shares of Class L Preferred Stock are represented by Depositary Shares in accordance with paragraph (J) hereof, then in any matter in which the Class L Preferred Stock is entitled to vote (as expressly provided herein), including any action by written consent, each share of Class L Preferred Stock shall be entitled to one thousand (1000) votes, each of which one thousand (1000) votes may be directed separately by the holder thereof (or by any proxy or proxies of such holder). With respect to each share of Class L Preferred Stock, the holder thereof may designate up to one thousand (1000) proxies, with each such proxy having the right to vote a whole number of votes (totaling one thousand (1000) votes per share of Class L Preferred Stock).

7. Notwithstanding anything contained herein to the contrary, the foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which the vote would otherwise be required shall be effected, all outstanding shares of Class L Preferred Stock shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect the redemption.

F. Restrictions on Ownership to Preserve Tax Benefit; Conversion of Class L Excess Preferred Stock; and Terms of Class L Excess Preferred Stock.

1. Restriction on Ownership and Transfer.

a. Except as provided in subparagraph (8) of this paragraph (F), no Person shall Beneficially Own or Constructively Own Class L Preferred Stock in excess of the Ownership Limit;

b. Except as provided in subparagraph (8) of this paragraph (F), any Transfer (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE) that, if effective, would result in any Person Beneficially Owning Class L Preferred Stock in excess of the Ownership Limit shall be void ab initio as to the Transfer of such Class L Preferred Stock which would be otherwise Beneficially Owned by such Person in excess of the Ownership Limit; and the intended transferee shall acquire no rights in such Class L Preferred Stock;

c. Except as provided in subparagraph (8) of this paragraph (F), any Transfer (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE) that, if effective, would result in any Person Constructively Owning Class L Preferred Stock in excess of the Ownership Limit shall be void ab initio as to the Transfer of such Class L Preferred Stock which would be otherwise Constructively Owned by such Person in excess of the Ownership Limit; and the intended transferee shall acquire no rights in such Class L Preferred Stock; and

d. Notwithstanding any other provisions contained in this paragraph (F), any Transfer (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE) or other event that, if effective, would result in the Corporation being "closely held" within the meaning of Section 856(h) of the Code, or would otherwise result in the Corporation failing to qualify as a REIT (including, but not limited to, a Transfer or other event that would result in the Corporation owning (directly or Constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the Corporation from such tenant would cause the Corporation to fail to satisfy any of the gross income requirements of Section 856(c) of the Code) shall be void ab initio as to the Transfer of the Class L Preferred Stock or other event which would cause the Corporation to be "closely held" within the meaning of Section 856(h) of the Code or would otherwise result in the Corporation failing to qualify as a REIT; and the intended transferee or owner or Constructive or Beneficial Owner shall acquire or retain no rights in such Class L Preferred Stock.

2. Conversion into Class L Excess Preferred Stock. If, notwithstanding the other provisions contained in this paragraph (F), at any time after the Initial Issue Date, there is a purported Transfer (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE), change in the capital structure of the Corporation or other event such that one or more of the restrictions on ownership and transfer described in subparagraph (1) of this paragraph (F), above have been violated, then the Class L Preferred Stock being Transferred (or in the case of an event other than a Transfer, the Class L Preferred Stock owned or Constructively Owned or Beneficially Owned or, if the next sentence applies, the Class L Preferred Stock identified in the next sentence) which would cause one or more of the restrictions on ownership or transfer to be violated (rounded up to the nearest whole share) shall be automatically converted into an equal number of shares of Class L Excess Preferred Stock. If at any time of such purported Transfer any of the shares of the Class L Preferred Stock are then owned by a depositary to permit the trading of beneficial interests in fractional shares of Class L Preferred Stock, then shares of Class L Preferred Stock that shall be converted to Class L Excess Preferred Stock shall be first taken from any Class L Preferred Stock that is not in such depositary that is Beneficially Owned or Constructively Owned by the Person whose Beneficial Ownership or Constructive Ownership would otherwise violate the restrictions of subparagraph (1) of this paragraph (F) prior to converting any shares in such depositary. Any conversion pursuant to this subparagraph shall be effective as of the close of business on the Business Day prior to the date of such Transfer or other event.

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3. Remedies for Breach. If the Board of Directors or its designees shall at any time determine in good faith that a Transfer or other event has taken place in violation of subparagraph (1) of this paragraph (F) or that a Person intends to acquire, has attempted to acquire or may acquire direct ownership, beneficial ownership (determined without reference to any rules of attribution), Beneficial Ownership or Constructive Ownership of any shares of the Corporation in violation of subparagraph (1) of this paragraph (F), the Board of Directors or its designees shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including, but not limited to, causing the Corporation to purchase such shares upon the terms and conditions specified by the Board of Directors in its sole discretion, refusing to give effect to such Transfer or other event on the books of the Corporation or instituting proceedings to enjoin such Transfer or other event; provided, however, that any Transfer (or, in the case of events other than a Transfer, ownership or Constructive Ownership or Beneficial Ownership) in violation of subparagraph (1) of this paragraph (F) shall automatically result in the conversion described in subparagraph (2), irrespective of any action (or non-action) by the Board of Directors.

4. Notice of Restricted Transfer. Any Person who acquires or attempts to acquire Class L Preferred Stock or other securities in violation of subparagraph (1) of this paragraph (F), or any Person who owns or will own Class L Excess Preferred Stock as a result of an event under subparagraph (2) of this paragraph (F), shall immediately give written notice to the Corporation of such event and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such Transfer or attempted Transfer or other event on the Corporation's status as a REIT.

5. Owners Required to Provide Information. From and after the Initial Issue Date, each Person who is a beneficial owner or Beneficial Owner or Constructive Owner of Class L Preferred Stock and each Person (including the stockholder of record) who is holding Class L Preferred Stock for a Beneficial Owner or Constructive Owner shall provide to the Corporation such information that the Corporation may request, in good faith, in order to determine the Corporation's status as a REIT.

6. Remedies Not Limited. Nothing contained in this paragraph (F) (but subject to subparagraph (12) of this paragraph (F)) shall limit the authority of the Board of Directors to take such other action as it deems necessary or advisable to protect the Corporation and the interests of its stockholders by preservation of the Corporation's status as a REIT.

7. Ambiguity. In the case of an ambiguity in the application of any of the provisions of this paragraph (F), including any definition contained in paragraph (A), the Board of Directors shall have the power to determine the application of the provisions of this paragraph (F) with respect to any situation based on the facts known to it (subject, however, to the provisions of paragraph (12) of this paragraph (F)).

8. Exceptions.

a. Subject to subparagraph (1)(d) of this paragraph (F), the Board of Directors, in its sole discretion, with the advice of the Corporation's tax counsel, may exempt (prospectively or retroactively) a Person from the limitation on a Person Beneficially Owning shares of Class L Preferred Stock in violation of subparagraphs (1)(a) or (1)(b) of this paragraph (F) if the Board of Directors determines that such exemption will not cause any Individual's Beneficial Ownership of shares of Capital Stock to violate the Aggregate Stock Ownership Limit and that such exemption will not cause the Corporation to fail to qualify as a REIT under the Code.

b. Subject to subparagraph (1)(d) of this paragraph (F), the Board of Directors, in its sole discretion, with advice of the Corporation's tax counsel, may exempt (prospectively or retroactively) a Person from the limitation on a Person Constructively Owning Class L Preferred Stock in violation of subparagraphs (1)(a) or (1)(c) of this paragraph (F) if the Board of Directors determines that such ownership would not cause the Corporation to fail to qualify as a REIT under the Code.

c. Prior to granting any exception pursuant to subparagraph (8)(a) or (8)(b) of this paragraph (F), the Board of Directors may (i) require such Person to make certain representations or undertakings or to agree that any violation or attempted violation of such representations or undertakings (or other action which is contrary to the restrictions contained in this paragraph F) will result in such Class L Preferred Stock being converted to Excess Class L Preferred Stock and transferred to a Trust in accordance with subparagraphs (2) and (11) of this paragraph (F) and/or (ii) require a ruling from the IRS, or an opinion of counsel, in either case in form and substance satisfactory to the Board of Directors, in its sole discretion as it may deem necessary or advisable in order to determine or ensure the Corporation's status as a REIT; provided, however, that obtaining such representations or undertakings, or a favorable ruling or opinion, shall not be required for the Board of Directors to grant an exception hereunder.

9. Legend. Each certificate for Class L Preferred Stock shall bear substantially the following legend:

"The Corporation will furnish to any stockholder, on request and without charge, a full statement of the information required by Section 2-211(b) of the Corporations and Associations Article of the Annotated Code of Maryland with respect to the designations and any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, and terms and conditions of redemptions of the stock of each class which the Corporation has authority to issue and, if the Corporation is authorized to issue any preferred or special class in series, (i) the differences in the relative rights and preferences between the shares of each series to the extent set, and (ii) the authority of the Board of Directors to set such rights and preferences of subsequent series. The foregoing summary does not purport to be complete and is subject to and qualified in its entirety by reference to the charter of the Corporation (the "Charter"), a copy of which will be sent without charge to each stockholder who so requests. Such request must be made to the Secretary of the Corporation at its principal office."

"The securities represented by this certificate are subject to restrictions on ownership for the purpose of the Corporation's maintenance of its status as a real estate investment trust under the Internal Revenue Code of 1986, as amended. Except as otherwise provided pursuant to the Charter of the Corporation, no Person may Beneficially Own or Constructively Own shares of Class L Preferred Stock in excess of 9.8% of the outstanding shares of Preferred Equity Stock. Any Person who attempts to Beneficially Own or Constructively Own shares of Class L Preferred Stock in excess of the above limitation must immediately notify the Corporation. All capitalized terms in this legend have the meanings defined in the Charter of the Corporation, a copy of which, including the restrictions on transfer, will be sent to any stockholder on request and without charge. Transfers in violation of the restrictions described above shall be void ab initio. Notwithstanding the foregoing, if the restrictions on ownership and transfer are violated, the securities represented hereby will be designated and treated as shares of Class L Excess Preferred Stock which will be held in trust by the Corporation. The foregoing summary does not purport to be complete and is subject to and qualified in its entirety by reference to the Charter, a copy of which, including the restrictions on transfer, will be sent without charge to each stockholder who so requests. Such request must be made to the Secretary of the Corporation at its principal office."

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10. Severability. If any provision of this paragraph (F) or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction, the validity of the remaining provisions shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

11. Class L Excess Preferred Stock.

a. Ownership in Trust. Upon any purported Transfer (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE) or other event that results in the issuance of Class L Excess Preferred Stock pursuant to subparagraph (2) of this paragraph (F), such Class L Excess Preferred Stock shall be deemed to have been transferred to the Corporation, as Trustee of a Trust for the exclusive benefit of such Beneficiary or Beneficiaries to whom an interest in such Class L Excess Preferred Stock may later be transferred pursuant to subparagraph (11)(d) of this paragraph (F). Class L Excess Preferred Stock so held in trust shall be issued and outstanding shares of stock of the Corporation. The Purported Record Transferee shall have no rights in such Class L Excess Preferred Stock except the right to designate a transferee of such Class L Excess Preferred Stock upon the terms specified in subparagraph (11)(d) of this paragraph (F). The Purported Beneficial Transferee shall have no rights in such Class L Excess Preferred Stock except as provided in subparagraph (11)(d) of this paragraph (F).

b. Dividend Rights. Class L Excess Preferred Stock shall not be entitled to any dividends or other distribution (except as provided in subparagraph (11)(c) of this paragraph (F)). Any dividend or distribution paid prior to the discovery by the Corporation that shares of Class L Preferred Stock have been converted into Class L Excess Preferred Stock shall be repaid to the Corporation upon demand.

c. Rights Upon Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of, or any distribution of the assets of, the Corporation, each holder of shares of Class L Excess Preferred Stock shall be entitled to receive, ratably with each other holder of shares of Preferred Equity Stock, that portion of the assets of the Corporation available for distribution to the holders of shares of Preferred Equity Stock as the number of shares of Class L Excess Preferred Stock held by such holder bears to the total number of shares of Preferred Equity Stock then outstanding. The Corporation, as holder of the Class L Excess Preferred Stock in trust, or if the Corporation shall have been dissolved, any trustee appointed by the Corporation prior to its dissolution, shall distribute ratably to the Beneficiaries of the Trust, when and if determined in accordance with subparagraph (11)(d) of this paragraph (F), any such assets received in respect of the Class L Excess Preferred Stock in any liquidation, dissolution or winding up of, or any distribution of, the assets of the Corporation.

d. Restrictions on Transfer; Designation of Beneficiary.

(1) Shares of Class L Excess Preferred Stock shall not be transferable. Subject to the last sentence of this clause (1), the Purported Record Transferee may freely designate a Beneficiary of an interest in the Trust (representing the number of shares of Class L Excess Preferred Stock held by the Trust attributable to a purported Transfer that resulted in the issuance of Class L Excess Preferred Stock), if (i) the Class L Excess Preferred Stock held in the Trust would not be Class L Excess Preferred Stock in the hands of such Beneficiary and (ii) the Purported Beneficial Transferee does not receive a price from such Beneficiary that reflects a price per share for such Class L Excess Preferred Stock that exceeds (x) the price per share such Purported Beneficial Transferee paid for the Class L Preferred Stock in the purported Transfer that resulted in the issuance of Class L Excess Preferred Stock, or (y) if the Transfer or other event that resulted in the issuance of Class L Excess Preferred Stock was not a transaction in which the Purported Beneficial Transferee gave full value for such Class L Excess Preferred Stock, a price per share equal to the Market Price on the date of the purported Transfer or other event that resulted in the issuance of Class L Excess Preferred Stock. Upon such transfer of an interest in the Trust, the corresponding shares of Class L Excess Preferred Stock in the Trust shall be automatically exchanged for an equal number of shares of Class L Preferred Stock and such Class L Preferred Stock shall be transferred of record to the transferee of the interest in the Trust if such Class L Preferred Stock would not be Class L Excess Preferred Stock in the hands of such transferee. Prior to any transfer of any interest in the Trust, the Purported Record Transferee must give advance notice to the Corporation of the intended transfer and the Corporation must have waived in writing its purchase rights under subparagraph (11)(f) of this paragraph (F).

(2) Notwithstanding the foregoing, if a Purported Beneficial Transferee receives a price for designating a Beneficiary of an interest in the Trust that exceeds the amounts allowable under subparagraph (11)(d)(1) of this paragraph (F), such Purported Beneficial Transferee shall pay, or cause such Beneficiary to pay, such excess to the Corporation.

e. Voting and Notice Rights. The holders of shares of Class L Excess Preferred Stock shall have no voting rights and shall have no rights to receive notice of any meetings. The holders of shares of Class L Excess Preferred Stock shall not be considered for purpose of determining a quorum.

f. Purchase Rights in Class L Excess Preferred Stock. Notwithstanding the provisions of subparagraph (11)(d) of this paragraph (F), shares of Class L Excess Preferred Stock shall be deemed to have been offered for sale to the Corporation, or its designee, at a price per share equal to the lesser of (i) the price per share in the transaction that required the issuance of such Class L Excess Preferred Stock (or, if the Transfer or other event that resulted in the issuance of Class L Excess Preferred Stock was not a transaction in which the Purported Beneficial Transferee gave full value for such Class L Excess Preferred Stock, a price per share equal to the Market Price on the date of the purported Transfer or other event that resulted in the issuance of Class L Excess Preferred Stock) and (ii) the Market Price on the date the Corporation, or its designee, accepts such offer. The Corporation shall have the right to accept such offer for a period of ninety (90) days after the later of (i) the date of the Transfer or other event which resulted in the issuance of such shares of Class L Excess Preferred Stock and (ii) the date the Board of Directors determines in good faith that a Transfer or other event resulting in the issuance of shares of Class L Excess Preferred Stock has occurred, if the Corporation does not receive a notice of such Transfer or other event pursuant to subparagraph (4) of this paragraph (F). The Corporation may appoint a special trustee of the Trust for the purpose of consummating the purchase of Class L Excess Preferred Stock by the Corporation. In the event that the Corporation's actions cause a reduction in the number of shares of Class L Preferred Stock outstanding and such reduction results in the issuance of Class L Excess Preferred Stock, the Corporation is required to exercise its option to repurchase such shares of Class L Excess Preferred Stock if the Beneficial Owner notifies the Corporation that it is unable to sell its rights to such Class L Excess Preferred Stock.

12. Settlement. Nothing in this paragraph (F) shall preclude the settlement of any transaction entered into through facilities of the NYSE.

G. Exclusion of Other Rights.

Without prejudice to any contractual obligations existing from time to time between the holders of the Class L Preferred Stock and the Corporation, the shares of Class L Preferred Stock shall not have any rights granted to or imposed thereupon, including as to dividends, preferences, conversion rights or voting rights, other than those specifically set forth in the Charter (including these Articles Supplementary), nor shall the shares of Class L Preferred Stock have preemptive or subscription rights. The Class L Preferred Stock has no stated maturity and is not subject to any sinking fund or mandatory redemption.

H. Headings of Subdivisions.

The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

I. Severability of Provisions.

If any preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Class L Preferred Stock set forth in the Charter are invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Class L Preferred Stock set forth in the Charter which can be given effect without the invalid, unlawful or unenforceable provision thereof shall, nevertheless, remain in full force and effect, and no preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Class L Preferred Stock herein set forth shall be deemed dependent upon any other provision thereof unless so expressed therein.

J. Registration as Depositary Shares.

Shares of Class L Preferred Stock shall be registered in the form of Depositary Shares representing a one-one thousandth fractional interest in a share of Class L Preferred Stock ("Depositary Shares") on, and subject to, such terms and conditions as may be provided for in any agreement binding upon the Corporation (whether directly or through merger with any other corporation).

EXHIBIT B
CLASS M PREFERRED STOCK

In accordance with Article IV.D. of the charter of the Corporation (the "Charter"), 10,580 shares (the "Shares") of Preferred Stock are classified as 5.25% Class M Cumulative Redeemable Preferred Stock, $1.00 par value per share ("Class M Preferred Stock"), and 10,580 shares (the "Class M Excess Shares") of Preferred Stock are classified as Class M Excess Preferred Stock, $1.00 par value per share ("Class M Excess Preferred Stock"), each with the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, and terms and conditions of redemption set forth below:

5.25% CLASS M CUMULATIVE REDEEMABLE PREFERRED STOCK

A. Certain Definitions.

Unless the context otherwise requires, the terms defined in this paragraph (A) shall have, for all purposes of the provisions of the Charter in respect of the Preferred Equity Stock, the meanings herein specified (with terms defined in the singular having comparable meanings when used in the plural).

Aggregate Stock Ownership Limit. The term "Aggregate Stock Ownership Limit" shall mean not more than 9.8% of the value of the outstanding shares of Capital Stock of the Corporation.

Beneficial Ownership. The term "Beneficial Ownership" shall mean ownership of stock by a Person who is or would be treated as an owner of stock either directly or constructively through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. In addition, "Beneficial Ownership" shall include ownership of Capital Stock by a Person who meets any one of its tests for beneficial ownership as set forth under Rule 13d-3 of the Securities Exchange Act of 1934, as amended. The terms "Beneficial Owner," "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

Beneficiary. The term "Beneficiary" shall mean the beneficiary of the Trust as determined pursuant to subparagraph (11)(d)(1) of paragraph (F) below.

Business Day. The term "Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York City are authorized or required by law, regulation or executive order to close.

Capital Gains Amount. The term "Capital Gains Amount" shall have the meaning set forth in subparagraph (7) of paragraph (B) below.

Capital Stock. The term "Capital Stock" shall mean all classes of series of stock of the Corporation, including, without limitation, Common Equity, Class L Preferred Stock and Class M Preferred Stock.

Class L Preferred Stock. The term "Class L Preferred Stock" shall mean the 5.125% Class L Cumulative Redeemable Preferred Stock, $1.00 par value per share, of the Corporation.

Code. The term "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

Common Equity. The term "Common Equity" shall mean all shares now or hereafter authorized of any class of common stock of the Corporation, including the Common Stock, and any other stock of the Corporation, howsoever designated, authorized after the Initial Issue Date, which has the right (subject always to prior rights of any class or series of preferred stock) to participate in the distribution of the assets and earnings of the Corporation without limit as to per share amount.

Common Stock. The term "Common Stock" shall mean the common stock, $.01 par value per share, of the Corporation.

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

Depositary Shares. The term "Depositary Shares" shall mean the Depositary Shares each representing a one-one thousandth (1/1000) fractional interest in a share of Class M Preferred Stock.

Dividends. The term "Dividends" shall have the meaning set forth in subparagraph (7) of paragraph (B) below.

Dividend Payment Date. The term "Dividend Payment Date" shall have the meaning set forth in subparagraph (2) of paragraph (B) below.

Dividend Period. The term "Dividend Period" with respect to a share of Class M Preferred Stock shall mean the period from, and including, January 15, 2023 to, but excluding, the first Dividend Payment Date and thereafter, each quarterly period from, and including, the Dividend Payment Date commencing such period to, but excluding, the succeeding Dividend Payment Date.

Individual. The term "Individual" shall mean an individual, trust qualified under Section 401(a) or 501(c)(17) of the Code, a portion of a trust permanently set aside for or to be used exclusively for the purposes described in Section 642(c) of the Code, or a private foundation within the meaning of Section 509(a) of the Code, provided that a trust described in Section 401(a) of the Code and exempt from tax under Section 501(a) of the Code shall be excluded from this definition.

Initial Issue Date. The term "Initial Issue Date" shall mean the date that shares of Class M Preferred Stock are first issued by the Corporation.

IRS. The term "IRS" means the United States Internal Revenue Service.

Junior Stock. The term "Junior Stock" shall mean, as the case may be, (i) the Common Equity and any other class or series of stock of the Corporation which is not entitled to receive any dividends in any Dividend Period unless all dividends required to have been paid or declared and set apart for payment on the Class M Preferred Stock shall have been so paid or declared and set apart for payment or (ii) the Common Equity and any other class or series of stock of the Corporation, which is not entitled to receive any assets upon liquidation, dissolution or winding up of the affairs of the Corporation until the Class M Preferred Stock shall have received the entire amount to which such Class M Preferred Stock is entitled upon such liquidation, dissolution or winding up.

Liquidation Preference. The term "Liquidation Preference" shall mean $25,000.00 per share of Class M Preferred Stock.

Market Price. The term "Market Price" shall mean the price of the Class M Preferred Stock (i) as determined by multiplying by one thousand the last reported sales price of the Depositary Shares reported on the NYSE on the trading day immediately preceding the relevant date or, (ii) if the Depositary Shares are not then traded on the NYSE, as determined by multiplying by one thousand the last reported sales price of the Depositary Shares on the trading day immediately preceding the relevant date as reported on any exchange or quotation system over which the Depositary Shares may be traded or, (iii) if the Depositary Shares are not then traded over any exchange or quotation system, as determined in good faith by the Board of Directors.

Notice. The term "Notice" shall have the meaning set forth in subparagraph (4) of paragraph (D) below.

NYSE. The term "NYSE" shall mean New York Stock Exchange, Inc., including any successor thereto.

Ownership Limit. The term "Ownership Limit" shall mean not more than 9.8% of the outstanding shares of Preferred Equity Stock.

Parity Stock. The term "Parity Stock" shall mean, as the case may be, (i) any class or series of stock of the Corporation which is entitled to receive payment of dividends on a parity with the Class M Preferred Stock or (ii) any class or series of stock of the Corporation which is entitled to receive assets upon liquidation, dissolution or winding up of the affairs of the Corporation on a parity with the Class M Preferred Stock. The term "Parity Stock" shall include, without limitation, the Class L Preferred Stock.

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

Preferred Equity Stock. The term "Preferred Equity Stock" shall mean shares of stock that are either Class M Preferred Stock or Class M Excess Preferred Stock.

Purported Beneficial Transferee. The term "Purported Beneficial Transferee" shall mean, with respect to any purported Transfer or other event which results in Class M Excess Preferred Stock, the purported beneficial transferee or owner for whom the Purported Record Transferee would have acquired or owned shares of Class M Preferred Stock if such Transfer or ownership had been valid under subparagraph (1) of paragraph (F) below.

Purported Record Transferee. The term "Purported Record Transferee" shall mean, with respect to any purported Transfer or other event which results in Class M Excess Preferred Stock, the record holder of the Preferred Equity Stock if such Transfer or ownership had been valid under subparagraph (1) of paragraph (F) below.

Record Date. The term "Record Date" shall mean the date designated by the Board of Directors at the time a dividend is authorized as the date for determining stockholders entitled to payment of the dividend; provided, however, that such Record Date shall be the first day of the calendar month in which the applicable Dividend Payment Date falls or such other date designated by the Board of Directors that is not more than thirty (30) days nor less than ten (10) days prior to such Dividend Payment Date.

Redemption Date. The term "Redemption Date" shall have the meaning set forth in subparagraph (2) of paragraph (D) below.

Redemption Price. The term "Redemption Price" shall mean a price per share equal to $25,000.00 plus accrued and unpaid dividends thereon, if any, to, but excluding, the Redemption Date, and as adjusted in subparagraph (2) of paragraph (D) below.

REIT. The term "REIT" shall mean a real estate investment trust under Section 856 of the Code.

Senior Stock. The term "Senior Stock" shall mean, as the case may be, (i) any class or series of stock of the Corporation created after the Initial Issue Date in accordance with subparagraph (1) of paragraph (E) ranking senior to the Class M Preferred Stock in respect of the right to receive dividends or (ii) any class or series of stock of the Corporation created after the Initial Issue Date in accordance with subparagraph (1) of paragraph (E) ranking senior to the Class M Preferred Stock in respect of the right to participate in any distribution upon liquidation, dissolution or winding up of the affairs of the Corporation.

Total Dividends. The term "Total Dividends" shall have the meaning set forth in subparagraph (7) of paragraph (B) below.

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

Trust. The term "Trust" shall mean the trust created pursuant to subparagraph (11)(a) of paragraph (F).

Trustee. The term "Trustee" shall mean the Corporation as trustee for the Trust, and any successor trustee appointed by the Corporation.

B. Dividends.

1. The record holders of Class M Preferred Stock shall be entitled to receive dividends, when, as and if authorized by the Board of Directors and declared by the Corporation, out of funds legally available for payment of dividends. Such dividends shall be payable by the Corporation in cash at the rate of 5.25% per annum of the Liquidation Preference.

2. Dividends on each outstanding share of Class M Preferred Stock shall accrue as set and be cumulative from, and including, January 15, 2023. Dividends shall be payable quarterly in arrears when, as and if authorized by the Board of Directors and declared by the Corporation on January 15, April 15, July 15 and October 15 of each year, commencing on April 15, 2023 (each, a "Dividend Payment Date"). If any Dividend Payment Date occurs on a day that is not a Business Day, any accrued dividends otherwise payable on such Dividend Payment Date shall be paid on the next succeeding Business Day. The amount of dividends payable for each Dividend Period will be computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends shall be paid to the holders of record of the Class M Preferred Stock as their names shall appear on the stock transfer records of the Corporation at the close of business on the Record Date for such dividends. Dividends in respect of any past Dividend Periods that are in arrears may be declared and paid at any time to holders of record on the Record Date therefor. Any dividend payment made on shares of Class M Preferred Stock shall be first credited against the earliest accrued but unpaid dividend due with respect to the Class M Preferred Stock which remains payable.

3. If any shares of Class M Preferred Stock are outstanding, no full dividends shall be declared or paid or set apart for payment on any Parity Stock or Junior Stock for any period unless full cumulative dividends have been or contemporaneously are declared and paid (contemporaneously with the respective dates that the dividends on the Parity Stock or Junior Stock are so declared and so paid) or declared and a sum sufficient for the payment thereof set apart for such payment on the Class M Preferred Stock for all past Dividend Periods. When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the shares of the Class M Preferred Stock and any Parity Stock, all dividends declared upon the shares of the Class M Preferred Stock and any such Parity Stock shall be declared pro rata so that the amount of dividends declared per share on the Class M Preferred Stock and all other such Parity Stock shall in all cases bear to each other the same ratio that accrued and unpaid dividends per share on the shares of the Class M Preferred Stock and all other such Parity Stock bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any dividend payment or payments on the Class M Preferred Stock which may be in arrears.

4. Except as provided in subparagraph (3) of this paragraph (B), unless full cumulative dividends on the Class M Preferred Stock have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods, no dividends (other than in the form of Common Stock or other Junior Stock) shall be declared or paid or set apart for payment or other distribution shall be declared or made upon any Junior Stock or Parity Stock or any excess stock nor shall any Junior Stock or Parity Stock or any excess stock be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such Junior Stock or Parity Stock or any excess stock) by the Corporation (except by conversion into or exchange for Junior Stock).

5. Notwithstanding anything contained herein to the contrary, no dividends on shares of Class M Preferred Stock shall be authorized by the Board of Directors or declared by the Corporation or paid or set apart for payment by the Corporation at such time as the terms and provisions of any agreement of the Corporation, including any agreement relating to its indebtedness, prohibits such authorization, declaration, payment or setting apart for payment or provides that such authorization, declaration, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or to the extent such declaration or payment shall be restricted or prohibited by law.

6. Notwithstanding anything contained herein to the contrary, dividends on the Class M Preferred Stock will accrue whether or not the Corporation has earnings, whether or not there are funds legally available for the payment of the dividends and whether or not the dividends are authorized or declared. Accrued but unpaid dividends on the Class M Preferred Stock will not bear interest.

7. If, for any taxable year, the Corporation elects to designate as "capital gain dividends" (as defined in Section 857 of the Code) any portion (the "Capital Gains Amount") of the dividends (as determined for federal income tax purposes) (the "Dividends") paid or made available for the year to holders of all classes of stock (the "Total Dividends") then, except as required by law, the portion of the Capital Gains Amount that shall be allocable to holders of the Class M Preferred Stock shall be the amount that the aggregate Dividends paid or made available to the holders of the Class M Preferred Stock for the year bears to the Total Dividends.

C. Distributions Upon Liquidation, Dissolution or Winding Up.

1. Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, subject to the prior preferences and other rights of any Senior Stock as to the distribution of assets upon liquidation, dissolution or winding up of the affairs of the Corporation, but before any distribution or payment shall be made to the holders of any Junior Stock or any excess stock, the holders of Class M Preferred Stock shall be entitled to be paid out of the assets of the Corporation legally available for distribution to its stockholders liquidating distributions in cash or property at its fair market value as determined by the Board of Directors in the amount of the Liquidation Preference plus an amount equal to all accrued and unpaid dividends to, but excluding, the date of such liquidation, dissolution or winding up. After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Class M Preferred Stock will have no right or claim to any of the remaining assets of the Corporation and shall not be entitled to any other distribution in the event of liquidation, dissolution or winding up of the affairs of the Corporation.

2. In the event that, upon any such voluntary or involuntary liquidation, dissolution or winding up, the legally available assets of the Corporation are insufficient to pay the amount of the Liquidation Preference plus an amount equal to all accrued and unpaid dividends on the Class M Preferred Stock and the corresponding amounts payable on Parity Stock upon any such liquidation, dissolution or winding up, then the holders of the Class M Preferred Stock and the holders of such Parity Stock shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they otherwise would be respectively entitled. Neither the consolidation or merger of the Corporation into or with another entity or entities nor the sale, lease, transfer or conveyance of all or substantially all of the property or business of the Corporation to another corporation or any other entity, individually or as part of a series of transactions, shall be deemed a liquidation, dissolution or winding up of the affairs of the Corporation within the meaning of this paragraph (C).

D. Redemption by the Corporation.

1. The Class M Preferred Stock may be redeemed for cash, in whole or from time to time in part, on any date on or after the Initial Issue Date at the option of the Corporation at the Redemption Price.

2. Each date fixed for redemption pursuant to subparagraph (1) of this paragraph (D) is called a "Redemption Date." If the Redemption Date is after the Record Date and before the related Dividend Payment Date, the dividend payable on such Dividend Payment Date shall be paid to the holder in whose name the Class M Preferred Stock to be redeemed is registered at the close of business on such Record Date notwithstanding the redemption thereof between such Record Date and the related Dividend Payment Date or the Corporation's default in the payment of the dividend due, and the Redemption Price shall not include the amount of such dividend payable on such Dividend Payment Date.

3. In case of redemption of less than all shares of Class M Preferred Stock at the time outstanding, the shares to be redeemed shall be selected by the Corporation by lot (as nearly as practicable without creating fractional shares) or by any other equitable method prescribed by the Board of Directors that will not result in the issuance of any Class M Excess Preferred Stock.

4. In order to exercise its redemption option, the Corporation shall give written notice ("Notice") of such redemption to each holder of record of the shares of Class M Preferred Stock to be redeemed not less than 30 days or more than 60 days prior to the Redemption Date. The Notice will be mailed by the Corporation, postage prepaid, addressed to the respective holders of record of the Class M Preferred Stock to be redeemed at their respective addresses as they appear on the stock transfer records of the Corporation. The notice of redemption may be contingent on the occurrence of a future event. No failure to give such Notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any shares of Class M Preferred Stock, except as to any holder to whom the Corporation has failed to give Notice or except as to any holder to whom Notice was defective. In addition to any information required by law or by the applicable rules of any exchange upon which Class M Preferred Stock may be listed or admitted to trading, such Notice shall state: (i) the Redemption Date; (ii) the Redemption Price; (iii) the number of shares of Class M Preferred Stock to be redeemed and, if less than all shares held by the particular holder are to be redeemed, the number of such shares to be redeemed from such holder; (iv) the place or places where certificates for such shares are to be surrendered for payment of the Redemption Price; and (v) that dividends on the shares to be redeemed will cease to accrue on the Redemption Date.

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5. Notice having been mailed in accordance with subparagraph (4) of this paragraph (D), from and after the Redemption Date (unless the Corporation shall fail to make available an amount of cash necessary to pay the Redemption Price), (i) except as otherwise provided herein, dividends on the shares of Class M Preferred Stock so called for redemption shall cease to accrue, (ii) said shares shall no longer be deemed to be outstanding, and (iii) all rights of the holders thereof as holders of Class M Preferred Stock of the Corporation shall cease (except the rights to receive the Redemption Price in cash). The Corporation's obligation to provide cash in accordance with the preceding sentence shall be deemed fulfilled if, on or before the Redemption Date, the Corporation shall deposit with a bank or trust company (which may be an affiliate of the Corporation), cash necessary for such redemption, in trust, with irrevocable instructions that such cash be applied to the redemption of the shares of Class M Preferred Stock so called for redemption. In this case, the Corporation's Notice shall (i) specify the office of such bank or trust company as the place of payment of the Redemption Price and (ii) call upon respective holders of record of the Class M Preferred Stock to surrender certificates for such shares, on the Redemption Date fixed in the Notice, for payment of the Redemption Price. No interest shall accrue for the benefit of any holder of shares of Class M Preferred Stock to be redeemed on any cash so set aside by the Corporation. Subject to applicable escheat laws, any such cash unclaimed at the end of two years from the Redemption Date shall revert to the general funds of the Corporation, after which reversion, the holders of such shares so called for redemption shall look only to the general funds of the Corporation for the payment of such cash.

6. As promptly as practicable after the surrender of the certificates for any such shares of Class M Preferred Stock so redeemed (properly endorsed or assigned for transfer, if the Corporation shall so require and if the Notice shall so state) in accordance with said Notice, the Corporation (or the related bank or trust company, if applicable) shall pay to the applicable holders the Redemption Price in cash (without interest thereon). In the event of the redemption of less than all shares of Class M Preferred Stock at the time outstanding, the shares to be redeemed shall be selected by the Corporation by lot (as nearly as practicable without creating fractional shares) or by any other equitable method determined by the Board of Directors that will not result in the issuance of any Class M Excess Preferred Stock. If fewer than all the shares of Class M Preferred Stock represented by any certificate are redeemed, then new certificates representing the unredeemed shares of Class M Preferred Stock shall be issued without cost to the holder thereof.

7. Unless full cumulative dividends on all outstanding shares of Class M Preferred Stock shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods, (i) no shares of any Class M Preferred Stock shall be redeemed, unless all outstanding shares of Class M Preferred Stock are simultaneously redeemed and (ii) the Corporation shall not purchase or otherwise acquire directly or indirectly any shares of Class M Preferred Stock (except by conversion into or exchange for Junior Stock); provided, however, that the foregoing shall not prevent the purchase or acquisition of shares of Class M Preferred Stock pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding shares of Class M Preferred Stock.

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8. All shares of Class M Preferred Stock redeemed pursuant to this paragraph (D) shall be retired and shall be reclassified as authorized and unissued shares of Preferred Stock, without designation as to class or series, and may thereafter be reissued as shares of any class or series of Preferred Stock.

E. Voting Rights.

1. The holders of record of shares of Class M Preferred Stock shall not be entitled to any voting rights except as hereinafter provided in this paragraph (E) or as required by applicable law. So long as any shares of Class M Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote or consent of the holders of at least two-thirds (2/3) of the shares of the Class M Preferred Stock outstanding at the time, given in person or by proxy, either in writing or at a meeting (such Class M Preferred Stock voting separately as a class): (i) authorize or create, or increase the authorized or issued amount of, any class or series of Senior Stock, or reclassify any authorized stock into Senior Stock, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any Senior Stock; or (ii) amend, alter or repeal the provisions of the Charter, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of the Class M Preferred Stock; except that (1) with respect to the occurrence of any of the events described in (ii) above, so long as the Class M Preferred Stock remains outstanding with the terms of the Class M Preferred Stock materially unchanged or is converted into a security in another entity with the terms materially unchanged, the occurrence of such event will not be deemed to materially and adversely affect the rights, preferences, privileges or voting powers of the Class M Preferred Stock and (2) (A) any increase in the amount of the authorized shares of Class M Preferred Stock or the authorization or issuance of any Parity Stock or Junior Stock or (B) any increase in the number of authorized shares of Class M Preferred Stock or Parity Stock or Junior Stock shall not be deemed to materially and adversely affect such rights, preferences, privileges or voting powers.

2. If and whenever dividends payable on Class M Preferred Stock shall be in arrears for six (6) or more Dividend Periods, whether or not consecutive, then the holders of Class M Preferred Stock (voting together as a class with Parity Stock upon which like voting rights have been conferred and are exercisable as provided in subparagraph (5) of this paragraph (E)) shall be entitled at the next annual meeting of the stockholders or at any special meeting of stockholders called for the purpose of electing directors to elect two (2) additional directors. Upon election, such directors shall become directors of the Corporation and the authorized number of directors of the Corporation shall thereupon be automatically increased by two.

3. Whenever the voting right described in subparagraph (2) of this paragraph (E) shall have vested, such right may be exercised initially either at a special meeting of the holders of Class M Preferred Stock and any Parity Stock entitled to vote as provided in subparagraph (5) of this paragraph (E), called as hereinafter provided, or at any annual meeting of stockholders held for the purpose of electing directors and, thereafter, at such annual meetings or by the written consent of the holders of Class M Preferred Stock and any such Parity Stock. Such right of the holders of Class M Preferred Stock to elect directors together with the holders of any such Parity Stock may be exercised until all dividends to which the holders of Class M Preferred Stock shall have been entitled for (i) all previous Dividend Periods and (ii) the current Dividend Period shall have been paid in full, at which time the right of the holders of Class M Preferred Stock to elect directors together with holders of any such Parity Stock shall cease, the term of such directors previously elected shall thereupon terminate, and the authorized number of directors of the Corporation shall thereupon return to the number of authorized directors otherwise in effect, but subject always to the same provisions for the renewal and divestment of such special voting rights in the case of any such future dividend default or defaults.

4. At any time when the voting right described in subparagraph (2) of this paragraph (E) shall have vested in the holders of Class M Preferred Stock and if such right shall not already have been initially exercised, a proper officer of the Corporation shall, upon the written request of any holder of record of Class M Preferred Stock then outstanding, addressed to the Secretary of the Corporation, call a special meeting of holders of Class M Preferred Stock together with the holders of any Parity Stock entitled to vote as provided in subparagraph (5) of this paragraph (E). Such meeting shall be held on the earliest practicable date upon the notice required for annual meetings of stockholders at the place for holding annual meetings of stockholders of the Corporation or, if none, at a place designated by the Secretary of the Corporation. If such meeting shall not be called by a proper officer of the Corporation within thirty (30) days after the personal service of such written request upon the Secretary of the Corporation, or within thirty (30) days after mailing the same within the United States, by registered mail, addressed to the Secretary of the Corporation at its principal office (such mailing to be evidenced by the registry receipt issued by the postal authorities), then the holders of record of ten percent (10%) of the shares of Class M Preferred Stock then outstanding may designate in writing a holder of Class M Preferred Stock to call such meeting at the expense of the Corporation, and such meeting may be called by such person so designated upon the notice required for annual meetings of stockholders and shall be held at the place for holding annual meetings of the Corporation or, if none, at a place designated by such holder. Any holder of Class M Preferred Stock that would be entitled to vote at such meeting shall have access to the stock transfer records of the Corporation for the purpose of causing a meeting of stockholders to be called pursuant to the provisions of this paragraph (E). Notwithstanding the provisions of this paragraph (E), however, no such special meeting shall be called if any such request is received less than ninety (90) days before the date fixed for the next ensuing annual or special meeting of stockholders.

5. If, at any time when the holders of Class M Preferred Stock are entitled to elect directors pursuant to the foregoing provisions of this paragraph (E), the holders of any one or more classes or series of Parity Stock are entitled to elect one or more directors by reason of any default or event specified in the Charter, as in effect at the time, and if the terms for such classes or series of Parity Stock so provide, then the voting rights of the Class M Preferred Stock and the one or more classes or series of Parity Stock then entitled to vote shall be combined (with each having a number of votes proportional to the aggregate liquidation preference of its outstanding shares). In such case, the holders of Class M Preferred Stock and of all such classes or series of Parity Stock then entitled to so vote, voting together as a class, shall elect such directors. If the holders of any such classes or series of Parity Stock have elected such directors prior to the happening of the default or event providing for the election of directors by the holders of Class M Preferred Stock, or prior to a written request for the holding of a special meeting being received by the Secretary of the Corporation as elsewhere required in subparagraph (4) of paragraph (E) above, then a new election shall be held with all such classes or series of Parity Stock and the Class M Preferred Stock voting together as a single class for such director(s), resulting in the termination of the term of such previously elected director(s) upon the election of such new director(s). If the holders of any such classes or series of Parity Stock are entitled to elect two directors, the Class M Preferred Stock shall not participate in the election of more than two such directors, and such directors whose terms first expire shall be deemed to be the directors elected by the holders of Class M Preferred Stock; provided, that if at the expiration of such terms the holders of Class M Preferred Stock are entitled to vote in the election of directors pursuant to the provisions of this paragraph (E), then the Secretary of the Corporation shall call a meeting (which meeting may be the annual meeting or a special meeting of stockholders referred to in subparagraph (3) of this paragraph (E)) of holders of Class M Preferred Stock for the purpose of electing replacement directors (in accordance with the provisions of this paragraph (E)) to be held at or prior to the time of expiration of the expiring terms referred to above.

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6. If and for so long as the shares of Class M Preferred Stock are represented by Depositary Shares in accordance with paragraph (J) hereof, then in any matter in which the Class M Preferred Stock is entitled to vote (as expressly provided herein), including any action by written consent, each share of Class M Preferred Stock shall be entitled to one thousand (1000) votes, each of which one thousand (1000) votes may be directed separately by the holder thereof (or by any proxy or proxies of such holder). With respect to each share of Class M Preferred Stock, the holder thereof may designate up to one thousand (1000) proxies, with each such proxy having the right to vote a whole number of votes (totaling one thousand (1000) votes per share of Class M Preferred Stock).

7. Notwithstanding anything contained herein to the contrary, the foregoing voting provisions shall not apply if, at or prior to the time when the act with respect to which the vote would otherwise be required shall be effected, all outstanding shares of Class M Preferred Stock shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust to effect the redemption.

F. Restrictions on Ownership to Preserve Tax Benefit; Conversion of Class M Excess Preferred Stock; and Terms of Class M Excess Preferred Stock.

1. Restriction on Ownership and Transfer.

a. Except as provided in subparagraph (8) of this paragraph (F), no Person shall Beneficially Own or Constructively Own Class M Preferred Stock in excess of the Ownership Limit;

b. Except as provided in subparagraph (8) of this paragraph (F), any Transfer (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE) that, if effective, would result in any Person Beneficially Owning Class M Preferred Stock in excess of the Ownership Limit shall be void ab initio as to the Transfer of such Class M Preferred Stock which would be otherwise Beneficially Owned by such Person in excess of the Ownership Limit; and the intended transferee shall acquire no rights in such Class M Preferred Stock;

c. Except as provided in subparagraph (8) of this paragraph (F), any Transfer (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE) that, if effective, would result in any Person Constructively Owning Class M Preferred Stock in excess of the Ownership Limit shall be void ab initio as to the Transfer of such Class M Preferred Stock which would be otherwise Constructively Owned by such Person in excess of the Ownership Limit; and the intended transferee shall acquire no rights in such Class M Preferred Stock; and

d. Notwithstanding any other provisions contained in this paragraph (F), any Transfer (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE) or other event that, if effective, would result in the Corporation being "closely held" within the meaning of Section 856(h) of the Code, or would otherwise result in the Corporation failing to qualify as a REIT (including, but not limited to, a Transfer or other event that would result in the Corporation owning (directly or Constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the Corporation from such tenant would cause the Corporation to fail to satisfy any of the gross income requirements of Section 856(c) of the Code) shall be void ab initio as to the Transfer of the Class M Preferred Stock or other event which would cause the Corporation to be "closely held" within the meaning of Section 856(h) of the Code or would otherwise result in the Corporation failing to qualify as a REIT; and the intended transferee or owner or Constructive or Beneficial Owner shall acquire or retain no rights in such Class M Preferred Stock.

2. Conversion into Class M Excess Preferred Stock. If, notwithstanding the other provisions contained in this paragraph (F), at any time after the Initial Issue Date, there is a purported Transfer (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE), change in the capital structure of the Corporation or other event such that one or more of the restrictions on ownership and transfer described in subparagraph (1) of this paragraph (F), above have been violated, then the Class M Preferred Stock being Transferred (or in the case of an event other than a Transfer, the Class M Preferred Stock owned or Constructively Owned or Beneficially Owned or, if the next sentence applies, the Class M Preferred Stock identified in the next sentence) which would cause one or more of the restrictions on ownership or transfer to be violated (rounded up to the nearest whole share) shall be automatically converted into an equal number of shares of Class M Excess Preferred Stock. If at any time of such purported Transfer any of the shares of the Class M Preferred Stock are then owned by a depositary to permit the trading of beneficial interests in fractional shares of Class M Preferred Stock, then shares of Class M Preferred Stock that shall be converted to Class M Excess Preferred Stock shall be first taken from any Class M Preferred Stock that is not in such depositary that is Beneficially Owned or Constructively Owned by the Person whose Beneficial Ownership or Constructive Ownership would otherwise violate the restrictions of subparagraph (1) of this paragraph (F) prior to converting any shares in such depositary. Any conversion pursuant to this subparagraph shall be effective as of the close of business on the Business Day prior to the date of such Transfer or other event.

3. Remedies for Breach. If the Board of Directors or its designees shall at any time determine in good faith that a Transfer or other event has taken place in violation of subparagraph (1) of this paragraph (F) or that a Person intends to acquire, has attempted to acquire or may acquire direct ownership, beneficial ownership (determined without reference to any rules of attribution), Beneficial Ownership or Constructive Ownership of any shares of the Corporation in violation of subparagraph (1) of this paragraph (F), the Board of Directors or its designees shall take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including, but not limited to, causing the Corporation to purchase such shares upon the terms and conditions specified by the Board of Directors in its sole discretion, refusing to give effect to such Transfer or other event on the books of the Corporation or instituting proceedings to enjoin such Transfer or other event; provided, however, that any Transfer (or, in the case of events other than a Transfer, ownership or Constructive Ownership or Beneficial Ownership) in violation of subparagraph (1) of this paragraph (F) shall automatically result in the conversion described in subparagraph (2), irrespective of any action (or non-action) by the Board of Directors.

4. Notice of Restricted Transfer. Any Person who acquires or attempts to acquire Class M Preferred Stock or other securities in violation of subparagraph (1) of this paragraph (F), or any Person who owns or will own Class M Excess Preferred Stock as a result of an event under subparagraph (2) of this paragraph (F), shall immediately give written notice to the Corporation of such event and shall provide to the Corporation such other information as the Corporation may request in order to determine the effect, if any, of such Transfer or attempted Transfer or other event on the Corporation's status as a REIT.

5. Owners Required to Provide Information. From and after the Initial Issue Date, each Person who is a beneficial owner or Beneficial Owner or Constructive Owner of Class M Preferred Stock and each Person (including the stockholder of record) who is holding Class M Preferred Stock for a Beneficial Owner or Constructive Owner shall provide to the Corporation such information that the Corporation may request, in good faith, in order to determine the Corporation's status as a REIT.

6. Remedies Not Limited. Nothing contained in this paragraph (F) (but subject to subparagraph (12) of this paragraph (F)) shall limit the authority of the Board of Directors to take such other action as it deems necessary or advisable to protect the Corporation and the interests of its stockholders by preservation of the Corporation's status as a REIT.

7. Ambiguity. In the case of an ambiguity in the application of any of the provisions of this paragraph (F), including any definition contained in paragraph (A), the Board of Directors shall have the power to determine the application of the provisions of this paragraph (F) with respect to any situation based on the facts known to it (subject, however, to the provisions of paragraph (12) of this paragraph (F)).

8. Exceptions.

a. Subject to subparagraph (1)(d) of this paragraph (F), the Board of Directors, in its sole discretion, with the advice of the Corporation's tax counsel, may exempt (prospectively or retroactively) a Person from the limitation on a Person Beneficially Owning shares of Class M Preferred Stock in violation of subparagraphs (1)(a) or (1)(b) of this paragraph (F) if the Board of Directors determines that such exemption will not cause any Individual's Beneficial Ownership of shares of Capital Stock to violate the Aggregate Stock Ownership Limit and that such exemption will not cause the Corporation to fail to qualify as a REIT under the Code.

b. Subject to subparagraph (1)(d) of this paragraph (F), the Board of Directors, in its sole discretion, with advice of the Corporation's tax counsel, may exempt (prospectively or retroactively) a Person from the limitation on a Person Constructively Owning Class M Preferred Stock in violation of subparagraphs (1)(a) or (1)(c) of this paragraph (F) if the Board of Directors determines that such ownership would not cause the Corporation to fail to qualify as a REIT under the Code.

c. Prior to granting any exception pursuant to subparagraph (8)(a) or (8)(b) of this paragraph (F), the Board of Directors may (i) require such Person to make certain representations or undertakings or to agree that any violation or attempted violation of such representations or undertakings (or other action which is contrary to the restrictions contained in this paragraph F) will result in such Class M Preferred Stock being converted to Excess Class M Preferred Stock and transferred to a Trust in accordance with subparagraphs (2) and (11) of this paragraph (F) and/or (ii) require a ruling from the IRS, or an opinion of counsel, in either case in form and substance satisfactory to the Board of Directors, in its sole discretion as it may deem necessary or advisable in order to determine or ensure the Corporation's status as a REIT; provided, however, that obtaining such representations or undertakings, or a favorable ruling or opinion, shall not be required for the Board of Directors to grant an exception hereunder.

9. Legend. Each certificate for Class M Preferred Stock shall bear substantially the following legend:

"The Corporation will furnish to any stockholder, on request and without charge, a full statement of the information required by Section 2-211(b) of the Corporations and Associations Article of the Annotated Code of Maryland with respect to the designations and any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, and terms and conditions of redemptions of the stock of each class which the Corporation has authority to issue and, if the Corporation is authorized to issue any preferred or special class in series, (i) the differences in the relative rights and preferences between the shares of each series to the extent set, and (ii) the authority of the Board of Directors to set such rights and preferences of subsequent series. The foregoing summary does not purport to be complete and is subject to and qualified in its entirety by reference to the charter of the Corporation (the "Charter"), a copy of which will be sent without charge to each stockholder who so requests. Such request must be made to the Secretary of the Corporation at its principal office."

"The securities represented by this certificate are subject to restrictions on ownership for the purpose of the Corporation's maintenance of its status as a real estate investment trust under the Internal Revenue Code of 1986, as amended. Except as otherwise provided pursuant to the Charter of the Corporation, no Person may Beneficially Own or Constructively Own shares of Class M Preferred Stock in excess of 9.8% of the outstanding shares of Preferred Equity Stock. Any Person who attempts to Beneficially Own or Constructively Own shares of Class M Preferred Stock in excess of the above limitation must immediately notify the Corporation. All capitalized terms in this legend have the meanings defined in the Charter of the Corporation, a copy of which, including the restrictions on transfer, will be sent to any stockholder on request and without charge. Transfers in violation of the restrictions described above shall be void ab initio. Notwithstanding the foregoing, if the restrictions on ownership and transfer are violated, the securities represented hereby will be designated and treated as shares of Class M Excess Preferred Stock which will be held in trust by the Corporation. The foregoing summary does not purport to be complete and is subject to and qualified in its entirety by reference to the Charter, a copy of which, including the restrictions on transfer, will be sent without charge to each stockholder who so requests. Such request must be made to the Secretary of the Corporation at its principal office."

10. Severability. If any provision of this paragraph (F) or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction, the validity of the remaining provisions shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court.

11. Class M Excess Preferred Stock.

a. Ownership in Trust. Upon any purported Transfer (whether or not such Transfer is the result of a transaction entered into through the facilities of the NYSE) or other event that results in the issuance of Class M Excess Preferred Stock pursuant to subparagraph (2) of this paragraph (F), such Class M Excess Preferred Stock shall be deemed to have been transferred to the Corporation, as Trustee of a Trust for the exclusive benefit of such Beneficiary or Beneficiaries to whom an interest in such Class M Excess Preferred Stock may later be transferred pursuant to subparagraph (11)(d) of this paragraph (F). Class M Excess Preferred Stock so held in trust shall be issued and outstanding shares of stock of the Corporation. The Purported Record Transferee shall have no rights in such Class M Excess Preferred Stock except the right to designate a transferee of such Class M Excess Preferred Stock upon the terms specified in subparagraph (11)(d) of this paragraph (F). The Purported Beneficial Transferee shall have no rights in such Class M Excess Preferred Stock except as provided in subparagraph (11)(d) of this paragraph (F).

b. Dividend Rights. Class M Excess Preferred Stock shall not be entitled to any dividends or other distribution (except as provided in subparagraph (11)(c) of this paragraph (F)). Any dividend or distribution paid prior to the discovery by the Corporation that shares of Class M Preferred Stock have been converted into Class M Excess Preferred Stock shall be repaid to the Corporation upon demand.

c. Rights Upon Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of, or any distribution of the assets of, the Corporation, each holder of shares of Class M Excess Preferred Stock shall be entitled to receive, ratably with each other holder of shares of Preferred Equity Stock, that portion of the assets of the Corporation available for distribution to the holders of shares of Preferred Equity Stock as the number of shares of Class M Excess Preferred Stock held by such holder bears to the total number of shares of Preferred Equity Stock then outstanding. The Corporation, as holder of the Class M Excess Preferred Stock in trust, or if the Corporation shall have been dissolved, any trustee appointed by the Corporation prior to its dissolution, shall distribute ratably to the Beneficiaries of the Trust, when and if determined in accordance with subparagraph (11)(d) of this paragraph (F), any such assets received in respect of the Class M Excess Preferred Stock in any liquidation, dissolution or winding up of, or any distribution of, the assets of the Corporation.

d. Restrictions on Transfer; Designation of Beneficiary.

(1) Shares of Class M Excess Preferred Stock shall not be transferable. Subject to the last sentence of this clause (1), the Purported Record Transferee may freely designate a Beneficiary of an interest in the Trust (representing the number of shares of Class M Excess Preferred Stock held by the Trust attributable to a purported Transfer that resulted in the issuance of Class M Excess Preferred Stock), if (i) the Class M Excess Preferred Stock held in the Trust would not be Class M Excess Preferred Stock in the hands of such Beneficiary and (ii) the Purported Beneficial Transferee does not receive a price from such Beneficiary that reflects a price per share for such Class M Excess Preferred Stock that exceeds (x) the price per share such Purported Beneficial Transferee paid for the Class M Preferred Stock in the purported Transfer that resulted in the issuance of Class M Excess Preferred Stock, or (y) if the Transfer or other event that resulted in the issuance of Class M Excess Preferred Stock was not a transaction in which the Purported Beneficial Transferee gave full value for such Class M Excess Preferred Stock, a price per share equal to the Market Price on the date of the purported Transfer or other event that resulted in the issuance of Class M Excess Preferred Stock. Upon such transfer of an interest in the Trust, the corresponding shares of Class M Excess Preferred Stock in the Trust shall be automatically exchanged for an equal number of shares of Class M Preferred Stock and such Class M Preferred Stock shall be transferred of record to the transferee of the interest in the Trust if such Class M Preferred Stock would not be Class M Excess Preferred Stock in the hands of such transferee. Prior to any transfer of any interest in the Trust, the Purported Record Transferee must give advance notice to the Corporation of the intended transfer and the Corporation must have waived in writing its purchase rights under subparagraph (11)(f) of this paragraph (F).

(2) Notwithstanding the foregoing, if a Purported Beneficial Transferee receives a price for designating a Beneficiary of an interest in the Trust that exceeds the amounts allowable under subparagraph (11)(d)(1) of this paragraph (F), such Purported Beneficial Transferee shall pay, or cause such Beneficiary to pay, such excess to the Corporation.

e. Voting and Notice Rights. The holders of shares of Class M Excess Preferred Stock shall have no voting rights and shall have no rights to receive notice of any meetings. The holders of shares of Class M Excess Preferred Stock shall not be considered for purpose of determining a quorum.

f. Purchase Rights in Class M Excess Preferred Stock. Notwithstanding the provisions of subparagraph (11)(d) of this paragraph (F), shares of Class M Excess Preferred Stock shall be deemed to have been offered for sale to the Corporation, or its designee, at a price per share equal to the lesser of (i) the price per share in the transaction that required the issuance of such Class M Excess Preferred Stock (or, if the Transfer or other event that resulted in the issuance of Class M Excess Preferred Stock was not a transaction in which the Purported Beneficial Transferee gave full value for such Class M Excess Preferred Stock, a price per share equal to the Market Price on the date of the purported Transfer or other event that resulted in the issuance of Class M Excess Preferred Stock) and (ii) the Market Price on the date the Corporation, or its designee, accepts such offer. The Corporation shall have the right to accept such offer for a period of ninety (90) days after the later of (i) the date of the Transfer or other event which resulted in the issuance of such shares of Class M Excess Preferred Stock and (ii) the date the Board of Directors determines in good faith that a Transfer or other event resulting in the issuance of shares of Class M Excess Preferred Stock has occurred, if the Corporation does not receive a notice of such Transfer or other event pursuant to subparagraph (4) of this paragraph (F). The Corporation may appoint a special trustee of the Trust for the purpose of consummating the purchase of Class M Excess Preferred Stock by the Corporation. In the event that the Corporation's actions cause a reduction in the number of shares of Class M Preferred Stock outstanding and such reduction results in the issuance of Class M Excess Preferred Stock, the Corporation is required to exercise its option to repurchase such shares of Class M Excess Preferred Stock if the Beneficial Owner notifies the Corporation that it is unable to sell its rights to such Class M Excess Preferred Stock.

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12. Settlement. Nothing in this paragraph (F) shall preclude the settlement of any transaction entered into through facilities of the NYSE.

G. Exclusion of Other Rights.

Without prejudice to any contractual obligations existing from time to time between the holders of the Class M Preferred Stock and the Corporation, the shares of Class M Preferred Stock shall not have any rights granted to or imposed thereupon, including as to dividends, preferences, conversion rights or voting rights, other than those specifically set forth in the Charter (including these Articles Supplementary), nor shall the shares of Class M Preferred Stock have preemptive or subscription rights. The Class M Preferred Stock has no stated maturity and is not subject to any sinking fund or mandatory redemption.

H. Headings of Subdivisions.

The headings of the various subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

I. Severability of Provisions.

If any preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Class M Preferred Stock set forth in the Charter are invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Class M Preferred Stock set forth in the Charter which can be given effect without the invalid, unlawful or unenforceable provision thereof shall, nevertheless, remain in full force and effect, and no preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of the Class M Preferred Stock herein set forth shall be deemed dependent upon any other provision thereof unless so expressed therein.

J. Registration as Depositary Shares.

Shares of Class M Preferred Stock shall be registered in the form of Depositary Shares representing a one-one thousandth fractional interest in a share of Class M Preferred Stock ("Depositary Shares") on, and subject to, such terms and conditions as may be provided for in any agreement binding upon the Corporation (whether directly or through merger with any other corporation).

Exhibit 3.2

NEW KRC CORP.

AMENDED AND RESTATED BYLAWS

ARTICLE I

OFFICES

Section 1. Principal Office. The principal executive offices of New KRC Corp. (the "Corporation") shall be located at such place or places as the Board of Directors may designate.

Section 2. Additional Offices. The Corporation may also have additional offices at such other places as the Board of Directors may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. Place. Meetings of stockholders shall be held at any place designated by the Board of Directors and stated in the notice of meeting. In the absence of any such designation, stockholders meetings shall be held at the principal executive office of the Corporation.

Section 2. Annual Meeting. The annual meeting of stockholders shall be held each year on the date and at the time designated by the Board of Directors. At each annual meeting, directors shall be elected and any other proper business may be transacted.

Section 3. Special Meetings.

(a) General. The Chairman of the Board of Directors, President, Chief Executive Officer or Board of Directors may call a special meeting of the stockholders. Subject to subsection (b) of this Section 3, a special meeting of stockholders shall also be called by the Secretary of the Corporation to act on any matter that may properly be considered at a meeting of stockholders upon the written request of stockholders entitled to cast not less than a majority of all the votes entitled to be cast on such matter at such meeting.

(b) Stockholder Requested Special Meetings. (1) Any stockholder of record seeking to have stockholders request a special meeting shall, by sending written notice to the Secretary (the "Record Date Request Notice") by registered mail, return receipt requested, request the Board of Directors to fix a record date to determine the stockholders entitled to request a special meeting (the "Request Record Date"). The Record Date Request Notice shall set forth the purpose of the meeting and the matters proposed to be acted on at it, shall be signed by one or more stockholders of record as of the date of signature (or their agents duly authorized in a writing accompanying the Record Date Request Notice), shall bear the date of signature of each such stockholder (or such agent) and shall set forth all information relating to each such stockholder and each matter proposed to be acted on at the meeting that would be required to be disclosed in connection with the solicitation of proxies for the election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to Regulation 14A (or any successor provision) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Upon receiving the Record Date Request Notice, the Board of Directors may fix a Request Record Date. The Request Record Date shall not precede and shall not be more than ten days after the close of business on the date on which the resolution fixing the Request Record Date is adopted by the Board of Directors. If the Board of Directors, within ten days after the date on which a valid Record Date Request Notice is received, fails to adopt a resolution fixing the Request Record Date, the Request Record Date shall be the close of business on the tenth day after the first date on which the Record Date Request Notice is received by the Secretary.

(2) In order for any stockholder to request a special meeting to act on any matter that may properly be considered at a meeting of stockholders, one or more written requests for a special meeting (collectively, the "Special Meeting Request") signed by stockholders of record (or their agents duly authorized in a writing accompanying the request) as of the Request Record Date entitled to cast not less than a majority of all of the votes entitled to be cast on such matter at such meeting (the "Special Meeting Percentage") shall be delivered to the Secretary. In addition, the Special Meeting Request (a) shall set forth the purpose of the meeting and the matters proposed to be acted on at it (which shall be limited to those lawful matters set forth in the Record Date Request Notice received by the Secretary), (b) shall bear the date of signature of each such stockholder (or such agent) signing the Special Meeting Request, (c) shall set forth the name and address, as they appear in the Corporation's books, of each stockholder signing such request (or on whose behalf the Special Meeting Request is signed), the class, series and number of all shares of stock of the Corporation which are owned by each such stockholder, and the nominee holder for, and number of, shares owned by such stockholder beneficially but not of record, (d) shall be sent to the Secretary by registered mail, return receipt requested, and (e) shall be received by the Secretary within 60 days after the Request Record Date. Any requesting stockholder (or agent duly authorized in a writing accompanying the revocation or the Special Meeting Request) may revoke his, her or its request for a special meeting at any time by written revocation delivered to the Secretary.

(3) The Secretary shall inform the requesting stockholders of the reasonably estimated cost of preparing and delivering the notice of the meeting (including the Corporation's proxy materials). The Secretary shall not be required to call a special meeting upon stockholder request and such meeting shall not be held unless, in addition to the documents required by paragraph (2) of this Section 3(b), the Secretary receives payment of such reasonably estimated cost prior to the preparation and mailing or delivery of such notice of the meeting.

(4) Except as provided in the next sentence, any special meeting shall be held at such place, date and time as may be designated by the President, Chief Executive Officer or Board of Directors, whoever has called the meeting. In the case of any special meeting called by the Secretary upon the request of stockholders (a "Stockholder Requested Meeting"), such meeting shall be held at such place, date and time as may be designated by the Board of Directors; provided, however, that the date of any Stockholder Requested Meeting shall be not more than 90 days after the record date for such meeting (the "Meeting Record Date"); and provided further that if the Board of Directors fails to designate, within ten days after the date that a valid Special Meeting Request is actually received by the Secretary (the "Delivery Date"), a date and time for a Stockholder Requested Meeting, then such meeting shall be held at 2:00 p.m. local time on the 90th day after the Meeting Record Date or, if such 90th day is not a Business Day (as defined below), on the first preceding Business Day; and provided further that in the event that the Board of Directors fails to designate a place for a Stockholder Requested Meeting within ten days after the Delivery Date, then such meeting shall be held at the principal executive office of the Corporation. In fixing a date for any special meeting, the President, Chief Executive Officer or Board of Directors may consider such factors as he, she or it deems relevant, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for the meeting and any plan of the Board of Directors to call an annual meeting or a special meeting. In the case of any Stockholder Requested Meeting, if the Board of Directors fails to fix a Meeting Record Date that is a date within 30 days after the Delivery Date, then the close of business on the 30th day after the Delivery Date shall be the Meeting Record Date. The Board of Directors may revoke the notice for any Stockholder Requested Meeting in the event that the requesting stockholders fail to comply with the provisions of paragraph (3) of this Section 3(b).

(5) If written revocations of the Special Meeting Request have been delivered to the Secretary and the result is that stockholders of record (or their agents duly authorized in writing), as of the Request Record Date, entitled to cast less than the Special Meeting Percentage have delivered, and not revoked, requests for a special meeting to the Secretary: (i) if the notice of meeting has not already been delivered, the Secretary shall refrain from delivering the notice of the meeting and send to all requesting stockholders who have not revoked such requests written notice of any revocation of a request for the special meeting, or (ii) if the notice of meeting has been delivered and if the Secretary first sends to all requesting stockholders who have not revoked requests for a special meeting on a matter written notice of any revocation of a request for the special meeting and written notice of the Corporation's intention to revoke the notice of the meeting or for the chairman of the meeting to adjourn the meeting without action on the matter, (A) the Secretary may revoke the notice of the meeting at any time before ten days before the commencement of the meeting or (B) the chairman of the meeting may call the meeting to order and adjourn the meeting sine die without acting on the matter. Any request for a special meeting received after a revocation by the Secretary of a notice of a meeting shall be considered a request for a new special meeting.

(6) The Chairman of the Board of Directors, the President or the Board of Directors may appoint regionally or nationally recognized independent inspectors of elections to act as the agent of the Corporation for the purpose of promptly performing a ministerial review of the validity of any purported Special Meeting Request received by the Secretary. For the purpose of permitting the inspectors to perform such review, no such purported Special Meeting Request shall be deemed to have been delivered to the Secretary until the earlier of (i) five Business Days after receipt by the Secretary of such purported request and (ii) such date as the independent inspectors certify to the Corporation that the valid requests received by the Secretary represent, as of the Request Record Date, stockholders of record entitled to cast not less than the Special Meeting Percentage. Nothing contained in this paragraph (6) shall in any way be construed to suggest or imply that the Corporation or any stockholder shall not be entitled to contest the validity of any request, whether during or after such five Business Day period, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(7) For purposes of these Bylaws, "Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

Section 4. Quorum. A majority of the stock issued and outstanding and entitled to vote at any meeting of stockholders, the holders of which are present in person or represented by proxy, shall constitute a quorum for the transaction of business, except as otherwise provided by law, the charter or these Bylaws. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum and the votes present may continue to transact business until adjournment. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the chairman of the meeting may adjourn the meeting from time to time to a date not more than 120 days after the original record date without notice other than announcement at the meeting. At such adjourned meeting at which a quorum shall be present, any business may be transacted that might have been transacted at the meeting as originally notified.

Section 5. Voting. When a quorum is present at any meeting, the vote of a majority of the votes cast at the meeting shall decide any question brought before such meeting, unless the question is one upon which by express provision of law, the charter or these Bylaws, a different vote is required, in which case such express provision shall govern and control the decision of such question.

Except as otherwise provided in this Section, a nominee for director shall be elected by a majority of the votes cast in person or by proxy at any meeting that includes the election of directors at which a quorum is present. For purposes of this Section, a majority of the votes cast means the affirmative vote of a majority of the total votes cast "for" and "against" such nominee. Notwithstanding the foregoing, a nominee for director shall be elected by a plurality of the votes cast in person or by proxy if the number of nominees exceeds the number of directors to be elected because the Secretary of the Corporation received proper notice that a stockholder nominated a person for election to the Board of Directors in accordance with the advance notice requirements contained in Article II, Section 12 of these Bylaws, and that nomination has not been withdrawn by the stockholder on or before the tenth day preceding the date the Company first mails its meeting notice to stockholders. For purposes of this Section, if plurality voting is applicable to the election of directors at any meeting, the nominees who receive the highest number of votes cast "for," without regard to votes cast "against," shall be elected as directors up to the total number of directors to be elected at that meeting. Abstentions and broker non-votes will not count as a vote cast with respect to a director's election.

If an incumbent director fails to receive the required vote for re-election, he or she shall offer to resign from the Board and the Nominating and Corporate Governance Committee will consider such offer to resign, will act on an expedited basis to determine whether to accept such director's resignation, and will submit such recommendation for prompt consideration by the Board. The director whose resignation is under consideration may not participate in any deliberation or vote of the Nominating and Corporate Governance Committee or Board regarding that resignation. Notwithstanding the foregoing, in the event that no nominee for director receives the vote required in these Bylaws, the Nominating and Corporate Governance Committee shall make a final determination as to whether the Board shall accept any or all resignations, including those resignations from the members of the committee. The Nominating and Corporate Governance Committee and the Board may consider any factors they deem relevant in deciding whether to accept a director's resignation. Within 90 days after the date of certification of the election results, the Board will promptly disclose its decision and rationale regarding whether to accept the resignation (or the reasons for rejecting the resignation, if applicable) in a press release, filing with the Securities and Exchange Commission or by other public announcement. If such incumbent director's resignation is not accepted by the Board, such director will continue to serve until the next meeting that includes the election of directors and until his or her successor is chosen and qualified, or his or her death, resignation, or retirement or removal, whichever event shall first occur. If a director's resignation is accepted by the Board, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board, in its sole discretion, may fill any resulting vacancy pursuant to these Bylaws.

Section 6. Proxies. A stockholder may cast the votes entitled to be cast by the holder of the shares of stock owned of record by the stockholder in person or by proxy executed by the stockholder or by the stockholder's duly authorized agent in any manner permitted by law. Such proxy or evidence of authorization of such proxy shall be filed with the Secretary of the Corporation before or at the meeting. No proxy shall be valid more than 11 months after its date unless otherwise provided in the proxy.

Section 7. Notice. Not less than ten nor more than 90 days before each meeting of stockholders, the Secretary shall give to each stockholder entitled to vote at such meeting and to each stockholder not entitled to vote who is entitled to notice of the meeting notice in writing or by electronic transmission stating the time and place of the meeting and, in the case of a special meeting or as otherwise may be required by any statute, the purpose for which the meeting is called, either by mail, by presenting it to such stockholder personally, by leaving it at the stockholder's residence or usual place of business or by any other means permitted by Maryland law. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the stockholder at the stockholder's address as it appears on the records of the Corporation, with postage thereon prepaid. If transmitted electronically, such notice shall be deemed to be given when transmitted to the stockholder by an electronic transmission to any address or number of the stockholder at which the stockholder receives electronic transmissions. A single notice to all stockholders who share an address shall be effective as to any stockholder at such address who consents to such notice or after having been notified of the Corporation's intent to give a single notice fails to object in writing to such single notice within 60 days. Failure to give notice of any meeting to one or more stockholders, or any irregularity in such notice, shall not affect the validity of any meeting fixed in accordance with this Article II, or the validity of any proceedings at any such meeting.

Subject to Section 12(a) of this Article II, any business of the Corporation may be transacted at an annual meeting of stockholders without being specifically designated in the notice, except such business as is required by any statute to be stated in such notice. No business shall be transacted at a special meeting of stockholders except as specifically designated in the notice. The Corporation may postpone or cancel a meeting of stockholders by making a "public announcement" (as defined in Section 12(c)(3)) of such postponement or cancellation prior to the meeting. Notice of the date to which the meeting is postponed shall be given not less than ten days prior to such date and otherwise in the manner set forth in this section.

Section 8. Organization and Conduct. Every meeting of stockholders shall be conducted by an individual appointed by the Board of Directors to be chairman of the meeting or, in the absence of such appointment, by the Chairman of the Board or, in the case of a vacancy in the office or absence of the Chairman of the Board, by one of the following officers present at the meeting: the Vice Chairman of the Board, if there is one, the President, the Vice Presidents in their order of rank and seniority, or, in the absence of such officers, a chairman chosen by the stockholders by the vote of a majority of the votes cast by stockholders present in person or by proxy. The Secretary, or, in the Secretary's absence, an Assistant Secretary, or in the absence of both the Secretary and Assistant Secretaries, a person appointed by the Board of Directors or, in the absence of such appointment, a person appointed by the chairman of the meeting shall act as secretary of the meeting. In the event that the Secretary presides at a meeting of the stockholders, an Assistant Secretary, or in the absence of Assistant Secretaries, an individual appointed by the Board of Directors or the chairman of the meeting, shall record the minutes of the meeting. The order of business and all other matters of procedure at any meeting of stockholders shall be determined by the chairman of the meeting. The chairman of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of the chairman and without any action by the stockholders, are appropriate for the proper conduct of the meeting, including, without limitation, (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance at the meeting to stockholders of record of the Corporation, their duly authorized proxies and other such individuals as the chairman of the meeting may determine; (c) limiting participation at the meeting on any matter to stockholders of record of the Corporation entitled to vote on such matter, their duly authorized proxies and other such individuals as the chairman of the meeting may determine; (d) limiting the time allotted to questions or comments by participants; (e) determining when the polls should be opened and closed; (f) maintaining order and security at the meeting; (g) removing any stockholder or any other individual who refuses to comply with meeting procedures, rules or guidelines as set forth by the chairman of the meeting; (h) concluding a meeting or recessing or adjourning the meeting to a later date and time and place announced at the meeting; and (i) complying with any state and local laws and regulations concerning safety and security. Unless otherwise determined by the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 9. Action by Written Consent. Any action required or permitted to be taken at any meeting of stockholders may be taken without a meeting if a unanimous consent setting forth the action is given in writing or by electronic transmission by each stockholder entitled to vote on the matter and filed with the minutes of proceedings of the stockholders.

Section 10. Voting of Stock by Certain Holders. Stock of the Corporation registered in the name of a corporation, partnership, trust or other entity, if entitled to be voted, may be voted by the president or a vice president, a general partner or trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such stock pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or agreement of the partners of a partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such stock. Any director or other fiduciary may vote stock registered in his or her name in his or her capacity as such fiduciary, either in person or by proxy.

Shares of stock of the Corporation directly or indirectly owned by it shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares entitled to be voted at any given time, unless they are held by it in a fiduciary capacity, in which case they may be voted and shall be counted in determining the total number of outstanding shares at any given time.

The Board of Directors may adopt by resolution a procedure by which a stockholder may certify in writing to the Corporation that any shares of stock registered in the name of the stockholder are held for the account of a specified person other than the stockholder. The resolution shall set forth the class of stockholders who may make the certification, the purpose for which the certification may be made, the form of certification and the information to be contained in it; if the certification is with respect to a record date, the time after the record date within which the certification must be received by the Corporation; and any other provisions with respect to the procedure which the Board of Directors considers necessary or desirable. On receipt of such certification, the person specified in the certification shall be regarded as, for the purposes set forth in the certification, the stockholder of record of the specified stock in place of the stockholder who makes the certification.

Section 11. Inspectors. The Board of Directors or the chairman of any meeting of stockholders may appoint, before or at the meeting, one or more inspectors for the meeting and any successor thereto. The inspectors, if any, shall (i) determine the number of shares of stock represented at the meeting in person or by proxy and the validity and effect of proxies, (ii) receive and tabulate all votes, ballots or consents, (iii) report such tabulation to the chairman of the meeting, (iv) hear and determine all challenges and questions arising in connection with the right to vote, and (v) do such acts as are proper to conduct the election or vote with fairness to all stockholders. Each such report shall be in writing and signed by him or her or by a majority of them if there is more than one inspector acting at such meeting. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be prima facie evidence thereof.

Section 12. Advance Notice of Stockholder Nominees for Director and Other Stockholder Proposals.

(a) Annual Meetings of Stockholders. (1) Nominations of individuals for election to the Board of Directors and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders (i) pursuant to the Corporation's notice of meeting, (ii) by or at the direction of the Board of Directors or (iii) by any stockholder of the Corporation who was a stockholder of record both at the time of giving of notice by the stockholder as provided for in this Section 12(a) and at the time of the annual meeting, who is entitled to vote at the meeting in the election of each individual so nominated or on any such other business, as the case may be, and who has complied with this Section 12(a).

(2) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of paragraph (a)(1) of this Section 12, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and such other business must otherwise be a proper matter for action by the stockholders. To be timely, a stockholder's notice shall set forth all information required under this Section 12 and shall be delivered to the Secretary at the principal executive office of the Corporation not earlier than the 150th day nor later than 5:00 p.m., Eastern Time, on the 120th day prior to the first anniversary of the date of the proxy statement for the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is advanced or delayed by more than 30 days from the first anniversary of the date of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the 150th day prior to the date of such annual meeting and not later than 5:00 p.m., Eastern Time, on the later of the 120th day prior to the date of such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made. The public announcement of a postponement or adjournment of an annual meeting shall not commence a new time period for the giving of a stockholder's notice as described above.

(3) Such stockholder's notice shall set forth:

(i) as to each individual whom the stockholder proposes to nominate for election or reelection as a director (each a "Proposed Nominee"),

(A) the name, age, business address and residence address of the Proposed Nominee,

(B) the class, series and number of any shares of stock of the Corporation that are beneficially owned by the Proposed Nominee,

(C) the date such shares were acquired and the investment intent of such acquisition,

(D) any material relationship between the Proposed Nominee and the nominating stockholder; and

(E) all other information relating to the Proposed Nominee that is required to be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case pursuant to Regulation 14A or Regulation 14C (or any successor provisions) under the Exchange Act and the rules thereunder (including the Proposed Nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected);

provided, however, that for purposes of this clause (i) of paragraph (a)(2) of this Section 12, no Proposed Nominee shall be eligible for election or reelection as a director of the Corporation, unless such Proposed Nominee delivers (in accordance with the time periods prescribed for delivery of notice under this Section 12) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such Proposed Nominee and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request) and a written representation and agreement (in the form provided by the Secretary upon written request) that such Proposed Nominee:

(X) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such Proposed Nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (2) any Voting Commitment that could limit or interfere with such Proposed Nominee's ability to comply, if elected as a director of the Corporation, with such Proposed Nominee's duties as a director under applicable law;

(Y) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, and

(Z) in such Proposed Nominee's personal capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation;

(ii) as to any other business that the stockholder proposes to bring before the meeting, a description of such business, the stockholder's reasons for proposing such business at the meeting and any material interest in such business of such stockholder or any Stockholder Associated Person (as defined below), individually or in the aggregate, including any anticipated benefit to the stockholder or the Stockholder Associated Person therefrom;

(iii) as to the stockholder giving the notice, any Proposed Nominee and any Stockholder Associated Person:

(A) the class, series and number of all shares of stock or other securities of the Corporation (collectively, the "Company Securities") which are owned (beneficially or of record) by such stockholder, Proposed Nominee or Stockholder Associated Person, if any, the date on which each such Company Security was acquired and the investment intent of such acquisition, and any short interest (including any opportunity to profit or share in any benefit from any decrease in the price of such stock or other security) in any Company Securities of any such person,

(B) the nominee holder for, and number of, any Company Securities owned beneficially but not of record by such stockholder, Proposed Nominee or Stockholder Associated Person,

(C) to the extent not set forth pursuant to the immediately preceding clause, (w) whether and the extent to which such stockholder, Proposed Nominee or Stockholder Associated Person has direct or indirect beneficial ownership of any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise, or any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation (a "Derivative Instrument"), (x) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder that are separated or separable from the underlying shares of the Corporation, (y) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner and (z) any performance-related fees (other than an asset-based fee) that such stockholder is entitled to based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder's immediate family sharing the same household (which information shall be supplemented by such stockholder and beneficial owner, if any, not later than 10 days after the record date for the meeting to disclose such ownership as of the record date),

(D) any derivative, swap or other transaction or series of transactions engaged in, directly or indirectly, by such stockholder, Proposed Nominee and Stockholder Associated Person, the purpose or effect of which is to give such stockholder, Proposed Nominee and Stockholder Associated Person economic risk similar to ownership of shares of any class or series of the Corporation, including due to the fact that the value of such derivative, swap or other transactions are determined by reference to the price, value or volatility of any shares of any class or series of the Corporation, or which derivative, swap or other transactions provide, directly or indirectly, the opportunity to profit from any increase in the price or value of shares of any class or series of the Corporation ("Synthetic Equity Interests"), which such Synthetic Equity Interests shall be disclosed without regard to whether (x) such derivative, swap or other transactions convey any voting rights in such shares to such stockholder, Proposed Nominee or such Stockholder Associated Person, (y) the derivative, swap or other transactions are required to be, or are capable of being, settled through delivery of such shares or (z) such stockholder, Proposed Nominee or such Stockholder Associated Person may have entered into other transactions that hedge or mitigate the economic effect of such derivative, swap or other transactions, and

(E) a general description of whether and the extent to which such stockholder, Proposed Nominee or Stockholder Associated Person has Synthetic Equity Interests or Derivative Instruments with respect to shares of stock or other equity interest of any other company;

(iv) as to the stockholder giving the notice, any Stockholder Associated Person with an interest or ownership referred to in clauses (ii) or (iii) of this paragraph (2) of this Section 12(a), and any Proposed Nominee,

(A) the name and address of such stockholder, as they appear on the Corporation's stock ledger, and the current name and business address, if different, of each such Stockholder Associated Person and any Proposed Nominee and

(B) the investment strategy or objective, if any, of such stockholder and each such Stockholder Associated Person who is not an individual and a copy of the prospectus, offering memorandum or similar document, if any, provided to investors or potential investors in such stockholder and each such Stockholder Associated Person; and

(v) to the extent known by the stockholder giving the notice, the name and address of any other stockholder supporting the nominee for election or reelection as a director or the proposal of other business on the date of such stockholder's notice.

(4) Notwithstanding anything in this subsection (a) of this Section 12 to the contrary, in the event that the number of directors to be elected to the Board of Directors is increased, and there is no public announcement of such action at least 130 days prior to the first anniversary of the date of the proxy statement for the preceding year's annual meeting, a stockholder's notice required by this Section 12(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive office of the Corporation not later than 5:00 p.m., Eastern Time, on the tenth day following the day on which such public announcement is first made by the Corporation.

(5) For purposes of this Section 12, "Stockholder Associated Person" of any stockholder means (i) any person acting in concert with such stockholder, (ii) any beneficial owner of shares of stock of the Corporation owned of record or beneficially by such stockholder (other than a stockholder that is a depositary) and (iii) any person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such stockholder or such Stockholder Associated Person.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of individuals for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected only (i) by or at the direction of the Board of Directors or (ii) provided that the Board of Directors has determined that directors shall be elected at such special meeting, by any stockholder of the Corporation who is a stockholder of record both at the time of giving of notice provided for in this Section 12 and at the time of the special meeting, who is entitled to vote at the meeting in the election of each individual so nominated and who has complied with the notice procedures set forth in this Section 12. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more individuals to the Board of Directors, any such stockholder may nominate an individual or individuals (as the case may be) for election as a director as specified in the Corporation's notice of meeting, if the stockholder's notice, containing the information required by paragraph (2) of this Section 12(a) shall be delivered to the Secretary at the principal executive office of the Corporation not earlier than the 120th day prior to such special meeting and not later than 5:00 p.m., Eastern Time, on the later of the 90th day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. The public announcement of a postponement or adjournment of a special meeting shall not commence a new time period for the giving of a stockholder's notice as described above.

(c) General. (1) If information submitted pursuant to this Section 12 by any stockholder proposing a nominee for election as a director or any proposal for other business at a meeting of stockholders shall be inaccurate to a material extent, at any time from the date of submission through the date of the meeting of stockholders, such information may be deemed not to have been provided in accordance with this Section 12. Any such stockholder shall notify the Corporation of any inaccuracy or change (within two Business Days of becoming aware of such inaccuracy or change) in any such information. Upon written request by the Secretary or the Board of Directors, any such stockholder shall provide, within five Business Days of delivery of such request (or such other period as may be specified in such request), (A) written verification, satisfactory, in the discretion of the Board of Directors or any authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Section 12 and (B) a written update of any information previously submitted by the stockholder pursuant to this Section 12 as of an earlier date. If a stockholder fails to provide such written verification or written update within such period, the information as to which written verification or written update was requested may be deemed not to have been provided in accordance with this Section 12.

(2) Only such individuals who are nominated in accordance with this Section 12 shall be eligible for election by stockholders as directors, and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with this Section 12. The chairman of the meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with this Section 12.

(3) "Public announcement" shall mean disclosure (i) in a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or other widely circulated news or wire service or (ii) in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to the Exchange Act.

(4) Notwithstanding the foregoing provisions of this Section 12, a stockholder shall also comply with all applicable requirements of state law and of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 12. Nothing in this Section 12 shall be deemed to affect any right of a stockholder to request inclusion of a proposal in, or the right of the Corporation to omit a proposal from, the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act. Nothing in this Section 12 shall require disclosure of revocable proxies received by the stockholder or Stockholder Associated Person pursuant to a solicitation of proxies after the filing of an effective Schedule 14A by such stockholder or Stockholder Associated Person under Section 14(a) of the Exchange Act.

Section 13. Control Share Acquisition Act. Notwithstanding any other provision of the charter of the Corporation or these Bylaws, Title 3, Subtitle 7 of the Maryland General Corporation Law, or any successor statute (the "MGCL"), shall not apply to any acquisition by any person of shares of stock of the Corporation. This section may be repealed, in whole or in part, at any time, whether before or after an acquisition of control shares and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any prior or subsequent control share acquisition.

ARTICLE III

DIRECTORS

Section 1. General Powers. The business and affairs of the Corporation shall be managed under the direction of its Board of Directors.

Section 2. Number and Qualifications. The number of directors which shall constitute the whole Board of Directors shall be not less than three (3) nor more than fifteen (15). The number of directors of the Corporation may be changed by majority vote of the entire Board of Directors. The directors need not be stockholders. A director shall be an individual at least 21 years of age who is not under legal disability.

Section 3. Tenure and Removal. The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 4 of this Article, and each director elected shall hold office for a term of one (1) year and until his successor is elected and qualifies; provided, however, that unless otherwise restricted by the charter or by law, any director or the entire Board of Directors may be removed, either with or without cause, from the Board of Directors at any meeting of stockholders by the affirmative vote of a majority of all the votes entitled to be cast generally for the election of directors.

Section 4. Vacancies. Any vacancy on the Board of Directors by reason of death, resignation, retirement, disqualification, removal from office, or otherwise (other than an increase in the number of directors), shall be filled by a majority of the remaining directors then in office, even if such majority is less than a quorum. Any vacancy in the number of directors created by an increase in the number of directors may be filled by a majority vote of the entire Board of Directors. The directors so chosen shall serve until the next annual meeting of stockholders and until his or her successor is elected and qualifies. If there are no directors in office, then an election of directors may be held in the manner provided by statute.

Section 5. Annual and Regular Meetings. An annual meeting of the Board of Directors shall be held immediately after and at the same place as the annual meeting of stockholders, no notice other than this Bylaw being necessary. In the event such meeting is not so held, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors. The Board of Directors may provide, by resolution, the time and place for the holding of regular meetings of the Board of Directors without other notice than such resolution.

Section 6. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the Chairman of the Board, the Chief Executive Officer, the President or by at least two of the directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix any place as the place for holding any special meeting of the Board of Directors called by them. The Board of Directors may provide, by resolution, the time and place for the holding of special meetings of the Board of Directors without other notice than such resolution

Section 7. Notice. Notice of any special meeting of the Board of Directors shall be delivered personally or by telephone, electronic mail, facsimile transmission, courier or United States mail to each director at his or her business or residence address. Notice by personal delivery, telephone, electronic mail or facsimile transmission shall be given at least 24 hours prior to the meeting. Notice by United States mail shall be given at least three days prior to the meeting. Notice by courier shall be given at least two days prior to the meeting. Telephone notice shall be deemed to be given when the director or his or her agent is personally given such notice in a telephone call to which the director or his or her agent is a party. Electronic mail notice shall be deemed to be given upon transmission of the message to the electronic mail address given to the Corporation by the director. Facsimile transmission notice shall be deemed to be given upon completion of the transmission of the message to the number given to the Corporation by the director and receipt of a completed answer-back indicating receipt. Notice by United States mail shall be deemed to be given when deposited in the United States mail properly addressed, with postage thereon prepaid. Notice by courier shall be deemed to be given when deposited with or delivered to a courier properly addressed. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Board of Directors need be stated in the notice, unless specifically required by statute or these Bylaws.

Section 8. Quorum. A majority of the directors shall constitute a quorum for transaction of business at any meeting of the Board of Directors, provided that, if less than a majority of such directors is present at such meeting, a majority of the directors present may adjourn the meeting from time to time without further notice, and provided further that if, pursuant to applicable law, the charter of the Corporation or these Bylaws, the vote of a majority or other percentage of a particular group of directors is required for action, a quorum must also include a majority of such group.

Section 9. Voting. The action of a majority of the directors present at a meeting at which a quorum is present shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable law, the charter or these Bylaws. If enough directors have withdrawn from a meeting to leave less than a quorum but the meeting is not adjourned, the action of the majority of that number of directors necessary to constitute a quorum at such meeting shall be the action of the Board of Directors, unless the concurrence of a greater proportion is required for such action by applicable law, the charter or these Bylaws.

Section 10. Organization. At each meeting of the Board of Directors, the Chairman of the Board or, in the absence of the Chairman, the Vice Chairman of the Board, if any, shall act as Chairman of the meeting. In the absence of both the Chairman and Vice Chairman of the Board, the Chief Executive Officer or in the absence of the Chief Executive Officer, the President or in the absence of the President, a director chosen by a majority of the directors present, shall act as chairman of the meeting. The Secretary or, in his or her absence, an Assistant Secretary of the Corporation, or in the absence of the Secretary and all Assistant Secretaries, a person appointed by the chairman of the meeting, shall act as secretary of the meeting.

Section 11. Consent by Directors Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such consent is filed with the minutes of proceedings of the Board of Directors or committee.

Section 12. Telephone Meetings. Members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors, or any committee, by means of conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 13. Compensation. Unless otherwise restricted by the charter or these Bylaws, the Board of Directors shall have the authority to fix the compensation of directors, provided, however, that no officer of the Corporation shall receive any compensation for serving as a director of the Corporation. The directors who are not officers of the Corporation shall be paid their expenses, if any, and an annual sum for their service on the Board of Directors and its committees. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor.

Section 14. Reliance. Each director and officer of the Corporation shall, in the performance of his or her duties with respect to the Corporation, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial data, prepared or presented by an officer or employee of the Corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented, by a lawyer, certified public accountant or other person, as to a matter which the director or officer reasonably believes to be within the person's professional or expert competence, or, with respect to a director, by a committee of the Board of Directors on which the director does not serve, as to a matter within its designated authority, if the director reasonably believes the committee to merit confidence .

Section 15. Ratification. The Board of Directors or the stockholders may ratify and make binding on the Corporation any action or inaction by the Corporation or its officers to the extent that the Board of Directors or the stockholders could have originally authorized the matter. Moreover, any action or inaction questioned in any stockholders' derivative proceeding or any other proceeding on the ground of lack of authority, defective or irregular execution, adverse interest of a director, officer or stockholder, non-disclosure, miscomputation, the application of improper principles or practices of accounting, or otherwise, may be ratified, before or after judgment, by the Board of Directors or by the stockholders, and if so ratified, shall have the same force and effect as if the questioned action or inaction had been originally duly authorized, and such ratification shall be binding upon the Corporation and its stockholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned action or inaction.

Section 16. Emergency Provisions. Notwithstanding any other provision in the charter or these Bylaws, this Section 16 shall apply during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the Board of Directors under Article III of these Bylaws cannot readily be obtained (an "Emergency"). During any Emergency, unless otherwise provided by the Board of Directors, (i) a meeting of the Board of Directors or a committee thereof may be called by any director or officer by any means feasible under the circumstances; (ii) notice of any meeting of the Board of Directors during such an Emergency may be given less than 24 hours prior to the meeting to as many directors and by such means as may be feasible at the time, including publication, television or radio, and (iii) the number of directors necessary to constitute a quorum shall be one-third of the entire Board of Directors.

ARTICLE IV

COMMITTEES OF DIRECTORS

Section 1. General Provisions. The Board of Directors may appoint one or more committees, consisting of one or more of the directors of the Corporation, to serve at the pleasure of the Board of Directors. Subject to the provisions hereof, the Board of Directors shall have the power at any time to change the membership of any committee, to fill any vacancy, to designate an alternate member to replace any absent or disqualified member or to dissolve any such committee. The Board of Directors may delegate to committees appointed under this Section 1 of this Article IV any of the powers of the Board of Directors, except as prohibited by law.

Section 2. Meetings. Notice of committee meetings shall be given in the same manner as notice for special meetings of the Board of Directors. A majority of the members of the committee shall constitute a quorum for the transaction of business at any meeting of the committee. The act of a majority of the committee members present at a meeting shall be the act of such committee; provided, however, in establishing a committee, the Board of Directors may provide for the voting and other rights of the members of the committee. The Board of Directors may designate a chairman of any committee, and such chairman or, in the absence of a chairman, any two members of any committee (if there are at least two members of the committee) may fix the time and place of its meeting unless the Board shall otherwise provide. In the absence of any member of any such committee, the members thereof present at any meeting, whether or not they constitute a quorum, may appoint another director to act in the place of such absent member. Each committee shall keep minutes of its proceedings.

ARTICLE V

INDEMNIFICATION

To the maximum extent permitted by Maryland law in effect from time to time, the Corporation, without requiring a preliminary determination of the ultimate entitlement to indemnification, shall indemnify and shall pay or reimburse reasonable expenses in advance of final disposition of a proceeding to (a) any individual who is a present or former director or officer of the Corporation and who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity or (b) any individual who, while a director or officer of the Corporation and at the request of the Corporation, serves or has served as a director, officer, partner or trustee of another corporation, real estate investment trust, partnership, joint venture, trust, employee benefit plan or any other enterprise and who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity. The rights to indemnification and advance of expenses provided by the charter of the Corporation and these Bylaws shall vest immediately upon election of a director or officer. The Corporation may, with the approval of its Board of Directors, provide such indemnification and advance for expenses to an individual who served a predecessor of the Corporation in any of the capacities described in (a) or (b) above and to any employee or agent of the Corporation or a predecessor of the Corporation. The indemnification and payment or reimbursement of expenses provided in these Bylaws shall not be deemed exclusive of or limit in any way other rights to which any person seeking indemnification or payment or reimbursement of expenses may be or may become entitled under any bylaw, regulation, insurance, agreement or otherwise.

Neither the amendment nor repeal of this Article, nor the adoption or amendment of any other provision of the Bylaws or charter of the Corporation inconsistent with this Article, shall apply to or affect in any respect the applicability of the preceding paragraph with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption regardless of whether a claim with respect to such action or inaction is raised prior or subsequent to such amendment.

ARTICLE VI

TRANSACTIONS WITH INTERESTED DIRECTORS

Section 1. No transaction between the Corporation and one or more of its directors, or between the Corporation and any other corporation, firm, association or other entity in which one or more of its directors are directors or officers of this Corporation or are financially interested, shall be either void or voidable for this reason alone, provided that such transaction shall be approved in a manner consistent with Section 2-419 of the MGCL.

Section 2. The Corporation shall not enter into any transactions or agreements with KC Holdings, Inc., a Delaware corporation, except pursuant to the Management Agreement and Option Agreement, each dated as of November 21, 1991, between the Corporation and KC Holdings, Inc., unless any such transaction is approved by a majority of the directors of the Corporation who are neither employees of the Corporation or any subsidiary of the Corporation.

ARTICLE VII

OFFICERS

Section 1. General Provisions. The officers of the Corporation shall be chosen by the Board of Directors and shall include a President, a Secretary and a Treasurer. The Corporation may also have at the discretion of the Board of Directors such other officers as are desired, including a Chairman of the Board of Directors, a Vice Chairman of the Board of Directors, a Chief Executive Officer, one or more Vice Presidents, a Chief Operating Officer, a Chief Financial Officer, one or more Assistant Secretaries and Assistant Treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article VII. In the event there are two or more Vice Presidents, then one or more may be designated as Executive Vice President, Senior Vice President, or other similar or dissimilar title. At the time of the election of officers, the directors may by resolution determine the order of their rank. Any number of offices may be held by the same person, unless the charter or these Bylaws otherwise provide.

Section 2. The Board of Directors, at its first meeting after each annual meeting of stockholders, shall choose the officers of the Corporation.

Section 3. The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

Section 4. Compensation. The compensation of the officers shall be fixed from time to time by or under the authority of the Board of Directors and no officer shall be prevented from receiving such compensation by reason of the fact that he is also a director.

Section 5. Removal and Resignation. Any officer or agent of the Corporation may be removed, with or without cause, by the Board of Directors if in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Corporation may resign at any time by delivering his or her resignation to the Board of Directors, the Chairman of the Board, the President or the Secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Corporation.

Section 6. Chairman of the Board. The Chairman of the Board of Directors, if such an officer be elected, shall, if present, preside at all meetings of the Board of Directors and of the stockholders. The Chairman of the Board shall exercise and perform such other powers and duties as may be from time to time assigned to him by the Board of Directors or prescribed by these Bylaws.

Section 7. President. In the absence of a Chief Executive Officer, the President shall be the Chief Executive Officer of the Corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the Corporation. He shall have the general powers and duties of management usually vested in the office of president and chief executive officer of corporations, and shall have such other powers and duties as may be prescribed by the Board of Directors or these Bylaws.

Section 8. Vice Presidents. In the absence or disability of the President, the Vice Presidents in order of their rank as fixed by the Board of Directors, or if not ranked, the Vice President designated by the Board of Directors, shall perform all the duties of the President, and when so acting shall have all the powers of and be subject to all the restrictions upon the President. The Vice Presidents shall have such other duties as from time to time may be prescribed for them, respectively, by the Board of Directors.

Section 9. Secretary. The Secretary shall attend all sessions of the Board of Directors and all meetings of the stockholders and record all votes and the minutes of all proceedings in a book to be kept for that purpose; and shall perform like duties for the standing committees when required by the Board of Directors. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or these Bylaws. He shall keep in safe custody the seal of the Corporation, and when authorized by the Board, affix the same to any instrument requiring it, and when so affixed it shall be attested by his signature or by the signature of an Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest to the affixing by his signature.

Section 10. Assistant Secretary. The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors, or if there be no such determination, the Assistant Secretary designated by the Board of Directors, shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary and shall, perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

Section 11. Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys, and other valuable effects in the name and to the credit of the Corporation, in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer and of the financial condition of the Corporation.

Section 12. Assistant Treasurer. The Assistant Treasurer, or if there shall be more than one, the Assistant Treasurers in the order determined by the Board of Directors, or if there be no such determination, the Assistant Treasurer designated by the Board of Directors, shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer and shall perform such other duties and have such other powers as the Board of Directors may from time to time prescribe.

ARTICLE VIII

STOCK

Section 1. Certificates. The Corporation may issue some or all of the shares of any or all of the Corporation's classes or series of stock without certificates if authorized by the Board of Directors. In the event that the Corporation issues shares of stock represented by certificates, such certificates shall be in such form as prescribed by the Board of Directors or a duly authorized officer, shall contain the statements and information required by the MGCL and shall be signed by the officers of the Corporation in the manner permitted by the MGCL. In the event that the Corporation issues shares of stock without certificates, to the extent then required by the MGCL, the Corporation shall provide to the record holders of such shares of stock a written statement of the information required by the MGCL to be included on stock certificates. There shall be no differences in the rights and obligations of stockholders based on whether or not their shares of stock are represented by certificates. If a class or series of stock is authorized by the Board of Directors to be issued without certificates, no stockholder shall be entitled to a certificate or certificates representing any shares of such class or series of stock held by such stockholder unless otherwise determined by the Board of Directors and then only upon written request by such stockholder to the Secretary of the Corporation.

Section 2. Transfers. All transfers of shares of stock shall be made on the books of the Corporation, by the holder of the shares of stock, in person or by his or her attorney, in such manner as the Board of Directors or any officer of the Corporation may prescribe and, if such shares of stock are certificated, upon surrender of certificates duly endorsed. The issuance of a new certificate upon the transfer of certificated shares is subject to the determination of the Board of Directors that such shares of stock shall no longer be represented by certificates. Upon the transfer of uncertificated shares of stock, to the extent then required by the MGCL, the Corporation shall provide to record holders of such shares of stock a written statement of the information required by the MGCL to be included on stock certificates.

The Corporation shall be entitled to treat the holder of record of any share of stock as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State of Maryland.

Notwithstanding the foregoing, transfers of shares of any class or series of stock will be subject in all respects to the charter of the Corporation and all of the terms and conditions contained therein.

Section 3. Replacement Certificate. Any officer of the Corporation may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, destroyed, stolen or mutilated, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, destroyed, stolen or mutilated; provided, however, if such shares of stock have ceased to be certificated, no new certificate shall be issued unless requested in writing by such stockholder and the Board of Directors has determined that such certificates may be issued. Unless otherwise determined by an officer of the Corporation, the owner of such lost, destroyed, stolen or mutilated certificate or certificates, or his or her legal representative, shall be required, as a condition precedent to the issuance of a new certificate or certificates, to give the Corporation a bond in such sums as it may direct as indemnity against any claim that may be made against the Corporation.

Section 4. Fixing of Record Date. The Board of Directors may set, in advance, a record date for the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or determining stockholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of stockholders for any other proper purpose. Such date, in any case, shall not be prior to the close of business on the day the record date is fixed and shall be not more than 90 days and, in the case of a meeting of stockholders, not less than ten days, before the date on which the meeting or particular action requiring such determination of stockholders of record is to be held or taken.

When a record date for the determination of stockholders entitled to notice of and to vote at any meeting of stockholders has been set as provided in this section, such record date shall continue to apply to the meeting if adjourned or postponed, except if the meeting is adjourned to a date more than 120 days or postponed to a date more than 90 days after the record date originally fixed for the meeting, in which case a new record date for such meeting may be determined as set forth herein.

Section 5. Stock Ledger. The Corporation shall maintain at its principal office or at the office of its counsel, accountants or transfer agent, an original or duplicate share ledger containing the name and address of each stockholder and the number of shares of each class held by such stockholder.

Section 6. Fractional Stock; Issuance of Units. The Board of Directors may issue fractional stock or provide for the issuance of scrip, all on such terms and under such conditions as they may determine. Notwithstanding any other provision of the charter or these Bylaws, the Board of Directors may issue units consisting of different securities of the Corporation. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Corporation, except that the Board of Directors may provide that for a specified period securities of the Corporation issued in such unit may be transferred on the books of the Corporation only in such unit.

ARTICLE IX

DISTRIBUTIONS

Section 1. Authorization. Dividends and other distributions upon the stock of the Corporation may be authorized by the Board of Directors, subject to the provisions of law and the charter of the Corporation. Dividends and other distributions may be paid in cash, property or stock of the Corporation, subject to the provisions of law and the charter.

Section 2. Contingencies. Before payment of any dividends or other distributions, there may be set aside out of any assets of the Corporation available for dividends or other distributions such sum or sums as the Board of Directors may from time to time, in its absolute discretion, think proper as a reserve fund for contingencies, for equalizing dividends, for repairing or maintaining any property of the Corporation or for such other purpose as the Board of Directors shall determine, and the Board of Directors may modify or abolish any such reserve.

ARTICLE X

CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. Contracts. The Board of Directors may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the Corporation when duly authorized or ratified by action of the Board of Directors and executed by an authorized person.

Section 2. Checks and Drafts. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or agent of the Corporation in such manner as shall from time to time be determined by the Board of Directors.

Section 3. Deposits. All funds of the Corporation not otherwise employed shall be deposited or invested from time to time to the credit of the Corporation as the Board of Directors, the Chief Executive Officer, the Chief Financial Officer, or any other officer designated by the Board of Directors may determine.

ARTICLE XI

FISCAL YEAR

The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

ARTICLE XII

SEAL

Section 1. Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its incorporation and the words “Incorporated Maryland.” The Board of Directors may authorize one or more duplicate seals and provide for the custody thereof.

Section 2. Affixing Seal. Whenever the Corporation is permitted or required to affix its seal to a document, it shall be sufficient to meet the requirements of any law, rule or regulation relating to a seal to place the word “(SEAL)” adjacent to the signature of the person authorized to execute the document on behalf of the Corporation.

ARTICLE XIII

NOTICES

Whenever any notice of a meeting is required to be given under the provisions of the law, the charter or these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE XIV

AMENDMENTS

Section 1. By Directors. The board of directors shall have the power to adopt, alter or repeal any bylaws of the Corporation and to make new bylaws, except that the board of directors shall not alter or repeal this Section or any bylaws made by the stockholders.

Section 2. By Stockholders. The stockholders shall have the power to adopt, alter or repeal any bylaws of the Corporation and to make new bylaws.

Exhibit 3.3

ARTICLES OF MERGER

MERGING

KRC MERGER SUB CORP.
(a Maryland corporation)

WITH AND INTO

KIMCO REALTY CORPORATION
(a Maryland corporation)

December 29, 2022

KRC Merger Sub Corp., a Maryland corporation (the "Merging Company"), and Kimco Realty Corporation, a Maryland corporation (the "Surviving Corporation"), hereby certify to the State Department of Assessments and Taxation of Maryland that:

FIRST: The Merging Company and the Corporation have agreed that the Merging Company shall be merged (the "Merger") with and into the Surviving Corporation on the terms and conditions set forth herein and in that certain Agreement and Plan of Merger, dated as of December 15, 2022 (the "Merger Agreement"), by and among the Corporation, New KRC, Corp., a Maryland corporation ("Holdco"), and the Merging Company.

SECOND: The Surviving Corporation shall survive the Merger as a corporation organized and existing under the laws of the State of Maryland

THIRD: The Merging Company is a Maryland corporation incorporated under the laws of the State of Maryland. The principal office of the Merging Company in the State of Maryland is located in Baltimore County. The Merging Company owns no interest in land located in the State of Maryland.

FOURTH: The Surviving Corporation is a Maryland corporation incorporated under the laws of the State of Maryland. The principal office in Maryland of the Surviving Corporation is located in Baltimore County.

FIFTH: The total number of shares of all classes and series of stock which the Merging Company has the authority to issue is 1,000 shares, $0.01 par value per share, all of one class.

SIXTH: The total number of shares of all classes and series of stock which the Surviving Corporation has the authority to issue is 1,141,100,000 shares, consisting of 750,000,000 shares of common stock, $0.01 par value per share (the "Surviving Corporation Common Stock"), 384,046,000 shares of excess stock, $0.01 par value per share (the "Surviving Corporation Excess Stock"), 7,012,140 shares of preferred stock, $1.00 par value per share (the "Surviving Corporation Undesignated Preferred Stock"), 10,350 shares of 5.125% Class L cumulative redeemable preferred stock, $1.00 par value per share (the "Class L Preferred Stock"), 10,350 shares of Class L excess preferred stock, $1.00 par value per share (the "Class L Excess Preferred Stock"), 10,580 shares of 5.25% Class M cumulative redeemable preferred stock, $1.00 par value per share (the "Class M Preferred Stock"), and 10,580 shares of Class M excess preferred stock, $1.00 par value per share (the "Class M Excess Preferred Stock" and together with the Surviving Corporation Undesignated Preferred Stock, the Class L Preferred Stock, the Class L Excess Preferred Stock and the Class M Preferred Stock, the "Surviving Corporation Preferred Stock"). The aggregate par value of all shares of all classes and series of stock of the Surviving Corporation having a par value is $18,394,460. These Articles of Merger do not change the total authorized shares of stock of the Surviving Corporation.

SEVENTH: At the Effective Time, the Merging Company shall be merged with and into the Surviving Corporation; and, thereupon, the Surviving Corporation shall possess any and all purposes and powers of the Merging Company; and all leases, licenses, property, rights, privileges and powers of whatever nature and description of the Merging Company shall be transferred to, vested in and devolved upon the Surviving Corporation, without further act or deed, and all of the debts, liabilities, duties and obligations of the Merging Company will become the debts, liabilities, duties and obligations of the Surviving Corporation. At the Effective Time,

(a) Each share of stock of Merging Company issued and outstanding immediately prior to the Effective Time shall automatically convert, on a one-for-one basis, into one share of Surviving Corporation Common Stock;

(b) Each share of Surviving Corporation Common Stock, Surviving Corporation Excess Stock and Surviving Corporation Preferred Stock issued and outstanding immediately prior to the Effective Time shall automatically convert, on a one-for-one basis, into one equivalent share of stock of Holdco, as applicable, as provided for in Section 1.7 of the Merger Agreement.

EIGHTH: The terms and conditions of the transaction set forth in these Articles of Merger were duly advised, authorized and approved by the Surviving Corporation in the manner and by the vote required by the laws of the State of Maryland and the charter and the bylaws of the Surviving Corporation, as follows, the board of directors of the Surviving Corporation, adopted resolutions at a duly called meeting of the board of directors at which a quorum of the members of the board of directors was present, approving the Merger, on the terms and subject to the conditions set forth in the Merger Agreement, and pursuant to Section 3-106.2(b) of the Maryland General Corporation Law ("MGCL"), the approval of the Surviving Corporation's stockholder is not required.

NINTH: The terms and conditions of the transaction set forth in these Articles of Merger were duly advised, authorized and approved by the Merging Company in the manner and by the vote required by the laws of the State of Maryland and the charter and the bylaws of the Merging Company, as follows, the board of directors of the Merging Company, adopted resolutions at a duly called meeting of the board of directors at which a quorum of the members of the board of directors was present, and the sole stockholder of the Merging Company adopted resolutions by written consent in lieu of a meeting, approving the Merger, on the terms and subject to the conditions set forth in the Merger Agreement.

TENTH: In accordance with Section 2-605 of the MGCL, the charter of the Surviving Corporation is hereby amended, as of the Effective Time, to change the name of the Surviving Corporation to the following:

KRC Interim Corp.

ELEVENTH: The Merger shall become effective at 12:01 a.m, Eastern Time, on January 1, 2023 (the "Effective Time").

TWELFTH: Each of the undersigned acknowledges these Articles of Merger to be the act of the entity on whose behalf that person has signed, and further, as to all matters or facts required to be verified under oath, each of the undersigned acknowledges that to the best of that person's knowledge, information and belief, these matters and facts relating to the entity on whose behalf that person has signed are true in all material respects and that this statement is made under the penalties of perjury.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, these Articles of Merger have been duly executed by the parties hereto as of the date first written above.

ATTEST:

By: /s/ Kathleen M. Gazerro
Name: Kathleen M. Gazerro
Title: Assistant Secretary

KRC MERGER SUB CORP.

By: /s/ Glenn G. Cohen
Name: Glenn G. Cohen
Title: Executive Vice President, Chief Financial Officer and Treasurer

ATTEST:

By: /s/ Kathleen M. Gazerro
Name: Kathleen M. Gazerro
Title: Assistant Secretary

KIMCO REALTY CORPORATION

By: /s/ Glenn G. Cohen
Name: Glenn G. Cohen
Title: Executive Vice President, Chief Financial Officer and Treasurer

[Signature Page – Merger Sub / Kimco Realty Corporation Articles of Merger]

Exhibit 3.4

STATE OF DELAWARE

CERTIFICATE OF FORMATION
OF
KIMCO REALTY OP, LLC

This Certificate of Formation of Kimco Realty OP, LLC is being executed by the undersigned for the purpose of forming a limited liability company under the Limited Liability Company Act of the State of Delaware.

1. Name. The name of the limited liability company formed hereby is: Kimco Realty OP, LLC.

2. Registered Office. The address of its registered office in the State of Delaware is 1209 N Orange St., Wilmington, County of New Castle, Delaware 19801.

3. Registered Agent. The name and address of its registered agent for service of process in the State of Delaware is The Corporation Trust Company, 1209 N Orange St., Wilmington, County of New Castle, Delaware 19801.

(signature page follows)

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Formation of Kimco Realty OP, LLC this 3rd day of January, 2023.

/s/ Glenn G. Cohen
Glenn G. Cohen

Exhibit 3.5

LIMITED LIABILITY COMPANY AGREEMENT
OF
KIMCO REALTY OP, LLC
a Delaware limited liability company

THE SECURITIES EVIDENCED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "*SECURITIES ACT*"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION, UNLESS IN THE OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THE PROPOSED SALE, TRANSFER OR OTHER DISPOSITION MAY BE EFFECTED WITHOUT REGISTRATION UNDER THE SECURITIES ACT AND UNDER APPLICABLE STATE SECURITIES OR "BLUE SKY" LAWS.

dated as of January 3, 2023

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LIMITED LIABILITY COMPANY AGREEMENT
OF KIMCO REALTY OP, LLC

THIS LIMITED LIABILITY COMPANY AGREEMENT OF KIMCO REALTY OP, LLC (the "*Company*"), dated as of January 3, 2023, (the "*Effective Date"*), is made and entered into by and among KIMCO REALTY CORPORATION, a Maryland corporation ("*Kimco*"), as the Managing Member, and the Persons from time to time party hereto, as members.

WHEREAS, on January 1, 2023, pursuant to Section 3-106.2 of the MGCL, KRC Merger Sub Corp., a Maryland corporation ("*Merger Sub*") and indirect subsidiary of KRC Interim Corp. (f/k/a/ Kimco Realty Corporation), a Maryland corporation and the predecessor to the Company ("*Predecessor*"), merged (the "*Merger*") with and into the Predecessor, with the Predecessor being the surviving entity (the "*Surviving Company*"), pursuant to the terms of the Agreement and Plan of Merger, dated December 15, 2022, by and among the Predecessor, Kimco and Merger Sub, so that as a result of the Merger the Predecessor became a direct wholly-owned subsidiary of Kimco.

WHEREAS, Kimco filed a certificate of conversion of the Predecessor, with the Secretary of the State of Delaware and State Department of Assessments and Taxation of Maryland, and a certificate of formation was filed for the Company with the Secretary of State of the State of Delaware, on January 2, 2023, to convert Predecessor into the Company, a limited liability company organized pursuant to and in accordance with the Delaware Limited Liability Company Act (6 Del. C. §18-101, et seq.), as amended from time to time (the "*Act*"), and change its name to "Kimco Realty OP, LLC" (the "*Conversion*");

WHEREAS, on or prior to January 3, 2023, all necessary action, corporate and otherwise, was taken by the Predecessor, including the Board of Directors of the Predecessor, to (i) authorize the Conversion and (ii) approve this Agreement;

WHEREAS, in accordance with Section 18-214 of the Act, the Predecessor was converted to a Delaware limited liability company on January 3, 2023, by the filing in the office of the Secretary of State a Certificate of Conversion to Limited Liability Company (the "*Certificate of Conversion*") and a Certificate of Formation (the "*Certificate of Formation*");

WHEREAS, in accordance with Section 18-214 of the Act, the Company shall constitute a continuation of the existence of the Predecessor in the form of a Delaware limited liability company and, for all purposes of the laws of the State of Delaware, the Company shall be deemed to be the same entity as the Predecessor;

WHEREAS, pursuant to this Agreement, Kimco, the sole stockholder of the Predecessor immediately following the Merger, was admitted to the Company as the sole member following the Conversion; and

WHEREAS, the Members (as hereinafter defined) of the Company desire to enter into this Agreement (as hereinafter defined) effective as of the Effective Date.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE 1
DEFINED TERMS

The following definitions shall be for all purposes, unless otherwise clearly indicated to the contrary, applied to the terms used in this Agreement:

"*Act*" means the Delaware Limited Liability Company Act (6 Del. C. §18-101, et seq.), as it may be amended from time to time, and any successor to such statute.

"*Actions*" has the meaning set forth in Section 7.7 hereof.

"*Additional Funds*" has the meaning set forth in Section 4.3(a) hereof.

"*Additional Member*" means a Person who is admitted to the Company as a Member pursuant to the Act and Section 4.2 and Section 12.2 hereof and who is shown as such on the Member Registry.

"*Adjusted Capital Account*" means, with respect to any Member, the balance in such Member's Capital Account as of the end of the relevant Fiscal Year or other applicable period, after giving effect to the following adjustments:

(a) increase such Capital Account by any amounts that such Member is obligated to restore pursuant to this Agreement upon liquidation of such Member's Membership Interest or that such Person is deemed to be obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c) or the penultimate sentence of each of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) decrease such Capital Account by the items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of "Adjusted Capital Account" is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"*Adjusted Capital Account Deficit*" means, with respect to any Member, the deficit balance, if any, in such Member's Adjusted Capital Account as of the end of the relevant Fiscal Year or other applicable period.

"*Adjustment Event*" has the meaning set forth in Section 16.3 hereof.

"*Adjustment Factor*" means 1.0; *provided*, *however*, that in the event that:

(a) the Managing Member (i) declares or pays a dividend on its outstanding REIT Shares wholly or partly in REIT Shares or makes a distribution to all holders of its outstanding REIT Shares wholly or partly in REIT Shares, (ii) splits or subdivides its outstanding REIT Shares or (iii) effects a reverse stock split or otherwise combines its outstanding REIT Shares into a smaller number of REIT Shares, the Adjustment Factor shall be adjusted by multiplying the Adjustment Factor previously in effect by a fraction, (A) the numerator of which shall be the number of REIT Shares issued and outstanding on the record date for such dividend, distribution, split, subdivision, reverse split or combination (assuming for such purposes that such dividend, distribution, split, subdivision, reverse split or combination has occurred as of such time) and (B) the denominator of which shall be the actual number of REIT Shares (determined without the above assumption) issued and outstanding on the record date for such dividend, distribution, split, subdivision, reverse split or combination;

(b) the Managing Member distributes any rights, options or warrants to all holders of its REIT Shares to subscribe for or to purchase or to otherwise acquire REIT Shares (other than in connection with a dividend reinvestment program adopted by the Managing Member), or other securities or rights convertible into, exchangeable for or exercisable for REIT Shares, at a price per share less than the Value of a REIT Share on the record date for such distribution (each a "*Distributed Right*"), then, as of the distribution date of such Distributed Rights or, if later, the time such Distributed Rights become exercisable, the Adjustment Factor shall be adjusted by multiplying the Adjustment Factor previously in effect by a fraction (i) the numerator of which shall be the number of REIT Shares issued and outstanding on the record date (or, if later, the date such Distributed Rights become exercisable) plus the maximum number of REIT Shares purchasable under such Distributed Rights and (ii) the denominator of which shall be the number of REIT Shares issued and outstanding on the record date (or, if later, the date such Distributed Rights become exercisable) plus a fraction (A) the numerator of which is the maximum number of REIT Shares purchasable under such Distributed Rights times the minimum purchase price per REIT Share under such Distributed Rights and (B) the denominator of which is the Value of a REIT Share as of the record date (or, if later, the date such Distributed Rights become exercisable); *provided*, *however*, that, if any such Distributed Rights expire or become no longer exercisable, then the Adjustment Factor shall be adjusted, effective retroactive to the date of distribution of the Distributed Rights (or, if applicable, the later time that the Distributed Rights became exercisable), to reflect a reduced maximum number of REIT Shares or any change in the minimum purchase price for the purposes of the above fraction; and

(c) the Managing Member shall, by dividend or otherwise, distribute to all holders of its REIT Shares evidences of its indebtedness or assets (including securities of the Managing Member or any other issuer, but excluding any dividend or distribution referred to in subsection (a) or (b) above), which evidences of indebtedness or assets relate to assets not received by the Managing Member pursuant to a pro rata distribution by the Company, then the Adjustment Factor shall be adjusted to equal the amount determined by multiplying the Adjustment Factor in effect immediately prior to the close of business as of the applicable record date by a fraction (i) the numerator of which shall be such Value of a REIT Share as of the record date and (ii) the denominator of which shall be the Value of a REIT Share as of the record date less the then fair market value (as determined by the Managing Member, whose determination shall be conclusive) of the portion of the evidences of indebtedness or assets so distributed applicable to one REIT Share.

Notwithstanding the foregoing, no adjustments to the Adjustment Factor will be made for any class or series of Membership Interests to the extent that the Company makes or effects any correlative distribution or payment to all of the Members holding Membership Interests of such class or series, or effects any correlative split or reverse split in respect of Membership Interests of such class or series. Any adjustments to the Adjustment Factor shall become effective immediately after such event, retroactive to the record date, if any, for such event (or, if later, the date Distributed Rights become exercisable). For illustrative purposes, examples of adjustments to the Adjustment Factor are set forth on Exhibit A attached hereto.

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

"*Agreement*" means this Limited Liability Company Agreement of Kimco Realty OP, LLC as now or hereafter amended, restated, modified, supplemented or replaced (including any Membership Unit Designations).

"*Applicable Percentage*" has the meaning set forth in Section 15.1(b) hereof.

"*Appraisal*" means, with respect to any assets, the written opinion of an independent third party experienced in the valuation of similar assets, selected by the Managing Member. Such opinion may be in the form of an opinion by such independent third party that the value for such property or asset as set by the Managing Member is fair, from a financial point of view, to the Company.

"*Assignee*" means a Person to whom a Membership Interest has been Transferred in a manner permitted under this Agreement, but who has not become a Substituted Member, and who has the rights set forth in Section 11.5 hereof.

"*Available Cash*" means, with respect to any period for which such calculation is being made,

(a) the sum, without duplication, of:

(i) the Company's Net Income or Net Loss (as the case may be) for such period,

(ii) Depreciation and all other noncash charges to the extent deducted in determining Net Income or Net Loss for such period,

(iii) the amount of any reduction in reserves of the Company referred to in clause (b)(vi) below (including, without limitation, reductions resulting because the Managing Member determines such amounts are no longer necessary),

(iv) the excess, if any, of the net cash proceeds from the sale, exchange, disposition, financing or refinancing of Company property for such period over the gain (or loss, as the case may be) recognized from such sale, exchange, disposition, financing or refinancing during such period (excluding Terminating Capital Transactions), and

(v) all other cash received (including amounts previously accrued as Net Income and amounts of deferred income) or any net amounts borrowed by the Company for such period that was not included in determining Net Income or Net Loss for such period;

(b) less the sum, without duplication, of:

(i) all principal debt payments made during such period by the Company,

(ii) capital expenditures made by the Company during such period,

(iii) investments in any entity (including loans made thereto) to the extent that such investments are not otherwise described in clause (b)(i) or clause (b)(ii) above,

(iv) all other expenditures and payments not deducted in determining Net Income or Net Loss for such period (including amounts paid in respect of expenses previously accrued),

(v) any amount included in determining Net Income or Net Loss for such period that was not received by the Company during such period,

(vi) the amount of any increase in reserves (including, without limitation, working capital reserves) established during such period that the Managing Member determines are necessary or appropriate in its sole and absolute discretion,

(vii) any amount distributed or paid in redemption of any Member Interest or Membership Units, including, without limitation, any Cash Amount paid, and

(viii) the amount of any working capital accounts and other cash or similar balances that the Managing Member determines to be necessary or appropriate in its sole and absolute discretion.

Notwithstanding the foregoing, Available Cash shall not include (a) any cash received or reductions in reserves, or take into account any disbursements made, or reserves established, after dissolution and the commencement of the liquidation and winding up of the Company or (b) any Capital Contributions, whenever received or any payments, expenditures or investments made with such Capital Contributions.

"*Board of Directors*" means the Board of Directors of the Managing Member.

"*Business Day*" means any day except a Saturday, Sunday or other day on which commercial banks in the City of New York, New York are authorized by law to close.

"*Capital Account*" means, with respect to any Member, the capital account maintained by the Managing Member for such Member on the Member Registry maintained by the Company in accordance with the following provisions:

(a) To each Member's Capital Account, there shall be added such Member's Capital Contributions, such Member's distributive share of Net Income and any items in the nature of income or gain that are specially allocated pursuant to Section 6.3 or 6.4 hereof, and the amount of any Company liabilities assumed by such Member or that are secured by any property distributed to such Member.

(b) From each Member's Capital Account, there shall be subtracted the amount of cash and the Gross Asset Value of any Company property distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Net Losses and any items in the nature of expenses or losses that are specially allocated pursuant to Section 6.3 or 6.4 hereof, and the amount of any liabilities of such Member assumed by the Company or that are secured by any property contributed by such Member to the Company (except to the extent already reflected in the amount of such Member's Capital Contribution).

(c) In the event any interest in the Company is Transferred in accordance with the terms of this Agreement (which Transfer does not result in the termination of the Company for U.S. federal income tax purposes), the transferee shall succeed to the Capital Account of the transferor to the extent that it relates to the Transferred interest.

(d) In determining the amount of any liability for purposes of subsections (a) and (b) hereof, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

(e) The provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations promulgated under Section 704 of the Code, and shall be interpreted and applied in a manner consistent with such Regulations. If the Managing Member shall determine that it is necessary or appropriate to modify the manner in which the Capital Accounts are maintained in order to comply with such Regulations, the Managing Member may make such modification, *provided* that such modification is not likely to have any material effect on the amounts distributable to any Member pursuant to Article 13 hereof upon the dissolution of the Company. The Managing Member may, in its sole discretion, (i) make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of Company capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations Section 1.704-1(b)(2)(iv)(q) and (ii) make any modifications that are necessary or appropriate in the event that unanticipated events might otherwise cause this Agreement not to comply with Regulations Section 1.704-1(b) or Section 1.704-2.

"*Capital Account Limitation*" means, with respect to a Holder of LTIP Units, (x) the Economic Capital Account Balance of such Holder, to the extent attributable to such Holder's ownership of LTIP Units, divided by (y) the Common Unit Economic Balance, in each case as determined as of the effective date of conversion.

"*Capital Contribution*" means, with respect to any Member, the amount of money and the initial Gross Asset Value of any Contributed Property that such Member contributes or is deemed to contribute pursuant to Article 4 hereof.

"*Capital Share*" means a share of any class or series of stock of the Managing Member now or hereafter authorized other than a REIT Share or an Excess Share.

"*Cash Amount*" means an amount of cash equal to the product of (a) the Value of a REIT Share and (b) the REIT Shares Amount determined as of the applicable Valuation Date.

"*Certificate*" means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware, as amended from time to time in accordance with the terms hereof and the Act.

"*Charity*" means an entity described in Section 501(c)(3) of the Code or any trust all the beneficiaries of which are such entities.

"*Charter*" means the charter of the Managing Member, within the meaning of Section 1-101 of the Maryland General Corporation Law.

"*Class L Articles Supplementary*" means the terms of the REIT Class L Preferred Shares of the Managing Member, as set forth in Exhibit A of the Charter.

"*Class L Preferred Capital*" means a Capital Account balance equal to the product of (i) the number of Class L Preferred Units then held by the Managing Member multiplied by (ii) the sum of $25,000.00, any Preferred Distribution Shortfall per Class L Preferred Unit and any accrued and unpaid distribution per Class L Preferred Unit for the current distribution period (and, for the avoidance of doubt, at the time of issuance of the Class L Preferred Units, the initial Class L Preferred Capital shall include an amount equal to the prorated portion of the then-current distribution period for the REIT Class L Preferred Shares).

"*Class L Preferred Unit Distribution Payment Date*" shall have the meaning set forth in Section 17.2(a).

"*Class L Preferred Units*" shall have the meaning set forth in Section 17.1.

"*Class L Priority Return*" shall mean an amount equal to 5.125% per annum on the stated value of $25,000.00 per Class L Preferred Unit, commencing on the date of original issuance of the Class L Preferred Units. For any partial quarterly period, the amount of the Class L Priority Return shall be prorated and computed on the basis of a 360-day year consisting of twelve 30-day months.

"*Class M Articles Supplementary*" means the terms of the REIT Class M Preferred Shares of the Managing Member, as set forth in Exhibit B of the Charter.

"*Class M Preferred Capital*" means a Capital Account balance equal to the product of (i) the number of Class M Preferred Units then held by the Managing Member multiplied by (ii) the sum of $25,000.00, any Preferred Distribution Shortfall per Class M Preferred Unit and any accrued and unpaid distribution per Class M Preferred Unit for the current distribution period (and, for the avoidance of doubt, at the time of issuance of the Class M Preferred Units, the initial Class M Preferred Capital shall include an amount equal to the prorated portion of the then-current distribution period for the REIT Class M Preferred Shares).

"*Class M Preferred Unit Distribution Payment Date*" shall have the meaning set forth in Section 18.2(a).

"*Class M Preferred Units*" shall have the meaning set forth in Section 18.1.

"*Class M Priority Return*" shall mean an amount equal to 5.25% per annum on the stated value of $25,000.00 per Class M Preferred Unit, commencing on the date of original issuance of the Class M Preferred Units. For any partial quarterly period, the amount of the Class M Priority Return shall be prorated and computed on the basis of a 360-day year consisting of twelve 30-day months.

"*Closing Price*" has the meaning set forth in the definition of "*Value*."

"*Code*" means the Internal Revenue Code of 1986, as amended and in effect from time to time or any successor statute thereto, as interpreted by the applicable Regulations thereunder. Any reference herein to a specific section or sections of the Code shall be deemed to include a reference to any corresponding provision of future law.

"*Common Unit*" means a fractional, undivided share of the Membership Interests of all Members issued pursuant to Sections 4.1 and 4.2 hereof, but does not include any Preferred Unit, LTIP Unit or any other Membership Unit specified in a Membership Unit Designation as being other than a Common Unit.

"*Common Unit Economic Balance*" means (i) the Capital Account balance of the Managing Member, plus the amount of the Managing Member's share of any Member Minimum Gain or Company Minimum Gain, in either case to the extent attributable to the Managing Member's ownership of Common Units and computed on a hypothetical basis after taking into account all allocations through the date on which any allocation is made under Section 6.2(d) hereof, divided by (ii) the number of the Managing Member's Common Units.

"*Company*" has the meaning set forth in the preamble.

"*Company Minimum Gain*" has the meaning set forth in Regulations Section 1.704-2(b)(2) for the term "partnership minimum gain," and the amount of Company Minimum Gain, as well as any net increase or decrease in Company Minimum Gain, for a Fiscal Year shall be determined in accordance with the rules of Regulations Section 1.704-2(d).

"*Company Record Date*" means the record date established by the Managing Member for the purpose of determining the Members entitled to notice of or to vote at any meeting of Members or to consent to any matter, or to receive any distribution or the allotment of any other rights, or in order to make a determination of Members for any other proper purpose, which, in the case of a distribution of Available Cash pursuant to Section 5.1 hereof, shall, absent a contrary determination by the Managing Member, be the same as the record date established by the Managing Member for a distribution to its stockholders of some or all of its portion of such distribution.

"*Company Representative"* has the meaning set forth in Section 10.3(a) hereof.

"*Consent*" means the consent to, approval of, or vote in favor of a proposed action by a Member given in accordance with Article 14 hereof. The terms "*Consented*" and "*Consenting*" have correlative meanings.

"*Consent of the Managing Member*" means the Consent of the Managing Member, which Consent, except as otherwise specifically required by this Agreement, may be obtained prior to or after the taking of any action for which it is required by this Agreement and may be given or withheld by the Managing Member in its sole and absolute discretion.

"*Consent of the Non-Managing Members*" means the Consent of a Majority in Interest of the Non-Managing Members, which Consent shall be obtained prior to the taking of any action for which it is required by this Agreement and, except as otherwise provided in this Agreement, may be given or withheld by each Non-Managing Member in its sole and absolute discretion.

"*Consent of the Members*" means the Consent of the Managing Member and the Consent of a Majority in Interest of the Members, which Consent shall be obtained prior to the taking of any action for which it is required by this Agreement and, except as otherwise provided in this Agreement, may be given or withheld by the Managing Member or the Members in their sole and absolute discretion; *provided*, *however*, that, if any such action affects only certain classes or series of Membership Interests, "Consent of the Members" means the Consent of the Managing Member and the Consent of a Majority in Interest of the Members of the affected classes or series of Membership Interests.

"*Constituent Person*" has the meaning set forth in Section 16.9(f) hereof.

"*Contributed Property*" means each Property or other asset, in such form as may be permitted by the Act, but excluding cash, contributed or deemed contributed to the Company.

"*Controlled Entity*" means, as to any Member, (a) any corporation more than fifty percent (50%) of the outstanding voting stock of which is owned by such Member or such Member's Family Members or Affiliates, (b) any trust, whether or not revocable, of which such Member or such Member's Family Members or Affiliates are the sole beneficiaries, (c) any partnership of which such Member or its Affiliates are the managing partners and in which such Member, such Member's Family Members or Affiliates hold partnership interests representing at least twenty-five percent (25%) of such partnership's capital and profits and (d) any limited liability company of which such Member or its Affiliates are the managers and in which such Member, such Member's Family Members or Affiliates hold membership interests representing at least twenty-five percent (25%) of such limited liability company's capital and profits.

"*Conversion Date*" has the meaning set forth in Section 16.9(b) hereof.

"*Conversion Notice*" has the meaning set forth in Section 16.9(b) hereof.

"*Conversion Right*" has the meaning set forth in Section 16.9(a) hereof.

"*Cut-Off Date*" means the thirtieth (30th) Business Day after the Managing Member's receipt of a Notice of Redemption.

"*Debt*" means, as to any Person, as of any date of determination: (a) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services; (b) all amounts owed by such Person to banks or other Persons in respect of reimbursement obligations under letters of credit, surety bonds and other similar instruments guaranteeing payment or other performance of obligations by such Person; (c) all indebtedness for borrowed money or for the deferred purchase price of property or services secured by any lien on any property owned by such Person, to the extent attributable to such Person's interest in such property, even though such Person has not assumed or become liable for the payment thereof; and (d) lease obligations of such Person that, in accordance with generally accepted accounting principles, should be capitalized.

"*Delaware Courts*" has the meaning set forth in Section 15.9(b) hereof.

"*Depreciation*" means, for each Fiscal Year or other applicable period, an amount equal to the federal income tax depreciation, amortization or other cost recovery deduction allowable with respect to an asset for such year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; *provided*, *however*, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Managing Member.

"*Designated Individual"* has the meaning set forth in Section 10.3(a) hereof.

"*Disregarded Entity*" means, with respect to any Person, (i) any "qualified REIT subsidiary" (within the meaning of Code Section 856(i)(2)) of such Person, (ii) any entity treated as a disregarded entity for federal income tax purposes with respect to such Person, or (iii) any grantor trust if the sole owner of the assets of such trust for federal income tax purposes is such Person.

"*Distributed Right*" has the meaning set forth in the definition of "*Adjustment Factor*."

"*Economic Capital Account Balance*" means, with respect to a Holder of LTIP Units, its Capital Account balance, plus the amount of its share of any Member Minimum Gain or Company Minimum Gain, in either case to the extent attributable to its ownership of LTIP Units.

"*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended.

"*Equity Plan*" means any stock, unit or equity purchase plan, restricted stock, unit or equity plan or other similar equity compensation plan as of the date hereof or hereafter adopted by the Company or the Managing Member, including the Plan.

"*Excess Share*" means a share of any class or series of stock of the Managing Member now or hereafter authorized that is designated as a share of "Excess Stock" or as "Excess Preferred Stock" of any class or series pursuant to the Charter.

"*Exchange Act*" means the Securities Exchange Act of 1934, as amended, and any successor statute thereto, and the rules and regulations of the SEC promulgated thereunder.

"*Family Members*" means, as to a Person that is an individual, such Person's spouse, ancestors, descendants (whether by blood or by adoption or step-descendants by marriage), brothers and sisters, nieces and nephews and *inter vivos* or testamentary trusts (whether revocable or irrevocable) of which only such Person and his or her spouse, ancestors, descendants (whether by blood or by adoption or step-descendants by marriage), brothers and sisters and nieces and nephews are beneficiaries.

"*Final Adjustment*" has the meaning set forth in Section 10.3(b)(ii) hereof.

"*Fiscal Year*" means the fiscal year of the Company, which shall be the tax year of the Company. The tax year shall be the calendar year unless otherwise required by the Code.

"*Forced Conversion*" has the meaning set forth in Section 16.9(c) hereof.

"*Forced Conversion Notice*" has the meaning set forth in Section 16.9(c) hereof.

"*Funding Debt*" means any Debt incurred by or on behalf of the Managing Member for the purpose of providing funds to the Company.

"*Gross Asset Value*" means, with respect to any asset, the asset's adjusted basis for federal income tax purposes, except as follows:

(a) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset on the date of contribution (subject to any adjustments required with respect to the conversion feature of the Class L Preferred Units, Class M Preferred Units and any other securities issued by the Company that are exercisable or convertible into Common Units, as determined by the Managing Member in its sole discretion), as determined by the Managing Member and agreed to by the contributing Person.

(b) The Gross Asset Values of all Company assets immediately prior to the occurrence of any event described in clauses (i) through (v) below shall be adjusted to equal their respective gross fair market values, as determined by the Managing Member using such reasonable method of valuation as it may adopt, as of the following times:

(i) the acquisition of an additional interest in the Company (including, without limitation, acquisitions pursuant to Section 4.2 hereof or contributions or deemed contributions by the Managing Member pursuant to Section 4.2 hereof) by a new or existing Member in exchange for more than a *de minimis* Capital Contribution;

(ii) the distribution by the Company to a Member of more than a *de minimis* amount of Company property as consideration for an interest in the Company;

(iii) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g);

(iv) the grant of an interest in the Company (other than a *de minimis* interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a member capacity, or by a new Member acting in a member capacity or in anticipation of becoming a Member of the Company (including the grant of an LTIP Unit); and

(v) at such other times as the Managing Member shall reasonably determine necessary or advisable in order to comply with Regulations Sections 1.704-1(b) and 1.704-2.

(c) The Gross Asset Value of any Company asset distributed to a Member shall be the gross fair market value of such asset on the date of distribution, as determined by the distributee and the Managing Member; *provided*, *however*, that if the distributee is the Managing Member or if the distributee and the Managing Member cannot agree on such a determination, such gross fair market value shall be determined by Appraisal.

(d) The Gross Asset Values of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); *provided*, *however*, that Gross Asset Values shall not be adjusted pursuant to this subsection (d) to the extent that the Managing Member reasonably determines that an adjustment pursuant to subsection (b) above is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this subsection (d).

(e) If the Gross Asset Value of a Company asset has been determined or adjusted pursuant to subsection (a), subsection (b) or subsection (d) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Net Income and Net Losses.

(f) If any unvested LTIP Units are forfeited, as described in Section 16.2(b), upon such forfeiture, the Gross Asset Value of the Company's assets shall be reduced by the amount of any reduction of such Member's Capital Account attributable to the forfeiture of such LTIP Units.

"*Hart-Scott-Rodino Act*" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"*Holder*" means either (a) a Member or (b) an Assignee owning a Membership Interest.

"*Incapacity*" or "*Incapacitated*" means: (a) as to any Member who is an individual, death, total physical disability or entry by a court of competent jurisdiction adjudicating such Member incompetent to manage his or her person or his or her estate; (b) as to any Member that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; (c) as to any Member that is a partnership or limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company; (d) as to any Member that is an estate, the distribution by the fiduciary of the estate's entire interest in the Company; (e) as to any trustee of a trust that is a Member, the termination of the trust (but not the substitution of a new trustee); or (f) as to any Member, the bankruptcy of such Member. For purposes of this definition, bankruptcy of a Member shall be deemed to have occurred when (i) the Member commences a voluntary proceeding seeking liquidation, reorganization or other relief of or against such Member under any bankruptcy, insolvency or other similar law now or hereafter in effect, (ii) the Member is adjudged as bankrupt or insolvent, or a final and non-appealable order for relief under any bankruptcy, insolvency or similar law now or hereafter in effect has been entered against the Member, (iii) the Member executes and delivers a general assignment for the benefit of the Member's creditors, (iv) the Member files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding of the nature described in clause (ii) above, (v) the Member seeks, consents to or acquiesces in the appointment of a trustee, receiver or Liquidator for the Member or for all or any substantial part of the Member's properties, (vi) any proceeding seeking liquidation, reorganization or other relief under any bankruptcy, insolvency or other similar law now or hereafter in effect has not been dismissed within one hundred twenty (120) days after the commencement thereof, (vii) the appointment without the Member's consent or acquiescence of a trustee, receiver or liquidator has not been vacated or stayed within ninety (90) days of such appointment, or (viii) an appointment referred to in clause (vii) above is not vacated within ninety (90) days after the expiration of any such stay.

"*Indemnitee*" means (a) (i) the Managing Member, the Company Representative or the Designated Individual or (ii) each present or former director of the Managing Member or officer of the Company or the Managing Member and (b) such other Persons (including Affiliates or employees of the Managing Member or the Company) as the Company may designate from time to time (whether before or after the event giving rise to potential liability), in its sole and absolute discretion.

"*Initial Holding Period*" means, respect to any Common Units held by a Qualifying Party or any of their successors-in-interest, a period ending on the day before the first fourteen-month anniversary of such date that the Qualifying Party first became a Holder of such Common Units; provided, however, that the Managing Member may, in its sole and absolute discretion, by written agreement with a Qualifying Party or any such successor-in-interest, shorten or lengthen the Initial Holding Period applicable to any Common Units, held by a Qualifying Party and/or its successors-in-interest to a period of shorter or longer than fourteen (14) months. For sake of clarity, as applied to a Common Unit that is issued upon conversion of an LTIP Unit pursuant to Section 16.9 (and subject to the proviso in the immediately preceding sentence, if applicable), the Initial Holding Period of such Common Unit shall end on the day before the first fourteen-month anniversary of the date that the underlying LTIP Unit was first issued.

"*IRS*" means the United States Internal Revenue Service.

"*Junior Units*" means Membership Units representing any class or series of Membership Interest ranking, as to distributions or voluntary or involuntary liquidation, dissolution or winding-up of the Company, junior to the Class L Preferred Units or the Class M Preferred Units.

"*Liquidating Event*" has the meaning set forth in Section 13.1 hereof.

"*Liquidating Gains*" means any net gain realized in connection with the actual or hypothetical sale of all or substantially all of the assets of the Company (including upon the occurrence of any Liquidating Event or Terminating Capital Transaction), including but not limited to net gain realized in connection with an adjustment to the Gross Asset Value of Company assets under the definition of Gross Asset Value in Section 1 of this Agreement.

"*Liquidator*" has the meaning set forth in Section 13.2(a) hereof.

"*LTIP Unit Agreement*" means any written agreement(s) between the Company and any recipient of LTIP Units evidencing the terms and conditions of any LTIP Units, including any vesting, forfeiture and other terms and conditions as may apply to such LTIP Units, consistent with the terms hereof and of the Plan (or other applicable Equity Plan governing such LTIP Units).

"*LTIP Unit Distribution Payment Date*" has the meaning set forth in Section 16.4(c) hereof.

"*LTIP Units*" means the Membership Units designated as such having the rights, powers, privileges, restrictions, qualifications and limitations set forth herein and in the Plan. LTIP Units can be issued in one or more classes, or one or more series of any such classes bearing such relationship to one another as to allocations, distributions, and other rights as the Managing Member shall determine in its sole and absolute discretion subject to Delaware law and this Agreement.

"*Majority in Interest of the Non-Managing Members*" means the Non-Managing Members holding in the aggregate Percentage Interests that are greater than fifty percent (50%) of the aggregate Percentage Interests of all Non-Managing Members entitled to Consent to or withhold Consent from a proposed action.

"*Majority in Interest of the Members*" means Members holding in the aggregate Percentage Interests that are greater than fifty percent (50%) of the aggregate Percentage Interests of all Members entitled to Consent to or withhold Consent from a proposed action.

"*Managing Member*" means Kimco and its successors and assigns as a Managing Member of the Company, in each case, that is admitted from time to time to the Company as a Managing Member, and has not ceased to be a Managing Member, pursuant to the Act and this Agreement, in such Person's capacity as a Managing Member of the Company.

"*Managing Member Interest*" means the entire Membership Interest held by a Managing Member hereof, which Membership Interest may be expressed as a number of Common Units, Preferred Units or any other Membership Units.

"*Market Price*" has the meaning set forth in the definition of "*Value*."

"*Member*" means any Person that is admitted from time to time to the Company as a Member, and has not ceased to be a Member pursuant to the Act and this Agreement, of the Company, including any Substituted Member or Additional Member or the Managing Member, in such Person's capacity as a Member of the Company.

"*Member Interest*" means a Membership Interest of a Member, other than the Managing Member, in the Company representing a fractional part of the Membership Interests of all Members, other than the Managing Member, and includes any and all benefits to which the holder of such a Membership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. A Member Interest may be expressed as a number of Common Units, Preferred Units or other Membership Units.

"*Member Minimum Gain*" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Regulations Section 1.704-2(i)(3).

"*Member Nonrecourse Debt*" has the meaning set forth in Regulations Section 1.704-2(b)(4) applicable to the term "partner nonrecourse debt."

"*Member Nonrecourse Deductions*" has the meaning set forth in Regulations Section 1.704-2(i)(1) for the term "partner nonrecourse deductions," and the amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a Fiscal Year shall be determined in accordance with the rules of Regulations Section 1.704-2(i)(2) applicable to the term "partner nonrecourse deductions".

"*Member Registry*" means the registry maintained by the Managing Member in the books and records of the Company.

"*Membership Equivalent Units*" has the meaning set forth in Section 4.7(a) hereof.

"*Membership Interest*" means an ownership interest in the Company held by either a Member or a Managing Member and includes any and all benefits to which the holder of such a Membership Interest may be entitled as provided in this Agreement, together with all obligations of such Person to comply with the terms and provisions of this Agreement. There may be one or more classes or series of Membership Interests. A Membership Interest may be expressed as a number of Common Units, Preferred Units or other Membership Units; however, notwithstanding that the Managing Member and any Member may have different rights and privileges as specified in this Agreement (including differences in rights and privileges with respect to their Membership Interests), the Membership Interest held by the Managing Member or any other Member and designated as being of a particular class or series shall not be deemed to be a separate class or series of Membership Interest from a Membership Interest having the same designation as to class and series that is held by any other Member solely because such Membership Interest is held by the Managing Member or other Member having different rights and privileges as specified under this Agreement.

"*Membership Unit*" means a Common Unit, a Preferred Unit, a LTIP Unit or any other unit of the fractional, undivided share of the Membership Interests that the Managing Member has authorized pursuant to Section 4.2 hereof.

"*Membership Unit Designation*" shall have the meaning set forth in Section 4.2(a) hereof.

"*Net Income*" or "*Net Loss*" means, for each Fiscal Year or other applicable period, an amount equal to the Company's taxable income or loss for such year or other applicable period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Net Income (or Net Loss) pursuant to this definition of "Net Income" or "Net Loss" shall be added to (or subtracted from, as the case may be) such taxable income (or loss);

(b) Any expenditure of the Company described in Code Section 705(a)(2)(B) or treated as a Code Section 705(a)(2)(B) expenditure pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income (or Net Loss) pursuant to this definition of "Net Income" or "Net Loss," shall be subtracted from (or added to, as the case may be) such taxable income (or loss);

(c) In the event the Gross Asset Value of any Company asset is adjusted pursuant to subsection (b) or subsection (c) of the definition of "Gross Asset Value," the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Income or Net Loss;

(d) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value;

(e) In lieu of the depreciation, amortization and other cost recovery deductions that would otherwise be taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or other applicable period;

(f) To the extent that an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Income or Net Loss; and

(g) Notwithstanding any other provision of this definition of "Net Income" or "Net Loss," any item that is specially allocated pursuant to Article 6 hereof shall not be taken into account in computing Net Income or Net Loss. The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Section 6.3 or 6.4 hereof shall be determined by applying rules analogous to those set forth in this definition of "Net Income" or "Net Loss."

"*New Securities*" means (a) any rights, options, warrants or convertible or exchangeable securities having the right to subscribe for or purchase REIT Shares or Preferred Shares, excluding grants under any Equity Plan, or (b) any Debt issued by the Managing Member or any subsidiary of the Managing Member that provides any of the rights described in clause (a).

"*Nonrecourse Deductions*" has the meaning set forth in Regulations Section 1.704-2(b)(1), and the amount of Nonrecourse Deductions for a Fiscal Year shall be determined in accordance with the rules of Regulations Section 1.704-2(c).

"*Nonrecourse Liability*" has the meaning set forth in Regulations Sections 1.704-2(b)(3) and 1.752-1(a)(2).

"*Non-Managing Members*" means Members other than (i) the Managing Member or (ii) any Member fifty percent (50%) or more of whose equity is owned, directly or indirectly, by the Managing Member.

"*Notice of Redemption*" means the Notice of Redemption substantially in the form of Exhibit B attached to this Agreement.

"*Optionee*" means a Person to whom a stock option is granted under any Equity Plan.

"*Ownership Limit*" means the restriction or restrictions on the ownership and transfer of stock of the Managing Member imposed under the Charter.

"*Parity Preferred Unit*" means any class or series of Membership Interests of the Company now or hereafter authorized, issued or outstanding expressly designated by the Company to rank on a parity with the Class L Preferred Units and the Class M Preferred Units with respect to distributions or rights upon voluntary or involuntary liquidation, winding-up or dissolution of the Company, or both, as the context may require.

"*Percentage Interest*" means, with respect to each Member, the fraction, expressed as a percentage, the numerator of which is the aggregate number of Membership Units of all classes and series held by such Member and the denominator of which is the total number of Membership Units of all classes and series held by all Members; *provided*, *however*, that, to the extent applicable in context, the term "Percentage Interest" means, with respect to a Member, the fraction, expressed as a percentage, the numerator of which is the aggregate number of Membership Units of a specified class or series (or specified group of classes and/or series) held by such Member and the denominator of which is the total number of Membership Units of such specified class or series (or specified group of classes and/or series) held by all Members.

"*Performance LTIP Units*" shall mean LTIP Units that vest in whole or in part based on the attainment of performance-vesting conditions.

"*Performance Unit Sharing Percentage*" shall mean 10%.

"*Permitted Transfer*" has the meaning set forth in Section 11.3(a) hereof.

"*Person*" means an individual or a corporation, partnership, trust, unincorporated organization, association, limited liability company or other entity.

"*Plan*" means the 2020 Equity Participation Plan, as amended and/or restated from time to time, or any successor plan to such plan.

"*Pledge*" has the meaning set forth in Section 11.3(a) hereof.

"*Preferred Distribution Shortfall*" means, with respect to any Membership Interests that are entitled to any preference in distributions of Available Cash pursuant to this Agreement, the aggregate amount of the required distributions for such outstanding Membership Interests for all prior distribution periods *minus* the aggregate amount of the distributions made with respect to such outstanding Membership Interests pursuant to this Agreement.

"*Preferred Share*" means a share of stock of the Managing Member of any class or series now or hereafter authorized or reclassified that has dividend rights, or rights upon liquidation, winding up and dissolution, that are superior or prior to the REIT Shares.

"*Preferred Unit*" means a fractional, undivided share of the Membership Interests of a particular class or series that the Managing Member has authorized pursuant to Section 4.2 hereof that has distribution rights, or rights upon liquidation, winding up and dissolution, that are superior or prior to the Common Units, including Class L Preferred Units and Class M Preferred Units.

"*Properties*" means any assets and property of the Company such as, but not limited to, interests in real property and personal property, including, without limitation, fee interests, interests in ground leases, easements and rights of way, interests in limited liability companies, joint ventures or partnerships, interests in mortgages, and Debt instruments as the Company may hold from time to time and "Property" means any one such asset or property.

"*Proposed Section 83 Safe Harbor Regulation*" has the meaning set forth in Section 16.11 hereof.

"*Publicly Traded*" means listed or admitted to trading on the New York Stock Exchange, the NASDAQ Stock Market, or any nationally or internationally recognized stock exchange or any successor to any of the foregoing.

"*Qualified Transferee*" means an "accredited investor" as defined in Rule 501 promulgated under the Securities Act.

"*Qualifying Party*" means (a) a Member, (b) an Assignee or (c) a Person, including a lending institution as the pledgee of a Pledge, who is the transferee of a Member Interest in a Permitted Transfer; *provided*, *however*, that a Qualifying Party shall not include the Managing Member.

"*Redemption*" has the meaning set forth in Section 15.1(a) hereof.

"*Regulations*" means the income tax regulations under the Code, whether such regulations are in proposed, temporary or final form, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"*Regulatory Allocations*" has the meaning set forth in Section 6.4(a)(viii) hereof.

"*REIT*" means a real estate investment trust qualifying under Code Section 856.

"*REIT Member*" means (a) the Managing Member or any Affiliate of the Managing Member to the extent such person has in place an election to qualify as a REIT and (b) any Disregarded Entity with respect to any such Person.

"*REIT Payment*" has the meaning set forth in Section 15.12 hereof.

"*REIT Requirements*" has the meaning set forth in Section 5.1 hereof.

"*REIT Share*" means a share of common stock of the Managing Member, $0.01 par value per share, but shall not include any class or series of the Managing Member's common stock classified after the date of this Agreement; *provided*, *however* that if (i) the shares of common stock of the Managing Member are at any time not Publicly Traded, and (ii) the shares of common stock (or other comparable equity securities) of an entity that owns, directly or indirectly, all of the common stock of the Managing Member are Publicly Traded, the term "REIT Share" shall refer to the common stock (or other comparable equity securities) of such entity that is Publicly Traded.

"*REIT Shares Amount*" means a number of REIT Shares equal to the product of (a) the number of Tendered Units and (b) the Adjustment Factor; *provided*, *however*, that, in the event that the Managing Member issues to all holders of REIT Shares as of a certain record date rights, options, warrants or convertible or exchangeable securities entitling the Managing Member's stockholders to subscribe for or purchase REIT Shares, or any other securities or property (collectively, the "*Rights*"), with the record date for such Rights issuance falling within the period starting on the date of the Notice of Redemption and ending on the day immediately preceding the Specified Redemption Date, which Rights will not be distributed before the relevant Specified Redemption Date, then the REIT Shares Amount shall also include such Rights that a holder of that number of REIT Shares would be entitled to receive, expressed, where relevant hereunder, in a number of REIT Shares determined by the Managing Member.

"*REIT Class L Preferred Share*" means a share of 5.125 % Class L Cumulative Redeemable Preferred Stock, par value $1.00 per share, liquidation preference $25,000.00 per share, of the Managing Member, with such rights, priorities and preferences as shall be designated by the Board of Directors in accordance with the Charter.

"*REIT Class M Preferred Share*" means a share of 5.25% Class M Cumulative Redeemable Preferred Stock, par value $1.00 per share, liquidation preference $25,000.00 per share, of the Managing Member, with such rights, priorities and preferences as shall be designated by the Board of Directors in accordance with the Charter.

"*Related Party*" means, with respect to any Person, any other Person to whom ownership of shares of the Managing Member's stock by the first such Person would be attributed under Code Section 544 (as modified by Code Section 856(h)(1)(B)) or Code Section 318(a) (as modified by Code Section 856(d)(5)).

"*Rights*" has the meaning set forth in the definition of "*REIT Shares Amount*."

"*Safe Harbors*" has the meaning set forth in Section 11.3(c) hereof.

"*SEC*" means the Securities and Exchange Commission.

"*Section 83 Safe Harbor*" has the meaning set forth in Section 16.11 hereof.

"*Securities Act*" means the Securities Act of 1933, as amended, and any successor statute thereto, and the rules and regulations of the SEC promulgated thereunder.

"*Special Redemption*" has the meaning set forth in Section 15.1(a) hereof.

"*Specified Redemption Date*" means the thirtieth (30th) Business Day after the receipt by the Managing Member of a Notice of Redemption; *provided*, *however*, that no Specified Redemption Date shall occur during the Initial Holding Period with respect to any Common Units (except pursuant to a Special Redemption).

"*Subsidiary*" means, with respect to any Person, any corporation or other entity of which a majority of (a) the voting power of the voting equity securities or (b) the outstanding equity interests is owned, directly or indirectly, by such Person; *provided*, *however*, that, with respect to the Company, "Subsidiary" means solely a partnership or limited liability company (taxed, for federal income tax purposes, as a partnership or as a Disregarded Entity and not as an association or publicly traded partnership taxable as a corporation) of which the Company is a partner or member or any "taxable REIT subsidiary" (within the meaning of Code Section 856(l)) of the Managing Member in which the Company owns shares of stock, unless the ownership of shares of stock of a corporation or other entity (other than a "taxable REIT subsidiary") will not jeopardize the Managing Member's status as a REIT or any Managing Member Affiliate's status as a "qualified REIT subsidiary" (within the meaning of Code Section 856(i)(2)) or "taxable REIT subsidiary," in which event the term "Subsidiary" shall include such corporation or other entity.

"*Substituted Member*" means a Person who is admitted as a Member to the Company pursuant to the Act and (a) Section 11.4 hereof or (b) pursuant to any Membership Unit Designation.

"*Surviving Company*" has the meaning set forth in Section 11.2(b)(ii) hereof.

"*Tax Items*" has the meaning set forth in Section 6.5(a) hereof.

"*Tendered Units*" has the meaning set forth in Section 15.1(a) hereof.

"*Tendering Party*" has the meaning set forth in Section 15.1(a) hereof.

"*Terminating Capital Transaction*" means any sale or other disposition of all or substantially all of the assets of the Company or a related series of transactions that, taken together, result in the sale or other disposition of all or substantially all of the assets of the Company, in any case, not in the ordinary course of the Company's business.

"*Termination Transaction*" has the meaning set forth in Section 11.2(b) hereof.

"*Transfer*" means any sale, assignment, bequest, conveyance, devise, gift (outright or in trust), Pledge, encumbrance, hypothecation, mortgage, exchange, transfer or other disposition or act of alienation, whether voluntary, involuntary or by operation of law; *provided*, *however*, that when the term is used in Article 11 hereof, except as otherwise expressly provided, "Transfer" does not include (a) any Redemption of Common Units by the Company, or acquisition of Tendered Units by the Managing Member, pursuant to Section 15.1, (b) any conversion of LTIP Units into Common Units pursuant to Section 16.9 hereof or (c) any conversion, redemption, exchange or acquisition by the Managing Member of Class L Preferred Units, Class M Preferred Units or other Membership Equivalent Units pursuant to Section 4.7 or any Membership Unit Designation. The terms "Transferred" and "Transferring" have correlative meanings.

"*Valuation Date*" means the date of receipt by the Managing Member of a Notice of Redemption pursuant to Section 15.1 herein, or such other date as specified herein, or, if such date is not a Business Day, the immediately preceding Business Day.

"*Value*" means, on any Valuation Date with respect to a REIT Share, the average of the daily Market Prices for ten (10) consecutive trading days immediately preceding the Valuation Date (except that, with respect to any REIT Share underlying any stock option, Value shall mean the term "Fair Market Value" or term of similar import set forth in the Equity Plan under which such stock option was granted). The term "*Market Price*" on any date means, with respect to any class or series of outstanding REIT Shares, the Closing Price for such REIT Shares on such date. The "*Closing Price*" on any date means the last sale price for such REIT Shares, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such REIT Shares, in either case as reported on the principal consolidated transaction reporting system with respect to securities listed on the principal national securities exchange on which such REIT Shares are listed or admitted to trading or, if such REIT Shares are not listed or admitted to trading on any national securities exchange, the last quoted price, or, if not so quoted, the average of the high bid and low asked prices in the over-the-counter market, as reported by the National Association of Securities Dealers, Inc. Automated Quotation System or, if such system is no longer in use, the principal other automated quotation system that may then be in use or, if such REIT Shares are not quoted by any such organization, the average of the closing bid and asked prices as furnished by a professional market maker making a market in such REIT Shares selected by the Board of Directors or, in the event that no trading price is available for such REIT Shares, the fair market value of the REIT Shares, as determined by the Board of Directors. Notwithstanding the foregoing, the Managing Member, in its reasonable discretion, may use the "Market Price" as defined in the Class L Articles Supplementary or the Class M Articles Supplementary, as applicable (or such other price for the REIT Shares that was used to determine the number of REIT Shares issued upon the conversion of REIT Class L Preferred Shares or REIT Class M Preferred Shares, as applicable, into REIT Shares) for purposes of making the determinations of "*Gross Asset Value*" in connection with the conversion of the Class L Preferred Units or Class M Preferred Units pursuant to Section 4.7(a).

In the event that the REIT Shares Amount includes Rights that a holder of REIT Shares would be entitled to receive, then the Value of such Rights shall be determined by the Managing Member on the basis of such quotations and other information as it considers appropriate.

"*Vested LTIP Units*" has the meaning set forth in Section 16.2(a) hereof.

"*Vesting Agreement*" has the meaning set forth in Section 16.2(a) hereof.

ARTICLE 2
ORGANIZATIONAL MATTERS

Section 2.1 *Formation*. Effective at the effective time of the Conversion under the Act and immediately following the Merger, (i) the charter and the Bylaws of the Predecessor, shall be and hereby are replaced and superseded in their entirety by the Certificate of Formation and this Agreement in respect of all periods beginning on or after the effective time of the Conversion, (ii) the sole stockholder of the Predecessor converted all of the issued and outstanding capital stock of the Predecessor into all of the limited liability company interests in the Company, (iii) all of the capital stock in the Predecessor issued and outstanding immediately prior to the effective time of the Conversion shall be and hereby is canceled on the books and records of the Predecessor and (iv) the Managing Member, the sole stockholder of the Predecessor, was admitted to the Company as the sole member of the Company. Glenn Cohen is hereby designated as an authorized person within the meaning of the Act, and has executed, delivered and filed the Certificate of Conversion and Certificate of Formation with the Office of the Secretary of State. Upon the filing of the Certificate of Conversion and Certificate of Formation, his powers as an "authorized person" ceased, and the Managing Member thereupon became a designated "authorized person" within the meaning of the Act. The Managing Member hereby ratifies, confirms and approves the Certificate of Conversion and Certificate of Formation and all actions taken by Glenn Cohen, in his capacity as an authorized person within the meaning of the Act. The Managing Member shall do, and continue to do, all other things that are required or advisable to maintain the Company as a limited liability company existing pursuant to the laws of the State of Delaware. The Managing Member shall execute, deliver and file any other certificates (and any amendment and/or restatements thereof) required to be filed under the Act or necessary for the Company to qualify to do business in any jurisdiction in which the Company may wish to conduct business. The Company is a limited liability company organized pursuant to the provisions of the Act and upon the terms and subject to the conditions set forth in this Agreement. Except as expressly provided herein to the contrary, the rights and obligations of the Members and the administration and termination of the Company shall be governed by the Act. The Membership Interest of each Member shall be personal property for all purposes.

Section 2.2 *Name*. The name of the Company is "Kimco Realty OP, LLC". The Company's business may be conducted under any other name or names deemed advisable by the Managing Member, including the name of the Managing Member or any Affiliate thereof. The Managing Member in its sole and absolute discretion may change the name of the Company at any time and from time to time.

Section 2.3 *Principal Office and Resident Agent; Principal Executive Office*. The address of the registered office of the Company in the State of Delaware as of the date hereof is c/o 1209 N Orange St., Wilmington, Delaware 19801, and the registered agent for service of process on the Company in the State of Delaware at such registered office as of the date hereof is The Corporation Trust Company. The Managing Member may, from time to time, designate a new registered agent and/or registered office for the Company and, notwithstanding any provision in this Agreement, may amend this Agreement and the Certificate to reflect such designation without the Consent of the Members or any other Person. The principal office of the Company shall be 500 North Broadway, Suite 201, Jericho, New York 11753, or such other place as the Managing Member may from time to time designate by notice to the Members. The Company may maintain offices at such other place or places within or outside the State of Delaware as the Managing Member may from time to time designate.

Section 2.4 *Power of Attorney*.

(a) Each Member and Assignee hereby irrevocably constitutes and appoints the Managing Member, any Liquidator, and authorized officers and attorneys-in-fact of each, and each of those acting singly, in each case with full power of substitution, as its true and lawful agent and attorney-in-fact, with full power and authority in its name, place and stead to:

(i) execute, swear to, seal, acknowledge, deliver, file and record in the appropriate public offices: (A) all certificates, documents and other instruments (including, without limitation, this Agreement and the Certificate and all amendments, supplements or restatements thereof) that the Managing Member or the Liquidator deems appropriate or necessary to form, qualify or continue the existence or qualification of the Company as a limited liability company in the State of Delaware and in all other jurisdictions in which the Company may conduct business or own property; (B) all instruments that the Managing Member or any Liquidator deems appropriate or necessary to reflect any amendment, change, modification or restatement of this Agreement in accordance with its terms; (C) all conveyances and other instruments or documents that the Managing Member or the Liquidator deems appropriate or necessary to reflect the dissolution and liquidation of the Company pursuant to the terms of this Agreement, including, without limitation, a certificate of cancellation; (D) all conveyances and other instruments or documents that the Managing Member or the Liquidator deems appropriate or necessary to reflect the distribution or exchange of assets of the Company pursuant to the terms of this Agreement; (E) all instruments relating to the admission, acceptance, withdrawal, removal or substitution of any Member pursuant to the terms of this Agreement or the Capital Contribution of any Member; and (F) all certificates, documents and other instruments relating to the determination of the rights, preferences and privileges relating to Membership Interests; and

(ii) execute, swear to, acknowledge and file all ballots, consents, approvals, waivers, certificates and other instruments appropriate or necessary, in the sole and absolute discretion of the Managing Member or any Liquidator, to make, evidence, give, confirm or ratify any vote, consent, approval, agreement or other action that is made or given by the Members hereunder or is consistent with the terms of this Agreement.

Nothing contained herein shall be construed as authorizing the Managing Member or any Liquidator to amend this Agreement except in accordance with Section 14.2 hereof or as may be otherwise expressly provided for in this Agreement.

(b) The foregoing power of attorney is hereby declared to be irrevocable and a special power coupled with an interest, in recognition of the fact that each of the Members and Assignees will be relying upon the power of the Managing Member or the Liquidator to act as contemplated by this Agreement in any filing or other action by it on behalf of the Company, and it shall survive and not be affected by the subsequent Incapacity of any Member or Assignee and the Transfer of all or any portion of such Person's Membership Interest and shall extend to such Person's heirs, successors, assigns and personal representatives. Each such Member and Assignee hereby agrees to be bound by any representation made by the Managing Member or the Liquidator, acting in good faith pursuant to such power of attorney; and, to the fullest extent permitted by law, each such Member and Assignee hereby waives any and all defenses that may be available to contest, negate or disaffirm the action of the Managing Member or the Liquidator, taken in good faith under such power of attorney. Each Member and Assignee shall execute and deliver to the Managing Member or the Liquidator, within fifteen (15) days after receipt of the Managing Member's or the Liquidator's request therefor, such further designation, powers of attorney and other instruments as the Managing Member or the Liquidator (as the case may be) deems necessary to effectuate this Agreement and the purposes of the Company. Notwithstanding anything else set forth in this Section 2.4(b), no Member shall incur any personal liability for any action of the Managing Member or the Liquidator taken under such power of attorney.

Section 2.5 *Term*. The term of the Company commenced on January 3, 2023, and shall continue indefinitely unless the Company is dissolved sooner pursuant to the provisions of Article 13 hereof or as otherwise provided by law.

Section 2.6 *Membership Interests Are Securities*. All Membership Interests shall be securities within the meaning of, and governed by Article 8 of the Uniform Commercial Code of any other applicable jurisdiction.

ARTICLE 3
PURPOSE

Section 3.1 *Purpose and Business*. The purpose and nature of the Company is to conduct any business, enterprise or activity permitted by or under the Act, whether directly or through one or more partnerships, joint ventures, Subsidiaries, business trusts, limited liability companies or similar arrangements.

Section 3.2 *Powers*. The Company shall be empowered to do any and all acts and things necessary, appropriate, proper, advisable, incidental to or convenient for the furtherance and accomplishment of the purposes and business described herein and for the protection and benefit of the Company including, without limitation, full power and authority, directly or through its ownership interest in other entities, to enter into, perform and carry out contracts of any kind, to borrow and lend money and to issue evidence of indebtedness, whether or not secured by mortgage, deed of trust, pledge or other lien, to acquire, own, manage, improve and develop real property and lease, sell, transfer and dispose of real property.

Section 3.3 *Nature of Relationship of Members*. The Company shall be a limited liability company formed pursuant to the Act, and this Agreement shall not be deemed to create a venture or partnership between or among the Members or any other Persons with respect to any activities whatsoever. Except as otherwise provided in this Agreement, no Member shall have any authority to act for, bind, commit or assume any obligation or responsibility on behalf of the Company, its properties or any other Member. No Member, in its capacity as a Member under this Agreement, shall be responsible or liable for any indebtedness or obligation of another Member, nor shall the Company be responsible or liable for any indebtedness or obligation of any Member, incurred either before or after the execution and delivery of this Agreement by such Member, except as to those responsibilities, liabilities, indebtedness or obligations incurred pursuant to, and as limited by, the terms of this Agreement and the Act.

Section 3.4 *Representations and Warranties by the Members*.

(a) Each Member that is an individual (including, without limitation, each Additional Member or Substituted Member as a condition to becoming an Additional Member or a Substituted Member) represents and warrants to, and covenants with, each other Member that (i) the consummation of the transactions contemplated by this Agreement to be performed by such Member will not result in a breach or violation of, or a default under, any material agreement by which such Member or any of such Member's property is bound, or any statute, regulation, order or other law to which such Member is subject, (ii) if five percent (5%) or more (by value) of the Company's interests are or will be owned by such Member within the meaning of Code Section 7704(d)(3), such Member does not, and for so long as it is a Member will not, own, directly or indirectly, (A) stock of any corporation that is a tenant of (I) the Managing Member or any Disregarded Entity with respect to the Managing Member, (II) the Company or (III) any partnership, venture, trust, limited liability company or other entity of which the Managing Member, any Disregarded Entity with respect to the Managing Member, or the Company is a direct or indirect partner, beneficial owner or member or (B) an interest in the assets or net profits of any non-corporate tenant of (I) the Managing Member or any Disregarded Entity with respect to the Managing Member, (II) the Company or (III) any partnership, venture, trust, limited liability company or other entity of which the Managing Member, any Disregarded Entity with respect to the Managing Member, or the Company is a direct or indirect partner, beneficial owner or member, (iii) such Member has the legal capacity to enter into this Agreement and perform such Member's obligations hereunder, and (iv) this Agreement is binding upon, and enforceable against, such Member in accordance with its terms. Notwithstanding the foregoing, a Member that is an individual shall not be subject to the ownership restrictions set forth in clause (ii) of the immediately preceding sentence to the extent such Member obtains the written Consent of the Managing Member prior to violating any such restrictions, which consent the Managing Member may give or withhold in its sole and absolute discretion. Each Member that is an individual shall also represent and warrant to the Company that such Member is neither a "foreign person" within the meaning of Code Section 1445(f) nor a foreign partner within the meaning of Code Section 1446(e).

(b) Each Member that is not an individual (including, without limitation, each Additional Member or Substituted Member as a condition to becoming an Additional Member or a Substituted Member) represents and warrants to, and covenants with, each other Member that (i) all transactions contemplated by this Agreement to be performed by it have been duly authorized by all necessary action, including, without limitation, that of its general partner(s), managing member(s), member(s), committee(s), trustee(s), beneficiaries, directors and/or stockholder(s) (as the case may be) as required, (ii) the consummation of such transactions shall not result in a breach or violation of, or a default under, its partnership or operating agreement, trust agreement, charter or bylaws (as the case may be) any material agreement by which such Member or any of such Member's properties or any of its partners, members, beneficiaries, trustees or stockholders (as the case may be) is or are bound, or any statute, regulation, order or other law to which such Member or any of its partners, members, trustees, beneficiaries or stockholders (as the case may be) is or are subject, (iii) if five percent (5%) or more (by value) of the Company's interests are or will be owned by such Member within the meaning of Code Section 7704(d)(3), such Member does not, and for so long as it is a Member will not, own, directly or indirectly, (A) stock of any corporation that is a tenant of (I) the Managing Member or any Disregarded Entity with respect to the Managing Member, (II) the Company or (III) any partnership, venture, trust, limited liability company or other entity of which the Managing Member, any Managing Member, any Disregarded Entity with respect to the Managing Member, or the Company is a direct or indirect partner, beneficial owner or member or (B) an interest in the assets or net profits of any non-corporate tenant of (I) the Managing Member, or any Disregarded Entity with respect to the Managing Member, (II) the Company or (III) any partnership, venture, trust, limited liability company or other entity for which the Managing Member, any Managing Member, any Disregarded Entity with respect to the Managing Member, or the Company is a direct or indirect partner, beneficial owner or member, and (iv) this Agreement is binding upon, and enforceable against, such Member in accordance with its terms. Notwithstanding the foregoing, a Member that is not an individual shall not be subject to the ownership restrictions set forth in clause (iii) of the immediately preceding sentence to the extent such Member obtains the written Consent of the Managing Member prior to violating any such restrictions, which consent the Managing Member may give or withhold in its sole and absolute discretion. Each Member that is not an individual shall also represent and warrant to the Company that such Member is neither a "foreign person" within the meaning of Code Section 1445(f) nor a foreign partner within the meaning of Code Section 1446(e).

(c) Each Member (including, without limitation, each Additional Member or Substituted Member as a condition to becoming an Additional Member or Substituted Member) represents, warrants and agrees that (i) it has acquired and continues to hold its interest in the Company for its own account for investment purposes only and not for the purpose of, or with a view toward, the resale or distribution of all or any part thereof in violation of applicable laws, and not with a view toward selling or otherwise distributing such interest or any part thereof at any particular time or under any predetermined circumstances in violation of applicable laws and (ii) it is a sophisticated investor, able and accustomed to handling sophisticated financial matters for itself, particularly real estate investments, and that it has a sufficiently high net worth that it does not anticipate a need for the funds that it has invested in the Company in what it understands to be a highly speculative and illiquid investment.

(d) The representations and warranties contained in Sections 3.4(a), 3.4(b) and 3.4(c) hereof shall survive the execution and delivery of this Agreement by each Member (and, in the case of an Additional Member or a Substituted Member, the admission of such Additional Member or Substituted Member as a Member in the Company) and the dissolution, liquidation and termination of the Company.

(e) Each Member (including, without limitation, each Additional Member or Substituted Member as a condition to becoming an Additional Member or Substituted Member) hereby acknowledges that no representations as to potential profit, cash flows, funds from operations or yield, if any, in respect of the Company or the Managing Member have been made by any Member or any employee or representative or Affiliate of any Member, and that projections and any other information, including, without limitation, financial and descriptive information and documentation, that may have been in any manner submitted to such Member shall not constitute any representation or warranty of any kind or nature, express or implied.

(f) Notwithstanding the foregoing, the Managing Member may, in its sole and absolute discretion, permit the modification of any of the representations and warranties contained in Sections 3.4(a), 3.4(b) and 3.4(c) above as applicable to any Member (including, without limitation any Additional Member or Substituted Member or any transferee of either), *provided* that such representations and warranties, as modified, shall be set forth in either (i) a Membership Unit Designation applicable to the Membership Units held by such Member or (ii) a separate writing addressed to the Company and the Managing Member.

ARTICLE 4
CAPITAL CONTRIBUTIONS

Section 4.1 *Capital Contributions of the Members*. The Members have heretofore made or are deemed to have made Capital Contributions to the Company. Except as provided by law or in Section 4.2, 4.3, or 10.4 hereof, the Members shall have no obligation or, except with the prior Consent of the Managing Member, right to make any additional Capital Contributions or loans to the Company. The Managing Member shall cause to be maintained in the principal business office of the Company, or such other place as may be determined by the Managing Member, the Member Registry of the Company, which shall include, among other things, a register containing the name, address, and number, class and series of Membership Units of each Member, and such other information as the Managing Member may deem necessary or desirable. The Member Registry shall not be part of this Agreement. The Managing Member shall from time to time update the Member Registry as necessary to accurately reflect the information therein, including as a result of any sales, exchanges or other Transfers, or any redemptions, issuances or similar events involving Membership Units. Any reference in this Agreement to the Member Registry shall be deemed a reference to the Member Registry as in effect from time to time. Subject to the terms of this Agreement, the Managing Member may take any action authorized hereunder in respect of the Member Registry without any need to obtain the consent or approval of any other Member. No action of any Member shall be required to amend or update the Member Registry. Except as required by law, no Member shall be entitled to receive a copy of the information set forth in the Member Registry relating to any Member other than itself.

Section 4.2 *Issuances of Additional Membership Interests*. Subject to the rights of any Holder of any Membership Interest set forth in a Membership Unit Designation:

(a) *General*. Subject to the terms of this Agreement, including Section 4.2(c), below, the Managing Member is hereby authorized to cause the Company to issue additional Membership Interests, in the form of Membership Units, for any Company purpose, at any time or from time to time, to the Members (including the Managing Member) or to other Persons, and to admit such Persons as Additional Members, for such consideration and on such terms and conditions as shall be established by the Managing Member in its sole and absolute discretion, all without the approval of any Member or any other Person. Without limiting the foregoing, the Managing Member is expressly authorized to cause the Company to issue Membership Units (i) upon the conversion, redemption or exchange of any Debt, Membership Units, or other securities issued by the Company, (ii) for less than fair market value, (iii) for no consideration, (iv) in connection with any merger of any other Person into the Company or any other Subsidiary of the Managing Member or (v) upon the contribution of property or assets to the Company. Any additional Membership Interests may be issued in one or more classes or series, or one or more series of any of such classes, with such designations, preferences, conversion or other rights, voting powers or rights, restrictions, limitations as to distributions, qualifications or terms or conditions of redemption (including, without limitation, terms that may be senior or otherwise entitled to preference over existing Membership Units) as shall be determined by the Managing Member, in its sole and absolute discretion without the approval of any Member or any other Person, and set forth in this Agreement or a written document thereafter attached to and made an exhibit to this Agreement, which exhibit shall be an amendment to this Agreement and shall be incorporated herein by this reference (each, a "*Membership Unit Designation*"), without the approval of any Member or any other Person. Without limiting the generality of the foregoing, the Managing Member shall have authority to specify: (A) the allocations of items of Company income, gain, loss, deduction and credit to each such class or series of Membership Interests; (B) the right of each such class or series of Membership Interests to share (on a *pari passu*, junior or preferred basis) in Company distributions; (C) the rights of each such class or series of Membership Interests upon dissolution and liquidation of the Company; (D) the voting rights, if any, of each such class or series of Membership Interests; and (E) the conversion, redemption or exchange rights applicable to each such class or series of Membership Interests. Except as expressly set forth in any Membership Unit Designation, a Membership Interest of any class or series other than a Common Unit shall not entitle the holder thereof to vote on, or consent to, any matter. Upon the issuance of any additional Membership Interest, the Managing Member shall update the Member Registry and the books and records of the Company as appropriate to reflect such issuance.

(b) *Issuances of LTIP Units*. Without limiting the generality of the foregoing, from time to time, the Managing Member is hereby authorized to issue LTIP Units to Persons providing services to or for the benefit of the Company for such consideration or for no consideration as the Managing Member may determine to be appropriate and on such terms and conditions as shall be established by the Managing Member, and admit such Persons as Members. Except to the extent a Capital Contribution is made with respect to an LTIP Unit or as otherwise determined by the Managing Member, each LTIP Unit is intended to qualify as a "profits interest" in the Company within the meaning of the Code, the Regulations, and any published guidance by the IRS with respect thereto. Except as may be provided from time to time by the Managing Member, LTIP Units shall have the terms set forth in Article 16.

(c) *Issuances to the Managing Member*. No additional Membership Units shall be issued to the Managing Member unless (i) the additional Membership Units are issued to all Members holding Common Units in proportion to their respective Percentage Interests in Common Units, (ii) (A) the additional Membership Units are (I) Common Units issued in connection with an issuance of REIT Shares, or (II) Membership Equivalent Units (other than Common Units) issued in connection with an issuance of Preferred Shares, New Securities or other interests in the Managing Member (other than REIT Shares), and (B) the Managing Member contributes to the Company the cash proceeds or other consideration received in connection with the issuance of such REIT Shares, Preferred Shares, New Securities or other interests in the Managing Member; (iii) the additional Membership Units are issued upon the conversion, redemption or exchange of Debt, Membership Units or other securities issued by the Company or (iv) the additional Membership Units are issued pursuant to Section 4.3(b), Section 4.3(e), Section 4.4 or Section 4.5.

(d) *No Preemptive Rights*. Except as expressly provided in this Agreement or in any Membership Unit Designation, no Person, including, without limitation, any Member or Assignee, shall have any preemptive, preferential, participation or similar right or rights to subscribe for or acquire any Membership Interest.

Section 4.3 *Additional Funds and Capital Contributions*.

(a) *General*. The Managing Member may, at any time and from time to time, determine that the Company requires additional funds ("*Additional Funds*") for the acquisition or development of additional Properties, for the redemption of Membership Units or for such other purposes as the Managing Member may determine, in its sole and absolute discretion. Additional Funds may be obtained by the Company, at the election of the Managing Member, in any manner provided in, and in accordance with, the terms of this Section 4.3 without the approval of any Member or any other Person.

(b) *Additional Capital Contributions*. The Managing Member, on behalf of the Company, may obtain any Additional Funds by accepting Capital Contributions from any Members or other Persons. In connection with any such Capital Contribution (of cash or property), the Managing Member is hereby authorized to cause the Company from time to time to issue additional Membership Units (as set forth in Section 4.2 above) in consideration therefor.

(c) *Loans by Third Parties*. The Managing Member, on behalf of the Company, may obtain any Additional Funds by causing the Company to incur Debt to any Person (other than to the Managing Member (but, for this purpose, disregarding any Debt that may be deemed incurred to the Managing Member by virtue of clause (c) of the definition of Debt)) upon such terms as the Managing Member determines appropriate, including making such Debt convertible, redeemable or exchangeable for Membership Units or REIT Shares; *provided*, *however*, that the Company shall not incur any such Debt if any Member would be personally liable for the repayment of such Debt (unless such Member otherwise agrees).

(d) *Managing Member Loans*. The Managing Member, on behalf of the Company, may obtain any Additional Funds by causing the Company to incur Debt to the Managing Member if (i) such Debt is, to the extent permitted by law, on substantially the same terms and conditions as to interest rate and repayment schedule (but, for avoidance of doubt, such Debt may have differing conversion, redemption, repurchase and exchange rights) as Funding Debt incurred by the Managing Member, the net proceeds of which are loaned to the Company to provide such Additional Funds, or (ii) such Debt is on terms and conditions no less favorable to the Company than would be available to the Company from any third party; *provided*, *however*, that the Company shall not incur any such Debt if any Member would be personally liable for the repayment of such Debt (unless such Member otherwise agrees).

(e) *Issuance of Securities by the Managing Member*. The Managing Member shall not issue any additional REIT Shares, Capital Shares or New Securities unless the Managing Member contributes the cash proceeds or other consideration received from the issuance of such additional REIT Shares, Capital Shares or New Securities (as the case may be) and from the exercise of the rights contained in any such additional Capital Shares or New Securities to the Company in exchange for (x) in the case of an issuance of REIT Shares, Common Units, or (y) in the case of an issuance of Capital Shares or New Securities, Membership Equivalent Units; *provided*, *however*, that notwithstanding the foregoing, the Managing Member may issue REIT Shares, Capital Shares or New Securities (i) pursuant to Section 4.4 or Section 15.1(b) hereof, (ii) pursuant to a dividend or distribution (including any stock split) of REIT Shares, Capital Shares or New Securities to holders of REIT Shares, Capital Shares or New Securities (as the case may be), (iii) upon a conversion, redemption or exchange of Capital Shares, (iv) upon a conversion, redemption, exchange or exercise of New Securities, or (v) in connection with an acquisition by the Managing Member of outstanding Membership Units or of any property or other asset to be owned, directly or indirectly, by the Managing Member. In the event of any issuance of additional REIT Shares, Capital Shares or New Securities by the Managing Member, and the contribution, if applicable, to the Company, by the Managing Member, of the cash proceeds or other consideration received from such issuance (or property acquired with such proceeds), if any, if the cash proceeds actually received by the Managing Member are less than the gross proceeds of such issuance as a result of any underwriter's discount or other expenses paid or incurred in connection with such issuance, then the Managing Member shall be deemed to have made a Capital Contribution to the Company in the amount equal to the sum of the cash proceeds of such issuance plus the amount of such underwriter's discount and other expenses paid by the Managing Member (which discount and expense shall be treated as an expense for the benefit of the Company for purposes of Section 7.4). In the event that the Managing Member issues any additional REIT Shares, Capital Shares or New Securities and contributes the cash proceeds or other consideration received from the issuance thereof to the Company, the Company is expressly authorized to issue a number of Common Units or Membership Equivalent Units to the Managing Member equal to the number of REIT Shares, Capital Shares or New Securities so issued, divided by the Adjustment Factor then in effect, in accordance with this Section 4.3(e) without any further act, approval or vote of any Member or any other Persons.

Section 4.4 *Equity Incentive Plans*. Nothing in this Agreement shall be construed or applied to preclude or restrain the Managing Member or the Company from adopting, modifying or terminating equity incentive plans for the benefit of employees, directors, consultants or other business associates or service providers of the Managing Member, the Company or any of their Affiliates or from issuing REIT Shares, Capital Shares or New Securities pursuant to any such plans. The Managing Member may implement such plans and any actions taken under such plans (such as the grant or exercise of options to acquire REIT Shares, or the issuance of restricted REIT Shares), whether taken with respect to or by an employee or other service provider of the Managing Member, the Company or its Subsidiaries, in a manner determined by the Managing Member, which may be set forth in plan implementation guidelines that the Managing Member may establish or amend from time to time. The Members acknowledge and agree that, in the event that any such plan is adopted, modified or terminated by the Managing Member, amendments to this Agreement may become necessary or advisable and shall not require approval or Consent of any other Member. The Company is expressly authorized to issue Membership Units (a) in accordance with the terms of any such equity incentive plans or plan implementation guidelines or (b) in an amount equal to the number of REIT Shares, Capital Shares or New Securities issued pursuant to any such equity incentive plans, divided, if applicable, by the Adjustment Factor then in effect, without any further act, approval or vote of any Member or any other Persons.

Section 4.5 *Dividend Reinvestment Plan, Cash Option Purchase Plan, Equity Incentive Plan or Other Plan*. Except as may otherwise be provided in this Article 4, all amounts received or deemed received by the Managing Member in respect of any dividend reinvestment plan, cash option purchase plan, equity incentive or other equity or subscription plan or agreement, either (a) shall be utilized by the Managing Member to effect open market purchases of REIT Shares, or (b) if the Managing Member elects instead to issue new REIT Shares with respect to such amounts, shall be contributed by the Managing Member to the Company in exchange for additional Common Units. Upon such contribution, the Company will issue to the Managing Member a number of Common Units equal to the quotient of (i) the new REIT Shares so issued, divided by (ii) the Adjustment Factor then in effect.

Section 4.6 *No Interest; No Return*. No Member shall be entitled to interest on its Capital Contribution or on such Member's Capital Account. Except as *provided* herein or by law, no Member shall have any right to demand or receive the return of its Capital Contribution from the Company.

Section 4.7 *Conversion or Redemption of Capital Shares*.

(a) *Conversion of Capital Shares*. If, at any time, any of the Capital Shares are converted into REIT Shares, in whole or in part, then a number of Membership Units with preferences, conversion and other rights, restrictions (other than restrictions on transfer), rights and limitations as to dividends and other distributions, qualifications and terms and conditions of redemption that are substantially the same as the preferences, conversion and other rights, restrictions (other than restrictions on transfer), rights and limitations as to distributions, qualifications and terms and conditions of redemption as those of such Capital Shares ("*Membership Equivalent Units*") or, in the case of conversion rights and terms and conditions of redemption, consistent with this Section 4.7 (for the avoidance of doubt, Membership Equivalent Units need not have voting rights, conversion rights, terms and conditions of redemption or restrictions on transfer that are substantially similar to the corresponding Capital Shares) equal to the number of Capital Shares so converted shall automatically be converted into a number of Common Units equal to the quotient of (i) the number of REIT Shares issued upon such conversion divided by (ii) the Adjustment Factor then in effect, and the Member Registry shall be adjusted to reflect such conversion.

(b) *Redemption or Repurchase of Capital Shares or REIT Shares*. Except as otherwise provided in Section 4.7(c) or in Section 7.4(c), if, at any time, any Capital Shares are redeemed or otherwise repurchased (whether by exercise of a put or call, automatically or by means of another arrangement) by the Managing Member, the Company shall, immediately prior to such redemption or repurchase of Capital Shares, redeem an equal number of Membership Equivalent Units held by the Managing Member upon the same terms and for the same price per Membership Equivalent Unit as such Capital Shares are redeemed or repurchased. Except as otherwise provided in Section 4.7(c) or in Section 7.4(c), if, at any time, any REIT Shares are redeemed or otherwise repurchased by the Managing Member, the Company shall, immediately prior to such redemption or repurchase of REIT Shares, redeem or repurchase a number of Common Units held by the Managing Member equal to the quotient of (i) the REIT Shares so redeemed or repurchased, divided by (ii) the Adjustment Factor then in effect, such redemption or repurchase to be upon the same terms and for the same price per Common Unit (after giving effect to application of the Adjustment Factor) as such REIT Shares are redeemed or otherwise repurchased. Notwithstanding the foregoing, the provisions of this Section 4.7(b) shall not apply in the event that such repurchase of REIT Shares is paired with a stock split or stock dividend such that after giving effect to such repurchase and subsequent stock split or stock dividend there shall be outstanding an equal number of REIT Shares as were outstanding prior to such repurchase and subsequent stock split or stock dividend.

(c) If the Managing Member acquires any Excess Shares as trustee for the exclusive benefit of one or more beneficiaries pursuant to Article IV, Section B.4 of the Charter, Section F of Exhibit A of the Charter, or Section F of Exhibit B, of the Charter, or any successor provision thereto or comparable provision with respect to any other class or series of Capital Shares, the Company shall, immediately prior to such acquisition of Excess Shares, designate a number of Common Units (if such Excess Shares resulted from the conversion of REIT Shares) or Membership Equivalent Units (if such Excess Shares resulted from the conversion of Capital Shares) equal to the number of such Excess Shares, and, if applicable, divided by the Adjustment Factor then in effect, as "Excess Units" of a class and/or series corresponding to such Excess Shares. Notwithstanding anything to the contrary in this Agreement, for the duration of the period that such Membership Equivalent Units are designated as Excess Units, such Membership Equivalent Units shall not be entitled to any dividends or distributions from the Company, other than the distribution of assets in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Managing Member. If the Managing Member repurchases any Excess Shares held in such trust pursuant to the Charter, the Company shall, immediately prior to such repurchase of Excess Shares, repurchase a number of Excess Units (of the corresponding class and/or series) held by the Managing Member equal to the number of Excess Shares so repurchased (divided, in the case of common Excess Shares, by the Adjustment Factor then in effect), such repurchase to be upon the same terms and for the same price per Excess Unit (after giving effect to application of the Adjustment Factor, if applicable) as such Excess Shares are repurchased. If the Excess Shares cease to be Excess Shares, the Company shall, immediately prior to such event, designate an equal number of Excess Units as Common Units (multiplied by the Adjustment Factor then in effect) or Membership Equivalent Units, as applicable.

Section 4.8 *Other Contribution Provisions*. In the event that any Member is admitted to the Company and is given a Capital Account in exchange for services rendered to the Company, such transaction shall be treated by the Company and the affected Member as if the Company had compensated such partner in cash and such Member had contributed the cash that the Member would have received to the capital of the Company. In addition, with the Consent of the Managing Member, one or more Members may enter into contribution agreements with the Company which have the effect of providing a guarantee of certain obligations of the Company (and/or a wholly-owned Subsidiary of the Company).

ARTICLE 5
DISTRIBUTIONS

Section 5.1 *Requirement and Characterization of Distributions*. Subject to the rights of any Holder of any Membership Interest set forth in Article 17 or Article 18 of this Agreement, or any Membership Unit Designation, the Managing Member may cause the Company to distribute such amounts, at such times, as the Managing Member may, in its sole and absolute discretion, determine, to the Holders as of any Company Record Date: (a) first, with respect to any Membership Units that are entitled to any preference in distribution, in accordance with the rights of Holders of such class(es) of Membership Units (and, within each such class, among the Holders of each such class, pro rata in proportion to their respective Percentage Interests of such class on such Company Record Date); and (b) second, with respect to any Membership Units that are not entitled to any preference in distribution, in accordance with the rights of Holders of such class(es) of Membership Units, as applicable (and, within each such class, among the Holders of each such class, pro rata in proportion to their respective Percentage Interests of such class on such Company Record Date). Distributions payable with respect to any Membership Units, other than any Membership Units issued to the Managing Member in connection with the issuance of REIT Shares by the Managing Member, that were not outstanding during the entire quarterly period in respect of which any distribution is made, shall be prorated based on the portion of the period that such Membership Units were outstanding. The Managing Member shall make such reasonable efforts, as determined by it in its sole and absolute discretion and consistent with the Managing Member's qualification as a REIT, to cause the Company to distribute sufficient amounts to enable the Managing Member, for so long as the Managing Member has determined to qualify as a REIT, to pay stockholder dividends that will (i) satisfy the requirements for qualifying as a REIT under the Code and Regulations (the "*REIT Requirements*") and (ii) except to the extent otherwise determined by the Managing Member, eliminate any U.S. federal income or excise tax liability of the Managing Member, except to the extent that a distribution pursuant to clause (ii)

would prevent the Company from making a distribution to the Holders of Class L Preferred Units in accordance with Article 17 or Class M Preferred Units in accordance with Article 18. The Members acknowledge that the Charter provides that the Board of Directors shall use its reasonable best efforts to cause the Managing Member and the stockholders to qualify for federal income tax treatment in accordance with Sections 856 through 860 of the Code, and that, in furtherance of the foregoing, the Board of Directors shall use its reasonable best efforts to take such actions as are necessary, and may take such actions as in its sole judgment and discretion are desirable, to preserve the status of the Managing Member as a REIT; provided, however, that if the Board of Directors determines that it is no longer in the best interests of the Managing Member for it to continue to qualify as a REIT, the Board of Directors may revoke or otherwise terminate the Managing Member's REIT election. Notwithstanding anything in the foregoing to the contrary, a Holder of LTIP Units will only be entitled to distributions with respect to an LTIP Unit as set forth in Article 16 hereof and in making distributions pursuant to this Section 5.1, the Managing Member of the Company shall take into account the provisions of Section 16.4 hereof.

Section 5.2 *Distributions in Kind*. Except as expressly provided herein, no right is given to any Holder to demand and receive property other than cash as provided in this Agreement. The Managing Member may determine, in its sole and absolute discretion, to make a distribution in kind of Company assets to the Holders, and such assets shall be distributed in such a fashion as to ensure that the fair market value is distributed and allocated in accordance with Articles 5, 6 and 13 hereof; *provided*, *however*, that the Managing Member shall not make a distribution in kind to any Holder unless the Holder has been given 90 days prior written notice of such distribution.

Section 5.3 *Amounts Withheld*. All amounts withheld pursuant to the Code or any provisions of any state, local or non-United States tax law and Section 10.4 hereof with respect to any allocation, payment or distribution to any Holder shall be treated as amounts paid or distributed to such Holder pursuant to Section 5.1 hereof for all purposes under this Agreement.

Section 5.4 *Distributions upon Liquidation*. Notwithstanding the other provisions of this Article 5, net proceeds from a Terminating Capital Transaction, and any other amounts distributed after the occurrence of a Liquidating Event, shall be distributed to the Holders in accordance with Section 13.2 hereof.

Section 5.5 *Distributions to Reflect Additional Membership Units*. In the event that the Company issues additional Membership Units pursuant to the provisions of Article 4 hereof, subject to the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, the Managing Member is authorized to make such revisions to this Article 5 and to Articles 6, 11 and 12 hereof as it determines are necessary or desirable to reflect the issuance of such additional Membership Units, including, without limitation, making preferential distributions to Holders of certain classes of Membership Units.

Section 5.6 *Restricted Distributions*. Notwithstanding any provision to the contrary contained in this Agreement, neither the Company nor the Managing Member, on behalf of the Company, shall make a distribution to any Holder if such distribution would violate the Act or other applicable law.

ARTICLE 6
ALLOCATIONS

Section 6.1 *Timing and Amount of Allocations of Net Income and Net Loss*. Net Income and Net Loss of the Company shall be determined and allocated with respect to each Fiscal Year as of the end of each such year, *provided* that the Managing Member may in its discretion allocate Net Income and Net Loss for a shorter period as of the end of such period (and, for purposes of this Article 6, references to the term "Fiscal Year" may include such shorter periods). Except as otherwise provided in this Article 6, and subject to Section 11.6(c) hereof, an allocation to a Holder of a share of Net Income or Net Loss shall be treated as an allocation of the same share of each item of income, gain, loss or deduction that is taken into account in computing Net Income or Net Loss.

Section 6.2 *General Allocations*. Except as otherwise provided in this Article 6 and Section 11.6(c) hereof, Net Income and Net Loss for any Fiscal Year shall be allocated to each of the Holders as follows:

(a) Net Income.

(i) First, 100% to the Managing Member in an amount equal to the remainder, if any, of the cumulative Net Losses allocated to the Managing Member pursuant to clause (iv) in Section 6.2(b) for all prior Fiscal Years minus the cumulative Net Income allocated to the Managing Member pursuant to this clause (i) for all prior Fiscal Years;

(ii) Second, 100% to each Holder (other than the Managing Member) in an amount equal to the remainder, if any, of the cumulative Net Losses allocated to each such Holder pursuant to clause (iii) in Section 6.2(b) for all prior Fiscal Years minus the cumulative Net Income allocated to such Holder pursuant to this clause (ii) for all prior Fiscal Years;

(iii) Third, 100% to the Managing Member in an amount equal to the remainder, if any, of the cumulative Net Losses allocated to the Managing Member pursuant to clause (ii) in Section 6.2(b) for all prior Fiscal Years minus the cumulative Net Income allocated to the Managing Member pursuant to this clause (iii) for all prior Fiscal Years;

(iv) Fourth, 100% to the Managing Member in an amount equal to the sum of (A) the excess of the cumulative Class L Priority Return on the Class L Preferred Units to the last day of the current Fiscal Year or to the date of redemption or conversion of the Class L Preferred Units, to the extent such Class L Preferred Units are redeemed or converted during such year, over the cumulative Net Income allocated to the Managing Member pursuant to this subclause (A) of this clause (iv) for all prior Fiscal Years, and (B) the excess of the cumulative Class M Priority Return on the Class M Preferred Units to the last day of the current Fiscal Year or to the date of redemption or conversion of the Class M Preferred Units, to the extent such Class M Preferred Units are redeemed or converted during such year, over the cumulative Net Income allocated to the Managing Member pursuant to this subclause (B) of this clause (iv) for all prior Fiscal Years, provided however that notwithstanding subclauses (A)-(B) of this clause (iv), in connection with any conversion of any such Membership Units, the Managing Member shall be permitted to make allocations of income with respect to such Membership Units and the Common Units issued upon such conversion that are consistent with the distributions payable with respect to such Membership Units and Common Units;

(v) Fifth, 100% to each Holder in an amount equal to the remainder, if any, of the cumulative Net Losses allocated to each such Holder pursuant to clause (i) in Section 6.2(b) for all prior Fiscal Years minus the cumulative Net Income allocated to such Holder pursuant to this clause (v) for all prior Fiscal Year; and

(vi) Sixth, 100% to the Holders of Common Units in accordance with their respective Percentage Interests in the Common Units.

To the extent the allocations of Net Income set forth above in any paragraph of this Section 6.2(a) are not sufficient to entirely satisfy the allocation set forth in such paragraph, such allocation shall be made in proportion to the total amount that would have been allocated pursuant to such paragraph without regard to such shortfall. In making allocations pursuant to this Section 6.2(a) and Section 6.2(b), the Managing Member of the Company shall take into account the provisions of Section 16.5 hereof.

(b) Net Losses.

(i) First, 100% to the Holders of Common Units in accordance with their respective Percentage Interests in the Common Units (to the extent consistent with this clause (i)) until the Adjusted Capital Account (ignoring for this purpose any amounts a Holder is obligated to contribute to the capital of the Company or is deemed obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c)(2) and ignoring the Managing Member's Class L Preferred Capital and Class M Preferred Capital) of all such Holders is zero;

(ii) Second, 100% to the Managing Member (ignoring for this purpose any amounts the Managing Member is obligated to contribute to the capital of the Company or is deemed obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c)(2)), until the Adjusted Capital Account (as so modified) of the Managing Member is zero;

(iii) Third, 100% to the Holders (other than the Managing Member) to the extent of, and in proportion to, the positive balance (if any) in their Adjusted Capital Accounts; and

(iv) Fourth, 100% to the Managing Member.

(c) *Allocations to Reflect Issuance of Additional Membership Interests*. In the event that the Company issues additional Membership Interests to the Managing Member or any Additional Member pursuant to Article 4 hereof, subject to the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, the Managing Member is authorized to make such revisions to this Article 6 or to Articles 12 and 13 hereof as it determines are necessary or desirable to reflect the terms of the issuance of such additional Membership Interests, including making preferential allocations to certain classes of Membership Interests.

(d) *Special Allocations with Respect to LTIP Units*. In the event that Liquidating Gains are allocated under this Section 6.2(d), Net Income allocable under Section 6.2(a) and any Net Losses allocable under Section 6.2(b) shall be recomputed without regard to the Liquidating Gains so allocated. After giving effect to the special allocations set forth in Section 6.4(a) hereof, and notwithstanding the provisions of Sections 6.2(a) and 6.2(b) above, any Liquidating Gains shall first be allocated to the Holders of LTIP Units until the Economic Capital Account Balances of such Holders, to the extent attributable to their ownership of LTIP Units, are equal to (i) the Common Unit Economic Balance, multiplied by (ii) the number of their LTIP Units. Any such allocations shall be made among the Holders of LTIP Units in proportion to the amounts required to be allocated to each under this Section 6.2(d). The parties agree that the intent of this Section 6.2(d) is to make the Capital Account balances of the Holders of LTIP Units with respect to their LTIP Units economically equivalent to the Capital Account balance of the Managing Member with respect to its Common Units.

Section 6.3 *Additional Allocation Provisions*. Notwithstanding the foregoing provisions of this Article 6:

(a) *Special Allocations Upon Liquidation*. In the event that the Company disposes of all or substantially all of its assets in a transaction that will lead to a liquidation of the Company pursuant to Article 13 hereof, then: (i) any Liquidating Gains shall first be allocated to the Managing Member in an amount equal to the sum of the Class L Preferred Capital and the Class M Preferred Capital, and then, thereafter, each Holder of LTIP Units in accordance with Section 6.2(d); and (ii) any Net Income or Net Loss realized in connection with such transaction and thereafter (recomputed without regard to the Liquidating Gains allocated pursuant to clause (i) above) shall be specially allocated for such Fiscal Year (and to the extent permitted by Section 761(c) of the Code, for the immediately preceding Fiscal Year) among the Holders as required so as to cause liquidating distributions pursuant to Section 13.2(a)(iv) hereof to be made in the same amounts and proportions as would have resulted had such distributions instead been made pursuant to Article 5 hereof. In addition, if there is an adjustment to the Gross Asset Value of the assets of the Company pursuant to paragraph (b) of the definition of Gross Asset Value, allocations of Net Income or Net Loss arising from such adjustment shall be allocated in the same manner as described in the prior sentence.

(b) *Offsetting Allocations*. Notwithstanding the provisions of Sections 6.1, 6.2(a) and 6.2(b), but subject to Sections 6.3 and 6.4, in the event Net Income or items thereof are being allocated to a Member to offset prior Net Loss or items thereof which have been allocated to such Member (including any allocations of Net Income or items thereof pursuant to Section 6.3(a)), the Managing Member shall attempt to allocate such offsetting Net Income or items thereof which are of the same or similar character (including without limitation Section 704(b) book items versus tax items) to the original allocations with respect to such Member.

Section 6.4 *Regulatory Allocation Provisions*. Notwithstanding the foregoing provisions of this Article 6:

(a) Regulatory Allocations.

(i) *Minimum Gain Chargeback*. Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding the provisions of Section 6.2 hereof, or any other provision of this Article 6, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Holder shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Holder's share of the net decrease in Company Minimum Gain, as determined under Regulations Section 1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Holder pursuant thereto. The items to be allocated shall be determined in accordance with Regulations Sections 1.704-2(f)(6) and 1.704-2(j)(2). This Section 6.4(a)(i) is intended to qualify as a "minimum gain chargeback" within the meaning of Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(ii) *Member Minimum Gain Chargeback*. Except as otherwise provided in Regulations Section 1.704-2(i)(4) or in Section 6.4(a)(i) hereof, if there is a net decrease in Member Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Holder who has a share of the Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(5), shall be specially allocated items of Company income and gain for such year (and, if necessary, subsequent years) in an amount equal to such Holder's share of the net decrease in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Holder pursuant thereto. The items to be so allocated shall be determined in accordance with Regulations Sections 1.704-2(i)(4) and 1.704-2(j)(2). This Section 6.4(a)(ii) is intended to qualify as a "chargeback of partner nonrecourse debt minimum gain" within the meaning of Regulations Section 1.704-2(i) and shall be interpreted consistently therewith.

(iii) *Nonrecourse Deductions and Member Nonrecourse Deductions*. Any Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Holders in accordance with their respective Percentage Interests with respect to Common Units. Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Holder(s) who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable, in accordance with Regulations Section 1.704-2(i).

(iv) *Qualified Income Offset*. If any Holder unexpectedly receives an adjustment, allocation or distribution described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated, in accordance with Regulations Section 1.704-1(b)(2)(ii)(d), to such Holder in an amount and manner sufficient to eliminate, to the extent required by such Regulations, the Adjusted Capital Account Deficit of such Holder as quickly as possible, *provided* that an allocation pursuant to this Section 6.4(a)(iv) shall be made if and only to the extent that such Holder would have an Adjusted Capital Account Deficit after all other allocations provided in this Article 6 have been tentatively made as if this Section 6.4(a)(iv) were not in the Agreement. It is intended that this Section 6.4(a)(iv) qualify and be construed as a "qualified income offset" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(v) *Gross Income Allocation*. In the event that any Holder has a deficit Capital Account at the end of any Fiscal Year that is in excess of the sum of (1) the amount (if any) that such Holder is obligated to restore to the Company upon complete liquidation of such Holder's Membership Interest (including, the Holder's interest in outstanding Preferred Units and other Membership Units) and (2) the amount that such Holder is deemed to be obligated to restore pursuant to Regulations Section 1.704-1(b)(2)(ii)(c) or the penultimate sentences of Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Holder shall be specially allocated items of Company income and gain in the amount of such excess to eliminate such deficit as quickly as possible, *provided* that an allocation pursuant to this Section 6.4(a)(v) shall be made if and only to the extent that such Holder would have a deficit Capital Account in excess of such sum after all other allocations provided in this Article 6 have been tentatively made as if this Section 6.4(a)(v) and Section 6.4(a)(iv) hereof were not in the Agreement.

(vi) *Limitation on Allocation of Net Loss*. To the extent that any allocation of Net Loss would cause or increase an Adjusted Capital Account Deficit as to any Holder, such allocation of Net Loss shall be reallocated (x) first, among the other Holders of Common Units in accordance with their respective Percentage Interests with respect to Common Units and (y) thereafter, among the Holders of other classes of Membership Units as determined by the Managing Member, subject to the limitations of this Section 6.4(a)(vi).

(vii) *Section 754 Adjustment*. To the extent that an adjustment to the adjusted tax basis of any Membership asset pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Holder in complete liquidation of its interest in the Company, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Holders in accordance with their respective Percentage Interests with respect to Common Units. in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Holder(s) to whom such distribution was made in the event that Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(viii) *Curative Allocations*. The allocations set forth in Sections 6.4(a)(i), (ii), (iii), (iv), (v), (vi) and (vii) hereof (the "*Regulatory Allocations*") are intended to comply with certain regulatory requirements, including the requirements of Regulations Sections 1.704-1(b) and 1.704-2. Notwithstanding the provisions of Sections 6.1 and 6.2 hereof, the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Holders so that to the extent possible without violating the requirements giving rise to the Regulatory Allocations, the net amount of such allocations of other items and the Regulatory Allocations to each Holder shall be equal to the net amount that would have been allocated to each such Holder if the Regulatory Allocations had not occurred.

(ix) *Forfeiture Allocations*. Upon a forfeiture of any Unvested LTIP Units by any Member, gross items of income, gain, loss or deduction shall be allocated to such Member if and to the extent required by final Regulations promulgated after the Effective Date to ensure that allocations made with respect to all unvested Membership Interests are recognized under Code Section 704(b).

(x) *LTIP Units*. For purposes of the allocations set forth in this Section 6.4, each issued and outstanding LTIP Unit will be treated as one outstanding Common Unit; provided, however, that for purposes of determining Percentage Interests with respect to Common Units, each unvested Performance LTIP Unit will be treated as a fraction of one outstanding Common Unit equal to one Common Unit multiplied by the Performance Unit Sharing Percentage.

(b) Allocation of Excess Nonrecourse Liabilities. For purposes of determining a Holder's proportional share of the "excess nonrecourse liabilities" of the Company within the meaning of Regulations Section 1.752-3(a)(3), each Holder's respective interest in Company profits shall be equal to such Holder's Percentage Interest with respect to Common Units, except as otherwise determined by the Managing Member.

Section 6.5 *Tax Allocations*.

(a) In General. Except as otherwise provided in this Section 6.5, for income tax purposes under the Code and the Regulations, each Company item of income, gain, loss and deduction (collectively, "*Tax Items*") shall be allocated among the Holders in the same manner as its correlative item of "book" income, gain, loss or deduction is allocated pursuant to Sections 6.2 and 6.3 hereof.

(b) Section 704(c) Allocations. Notwithstanding Section 6.5(a) hereof, Tax Items with respect to Property that is contributed to the Company with an initial Gross Asset Value that varies from its basis in the hands of the contributing Member immediately preceding the date of contribution shall be allocated among the Holders for income tax purposes pursuant to Regulations promulgated under Code Section 704(c) so as to take into account such variation. The Company shall account for such variation under any method approved under Code Section 704(c) and the applicable Regulations as chosen by the Managing Member. In the event that the Gross Asset Value of any Company asset is adjusted pursuant to subsection (b) of the definition of "Gross Asset Value" (provided in Article 1 hereof), subsequent allocations of Tax Items with respect to such asset shall take account of the variation, if any, between the adjusted basis of such asset and its Gross Asset Value in the same manner as under Code Section 704(c) and the applicable Regulations and using the method chosen by the Managing Member. Allocations pursuant to this Section 6.5(b) are solely for purposes of federal, state and local income taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Income, Net Loss, or any other items or distributions pursuant to any provision of this Agreement.

ARTICLE 7
MANAGEMENT AND OPERATIONS OF BUSINESS

Section 7.1 *Management*.

(a) Except as otherwise expressly provided in this Agreement, including in any Membership Unit Designation, all management powers over the business and affairs of the Company are and shall be exclusively vested in the Managing Member, and no Member shall have any right to participate in or exercise control or management power over the business and affairs of the Company. No Managing Member may be removed by the Members, with or without cause, except with the Consent of the Managing Member. In addition to the powers now or hereafter granted a managing member of a limited liability company under applicable law or that are granted to the Managing Member under any other provision of this Agreement, the Managing Member, subject to the other provisions hereof including, without limitation, Section 3.2 and Section 7.3, and the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, shall have full and exclusive power and authority, without the consent or approval of any Member, to do or authorize all things deemed necessary or desirable by it to conduct the business and affairs of the Company, to exercise or direct the exercise of all of the powers of the Company and a managing member under the Act and this Agreement and to effectuate the purposes of the Company including, without limitation:

(i) the making of any expenditures, the lending or borrowing of money or selling of assets (including, without limitation, making prepayments on loans and borrowing money to permit the Company to make distributions to the Holders in such amounts as will permit the Managing Member to prevent the imposition of any federal income tax on the Managing Member (including, for this purpose, any excise tax pursuant to Code Section 4981), to make distributions to its stockholders and payments to any taxing authority sufficient to permit the Managing Member to maintain REIT status or otherwise to satisfy the REIT Requirements), the assumption or guarantee of, or other contracting for, indebtedness and other liabilities, the issuance of evidences of indebtedness (including the securing of same by deed to secure debt, mortgage, deed of trust, pledge or other lien or encumbrance on the Company's assets) and the incurring of any obligations to conduct the activities of the Company;

(ii) the making of tax, regulatory and other filings, or rendering of periodic or other reports to governmental or other agencies having jurisdiction over the business or assets of the Company;

(iii) the taking of any and all acts to ensure that the Company will not be classified as a "publicly traded partnership" under Code Section 7704;

(iv) subject to Section 11.2 hereof, the acquisition, sale, transfer, exchange or other disposition of any, all or substantially all of the assets (including the goodwill) of the Company (including, but not limited to, the exercise or grant of any conversion, option, privilege or subscription right or any other right available in connection with any assets at any time held by the Company) or the merger, division, consolidation, reorganization or other combination of the Company with or into another entity;

(v) the mortgage, pledge, encumbrance or hypothecation of any assets of the Company, the assignment of any assets of the Company in trust for creditors or on the promise of the assignee to pay the debts of the Company, the use of the assets of the Company (including, without limitation, cash on hand) for any purpose consistent with the terms of this Agreement and on any terms that the Managing Member sees fit, including, without limitation, the financing of the operations and activities of the Managing Member, the Company or any of the Company's Subsidiaries, the lending of funds to other Persons (including, without limitation, the Managing Member and/or the Company's Subsidiaries) and the repayment of obligations of the Company, its Subsidiaries and any other Person in which the Company has an equity investment, and the making of capital contributions to and equity investments in the Company's Subsidiaries;

(vi) the management, operation, leasing, landscaping, repair, alteration, demolition, replacement or improvement of any Property;

(vii) the negotiation, execution and performance of any contracts, including leases (including ground leases), easements, management agreements, rights of way and other property-related agreements, conveyances or other instruments to conduct the Company's operations or implement the Managing Member's powers under this Agreement, including contracting with contractors, developers, consultants, governmental authorities, accountants, legal counsel, other professional advisors and other agents and the payment of their expenses and compensation, as applicable, out of the Company's assets;

(viii) the distribution of Company cash or other Company assets in accordance with this Agreement, the holding, management, investment and reinvestment of cash and other assets of the Company, and the collection and receipt of revenues, rents and income of the Company;

(ix) the selection and dismissal of employees of the Company (if any) (including, without limitation, employees having titles or offices such as "president," "vice president," "secretary" and "treasurer"), and agents, outside attorneys, accountants, consultants and contractors of the Company and the determination of their compensation and other terms of employment or hiring;

(x) the maintenance of such insurance (including, without limitation, directors' and officers' insurance) for the benefit of the Company and the Members (including, without limitation, the Managing Member);

(xi) the formation of, or acquisition of an interest in, and the contribution of property to, any further limited or general partnership, limited liability companies, joint ventures or other relationships that it deems desirable (including, without limitation, the acquisition of interests in, and the contributions of property to, any Subsidiary and any other Person in which the Managing Member has an equity investment from time to time);

(xii) the control of any matters affecting the rights and obligations of the Company, including the settlement, compromise, submission to arbitration or any other form of dispute resolution, or abandonment, of any claim, cause of action, liability, debt or damages, due or owing to or from the Company, the commencement or defense of suits, legal proceedings, administrative proceedings, arbitrations or other forms of dispute resolution, and the representation of the Company in all suits or legal proceedings, administrative proceedings, arbitrations or other forms of dispute resolution, the incurring of legal expense, and the indemnification of any Person against liabilities and contingencies to the extent permitted by law;

(xiii) the undertaking of any action in connection with the Company's direct or indirect investment in any Subsidiary or any other Person (including, without limitation, the contribution or loan of funds by the Company to such Persons);

(xiv) the determination of the fair market value of any Company property distributed in kind using such reasonable method of valuation as the Managing Member may adopt; *provided*, *however*, that such methods are otherwise consistent with the requirements of this Agreement;

(xv) the enforcement of any rights against any Member pursuant to representations, warranties, covenants and indemnities relating to such Member's contribution of property or assets to the Company;

(xvi) the exercise, directly or indirectly, through any attorney-in-fact acting under a general or limited power of attorney, of any right, including the right to vote, appurtenant to any asset or investment held by the Company;

(xvii) the exercise of any of the powers of the Managing Member enumerated in this Agreement on behalf of or in connection with any Subsidiary of the Company or any other Person in which the Company has a direct or indirect interest, or jointly with any such Subsidiary or other Person;

(xviii) an election to acquire Tendered Units in exchange for REIT Shares;

(xix) the exercise of any of the powers of the Managing Member enumerated in this Agreement on behalf of any Person in which the Company does not have an interest, pursuant to contractual or other arrangements with such Person;

(xx) the making, execution and delivery of any and all deeds, leases, notes, deeds to secure debt, mortgages, deeds of trust, security agreements, conveyances, contracts, guarantees, warranties, indemnities, waivers, releases, confessions of judgment or any other legal instruments or agreements in writing;

(xxi) the issuance of additional Membership Units in connection with Capital Contributions by Additional Members and additional Capital Contributions by Members pursuant to Article 4 hereof;

(xxii) an election to dissolve the Company pursuant to Section 13.1(b) hereof;

(xxiii) the distribution of cash to acquire Common Units held by a Member in connection with a Redemption under Section 15.1 hereof;

(xxiv) the maintenance of the Member Registry from time to time to reflect accurately at all times the Membership Units, Capital Contributions and Percentage Interests of the Members as the same are adjusted from time to time to reflect redemptions, Capital Contributions, the issuance or transfer of Membership Units, the admission of any Additional Member or any Substituted Member or otherwise, which shall not be deemed an amendment to this Agreement, as long as the matter or event being reflected in the Member Registry otherwise is authorized by this Agreement; and

(xxv) the registration of any class of securities of the Company under the Securities Act or the Exchange Act, and the listing of any debt securities of the Company on any exchange.

(b) Each of the Members agrees that, except as provided in Section 7.3 hereof and subject to the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, the Managing Member is authorized to execute and deliver any affidavit, agreement, certificate, consent, instrument, notice, power of attorney, waiver or other writing or document in the name and on behalf of the Company and to otherwise exercise any power of the Managing Member under this Agreement and the Act on behalf of the Company without any further act, approval or vote of the Members or any other Persons, notwithstanding any other provision of the Act or any applicable law, rule or regulation and, in the absence of any specific corporate action on the part of the Managing Member to the contrary, the taking of any action or the execution of any such document or writing by an officer of the Managing Member, in the name and on behalf of the Managing Member, in its capacity as the Managing Member of the Company, shall conclusively evidence (i) the approval thereof by the Managing Member, in its capacity as the Managing Member of the Company, (ii) the Managing Member's determination that such action, document or writing is necessary, advisable, appropriate, desirable or prudent to conduct the business and affairs of the Company, exercise the powers of the Company under this Agreement and the Act or effectuate the purposes of the Company, or any other determination by the Managing Member required by this Agreement in connection with the taking of such action or execution of such document or writing, and (iii) the authority of such officer with respect thereto.

(c) At all times from and after the date hereof, the Managing Member may cause the Company to obtain and maintain (i) casualty, liability and other insurance on the Properties and (ii) liability insurance for the Indemnitees hereunder.

(d) At all times from and after the date hereof, the Managing Member may cause the Company to establish and maintain working capital and other reserves in such amounts as the Managing Member, in its sole and absolute discretion, determines from time to time.

(e) The determination as to any of the following matters, made by or at the direction of the Managing Member consistent with this Agreement and the Act, shall be final and conclusive and shall be binding upon the Company and every Member: the amount of assets at any time available for distribution or the redemption of Common Units; the amount and timing of any distribution; any determination to redeem Tendered Units; the amount, purpose, time of creation, increase or decrease, alteration or cancellation of any reserves or charges and the propriety thereof (whether or not any obligation or liability for which such reserves or charges shall have been created shall have been paid or discharged); the amount of any Member's Capital Account, Adjusted Capital Account or Adjusted Capital Account Deficit; the amount of Net Income, Net Loss or Depreciation for any period; any special allocations of Net Income or Net Loss pursuant to Sections 6.2(c), 6.2(d), 6.3, 6.4, 6.5 or 16.5; the Gross Asset Value of any Company asset; the Value of any REIT Share; the timing and amount of any adjustment to the Adjustment Factor; any adjustment to the number of outstanding LTIP Units pursuant to Section 16.3; the timing, number and redemption or repurchase price of the redemption or repurchase of any Membership Units pursuant to Section 4.7(b); any interpretation of the rights, powers and duties of any class or series of Membership Interest; the fair value, or any sale, bid or asked price to be applied in determining the fair value, of any asset owned or held by the Company or of any Membership Interest; the number of authorized or outstanding Membership Units of any class or series; any matter relating to the acquisition, holding and disposition of any assets by the Company; or any other matter relating to the business and affairs of the Company or required or permitted by applicable law, this Agreement or otherwise to be determined by the Managing Member.

Section 7.2 *Certificate of Formation*. The Managing Member, as the designated "authorized person" within the meaning of the Act, may file amendments to and restatements of the Certificate and do all the things to maintain the Company as a limited liability company under the laws of the State of Delaware and each other state, the District of Columbia or any other jurisdiction, in which the Company may elect to do business or own property. Subject to the terms of Section 8.5(a) hereof, the Managing Member shall not be required, before or after filing, to deliver or mail a copy of the Certificate or any amendment thereto to any Member. The Managing Member shall use all reasonable efforts to cause to be filed such other certificates or documents for the formation, continuation, qualification and operation of a limited liability company in the State of Delaware and any other state, or the District of Columbia or other jurisdiction, in which the Company may elect to do business or own property.

Section 7.3 *Restrictions on Managing Member's Authority*.

(a) The Managing Member may not, in its capacity as the Managing Member, for or on behalf of the Company:

(i) take any action that would make it impossible to carry on the ordinary business of the Company, except as otherwise provided in this Agreement or with the Consent of the Non-Managing Members;

(ii) enter into any contract, mortgage, loan or other agreement that, in the absence of any default by the Managing Member of its obligations thereunder, expressly prohibits or restricts (A) the Managing Member or the Company from performing its specific obligations under Section 15.1 hereof in full or (B) a Member from exercising its rights under Section 15.1 hereof to effect a Redemption in full, except, in either case, (x) with the Consent of each Non-Managing Member affected by the prohibition or restriction or (y) in connection with or as a result of a Termination Transaction that, in accordance with Section 11.2(b)(i) and/or (ii), does not require the Consent of the Non-Managing Members.

(b) Notwithstanding Section 14.2 hereof but subject to the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, the Managing Member shall have the power, without the Consent of the Members or the consent or approval of any Member or any other Person, to amend this Agreement as may be required to facilitate or implement any of the following purposes:

(i) to add to the obligations of the Managing Member or surrender any right or power granted to the Managing Member or any Affiliate of the Managing Member for the benefit of the Members;

(ii) to reflect the admission, substitution or withdrawal of Members, the Transfer of any Membership Interest, the termination of the Company in accordance with this Agreement, or the adjustment of outstanding LTIP Units as contemplated by Section 16.3, and to update the Member Registry in connection with such admission, substitution, withdrawal, Transfer or adjustment;

(iii) to reflect a change that is of an inconsequential nature or does not adversely affect the Members in any material respect, or to cure any ambiguity, correct or supplement any provision in this Agreement not inconsistent with law or with other provisions of this Agreement, or make other changes with respect to matters arising under this Agreement that will not be inconsistent with law or with the provisions of this Agreement;

(iv) to set forth or amend the rights, powers and duties of the Holders of any additional Membership Interests issued pursuant to Article 4 (including any changes contemplated by Section 5.5 above);

(v) to satisfy any requirements, conditions or guidelines contained in any order, directive, opinion, ruling or regulation of a federal or state court or agency or contained in federal or state law or the listing standards of any securities exchange upon which the Managing Member's securities are then listed or admitted for trading;

(vi) (A) to reflect such changes as are reasonably necessary or appropriate for the Managing Member to maintain its status as a REIT or to satisfy the REIT Requirements or (B) to reflect the Transfer of all or any part of a Membership Interest among the Managing Member and any Disregarded Entity with respect to the Managing Member;

(vii) to modify either or both of the manner in which items of Net Income or Net Loss are allocated pursuant to Article VI or the manner in which Capital Accounts are adjusted, computed, or maintained (but in each case only to the extent otherwise provided in this Agreement and as may be permitted under applicable law);

(viii) to reflect the issuance of additional Membership Interests in accordance with Section 4.2;

(ix) as contemplated by the last sentence of Section 4.4;

(x) to reflect any other modification to this Agreement as is reasonably necessary for the business or operations of the Company or the Managing Member and which does not violate Section 7.3(d); and

(xi) to effect or facilitate a Termination Transaction that, in accordance with Section 11.2(b)(i) and/or (ii), does not require the Consent of the Non-Managing Members and, if the Company is the Surviving Company in any Termination Transaction, to modify Section 15.1 or any related definitions to provide that the holders of interests in such Surviving Company have rights that are consistent with Section 11.2B(ii).

(c) Notwithstanding Sections 7.3(b) (other than as set forth below in this Section 7.3(c)) and 14.2 hereof, this Agreement shall not be amended, and no action may be taken by the Managing Member, without the Consent of each Member adversely affected thereby, if such amendment or action would (i) adversely modify in any material respect the limited liability of a Member, (ii) alter the rights of any Member to receive the distributions to which such Member is entitled pursuant to Article 5 or Section 13.2(a)(iv) hereof, or alter the allocations specified in Article 6 hereof (except, in any case, as permitted pursuant to Sections 4.2, 5.5, 7.3(b) (including clause (xi) thereof) and Article 6 hereof), (iii) alter or modify the Redemption rights, Cash Amount or REIT Shares Amount as set forth in Section 15.1 hereof, or amend or modify any related definitions (except, in any case, as permitted pursuant to clause (xi) of Section 7.3(b) hereof), (iv) alter or modify Section 11.2 hereof (except as permitted pursuant to clause (xi) of Section 7.3(b) hereof), (v) subject to Section 7.8(i), remove the powers and restrictions related to REIT Requirements or permitting the Managing Member to avoid paying tax under Code Sections 857 or 4981 contained in Sections 7.1 and 7.3, or (vi) amend this Section 7.3(d) (except as permitted pursuant to clause (xi) of Section 7.3(b) hereof). Further, no amendment may alter the restrictions on the Managing Member's authority set forth elsewhere in this Section 7.3 without the Consent specified therein. Any such amendment or action consented to by any Member shall be effective as to that Member, notwithstanding the absence of such consent by any other Member.

Section 7.4 *Reimbursement of the Managing Member*.

(a) The Managing Member shall not be compensated for its services as Managing Member of the Company except as provided in this Agreement (including the provisions of Articles 5 and 6 hereof regarding distributions, payments and allocations to which the Managing Member may be entitled in its capacity as the Managing Member).

(b) Subject to Sections 7.4(d) and 15.12 hereof, the Company shall be responsible for and shall pay all expenses relating to the Company's and the Managing Member's organization and the ownership of each of their assets and operations. The Managing Member is hereby authorized to pay compensation for accounting, administrative, legal, technical, management and other services rendered to the Company. The Company shall be liable for, and shall reimburse the Managing Member, on a monthly basis, or such other basis as the Managing Member may determine in its sole and absolute discretion, for all sums expended in connection with the Company's business, including, without limitation, (i) expenses relating to the ownership of interests in and management and operation of, or for the benefit of, the Company, (ii) compensation of officers and employees, including, without limitation, payments under future compensation plans, of the Managing Member or the Company that may provide for stock units, or phantom stock, pursuant to which employees of the Managing Member or the Company will receive payments based upon dividends on or the value of REIT Shares, (iii) director fees and expenses of the Managing Member or its Affiliates, (iv) any expenses (other than the purchase price) incurred by the Managing Member in connection with the redemption or other repurchase of its Capital Shares or the purchase by the Managing Member of any outstanding Membership Units, (v) all costs and expenses of the Managing Member in connection with the preparation of reports and other distributions to its stockholders and any regulatory or governmental authorities or agencies and, as applicable, all costs and expenses of the Managing Member as a reporting company (including, without limitation, costs of filings with the SEC), (vi) all costs and expenses of the Managing Member in connection with its operation as a REIT, and (vii) all costs and expenses of the Managing Member in connection with the offering, sale, syndication, private placement or public offering of stock, bonds, securities or other interests and financing or refinancing of any type related to the Company or its assets or activities; *provided*, *however*, that the amount of any reimbursement shall be reduced by any interest earned by the Managing Member with respect to bank accounts or other instruments or accounts held by it on behalf of the Company as permitted pursuant to Section 7.5 hereof. The Members acknowledge that all such expenses of the Managing Member are deemed to be for the benefit of the Company. Such reimbursements shall be in addition to any reimbursement of the Managing Member as a result of indemnification pursuant to Section 7.7 hereof.

(c) If the Managing Member shall elect to purchase from its stockholders Capital Shares for the purpose of delivering such Capital Shares to satisfy an obligation under any dividend reinvestment program adopted by the Managing Member, any employee stock purchase plan adopted by the Managing Member or any similar obligation or arrangement undertaken by the Managing Member in the future, in lieu of the treatment specified in Section 4.7(b), the purchase price paid by the Managing Member for such Capital Shares shall be considered expenses of the Company and shall be advanced to the Managing Member or reimbursed to the Managing Member, subject to the condition that: (i) if such REIT Shares subsequently are sold by the Managing Member, the Managing Member shall pay or cause to be paid to the Company any proceeds received by the Managing Member for such REIT Shares (which sales proceeds shall include the amount of dividends reinvested under any dividend reinvestment or similar program; *provided*, that a transfer of REIT Shares for Membership Units pursuant to Section 15.1 would not be considered a sale for such purposes); and (ii) if such REIT Shares are not retransferred by the Managing Member within 30 days after the purchase thereof, or the Managing Member otherwise determines not to retransfer such REIT Shares, the Managing Member shall cause the Company to redeem a number of Membership Units determined in accordance with Section 4.7(b), as adjusted, (x) pursuant to Section 7.5 (in the event the Managing Member acquires material assets, other than on behalf of the Company) and (y) for stock dividends and distributions, stock splits and subdivisions, reverse stock splits and combinations, distributions of rights, warrants or options, and distributions of evidences of indebtedness or assets relating to assets not received by the Managing Member pursuant to a pro rata distribution by the Company (in which case such advancement or reimbursement of expenses shall be treated as having been made as a distribution in redemption of such number of Membership Units held by the Managing Member).

(d) To the extent practicable, Company expenses shall be billed directly to and paid by the Company and, subject to Section 15.12 hereof, if and to the extent any reimbursements to the Managing Member or any of its Affiliates by the Company pursuant to this Section 7.4 constitute gross income to such Person (as opposed to the repayment of advances made by such Person on behalf of the Company), such amounts shall be treated as "guaranteed payments" within the meaning of Code Section 707(c) and shall not be treated as distributions for purposes of computing the Members' Capital Accounts.

Section 7.5 *Outside Activities of the Managing Member*. Without the Consent of the Members, not to be unreasonably withheld, conditioned or delayed, the Managing Member shall not directly or indirectly enter into or conduct any business, other than in connection with, (a) the ownership, acquisition and disposition of Membership Interests, (b) the management of the business and affairs of the Company, (c) the operation of the Managing Member as a reporting company with a class (or classes) of securities registered under the Exchange Act, (d) its operations as a REIT, (e) the offering, sale, syndication, private placement or public offering of stock, bonds, securities or other interests, (f) financing or refinancing of any type related to the Company or its assets or activities, and (g) such activities as are incidental thereto; *provided*, *however*, that, except as otherwise provided herein, any funds raised by the Managing Member pursuant to the preceding clauses (e) and (f) shall be made available to the Company, whether as Capital Contributions, loans or otherwise, as appropriate, and, *provided*, *further,* that the Managing Member may, in its sole and absolute discretion, from time to time directly or indirectly hold or acquire assets or conduct property, leasing, construction or other management services or employee-related activities in its own name or otherwise other than through the Company so long as the Managing Member takes commercially reasonable measures to ensure that the economic benefits and burdens of such Property , services or activities are otherwise vested in the Company, through assignment, mortgage loan or otherwise or, if it is not commercially reasonable to vest such economic interests in the Company, the Members shall negotiate in good faith to amend this Agreement, including, without limitation, the definition of "Adjustment Factor," to reflect such activities and the direct ownership of assets by the Managing Member. Nothing contained herein shall be deemed to prohibit the Managing Member from executing guarantees of Company debt. The Managing Member and all Disregarded Entities with respect to the Managing Member, taken as a group, shall not own any assets or take title to assets (other than temporarily in connection with an acquisition prior to contributing such assets to the Company) other than (i) interests in Disregarded Entities with respect to the Managing Member, (ii) Membership Interests as the Managing Member, (iii) a minority interest in any Subsidiary of the Company that the Managing Member holds to maintain such Subsidiary's status as a partnership for federal income tax purposes or otherwise, and (iv) such cash and cash equivalents, bank accounts or similar instruments or accounts as such group deems reasonably necessary, taking into account Section 7.1(d) hereof and the requirements necessary for the Managing Member to qualify as a REIT and for the Managing Member to carry out its responsibilities contemplated under this Agreement and the Charter. Any Membership Interests acquired by the Managing Member, whether pursuant to the exercise by a Member of its right to Redemption, or otherwise, shall be automatically converted into a Managing Member Interest comprised of an identical number of Membership Units with the same terms as the class or series so acquired. Any Affiliates of the Managing Member may acquire Member Interests and shall, except as expressly provided in this Agreement, be entitled to exercise all rights of a Member relating to such Member Interests.

Section 7.6 *Transactions with Affiliates*.

(a) The Company may lend or contribute funds to, and borrow funds from, Persons in which the Company has an equity investment, and such Persons may borrow funds from, and lend or contribute funds to, the Company, on terms and conditions established in the sole and absolute discretion of the Managing Member. The foregoing authority shall not create any right or benefit in favor of any Person.

(b) Except as provided in Section 7.5 hereof, the Company may transfer assets to joint ventures, limited liability companies, partnerships, corporations, business trusts or other business entities in which it is or thereby becomes a participant upon such terms and subject to such conditions consistent with this Agreement and applicable law.

(c) The Managing Member and its Affiliates may sell, transfer or convey any property to, or purchase any property from, the Company, directly or indirectly, on terms and conditions established by the Managing Member in its sole and absolute discretion.

(d) The Managing Member, in its sole and absolute discretion and without the approval of the Members or any of them or any other Persons, may propose and adopt (on behalf of the Company or its Subsidiaries) employee benefit plans (including without limitation plans that contemplate the issuance of LTIP Units) funded by the Company or its Subsidiaries for the benefit of employees of the Managing Member, the Company, Subsidiaries of the Company or any Affiliate of any of them in respect of services performed, directly or indirectly, for the benefit of the Managing Member, the Company or any of the Company's Subsidiaries.

Section 7.7 *Indemnification*.

(a) To the fullest extent that a Maryland corporation may indemnify and advance expenses to directors and officers of a Maryland corporation under the laws of the State of Maryland, the Company shall indemnify, and shall pay or reimburse reasonable expenses in advance of final disposition of a proceeding to, any Indemnitee who is made or threatened to be made a party to, or witness in, a proceeding by reason of his or her service as an Indemnitee. The rights to indemnification and advance of expenses provided by this Section 7.7 shall vest immediately upon any Indemnitee becoming an Indemnitee.

Without limitation, the foregoing indemnity shall extend to any liability of any Indemnitee, pursuant to a loan guaranty or otherwise, for any indebtedness of the Company or any Subsidiary of the Company (including, without limitation, any indebtedness which the Company or any Subsidiary of the Company has assumed or taken subject to), and the Managing Member is hereby authorized and empowered, on behalf of the Company, to enter into one or more indemnity agreements consistent with the provisions of this Section 7.7 in favor of any Indemnitee having or potentially having liability for any such indebtedness. It is the intention of this Section 7.7(a) that the Company indemnify each Indemnitee to the fullest extent permitted by law and this Agreement. The termination of any proceeding by judgment, order or settlement does not create a presumption that the Indemnitee did not meet the requisite standard of conduct set forth in this Section 7.7(a). The termination of any proceeding by conviction of an Indemnitee or upon a plea of *nolo contendere* or its equivalent by an Indemnitee, or an entry of an order of probation against an Indemnitee prior to judgment, does not create a presumption that such Indemnitee acted in a manner contrary to that specified in this Section 7.7(a) with respect to the subject matter of such proceeding. Any indemnification pursuant to this Section 7.7 shall be made only out of the assets of the Company, and neither the Managing Member nor any other Holder shall have any obligation to contribute to the capital of the Company or otherwise provide funds to enable the Company to fund its obligations under this Section 7.7.

(b) The Company's obligation to indemnify or advance expenses hereunder to any Indemnitee shall be reduced by any amount Indemnitee has actually received as indemnification or advancement of expenses from any other Person, including the Managing Member or from any insurance policy or policies.

(c) The indemnification provided by this Section 7.7 shall be in addition to any other rights to which an Indemnitee or any other Person may be entitled under any agreement, pursuant to any vote of the Members, as a matter of law or otherwise, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns and administrators of the Indemnitee unless otherwise provided in a written agreement with such Indemnitee or in the writing pursuant to which such Indemnitee is indemnified.

(d) The Company may, but shall not be obligated to, purchase and maintain insurance, on behalf of any of the Indemnitees and such other Persons as the Managing Member shall determine, against any liability that may be asserted against or expenses that may be incurred by such Person in connection with the Company's activities, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement.

(e) Any liabilities which an Indemnitee incurs as a result of acting on behalf of the Company or the Managing Member (whether as a fiduciary or otherwise) in connection with the operation, administration or maintenance of an employee benefit plan or any related trust or funding mechanism (whether such liabilities are in the form of excise taxes assessed by the IRS, penalties assessed by the U.S. Department of Labor, restitutions to such a plan or trust or other funding mechanism or to a participant or beneficiary of such plan, trust or other funding mechanism, or otherwise) shall be treated as liabilities or judgments or fines under this Section 7.7, unless such liabilities arise as a result of (i) an act or omission of such Indemnitee that was material to the matter giving rise to the Action and either was committed in bad faith or was the result of active and deliberate dishonesty; (ii) in the case of any criminal proceeding, an act or omission that such Indemnitee had reasonable cause to believe was unlawful, or (iii) any transaction in which such Indemnitee actually received an improper personal benefit in violation or breach of any provision of this Agreement.

(f) In no event may an Indemnitee subject any of the Holders to personal liability by reason of the indemnification provisions set forth in this Agreement.

(g) An Indemnitee shall not be denied indemnification in whole or in part under this Section 7.7 because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

(h) The provisions of this Section 7.7 are for the benefit of the Indemnitees, their heirs, successors, assigns and administrators and shall not be deemed to create any rights for the benefit of any other Persons. Any amendment, modification or repeal of this Section 7.7 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the Company's liability to any Indemnitee under this Section 7.7 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

(i) It is the intent of the parties that any amounts paid by the Company to the Managing Member pursuant to this Section 7.7 shall be treated as "guaranteed payments" within the meaning of Code Section 707(c) and shall not be treated as distributions for purposes of computing the Members' Capital Accounts.

Section 7.8 *Duties and Liability of the Managing Member*.

(a) To the maximum extent permitted under the Act, the only duties that the Managing Member owes to the Company, any Member or any other Person (including any creditor of any Member or assignee of any Membership Interest), fiduciary or otherwise, are to perform its contractual obligations as expressly set forth in this Agreement consistently with the implied contractual covenant of good faith and fair dealing. To the fullest extent permitted by law, the Managing Member, in its capacity as such, shall have no other duty, fiduciary or otherwise, to the Company, any Member or any other Person (including any creditor of any Member or any assignee of Membership Interest). The provisions of this Agreement other than this Section 7.8 shall create contractual obligations of the Managing Member only, and no such provision shall be interpreted to expand the fiduciary duties of the Managing Member under the Act as modified by this Agreement. To the fullest extent permitted by law, the provisions of this Section 7.8, to the extent they restrict or modify the duties and liabilities of the Managing Member or any other Person under the Act or otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities. The Managing Member is entitled to a presumption that any act or failure to act on the part of the Managing Member, and any decision or determination made by the Managing Member, is presumed to satisfy the duties of the Managing Member, whether under this Agreement or otherwise existing at law or in equity, and no act or failure to act by the Managing Member, or decision or determination made by the Managing Member (whether with respect to a change of control of the Company or otherwise) shall be subject to any duty, standard of conduct, burden of proof or scrutiny, whether at law or in equity, other than as set forth in this Section 7.8.

(b) The Members agree that (i) the Managing Member is acting for the benefit of the Company, the Members and the Managing Member's stockholders collectively and (ii) notwithstanding any duty otherwise existing at law or equity, in the event of a conflict between the interests of the Company or any Member, on the one hand, and the separate interests of the Managing Member or its stockholders, on the other hand, the Managing Member may give priority to the separate interests of the Managing Member or the stockholders of the Managing Member (including, without limitation, with respect to tax consequences to Members, Assignees or the Managing Member's stockholders), and, in the event of such a conflict, any action or failure to act on the part of the Managing Member (or the Managing Member's directors, officers or agents) that gives priority to the separate interests of the Managing Member or its stockholders that does not result in a violation of the contract rights of the Members under this Agreement does not violate any other duty owed by the Managing Member to the Company and/or the Members.

(c) Subject to its obligations and duties as Managing Member set forth in this Agreement and applicable law, the Managing Member may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its employees or agents. The Managing Member shall not be responsible to the Company or any Member for any misconduct or negligence on the part of any such employee or agent appointed by it in good faith.

(d) Any obligation or liability whatsoever of the Managing Member which may arise at any time under this Agreement or any other instrument, transaction, or undertaking contemplated hereby shall be satisfied, if at all, out of the assets of the Managing Member or the Company only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, any of the Managing Member's directors, stockholders, officers, employees, or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise. Notwithstanding anything to the contrary set forth in this Agreement, and to the fullest extent permitted by law, none of the directors or officers of the Managing Member shall be directly liable or accountable in damages or otherwise to the Company, any Members, or any Assignees for losses sustained, liabilities incurred or benefits not derived as a result of errors in judgment or mistakes of fact or law or of any act or omission or by reason of their service as such. This Agreement is executed by the officers of the Managing Member solely as officers of the same and not in their own individual capacities.

(e) Notwithstanding anything herein to the contrary and to the fullest extent permitted by law, except for liability for fraud, willful misconduct or gross negligence on the part of the Managing Member, or pursuant to any express indemnities given to the Company by the Managing Member pursuant to any other written instrument, the Managing Member shall not have any personal liability whatsoever, to the Company or to the other Members, for any action or omission taken in its capacity as the Managing Member or for the debts or liabilities of the Company or the Company's obligations hereunder, except pursuant to Section 15.1 or as expressly required by the Act. Without limitation of the foregoing, and except for liability for fraud, willful misconduct or gross negligence, or pursuant to Section 15.1 or any such express indemnity, no property or assets of the Managing Member, other than its interest in the Company, shall be subject to levy, execution or other enforcement procedures for the satisfaction of any judgment (or other judicial process) in favor of any other Member(s) and arising out of, or in connection with, this Agreement.

(f) To the extent that, under applicable law, the Managing Member has duties (including fiduciary duties) and liabilities relating thereto to the Company or the Members, to the fullest extent permitted by law, the Managing Member shall not be liable to the Company or to any other Member for its good faith reliance on the provisions of this Agreement. In accordance with and subject to Section 18-1101(c) of the Act, the provisions of this Agreement, to the extent that they restrict or modify the duties and liabilities of the Managing Member under the Act or otherwise existing under applicable law, are agreed by the Members to operate as an express limitation of any such duties and liabilities and to replace such other duties and liabilities of such Managing Member and further acknowledged and agreed that such provisions are fundamental elements to the agreement of the Members and the Managing Member to enter into this Agreement and without such provisions the Members and the Managing Member would not have entered into this Agreement.

(g) Whenever in this Agreement the Managing Member is permitted or required to make a decision in its "sole and absolute discretion," "sole discretion" or "discretion" or under a grant of similar authority or latitude, the Managing Member shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest or factors affecting the Company or the Members or any of them, and any such decision or determination made by the Managing Member that does not consider such interests or factors affecting the Company of the Members, or any of them, that does not result in a violation of the contract rights of the Members under this Agreement or any other duty owed by the Managing Member to the Company and/or the Members pursuant to express terms of this Agreement. If any question should arise with respect to the operation of the Company, which is not otherwise specifically provided for in this Agreement or the Act, or with respect to the interpretation of this Agreement, the Managing Member is hereby authorized to make a final determination with respect to any such question and to interpret this Agreement in such a manner as it shall deem, in its sole discretion, to be fair and equitable, and its determination and interpretations so made shall be final and binding on all parties. The Managing Member's "sole and absolute discretion," "sole discretion" and "discretion" under this Agreement shall be exercised consistently with good faith reliance on the provisions of this Agreement and the obligation of good faith and fair dealing under the Act (as modified by the Agreement).

(h) The Managing Member may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties. In performing its duties under this Agreement, the Managing Member shall be entitled to rely on the provisions of this Agreement and on any information, opinion, report or statement, including any financial statement or other financial data or the records or books of account of the Company or any subsidiary of the Company, prepared or presented by any officer, employee or agent of the Managing Member, any agent of the Company or any such subsidiary, or by any lawyer, certified public accountant, appraiser or other person engaged by the Managing Member, the Company or any such subsidiary as to any matter within such person's professional or expert competence, and any act taken or omitted to be taken in reliance upon any such information, opinion, report or statement as to matters that the Managing Member reasonably believes to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such information, opinion, report or statement.

(i) No director, officer or agent of the Managing Member shall have any duties directly to the Company or any Member. No director, officer or agent of the Managing Member shall be directly liable to the Company or any Member for money damages by reason of their service as such.

(j) Notwithstanding any other provision of this Agreement or the Act, any action of the Managing Member on behalf of the Company or any decision of the Managing Member to refrain from acting on behalf of the Company, undertaken in the good faith belief that such action or omission is necessary or advisable in order (i) to protect the ability of the Managing Member to continue to qualify as a REIT, (ii) for the Managing Member otherwise to satisfy the REIT Requirements, (iii) for the Managing Member to avoid incurring any taxes under Code Section 857 or Code Section 4981, or (iv) for any Managing Member Affiliate to continue to qualify as a "qualified REIT subsidiary" (within the meaning of Code Section 856(i)(2)) or a "taxable REIT subsidiary" (within the meaning of Code Section 856(l)), is expressly authorized under this Agreement and is deemed approved by all of the Members.

(k) Any amendment, modification or repeal of this Section 7.8 or any provision hereof shall be prospective only and shall not in any way affect the limitations on the Managing Member's and its officers' and directors' liability to the Company and the Members under this Section 7.8 as in effect immediately prior to such amendment, modification or repeal with respect to claims arising from or relating to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when such claims may arise or be asserted.

(l) In exercising its authority under this Agreement and subject to Section 7.8(b), the Managing Member may, but shall be under no obligation to, take into account the tax consequences to any Member of any action taken (or not taken) by it. The Managing Member and the Company shall not have liability to a Member under any circumstances as a result of any tax liability incurred by such Member as a result of an action (or inaction) by the Managing Member pursuant to its authority under this Agreement.

Section 7.9 *Title to Company Assets.* Title to Company assets, whether real, personal or mixed and whether tangible or intangible, shall be deemed to be owned by the Company as an entity, and no Member, individually or collectively with other Members or Persons, shall have any ownership interest in such Company assets or any portion thereof. Title to any or all of the Company assets may be held in the name of the Company, the Managing Member or one or more nominees, as the Managing Member may determine, including Affiliates of the Managing Member. The Managing Member hereby declares and warrants that any Company assets for which legal title is held in the name of the Managing Member or any nominee or Affiliate of the Managing Member shall be held by the Managing Member or such nominee or Affiliate for the use and benefit of the Company in accordance with the provisions of this Agreement. All Membership assets shall be recorded as the property of the Company in its books and records, irrespective of the name in which legal title to such Company assets is held.

Section 7.10 *Reliance by Third Parties.* Notwithstanding anything to the contrary in this Agreement, any Person dealing with the Company shall be entitled to assume that the Managing Member has full power and authority, without the consent or approval of any other Member, or Person, to encumber, sell or otherwise use in any manner any and all assets of the Company and to enter into any contracts on behalf of the Company, and take any and all actions on behalf of the Company, and such Person shall be entitled to deal with the Managing Member as if it were the Company's sole party in interest, both legally and beneficially. To the fullest extent permitted by law, each Member hereby waives any and all defenses or other remedies that may be available against such Person to contest, negate or disaffirm any action of the Managing Member in connection with any such dealing. In no event shall any Person dealing with the Managing Member or its representatives be obligated to ascertain that the terms of this Agreement have been complied with or to inquire into the necessity or expediency of any act or action of the Managing Member or its representatives. Each and every certificate, document or other instrument executed on behalf of the Company by the Managing Member or its representatives shall be conclusive evidence in favor of any and every Person relying thereon or claiming thereunder that (a) at the time of the execution and delivery of such certificate, document or instrument, this Agreement was in full force and effect, (b) the Person executing and delivering such certificate, document or instrument was duly authorized and empowered to do so for and on behalf of the Company and (c) such certificate, document or instrument was duly executed and delivered in accordance with the terms and provisions of this Agreement and is binding upon the Company.

ARTICLE 8
RIGHTS AND OBLIGATIONS OF NON-MANAGING MEMBERS

Section 8.1 *Duties; Limitation of Liability*. To the maximum extent permitted under the Act, except as set forth in Section 7.8 with respect to the Managing Member, the only duties that a Member owes to the Company, any Member or any other Person (including any creditor of any Member or assignee of any Membership Interest), fiduciary or otherwise, are to perform its contractual obligations as expressly set forth in this Agreement consistently with the implied contractual covenant of good faith and fair dealing. To the fullest extent permitted by law, no Member, other than the Managing Member, in its capacity as such, shall have any other duty, fiduciary or otherwise, to the Company, any Member or any other Person (including any creditor of any Member or any assignee of Membership Interest). The provisions of this Agreement other than this Section 8.1 shall create contractual obligations of the Members only, and no such provision shall be interpreted to expand, modify or impose fiduciary duties of the Members set forth in this Agreement. To the fullest extent permitted by law, the provisions of this Section 8.1, to the extent they restrict or modify the duties and liabilities of the Members or any other Person under the Act or otherwise existing at law or in equity, are agreed by the Members to replace such other duties and liabilities. No Non-Managing Member shall have any liability under this Agreement except for intentional harm or gross negligence on the part of such Non-Managing Member or as expressly provided in this Agreement (including, without limitation, Section 10.4 hereof) or under the Act.

Section 8.2 *Management of Business.* Subject to the rights and powers of the Managing Member hereunder, no Member or Assignee (other than the Managing Member, any of its Affiliates or any officer, director, member, employee, partner, agent or trustee of the Managing Member, the Company or any of their Affiliates, in their capacity as such) shall take part in the operations, management or control (within the meaning of the Act) of the Company's business, transact any business in the Company's name or have the power to sign documents for or otherwise bind the Company. The transaction of any such business by the Managing Member, any of its Affiliates or any officer, director, member, employee, partner, agent, representative, or trustee of the Managing Member, the Company or any of their Affiliates, in their capacity as such, shall not affect, impair or eliminate the limitations on the liability of the Members or Assignees under this Agreement.

Section 8.3 *Outside Activities of Members.* Subject to any agreements entered into pursuant to Section 7.6 hereof and any other agreements entered into by a Member (other than the Managing Member) or any of its Affiliates with the Managing Member, the Company or a Subsidiary (including, without limitation, any employment agreement), any Member (other than the Managing Member) and any Assignee, officer, director, employee, agent, trustee, Affiliate, member or stockholder of any Member (other than the Managing Member) shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Company, including business interests and activities that are in direct or indirect competition with the Company or that are enhanced by the activities of the Company notwithstanding any duty otherwise existing at law or in equity. Neither the Company nor any Member (other than the Managing Member) shall have any rights by virtue of this Agreement in any business ventures of any Member (other than the Managing Member) or Assignee. Subject to such agreements, none of the Members (other than the Managing Member) nor any other Person shall have any rights by virtue of this Agreement or the Company relationship established hereby in any business ventures of any other Person (other than the Managing Member), and such Person shall have no obligation pursuant to this Agreement, subject to Section 7.6 hereof and any other agreements entered into by a Member (other than the Managing Member) or its Affiliates with the Managing Member, the Company or a Subsidiary, to offer any interest in any such business ventures to the Company, any Member (other than the Managing Member), or any such other Person, even if such opportunity is of a character that, if presented to the Company, any Member (other than the Managing Member) or such other Person, could be taken by such Person. In deciding whether to take any actions in such capacity, the Members (other than the Managing Member) and their respective Affiliates shall be under no obligation to consider the separate interests of the Company or its subsidiaries and to the maximum extent permitted by applicable law shall have no fiduciary duties or similar obligations to the Company or any other Members (other than the Managing Member), or to any subsidiary of the Company, and, to the fullest extent permitted by law, shall not be liable for monetary damages for losses sustained, liabilities incurred or benefits not derived by the other Members (other than the Managing Member) in connection with such acts except for liability for fraud, willful misconduct or gross negligence.

Section 8.4 *Return of Capital*. Except pursuant to the rights of Redemption set forth in Section 15.1 hereof or in Article 17 or Article 18 of this Agreement or any Membership Unit Designation, no Member shall be entitled to the withdrawal or return of its Capital Contribution, except to the extent of distributions made pursuant to this Agreement or upon dissolution of the Company as *provided* herein. Except to the extent provided in Article 5 and Article 6 hereof or otherwise expressly provided in this Agreement or in any Membership Unit Designation, no Member or Assignee shall have priority over any other Member or Assignee either as to the return of Capital Contributions or as to profits, losses or distributions.

Section 8.5 *Rights of Members Relating to the Company*.

(a) In addition to other rights provided by this Agreement or by the Act, and except as limited by Section 8.5(c) hereof, the Managing Member shall deliver to each Member a copy of any information mailed or electronically delivered to all of the common stockholders of the Managing Member as soon as practicable after such mailing.

(b) The Company shall notify any Member that is a Qualifying Party, on request, of the then current Adjustment Factor and any change made to the Adjustment Factor shall be set forth in the quarterly report required by Section 9.3(b) hereof immediately following the date such change becomes effective.

(c) Notwithstanding any other provision of this Section 8.5, the Managing Member may keep confidential from the Members (or any of them), for such period of time as the Managing Member determines in its sole and absolute discretion to be reasonable, any information that (i) the Managing Member believes to be in the nature of trade secrets or other information the disclosure of which the Managing Member believes is not in the best interests of the Company or the Managing Member or (ii) the Company or the Managing Member is required by law or by agreement to keep confidential.

(d) Upon written request by any Member, the Managing Member shall cause the ownership of Membership Units by such Member to be evidenced by a certificate for units in such form as the Managing Member may determine with respect to any class of Membership Units issued from time to time under this Agreement. Any officer of the Managing Member may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Company alleged to have been lost, destroyed, stolen or mutilated, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, destroyed, stolen or mutilated. Unless otherwise determined by an officer of the Managing Member, the owner of such lost, destroyed, stolen or mutilated certificate or certificates, or such owner's legal representative, shall be required, as a condition precedent to the issuance of a new certificate or certificates, to give the Company a bond in such sums as the Managing Member may direct as indemnity against any claim that may be made against the Company.

Section 8.6 *Company Right to Call Common Units*. Notwithstanding any other provision of this Agreement: (i) on and after the date on which the aggregate Percentage Interests of the Common Units held by Members (other than the Managing Member) are less than one percent (1%) of the outstanding Common Units, the Company shall have the right, but not the obligation, from time to time and at any time to redeem any and all outstanding Common Units and (ii) at any time the Percentage Interest of the Common Units held by a Member is less than one half of a percent (0.5%) of the outstanding Common Units, the Company shall have the right, but not the obligation, from time to time and at any time to redeem all outstanding Common Units owned by such Member, in each case by treating any such Holder thereof as a Tendering Party who has delivered a Notice of Redemption pursuant to Section 15.1 hereof for the amount of Common Units to be specified by the Managing Member, by notice to such Holder that the Company has elected to exercise its rights under this Section 8.6. Such notice given by the Company to a Holder pursuant to this Section 8.6 shall be treated as if it were a Notice of Redemption delivered to the Managing Member by such Holder. For purposes of this Section 8.6, (a) the Managing Member may treat any Holder (whether or not otherwise a Qualifying Party) as a Qualifying Party that is a Tendering Party and (b) the provisions of Sections 15.1(f)(ii) and 15.1(f)(iii) hereof shall not apply, but the remainder of Section 15.1 hereof shall apply, *mutatis mutandis*.

ARTICLE 9
BOOKS, RECORDS, ACCOUNTING AND REPORTS

Section 9.1 *Records and Accounting*.

(a) The Managing Member shall keep or cause to be kept at the principal place of business of the Company those records and documents, if any, required to be maintained by the Act and any other books and records deemed by the Managing Member to be appropriate with respect to the Company's business, including, without limitation, all books and records necessary to provide to the Members any information, lists and copies of documents required to be provided pursuant to Section 8.5(a), Section 9.3 or Article 13 hereof. Any records maintained by or on behalf of the Company in the regular course of its business may be kept on any information storage device, *provided* that the records so maintained are convertible into clearly legible written form within a reasonable period of time.

(b) The books of the Company shall be maintained, for financial and tax reporting purposes, on an accrual basis in accordance with generally accepted accounting principles, or on such other basis as the Managing Member determines to be necessary or appropriate. To the extent permitted by sound accounting practices and principles, the Company and the Managing Member may operate with integrated or consolidated accounting records, operations and principles.

Section 9.2 *Fiscal Year*. For purposes of this Agreement, the fiscal year of the Company shall be the Fiscal Year.

Section 9.3 *Reports*.

(a) As soon as practicable, but in no event later than one hundred five (105) days after the close of each Fiscal Year, the Managing Member shall cause to be mailed to each Member of record as of the close of the Fiscal Year, financial statements of the Company, or of the Managing Member if such statements are prepared solely on a consolidated basis with the Managing Member, for such Fiscal Year, presented in accordance with generally accepted accounting principles, such statements to be audited by a nationally recognized firm of independent public accountants selected by the Managing Member.

(b) As soon as practicable, but in no event later than sixty (60) days after the close of each calendar quarter (except the last calendar quarter of each year), the Managing Member shall cause to be mailed to each Member of record as of the last day of the calendar quarter, a report containing unaudited financial statements of the Company for such calendar quarter, or of the Managing Member if such statements are prepared solely on a consolidated basis with the Managing Member, and such other information as may be required by applicable law or regulation or as the Managing Member determines to be appropriate.

(c) The Managing Member shall have satisfied its obligations under Section 9.3(a) and Section 9.3(b) by either (i) to the Managing Member or the Company being subject to periodic reporting requirements under the Exchange Act, and filing the quarterly and annual reports required thereunder within the time periods provided for the filing of such reports, including any permitted extensions, or (ii) posting or making available the reports required by this Section 9.3 on the website maintained from time to time by the Company or the Managing Member.

Section 9.4 *Waiver of Statutory Inspection Rights*. To the fullest extent permitted by law, each Member hereby waives any current or future rights Members may have under Section 18-305 of the Act (and similar rights under other applicable law) to inspect, or make copies and extracts from, the Company's stock ledger, any list of its stockholders, or any other books and records of the Company or any of its affiliates or subsidiaries, in Member's capacity as a holder of stock, shares, units, options, or any other equity instrument.

ARTICLE 10
TAX MATTERS

Section 10.1 *Preparation of Tax Returns*. The Managing Member shall arrange for the preparation and timely filing of all returns with respect to Company income, gains, deductions, losses and other items required of the Company for federal and state income tax purposes and shall use all reasonable efforts to furnish, within ninety (90) days of the close of each taxable year or as soon as reasonably practicable thereafter, the tax information reasonably required by Members for federal and state income tax and any other tax reporting purposes. The Members shall promptly provide the Managing Member with such information relating to the Contributed Properties as is readily available to the Members, including tax basis and other relevant information, as may be reasonably requested by the Managing Member from time to time.

Section 10.2 *Tax Elections*. Except as otherwise *provided* herein, the Managing Member shall, in its sole and absolute discretion, determine whether to cause the Company to make any available election pursuant to the Code, including, but not limited to, the election under Code Section 754. The Managing Member shall have the right to cause the Company to seek to revoke any such election (including, without limitation, any election under Code Section 754) upon the Managing Member's determination in its sole and absolute discretion that such revocation is in the best interests of the Members.

Section 10.3 *Company Representative*.

(a) The Managing Member shall be the "partnership representative" of the Company under Code Section 6223 for federal income tax purposes (the "*Company Representative*"). The Company Representative shall receive no compensation for its services. All third-party costs and expenses incurred by the Company Representative in performing its duties as such (including legal and accounting fees and expenses) shall be borne by the Company in addition to any reimbursement pursuant to Section 7.4 hereof. Nothing herein shall be construed to restrict the Company from engaging an accounting firm to assist the Company Representative in discharging its duties hereunder. The Managing Member shall appoint an individual (the "*Designated Individual*") through whom the Company Representative will act in accordance with Regulations Section 301.6223-1 and any other applicable IRS guidance. The Designated Individual is authorized to take any action the Company Representative is authorized to take under this Agreement.

(b) The Company Representative is authorized, but not required:

(i) to enter into any settlement with the IRS with respect to any administrative or judicial proceedings for the adjustment of Company items required to be taken into account by a Member for income tax purposes (such administrative proceedings being referred to as a "tax audit" and such judicial proceedings being referred to as "judicial review"), and in the settlement agreement the Company Representative may expressly state that such agreement shall bind all Members;

(ii) in the event that a notice of a final administrative adjustment at the Company level of any item required to be taken into account by a Member for tax purposes (a "*Final Adjustment*") is mailed to the Company Representative, to seek judicial review of such Final Adjustment, including the filing of a petition for readjustment with the United States Tax Court or the United States Claims Court, or the filing of a complaint for refund with the District Court of the United States for the district in which the Company's principal place of business is located;

(iii) to intervene in any action brought by any other Member for judicial review of a final adjustment;

(iv) to file a request for an administrative adjustment with the IRS at any time and, if any part of such request is not allowed by the IRS, to file an appropriate pleading (petition or complaint) for judicial review with respect to such request;

(v) to enter into an agreement with the IRS to extend the period for assessing any tax that is attributable to any item required to be taken into account by a Member for tax purposes, or an item affected by such item;

(vi) to make an election under Code Section 6226; and

(vii) to take any other action on behalf of the Members or any of them in connection with any tax audit or judicial review proceeding to the extent permitted by applicable law or regulations.

The taking of any action and the incurring of any expense by the Company Representative in connection with any such proceeding, except to the extent required by law, is a matter in the sole and absolute discretion of the Company Representative and the provisions relating to indemnification of the Managing Member set forth in Section 7.7 hereof shall be fully applicable to the Company Representative in its capacity as such.

Section 10.4 *Withholding*. Each Member hereby authorizes the Company to withhold from or pay on behalf of or with respect to such Member any amount of federal, state, local or foreign taxes that the Managing Member determines the Company is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement, including, without limitation, any taxes required to be withheld or paid by the Company pursuant to Code Section 1441, Code Section 1442, Code Section 1445, Code Section 1446 or Code Section 6225. Any amount withheld with respect to a Member pursuant to this Section 10.4 shall be treated as paid or distributed, as applicable, to such Member for all purposes under this Agreement. Any amount paid on behalf of or with respect to a Member, in excess of any such withheld amount, shall constitute a loan by the Company to such Member, which loan shall be repaid by such Member within thirty (30) days after the affected Member receives written notice from the Managing Member that such payment must be made, *provided* that the Member shall not be required to repay such deemed loan if either (a) the Company withholds such payment from a distribution that would otherwise be made to the Member or (b) the Managing Member determines, in its sole and absolute discretion, that such payment may be satisfied out of the Available Cash of the Company that would, but for such payment, be distributed to the Member. Any amounts payable by a Member hereunder shall bear interest at the base rate on corporate loans at large United States money center commercial banks, as published from time to time in the Wall Street Journal (but not higher than the maximum lawful rate) from the date such amount is due (i.e., thirty (30) days after the Member receives written notice of such amount) until such amount is paid in full.

Section 10.5 *Organizational Expenses*. The Managing Member may cause the Company to elect to deduct expenses, if any, incurred by it in organizing the Company ratably over a 180-month period as provided in Section 709 of the Code.

Section 10.6 *Membership Provisions*. The Members acknowledge that, as of the date of this Agreement, the Company is a Disregarded Entity of the Managing Member for U.S. federal income tax purposes and will remain disregarded until such time as a Person other than the Managing Member or a Disregarded Entity thereof acquires an equity interest in the Company, at which point the Company would become a partnership for U.S. federal income tax purposes. Accordingly, notwithstanding anything to the contrary in this Agreement, the provisions of this Agreement that (i) relate to the maintenance of Capital Accounts, (ii) reference or apply the provisions of Subchapter K of the Code, or (iii) otherwise are, in the Managing Member's determination, not relevant to the Company for so long as it is a Disregarded Entity shall, in each case, apply only if and to the extent the Company becomes a partnership for U.S. federal income tax purposes.

Section 10.7 *Survival*. Each Member's obligations and the Company's rights under this Article X shall survive the dissolution, liquidation, and winding up of the Company.

ARTICLE 11
MEMBER TRANSFERS AND WITHDRAWALS

Section 11.1 *Transfer*.

(a) No part of the interest of a Member shall be subject to the claims of any creditor, to any spouse for alimony or support, or to legal process, and may not be voluntarily or involuntarily alienated or encumbered except as may be specifically provided for in this Agreement.

(b) No Membership Interest shall be Transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article 11. To the fullest extent permitted by law, any Transfer or purported Transfer of a Membership Interest not made in accordance with this Article 11 shall be void.

(c) No Transfer of any Membership Interest may be made to a lender to the Company or any Person who is related (within the meaning of Section 1.752-4(b) of the Regulations) to any lender to the Company whose loan constitutes a Nonrecourse Liability, without the Consent of the Managing Member; *provided*, *however*, that, as a condition to such Consent, the lender may be required to enter into an arrangement with the Company and the Managing Member to redeem or exchange for the REIT Shares Amount any Membership Units in which a security interest is held by such lender simultaneously with the time at which such lender would be deemed to be a partner in the Company for purposes of allocating liabilities to such lender under Section 752 of the Code (*provided* that, for purpose of calculating the REIT Shares Amount in this Section 11.1(c), "*Tendered Units*" shall mean all such Membership Units in which a security interest is held by such lender).

Section 11.2 *Transfer of Managing Member's Membership Interest*.

(a) Except as provided in Section 11.2(b) or Section 11.2(c), and subject to the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, the Managing Member may not Transfer all or any portion of its Membership Interest (whether by sale, disposition, statutory merger or consolidation, liquidation or otherwise) without the Consent of the Non-Managing Members (excluding, for purposes of such consent, any outstanding LTIP Units). It is a condition to any Transfer of a Membership Interest of a Managing Member otherwise permitted hereunder (including any Transfer permitted pursuant to Section 11.2(b) or Section 11.2(c)) that: (i) coincident with such Transfer, the transferee is admitted as a Managing Member pursuant to Section 12.1 hereof; (ii) the transferee assumes, by operation of law or express agreement, all of the obligations of the transferor Managing Member under this Agreement with respect to such Transferred Membership Interest; and (iii) the transferee has executed such instruments as may be necessary to effectuate such admission and to confirm the agreement of such transferee to be bound by all the terms and provisions of this Agreement with respect to the Membership Interest so acquired and the admission of such transferee as a Managing Member.

(b) *Certain Transactions of the Managing Member*. Subject to the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, the Managing Member may, without the Consent of the Non-Managing Members, Transfer all of its Membership Interest in connection with (x) a merger, consolidation or other combination of its or the Company's assets with another entity, (y) a sale of all or substantially all of its or the Company's assets not in the ordinary course of the Company's business or (z) a reclassification, recapitalization or change of any outstanding shares of the Managing Member's stock or other outstanding equity interests, other than in connection with a stock split, reverse stock split, stock dividend change in par value, increase in authorized shares, designation or issuance of new classes of equity securities or other event that does not require the approval of the Managing Member's stockholders (each, a "*Termination Transaction*") if:

(i) in connection with such Termination Transaction, all of the Members will receive, or will have the right to elect to receive (and shall be provided the opportunity to make such an election if the holders of REIT Shares generally are also provided such an opportunity), for each Common Unit an amount of cash, securities or other property equal to the product of the Adjustment Factor and the greatest amount of cash, securities or other property paid to a holder of one REIT Share in consideration of one REIT Share pursuant to the terms of such Termination Transaction; *provided*, that if, in connection with such Termination Transaction, a purchase, tender or exchange offer shall have been made to and accepted by the holders of the outstanding REIT Shares, each holder of Common Units shall receive, or shall have the right to elect to receive, the greatest amount of cash, securities or other property which such holder of Common Units would have received had it exercised its right to Redemption pursuant to Article 15 hereof and received REIT Shares in exchange for its Common Units immediately prior to the expiration of such purchase, tender or exchange offer and had thereupon accepted such purchase, tender or exchange offer and then such Termination Transaction shall have been consummated; or

(ii) all of the following conditions are met: (A) substantially all of the assets directly or indirectly owned by the surviving entity are owned directly or indirectly by the Company or another limited liability company or entity which is the survivor of a merger, consolidation or combination of assets with the Company (in each case, the "*Surviving Company*"); (B) Members that held Common Units immediately prior to the consummation of such Termination Transaction own a percentage interest of the Surviving Company based on the relative fair market value of the net assets of the Company and the other net assets of the Surviving Company immediately prior to the consummation of such transaction; (C) the rights, preferences and privileges in the Surviving Company of such Members are at least as favorable as those in effect with respect to the Common Units immediately prior to the consummation of such transaction and as those applicable to any other non-managing members or owners of the Surviving Company; and (D) the rights of such Members include at least one of the following: (I) the right to redeem their interests in the Surviving Company for the consideration available to such persons pursuant to Section 11.2(b)(i) or (II) the right to redeem their interests in the Surviving Company for cash on terms substantially equivalent to those in effect with respect to their Common Units immediately prior to the consummation of such transaction, or, if the ultimate controlling person of the Surviving Company has publicly traded common equity securities, such common equity securities, with an exchange ratio based on the determination of relative fair market value of such securities and the REIT Shares.

(c) Notwithstanding the other provisions of this Article 11 (other than Section 11.6(d) hereof), the Managing Member may Transfer all of its Membership Interests at any time to any Person that is, at the time of such Transfer an Affiliate of the Managing Member, including any "qualified REIT subsidiary" (within the meaning of Code Section 856(i)(2)) or a "taxable REIT subsidiary" (within the meaning of Code Section 856(l)), without the Consent of any Non-Managing Members. The provisions of Section 11.2(b), 11.3, 11.4(a) and 11.5 hereof shall not apply to any Transfer permitted by this Section 11.2(c).

(d) Except in connection with Transfers permitted in this Article 11 and as otherwise provided in Section 12.1 in connection with the Transfer of the Managing Member's entire Membership Interest, the Managing Member may not voluntarily withdraw as a Managing Member of the Company without the Consent of the Non-Managing Members.

Section 11.3 *Members' Rights to Transfer*.

(a) *General*. Prior to the end of the Initial Holding Period, no Member (other than, subject to Section 11.2, the Managing Member) shall Transfer all or any portion of its Membership Interest to any transferee without the Consent of the Managing Member; *provided*, *however*, that any Member may, at any time, without the consent or approval of the Managing Member, (x) Transfer all or part of its Membership Interest to any Family Member (including a Transfer by a Family Member that is an inter vivos or testamentary trust (whether revocable or irrevocable) to a Family Member that is a beneficiary of such trust), any Charity, any Controlled Entity or any Affiliate, or (y) except as provided in Section 11.1(c) hereof, pledge (a "*Pledge*") all or any portion of its Membership Interest to a lending institution as collateral or security for a bona fide loan or other extension of credit, and Transfer such pledged Membership Interest to such lending institution in connection with the exercise of remedies under such loan or extension of credit (any Transfer or Pledge permitted by this proviso is hereinafter referred to as a "*Permitted Transfer*"). After such Initial Holding Period, each Member (other than, subject to Section 11.2, the Managing Member), and each transferee of Membership Units or Assignee pursuant to a Permitted Transfer, shall have the right to Transfer all or any portion of its Membership Interest to any Person, without the Consent of the Managing Member but subject to the provisions of Section 11.1(c) and Section 11.4 hereof and to satisfaction of each of the following conditions:

(i) *Managing Member Right of First Refusal*. The transferor Member (or the Member's estate in the event of the Member's death) shall give written notice of the proposed Transfer to the Managing Member, which notice shall state (A) the identity and address of the proposed transferee and (B) the amount and type of consideration proposed to be received for the Transferred Membership Units. The Managing Member shall have ten (10) Business Days upon which to give the transferor Member notice of its election to acquire the Membership Units on the terms set forth in such notice. If the Managing Member so elects, it shall purchase the Membership Units on such terms within ten (10) Business Days after giving notice of such election; *provided*, *however*, that, in the event that the proposed terms involve a purchase for cash, the Managing Member may at its election deliver in lieu of all or any portion of such cash a note from the Managing Member payable to the transferor Member at a date as soon as reasonably practicable, but in no event later than one hundred eighty (180) days after such purchase, and bearing interest at an annual rate equal to the total dividends declared with respect to one (1) REIT Share for the four (4) preceding fiscal quarters of the Managing Member, divided by the Value as of the closing of such purchase; and *provided*, *further*, that such closing may be deferred to the extent necessary to effect compliance with the Hart-Scott-Rodino Act, if applicable, and any other applicable requirements of law. If the Managing Member does not so elect, the transferor Member may Transfer such Membership Units to a third party, on terms no more favorable to the transferee than the proposed terms, subject to the other conditions of this Section 11.3.

(ii) *Qualified Transferee*. Any Transfer of a Membership Interest shall be made only to a single Qualified Transferee; *provided*, *however*, that, for such purposes, all Qualified Transferees that are Affiliates, or that comprise investment accounts or funds managed by a single Qualified Transferee and its Affiliates, shall be considered together to be a single Qualified Transferee; and *provided*, *further*, that each Transfer meeting the minimum Transfer restriction of Section 11.3(a)(iv) hereof may be to a separate Qualified Transferee.

(iii) *Opinion of Counsel*. The transferor Member shall deliver or cause to be delivered to the Managing Member an opinion of counsel reasonably satisfactory to it to the effect that the proposed Transfer may be effected without registration under the Securities Act and will not otherwise violate the registration provisions of the Securities Act and the regulations promulgated thereunder or violate any state securities laws or regulations applicable to the Company or the Membership Interests Transferred; *provided*, *however*, that the Managing Member may, in its sole discretion, waive this condition upon the request of the transferor Member. If, in the opinion of such counsel, such Transfer would require the filing of a registration statement under the Securities Act or would otherwise violate any federal or state securities laws or regulations applicable to the Company or the Membership Units, the Managing Member may prohibit any Transfer otherwise permitted under this Section 11.3 by a Member of Membership Interests.

(iv) *Minimum Transfer Restriction*. Any Transferring Member must Transfer not less than the lesser of (A) five hundred (500) Membership Units or (B) all of the remaining Membership Units owned by such Transferring Member, without, in each case, the Consent of the Managing Member; *provided*, *however*, that, for purposes of determining compliance with the foregoing restriction, all Membership Units owned by Affiliates of a Member shall be considered to be owned by such Member.

(v) *Exception for Permitted Transfers*. The conditions of Sections 11.3(a)(i) through 11.3(a)(iv) hereof shall not apply in the case of a Permitted Transfer.

It is a condition to any Transfer otherwise permitted hereunder (whether or not such Transfer is effected during or after the Initial Holding Period) that the transferee assumes by operation of law or express agreement all of the obligations of the transferor Member under this Agreement with respect to such Transferred Membership Interest, and no such Transfer (other than pursuant to a statutory merger or consolidation wherein all obligations and liabilities of the transferor Member are assumed by a successor corporation by operation of law) shall relieve the transferor Member of its obligations under this Agreement without the Consent of the Managing Member. Notwithstanding the foregoing, any transferee of any Transferred Membership Interest shall be subject to any restrictions on ownership and transfer of stock of the Managing Member contained in the Charter that may limit or restrict such transferee's ability to exercise its Redemption rights, including, without limitation, the Ownership Limit. Any transferee, whether or not admitted as a Substituted Member, shall take subject to the obligations of the transferor hereunder. Unless admitted as a Substituted Member, no transferee, whether by a voluntary Transfer, by operation of law or otherwise, shall have any rights hereunder, other than the rights of an Assignee as provided in Section 11.5 hereof.

(b) *Incapacity*. If a Member is subject to Incapacity, the executor, administrator, trustee, committee, guardian, conservator or receiver of such Member's estate shall have all the rights of a Member, but not more rights than those enjoyed by other Members, for the purpose of settling or managing the estate, and such power as the Incapacitated Member possessed to Transfer all or any part of its interest in the Company. The Incapacity of a Member, in and of itself, shall not dissolve or terminate the Company.

(c) *Adverse Tax Consequences*. Notwithstanding anything to the contrary in this Agreement, the Managing Member shall have the authority (but shall not be required) to take any steps it determines are necessary or appropriate in its sole and absolute discretion to prevent the Company from being taxable as a corporation for federal income tax purposes. Except with the Consent of the Managing Member, no Transfer by a Member of its Membership Interests (including any Redemption, any conversion of LTIP Units into Common Units, any other acquisition of Membership Units by the Managing Member or any acquisition of Membership Units by the Company) may be made to or by any Person if such Transfer could (i) result in the Company being treated as an association taxable as a corporation; (ii) result in a termination of the Company for state income tax purposes; (iii) be treated as effectuated through an "established securities market" or a "secondary market (or the substantial equivalent thereof)" within the meaning of Code Section 7704 and the Regulations promulgated thereunder, (iv) result in the Company (A) being unable to qualify for the "private placements" safe harbor from treatment as a "publicly traded partnership" under Regulations Section 1.7704-1(h), (B) being unable to qualify for the "lack of actual trading" safe harbor from treatment as a "publicly traded partnership" under Regulations Section 1.7704-1(j), or (C) otherwise being unable to qualify for at least one of the "safe harbors" set forth in Regulations Section 1.7704-1 (or such other guidance subsequently published by the IRS setting forth safe harbors under which interests will not be treated as "readily tradable on a secondary market (or the substantial equivalent thereof)" within the meaning of Section 7704 of the Code) (the "*Safe Harbors*") as selected by the Managing Member in its sole discretion or (v) based on the advice of counsel to the Company or the Managing Member, adversely affect the ability of the Managing Member to continue to qualify as a REIT or subject the Managing Member to any additional taxes under Code Section 857 or Code Section 4981.

(d) In addition to any other restrictions on Transfer herein contained, in no event may any Transfer of a Membership Interest by any Member, other than the Managing Member (including any Redemption, any conversion of LTIP Units into Common Units, any acquisition of Membership Units by the Managing Member or any other acquisition of Membership Units by the Company) be made, without the Consent of the Managing Member: (i) to any person or entity who lacks the legal right, power or capacity to own a Membership Interest; (ii) in violation of applicable law; (iii) of any component portion of a Membership Interest, such as the Capital Account, or rights to distributions, separate and apart from all other components of a Membership Interest; (iv) in the event that such Transfer could cause either the Managing Member or any Managing Member Affiliate to cease to comply with the REIT Requirements or to cease to qualify as a "qualified REIT subsidiary" (within the meaning of Code Section 856(i)(2)) or a "taxable REIT subsidiary" (within the meaning of Code Section 856(l)); (v) if such Transfer could, based on the advice of counsel to the Company or the Managing Member, cause a termination of the Company for state income tax purposes (except as a result of the Redemption (or acquisition by the Managing Member) of all Common Units held by all Members); (vi) if such Transfer could, based on the advice of legal counsel to the Company or the Managing Member, cause the Company to cease to be classified as a partnership for federal income tax purposes (except as a result of the Redemption (or acquisition by the Managing Member) of all Common Units held by all Members); (vii) if such Transfer would cause the Company to become, with respect to any employee benefit plan subject to Title I of ERISA, a "party-in-interest" (as defined in ERISA Section 3(14)) or a "disqualified person" (as defined in Code Section 4975(c)) or result in a "prohibited transaction" (within the meaning of ERISA or the Code); (viii) if such Transfer could, based on the advice of legal counsel to the Company or the Managing Member, cause any portion of the assets of the Company to constitute assets of any employee benefit plan pursuant to Department of Labor Regulations Section 2510.3-101, as modified by Section 3(42) of ERISA; (ix) if such Transfer requires the registration of such Membership Interest pursuant to any applicable federal or state securities laws; (x) if such Transfer could (A) be treated as effectuated through an "established securities market" or a "secondary market" (or the substantial equivalent thereof) within the meaning of Section 7704 of the Code and the Regulations promulgated thereunder, (B) cause the Company to become a "publicly traded partnership," as such term is defined in Sections 469(k)(2) or 7704(b) of the Code, or (C) cause the Company to fail to qualify for at least one of the Safe Harbors; (xi) if such Transfer causes the Company (as opposed to the Managing Member) to become a reporting company under the Exchange Act; or (xii) if such Transfer subjects the Company to regulation under the Investment Company Act of 1940, the Investment Advisors Act of 1940 or ERISA, each as amended. The Managing Member shall, in its sole discretion, be permitted to take all action necessary to prevent the Company from being classified as a "publicly traded partnership" under Code Section 7704.

(e) Transfers of the Membership Interest of a Member, other than the Managing Member, pursuant to this Article 11 may only be made on the first day of a fiscal quarter of the Company, unless the Managing Member otherwise Consents.

Section 11.4 *Admission of Substituted Members*.

(a) No Member shall have the right to substitute a transferee (including any transferees pursuant to Transfers permitted by Section 11.3 hereof) as a Member in its place. A transferee of a Member Interest may be admitted as a Substituted Member only with the Consent of the Managing Member. The failure or refusal by the Managing Member to permit a transferee of any such interests to become a Substituted Member shall not give rise to any cause of action against the Company or the Managing Member. Subject to the foregoing, an Assignee shall not be admitted as a Substituted Member until and unless it furnishes to the Managing Member (i) evidence of acceptance, in form and substance satisfactory to the Managing Member, of all the terms, conditions and applicable obligations of this Agreement, (ii) a counterpart signature page to this Agreement executed by such Assignee and (iii) such other documents and instruments as the Managing Member may require in its sole discretion to effect such Assignee's admission as a Substituted Member.

(b) Concurrently with, and as evidence of, the admission of a Substituted Member, the Managing Member shall update the Member Registry and the books and records of the Company to reflect the name, address and number and class and/or series of Membership Units of such Substituted Member and to eliminate or adjust, if necessary, the name, address and number of Membership Units of the predecessor of such Substituted Member.

(c) A transferee who has been admitted as a Substituted Member in accordance with this Article 11 shall have all the rights and powers and be subject to all the restrictions and liabilities of a Member under this Agreement.

Section 11.5 *Assignees*. If the Managing Member does not Consent to the admission of any permitted transferee under Section 11.3 hereof as a Substituted Member, as described in Section 11.4 hereof, or in the event that any Membership Interest is deemed to have been Transferred notwithstanding the restrictions set forth in this Article 11, such transferee shall be considered an Assignee for purposes of this Agreement. An Assignee shall be entitled to all the rights of an assignee of a limited liability company interest under the Act, including the right to receive distributions from the Company and the share of Net Income, Net Losses and other items of income, gain, loss, deduction and credit of the Company attributable to the Membership Interest assigned to such transferee and the rights to Transfer the Membership Interest provided in this Article 11, but shall not be deemed to be a holder of a Membership Interest for any other purpose under this Agreement (other than as expressly provided in Section 15.1 hereof with respect to a Qualifying Party that becomes a Tendering Party), and shall not be entitled to effect a Consent or vote with respect to such Membership Interest on any matter presented to the Members for approval (such right to Consent or vote, to the extent provided in this Agreement or under the Act, fully remaining with the transferor Member). In the event that any such transferee desires to make a further Transfer of any such Membership Interest, such transferee shall be subject to all the provisions of this Article 11 to the same extent and in the same manner as any Member desiring to make a Transfer of a Member Interest.

Section 11.6 *General Provisions*.

(a) No Member may withdraw from the Company other than as a result of: (i) a permitted Transfer of all of such Member's Membership Interest in accordance with this Article 11 with respect to which the transferee becomes a Substituted Member; (ii) pursuant to a redemption (or acquisition by the Managing Member) of all of its Membership Interest pursuant to a Redemption under Section 15.1 hereof and/or pursuant to Section 4.7 of this Agreement or any Membership Unit Designation or (iii) the acquisition by the Managing Member of all of such Member's Membership Interest, whether or not pursuant to Section 15.1(b) hereof.

(b) Any Member who shall Transfer all of its Membership Units in a Transfer (i) permitted pursuant to this Article 11 where such transferee was admitted as a Substituted Member, (ii) pursuant to the exercise of its rights to effect a redemption of all of its Membership Units pursuant to a Redemption under Section 15.1 hereof and/or pursuant to Section 4.7 of this Agreement or any Membership Unit Designation, or (iii) to the Managing Member, whether or not pursuant to Section 15.1(b) hereof, shall cease to be a Member.

(c) If any Membership Unit is Transferred in compliance with the provisions of this Article 11, or is redeemed by the Company, or acquired by the Managing Member pursuant to Section 15.1 hereof, on any day other than the first day of a Fiscal Year, then Net Income, Net Losses, each item thereof and all other items of income, gain, loss, deduction and credit attributable to such Membership Unit for such Fiscal Year shall be allocated to the transferor Member or the Tendering Party (as the case may be) and, in the case of a Transfer other than a Redemption, to the transferee Member, by taking into account their varying interests during the Fiscal Year in accordance with Code Section 706(d), using the "interim closing of the books" method or another permissible method selected by the Managing Member in its sole and absolute discretion. The Members hereby agree that any such selection by the Managing Member is made by "agreement of the partners" within the meaning of Regulations Section 1.706-4(f). Solely for purposes of making such allocations, unless the Managing Member decides in its sole and absolute discretion to use another method permitted under the Code, each of such items for the calendar month in which a Transfer occurs shall be allocated to the transferee Member and none of such items for the calendar month in which a Transfer or a Redemption occurs shall be allocated to the transferor Member, or the Tendering Party (as the case may be) if such Transfer occurs on or before the fifteenth (15th) day of the month, otherwise such items shall be allocated to the transferor. All distributions of Available Cash attributable to such Membership Unit with respect to which the Company Record Date is before the date of such Transfer, assignment or Redemption shall be made to the transferor Member or the Tendering Party (as the case may be) and, in the case of a Transfer other than a Redemption, all distributions of Available Cash thereafter attributable to such Membership Unit shall be made to the transferee Member.

ARTICLE 12
ADMISSION OF MEMBERS

Section 12.1 *Admission of Successor Managing Member*. A successor to all of the Managing Member's Managing Member Interest pursuant to a Transfer permitted by Section 11.2 hereof who is proposed to be admitted as a successor Managing Member shall be admitted to the Company as the Managing Member, effective immediately upon such Transfer. Upon any such Transfer and the admission of any such transferee as a successor Managing Member in accordance with this Section 12.1, the transferor Managing Member shall be relieved of its obligations without any further liability under this Agreement and shall cease to be a Managing Member of the Company without any separate Consent of the Non-Managing Members or the consent or approval of any other Members. Any such successor Managing Member shall carry on the business and affairs of the Company without dissolution. In each case, the admission shall be subject to the successor Managing Member executing and delivering to the Company an acceptance of all of the terms and conditions of this Agreement and such other documents or instruments as may be required to effect the admission of such Person as a Managing Member. Upon any such Transfer, the transferee shall become the successor Managing Member for all purposes herein, and shall be vested with

the powers and rights of the transferor Managing Member, and shall be liable for all obligations and responsible for all duties of the Managing Member. Concurrently with, and as evidence of, the admission of a successor Managing Member, the Managing Member shall update the Member Registry and the books and records of the Company to reflect the name, address and number and classes and/or series of Membership Units of such successor Managing Member. In the event that the Managing Member withdraws from the Company, or transfers its entire Membership Interest, in violation of this Agreement, or otherwise dissolves or terminates or ceases to be the Managing Member of the Company, a Majority in Interest of the Members may elect to continue the Company by selecting a successor Managing Member in accordance with Section 13.1(a) hereof.

Section 12.2 *Admission of Additional Members*.

(a) A Person (other than an existing Member) who makes a Capital Contribution to the Company in exchange for Membership Units and in accordance with this Agreement or is issued LTIP Units in exchange for no consideration in accordance with Section 4.2(b) hereof shall be admitted to the Company as an Additional Member only upon furnishing to the Managing Member (i) evidence of acceptance, in form and substance satisfactory to the Managing Member, of all of the terms and conditions of this Agreement, including, without limitation, the power of attorney granted in Section 2.4 hereof, (ii) a counterpart signature page to this Agreement executed by such Person and (iii) such other documents or instruments as the Managing Member may require in its sole and absolute discretion in order to effect such Person's admission as an Additional Member. Concurrently with, and as evidence of, the admission of an Additional Member, the Managing Member shall update the Member Registry and the books and records of the Company to reflect the name, address and number and classes and/or series of Membership Units of such Additional Member.

(b) Notwithstanding anything to the contrary in this Section 12.2, no Person shall be admitted as an Additional Member without the Consent of the Managing Member. The admission of any Person as an Additional Member shall become effective on the date upon which the name of such Person is recorded on the books and records of the Company, following the Consent of the Managing Member to such admission and the satisfaction of all the conditions set forth in Section 12.2(a).

(c) If any Additional Member is admitted to the Company on any day other than the first day of a Fiscal Year, then Net Income, Net Losses, each item thereof and all other items of income, gain, loss, deduction and credit allocable among Holders for such Fiscal Year shall be allocated among such Additional Member and all other Holders by taking into account their varying interests during the Fiscal Year in accordance with Code Section 706(d), using the "interim closing of the books" method or another permissible method selected by the Managing Member. The Members hereby agree that any such selection by the Managing Member is made by "agreement of the partners" within the meaning of Regulations Section 1.706-4(f). Solely for purposes of making such allocations, each of such items for the calendar month in which an admission of any Additional Member occurs shall be allocated among all the Holders including such Additional Member, in accordance with the principles described in Section 11.6(c) hereof. All distributions of Available Cash with respect to which the Company Record Date is before the date of such admission shall be made solely to Members and Assignees other than the Additional Member, and all distributions of Available Cash thereafter shall be made to all the Members and Assignees including such Additional Member.

(d) Any Additional Member admitted to the Company that is an Affiliate of the Managing Member shall be deemed to be a "Managing Member Affiliate" hereunder and shall be reflected as such on the Member Registry and the books and records of the Company.

Section 12.3 *Amendment of Agreement and Certificate of Formation.* For the admission to the Company of any Member, the Managing Member shall take all steps necessary and appropriate under the Act to update the Member Registry , amend the records of the Company and, if necessary, to prepare as soon as practical an amendment of this Agreement and, if required by law, shall prepare and file an amendment to the Certificate and may for this purpose exercise the power of attorney granted pursuant to Section 2.4 hereof.

Section 12.5 *Limit on Number of Members*. Unless otherwise permitted by the Managing Member in its sole and absolute discretion, no Person shall be admitted to the Company as an Additional Member if the effect of such admission would be to cause the Company to have a number of Members that would cause the Company to become a reporting company under the Exchange Act.

Section 12.6 *Admission*. A Person shall be admitted to the Company as a Member of the Company or a Managing Member of the Company only upon strict compliance, and not upon substantial compliance, with the requirements set forth in this Agreement for admission to the Company as a Member or a Managing Member.

ARTICLE 13
DISSOLUTION, LIQUIDATION AND TERMINATION

Section 13.1 *Dissolution*. The Company shall not be dissolved by the admission of Substituted Members or Additional Members or by the admission of a successor Managing Member in accordance with the terms of this Agreement. Upon the withdrawal of the Managing Member, any successor Managing Member shall continue the business and affairs of the Company without dissolution. However, the Company shall dissolve, and its affairs shall be wound up, upon the first to occur of any of the following (each a "*Liquidating Event*"):

(a) an event of withdrawal of the Managing Member (including, without limitation, bankruptcy, but excluding the admission of a successor Managing Member in accordance with this Agreement) unless, within ninety (90) days after the withdrawal, a Majority in Interest of the Members remaining agree in writing, in their sole and absolute discretion, to continue the Company and to the appointment, effective as of the date of such withdrawal, of a successor Managing Member;

(b) an election to dissolve the Company made by the Managing Member in its sole and absolute discretion, with or without the Consent of the Members;

(c) the termination of the legal existence of the last remaining member of the Company or the occurrence of any other event which terminates the continued membership of the last remaining member of the Company in the Company unless the Company is continued without dissolution in a manner permitted by this Agreement or the Act; or

(d) entry of a decree of judicial dissolution of the Company pursuant to the provisions of the Act;

Section 13.2 *Winding Up*.

(a) Upon the occurrence of a Liquidating Event, the Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets and satisfying the claims of its creditors and the Holders. After the occurrence of a Liquidating Event, no Holder shall take any action that is inconsistent with, or not necessary to or appropriate for, the winding up of the Company's business and affairs. The Managing Member (or, in the event that there is no remaining Managing Member or the Managing Member has dissolved, become bankrupt within the meaning of the Act or ceased to operate, any Person elected by a Majority in Interest of the Members (the Managing Member or such other Person being referred to herein as the "*Liquidator*")) shall be responsible for overseeing the winding up and dissolution of the Company and shall take full account of the Company's liabilities and property, and the Company property shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom (which may, to the extent determined by the Managing Member, include shares of stock in the Managing Member) shall be applied and distributed in the following order:

(i) First, to the satisfaction of all of the Company's debts and liabilities to creditors other than the Holders (whether by payment or the making of reasonable provision for payment thereof);

(ii) Second, to the satisfaction of all of the Company's debts and liabilities to the Managing Member (whether by payment or the making of reasonable provision for payment thereof), including, but not limited to, amounts due as reimbursements under Section 7.4 hereof;

(iii) Third, to the satisfaction of all of the Company's debts and liabilities to the other Holders (whether by payment or the making of reasonable provision for payment thereof); and

(iv) Fourth, to the Members in accordance with their positive Capital Account balances, determined after taking into account all Capital Account adjustments for all prior periods and the Company taxable year during which the liquidation occurs (other than those made as a result of the liquidating distribution set forth in this Section 13.2(a)(iv)).

The Managing Member shall not receive any additional compensation for any services performed pursuant to this Article 13 other than reimbursement of its expenses as set forth in Section 7.4.

(b) Notwithstanding the provisions of Section 13.2(a) hereof that require liquidation of the assets of the Company, but subject to the order of priorities set forth therein, if prior to or upon dissolution of the Company, the Liquidator determines that an immediate sale of part or all of the Company's assets would be impractical or would cause undue loss to the Holders, the Liquidator may, in its sole and absolute discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy liabilities of the Company (including to those Holders as creditors) and/or distribute to the Holders, in lieu of cash, as tenants in common and in accordance with the provisions of Section 13.2(a) hereof, undivided interests in such Membership assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be made only if, in the good faith judgment of the Liquidator, such distributions in kind are in the best interest of the Holders, and shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any agreements governing the operation of such properties at such time. The Liquidator shall determine the fair market value of any property distributed in kind using such reasonable method of valuation as it may adopt.

(c) If any Holder has a deficit balance in its Capital Account (after giving effect to all contributions, distributions and allocations for all taxable years, including the year during which such liquidation occurs), except as otherwise agreed to by such Holder, such Holder shall have no obligation to make any contribution to the capital of the Company with respect to such deficit, and such deficit shall not be considered a debt owed to the Company or to any other Person for any purpose whatsoever.

(d) In the sole and absolute discretion of the Managing Member or the Liquidator, a pro rata portion of the distributions that would otherwise be made to the Holders pursuant to this Article 13 may be:

(i) distributed to a trust established for the benefit of the Managing Member and the Holders for the purpose of liquidating Company assets, collecting amounts owed to the Company, and paying any contingent, conditional or unmatured liabilities or obligations of the Company or of the Managing Member arising out of or in connection with the Company and/or Company activities. The assets of any such trust shall be distributed to the Holders, from time to time, in the discretion of the Managing Member, in the same proportions and amounts as would otherwise have been distributed to the Holders pursuant to this Agreement; or

(ii) withheld or escrowed to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, *provided* that such withheld or escrowed amounts shall be distributed to the Holders in the manner and order of priority set forth in Section 13.2(a) hereof as soon as practicable.

(e) The provisions of Section 7.8 hereof shall apply to any Liquidator appointed pursuant to this Article 13 as though the Liquidator were the Managing Member of the Company.

Section 13.3 *Rights of Holders*. Except as otherwise provided in this Agreement and subject to the rights of any Holder of any Membership Interest set forth in Article 17 or Article 18 of this Agreement or any Membership Unit Designation , (a) each Holder shall look solely to the assets of the Company for the return of its Capital Contribution, (b) no Holder shall have the right or power to demand or receive property other than cash from the Company and (c) no Holder shall have priority over any other Holder as to the return of its Capital Contributions, distributions or allocations.

Section 13.4 *Notice of Dissolution*. In the event that a Liquidating Event occurs or an event occurs that would, but for an election or objection by one or more Members pursuant to Section 13.1 hereof, result in a dissolution of the Company, the Managing Member or Liquidator shall, within thirty (30) days thereafter, provide written notice thereof to each Holder and, in the Managing Member's or Liquidator's sole and absolute discretion or as required by the Act, to all other parties with whom the Company regularly conducts business (as determined in the sole and absolute discretion of the Managing Member or Liquidator), and the Managing Member or Liquidator may, or, if required by the Act, shall, publish notice thereof in a newspaper of general circulation in each place in which the Company regularly conducts business (as determined in the sole and absolute discretion of the Managing Member or Liquidator).

Section 13.5 *Cancellation of Certificate of Formation*. Upon the completion of the liquidation of the Company cash and property as provided in Section 13.2 hereof, the Company shall be terminated and the Certificate and all qualifications of the Company as a foreign limited liability company or association in jurisdictions other than the State of Delaware shall be cancelled, and such other actions as may be necessary to terminate the Company shall be taken.

Section 13.6 *Reasonable Time for Winding-Up*. A reasonable time shall be allowed for the orderly winding-up of the business and affairs of the Company and the liquidation of its assets pursuant to Section 13.2 hereof, in order to minimize any losses otherwise attendant upon such winding-up, and the provisions of this Agreement shall remain in effect between and among the Members during the period of liquidation; *provided*, *however*, reasonable efforts shall be made to complete such winding-up within twenty-four (24) months after the adoption of a plan of liquidation of the Managing Member, as provided in Section 562(b)(1)(B) of the Code, if necessary, in the sole and absolute discretion of the Managing Member.

ARTICLE 14
PROCEDURES FOR ACTIONS AND CONSENTS OF MEMBERS; AMENDMENTS; MEETINGS

Section 14.1 *Procedures for Actions and Consents of Members*. The actions requiring Consent of any Member or Members pursuant to this Agreement, including Section 7.3 hereof, or otherwise pursuant to applicable law, are subject to the procedures set forth in this Article 14.

Section 14.2 *Amendments*. Amendments to this Agreement may be proposed by the Managing Member or by Members holding twenty-five percent (25%) or more of the Membership Interests held by Members and, except as set forth in Section 7.3(b) and Section 7.3(c) and subject to Section 7.3(d), Section 16.10 and the rights of any Holder of any Membership Interest set forth in any Membership Unit Designation, shall be approved by the Consent of the Members. Following such proposal, the Managing Member shall submit to the Members entitled to vote thereon any proposed amendment that, pursuant to the terms of this Agreement, requires the consent, approval or vote of such Members. The Managing Member shall seek the consent, approval or vote of the Members entitled to vote thereon on any such proposed amendment in accordance with Section 14.3 hereof. Upon obtaining any such Consent, or any other Consent required by this Agreement, and without further action or execution by any other Person, including any Member, (a) any amendment to this Agreement may be implemented and reflected in a writing executed solely by the Managing Member, and (b) the Members shall be deemed a party to and bound by such amendment of this Agreement. For the avoidance of doubt, notwithstanding anything to the contrary in this Agreement, this Agreement may not be amended without the Consent of the Managing Member.

Section 14.3 *Actions and Consents of the Members*.

(a) Meetings of the Members may be called only by the Managing Member to transact any business that the Managing Member determines. The call shall state the nature of the business to be transacted. Notice of any such meeting shall be given to all Members entitled to act at the meeting not less than seven (7) days nor more than sixty (60) days prior to the date of such meeting. Members may vote in person or by proxy at such meeting. Unless approval by a different number or proportion of the Members is required by this Agreement, the affirmative vote of a Majority in Interest of the Members entitled to act on any proposal shall be sufficient to approve such proposal at a meeting of the Members. Whenever the vote, consent or approval of Members is permitted or required under this Agreement, such vote, consent or approval may be given at a meeting of Members or in accordance with the procedure prescribed in Section 14.3(b) hereof.

(b) Any action requiring the Consent of any Member or group of Members pursuant to this Agreement or that is required or permitted to be taken at a meeting of the Members may be taken without a meeting if a consent in writing or by electronic transmission setting forth the action so taken or consented to is given by Members whose affirmative vote would be sufficient to approve such action or provide such Consent at a meeting of the Members. Such consent may be in one instrument or in several instruments, and shall have the same force and effect as the affirmative vote of such Members at a meeting of the Members. Such consent shall be filed with the Managing Member. An action so taken shall be deemed to have been taken at a meeting held on the effective date so certified. For purposes of obtaining a Consent in writing or by electronic transmission, the Managing Member may require a response within a reasonable specified time, but not less than fifteen (15) days, and failure to respond in such time period shall constitute a Consent that is consistent with the Managing Member's recommendation with respect to the proposal; *provided*, *however*, that an action shall become effective at such time as requisite Consents are received even if prior to such specified time.

(c) Each Member entitled to act at a meeting of the Members may authorize any Person or Persons to act for it by proxy on all matters in which a Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Each proxy must be signed by the Member or its attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy (or there is receipt of a proxy authorizing a later date). Every proxy shall be revocable at the pleasure of the Member executing it, such revocation to be effective upon the Company's receipt of written notice of such revocation from the Member executing such proxy, unless such proxy states that it is irrevocable and is coupled with an interest.

(d) The Managing Member may set a record date for the purpose of determining the Members (i) entitled to Consent to any action, (ii) entitled to receive notice of or vote at any meeting of the Members or (iii) in order to make a determination of Members for any other proper purpose. Such date, in any case, shall not be more than ninety (90) days and, in the case of a meeting of the Members, not less than five (5) days, before the date on which the meeting is to be held or Consent is to be given. If no record date is fixed, the record date for the determination of Members entitled to notice of or to vote at a meeting of the Members shall be at the close of business on the day on which the notice of the meeting is sent, and the record date for any other determination of Members shall be the effective date of such Member action, distribution or other event. When a determination of the Members entitled to vote at any meeting of the Members has been made as provided in this section, such determination shall apply to any adjournment thereof.

(e) Each meeting of Members shall be conducted by the Managing Member or such other Person as the Managing Member may appoint pursuant to such rules for the conduct of the meeting as the Managing Member or such other Person deems appropriate in its sole and absolute discretion. Without limitation, meetings of Members may be conducted in the same manner as meetings of the Managing Member's stockholders and may be held at the same time as, and as part of, the meetings of the Managing Member's stockholders.

ARTICLE 15
GENERAL PROVISIONS

Section 15.1 *Redemption Rights of Qualifying Parties*.

(a) After the applicable Initial Holding Period, a Qualifying Party shall have the right (subject to the terms and conditions set forth herein) to require the Company to redeem all or a portion of Common Units held by such Tendering Party (Common Units that have in fact been tendered for redemption being hereafter referred to as "*Tendered Units*") in exchange (a "*Redemption*") for the Cash Amount payable on the Specified Redemption Date. The Company may, in the Managing Member's sole and absolute discretion, redeem Tendered Units at the request of the Holder thereof prior to the end of the applicable Initial Holding Period (subject to the terms and conditions set forth herein) (a "*Special Redemption*"); *provided*, *however*, that the Managing Member first receives an opinion of counsel reasonably satisfactory to it to the effect that the proposed Special Redemption will not cause the Company or the Managing Member to violate any federal or state securities laws or regulations applicable to the Special Redemption, the issuance and sale of the Tendered Units to the Tendering Party or the issuance and sale of REIT Shares to the Tendering Party pursuant to Section 15.1(b) of this Agreement. Any Redemption shall be exercised pursuant to a Notice of Redemption delivered to the Managing Member by the Qualifying Party when exercising the Redemption right (the "*Tendering Party*"). The Company's obligation to effect a Redemption, however, shall not arise or be binding against the Company until the earlier of (i) the date the Managing Member notifies the Tendering Party that the Managing Member declines to acquire some or all of the Tendered Units under Section 15.1(b) hereof following receipt of a Notice of Redemption and (ii) the Business Day following the Cut-Off Date. In the event of a Redemption, the Cash Amount shall be delivered as a certified or bank check payable to the Tendering Party or, in the Managing Member's sole and absolute discretion, in immediately available funds, in each case, on or before the Specified Redemption Date; *provided*, *however*, that the Managing Member may elect to cause the Specified Redemption Date to be delayed for up to an additional 60 Business Days to the extent required for the Managing Member to cause additional REIT Shares to be issued to provide financing to be used to make such payment of the Cash Amount.

(b) Notwithstanding the provisions of Section 15.1(a) hereof, on or before the close of business on the Cut-Off Date, the Managing Member may, in the Managing Member's sole and absolute discretion but subject to the Ownership Limit, elect to acquire some or all (such percentage being referred to as the "*Applicable Percentage*") of the Tendered Units from the Tendering Party in exchange for REIT Shares. If the Managing Member elects to acquire some or all of the Tendered Units pursuant to this Section 15.1(b), the Managing Member shall give written notice thereof to the Tendering Party on or before the close of business on the Cut-Off Date. If the Managing Member elects to acquire any of the Tendered Units for REIT Shares, the Managing Member shall issue and deliver such REIT Shares to the Tendering Party pursuant to the terms of this Section 15.1(b), in which case (i) the Managing Member shall assume directly the obligation with respect thereto and shall satisfy the Tendering Party's exercise of its Redemption right with respect to such Tendered Units and (ii) such transaction shall be treated, for federal income tax purposes, as a transfer by the Tendering Party of such Tendered Units to the Managing Member in exchange for the REIT Shares Amount. If the Managing Member so elects, on the Specified Redemption Date, the Tendering Party shall sell such number of the Tendered Units to the Managing Member in exchange for a number of REIT Shares equal to the product of the REIT Shares Amount and the Applicable Percentage; *provided*, *however*, that the Managing Member may elect to cause the Specified Redemption Date to be delayed for up to an additional 60 Business Days to the extent required for the Managing Member to cause additional REIT Shares to be issued. The Tendering Party shall submit (A) such information, certification or affidavit as the Managing Member may reasonably require in connection with the application of the Ownership Limit to any such acquisition and (B) such written representations, investment letters, legal opinions or other instruments necessary, in the Managing Member's view, to effect compliance with the Securities Act. In the event of a purchase of the Tendered Units by the Managing Member pursuant to this Section 15.1(b), the Tendering Party shall no longer have the right to cause the Company to effect a Redemption of such Tendered Units and, upon notice to the Tendering Party by the Managing Member given on or before the close of business on the Cut-Off Date that the Managing Member has elected to acquire some or all of the Tendered Units pursuant to this Section 15.1(b), the obligation of the Company to effect a Redemption of the Tendered Units as to which the Managing Member's notice relates shall not accrue or arise. A number of REIT Shares equal to the product of the Applicable Percentage and the REIT Shares Amount, if applicable, shall be delivered by the Managing Member as duly authorized, validly issued, fully paid and non-assessable REIT Shares and, if applicable, Rights, free of any pledge, lien, encumbrance or restriction, other than the Ownership Limit, the Securities Act and relevant state securities or "blue sky" laws. Neither any Tendering Party whose Tendered Units are acquired by the Managing Member pursuant to this Section 15.1(b), any Member, any Assignee nor any other interested Person shall have any right to require or cause the Managing Member to register, qualify or list any REIT Shares owned or held by such Person, whether or not such REIT Shares are issued pursuant to this Section 15.1(b), with the SEC, with any state securities commissioner, department or agency, under the Securities Act or the Exchange Act or with any stock exchange; *provided*, *however*, that this limitation shall not be in derogation of any registration or similar rights granted pursuant to any other written agreement between the Managing Member and any such Person. Notwithstanding any delay in such delivery, the Tendering Party shall be deemed the owner of such REIT Shares and Rights for all purposes, including, without limitation, rights to vote or consent, receive dividends, and exercise rights, as of the Specified Redemption Date. REIT Shares issued upon an acquisition of the Tendered Units by the Managing Member pursuant to this Section 15.1(b) may contain such legends regarding restrictions under the Securities Act and applicable state securities laws as the Managing Member determines to be necessary or advisable in order to ensure compliance with such laws.

(c) Notwithstanding the provisions of Section 15.1(a) and 15.1(b) hereof, the Tendering Parties shall have no rights under this Agreement that would otherwise be prohibited by the Charter and shall have no rights to require the Company to redeem Common Units if the acquisition of such Common Units by the Managing Member pursuant to Section 15.1(b) hereof would cause any Person to violate the Ownership Limit. To the extent that any attempted Redemption or acquisition of the Tendered Units by the Managing Member pursuant to Section 15.1(b) hereof would be in violation of this Section 15.1(c), to the fullest extent permitted by law, it shall be void, and the Tendering Party shall not acquire any rights or economic interests in REIT Shares otherwise issuable by the Managing Member under Section 15.1(b) hereof or cash otherwise payable under Section 15.1(a) hereof.

(d) If the Managing Member does not elect to acquire the Tendered Units pursuant to Section 15.1(b) hereof:

(i) The Company may elect to raise funds for the payment of the Cash Amount either (A) by requiring that the Managing Member contribute to the Company funds from the proceeds of a registered public offering by the Managing Member of REIT Shares sufficient to purchase the Tendered Units or (B) from any other sources (including, but not limited to, the sale of any Property and the incurrence of additional Debt) available to the Company. Any proceeds from a public offering that are in excess of the Cash Amount shall be for the sole benefit of the Managing Member. The Managing Member shall make a Capital Contribution of any such amounts to the Company for an additional Managing Member Interest in accordance with Section 4.3(e).

(ii) If the Cash Amount is not paid on or before the Specified Redemption Date, interest shall accrue with respect to the Cash Amount from the day after the Specified Redemption Date to and including the date on which the Cash Amount is paid at a rate equal to the base rate on corporate loans at large United States money center commercial banks, as published from time to time in the Wall Street Journal (but not higher than the maximum lawful rate).

(e) Notwithstanding the provisions of Section 15.1(b) hereof, the Managing Member shall not, under any circumstances, elect to acquire any Tendered Units in exchange for REIT Shares if such exchange would be prohibited under the Charter.

(f) Notwithstanding anything herein to the contrary (but subject to Section 15.1(c) hereof), with respect to any Redemption (or any tender of Common Units for Redemption if the Tendered Units are acquired by the Managing Member pursuant to Section 15.1(b) hereof) pursuant to this Section 15.1:

(i) All Common Units acquired by the Managing Member pursuant to Section 15.1(b) hereof shall automatically, and without further action required, be converted into and deemed to be a Managing Member Interest comprised of the same number of Common Units.

(ii) Subject to the Ownership Limit, no Tendering Party may effect a Redemption for less than one thousand (1,000) Common Units or, if such Tendering Party holds (as a Member or, economically, as an Assignee) less than one thousand (1,000) Common Units, all of the Common Units held by such Tendering Party, without, in each case, the Consent of the Managing Member.

(iii) If (A) a Tendering Party surrenders its Tendered Units during the period after the Company Record Date with respect to a distribution and before the record date established by the Managing Member for a distribution to its stockholders of some or all of its portion of such Company distribution, and (B) the Managing Member elects to acquire any of such Tendered Units in exchange for REIT Shares pursuant to Section 15.1(b), such Tendering Party shall pay to the Managing Member on the Specified Redemption Date an amount in cash equal to the portion of the Company distribution in respect of the Tendered Units exchanged for REIT Shares, insofar as such distribution relates to the same period for which such Tendering Party would receive a distribution in respect of such REIT Shares.

(iv) The consummation of such Redemption (or an acquisition of Tendered Units by the Managing Member pursuant to Section 15.1(b) hereof, as the case may be) shall be subject to the expiration or termination of the applicable waiting period, if any, under the Hart-Scott-Rodino Act.

(v) The Tendering Party shall continue to own (subject, in the case of an Assignee, to the provisions of Section 11.5 hereof) all Common Units subject to any Redemption, and be treated as a Member or an Assignee, as applicable, with respect to such Common Units for all purposes of this Agreement, until such Common Units are either paid for by the Company pursuant to Section 15.1(a) hereof or transferred to the Managing Member and paid for, by the issuance of the REIT Shares, pursuant to Section 15.1(b) hereof on the Specified Redemption Date. Until a Specified Redemption Date and an acquisition of the Tendered Units by the Managing Member pursuant to Section 15.1(b) hereof, the Tendering Party shall have no rights as a stockholder of the Managing Member with respect to the REIT Shares issuable in connection with such acquisition.

(g) In connection with an exercise of Redemption rights pursuant to this Section 15.1, except as otherwise Consented to by the Managing Member, the Tendering Party shall submit the following to the Managing Member, in addition to the Notice of Redemption:

(i) A written affidavit, dated the same date as the Notice of Redemption, (A) disclosing the actual and constructive ownership, as determined for purposes of Code Sections 856(a)(6) and 856(h), of REIT Shares by (I) such Tendering Party and (II) to the best of their knowledge any Related Party and (B) representing that, after giving effect to the Redemption or an acquisition of the Tendered Units by the Managing Member pursuant to Section 15.1(b) hereof, neither the Tendering Party nor to the best of their knowledge any Related Party will own REIT Shares in violation of the Ownership Limit;

(ii) A written representation that neither the Tendering Party nor to the best of their knowledge any Related Party has any intention to acquire any additional REIT Shares prior to the closing of the Redemption or an acquisition of the Tendered Units by the Managing Member pursuant to Section 15.1(b) hereof on the Specified Redemption Date;

(iii) An undertaking to certify, at and as a condition of the closing of (A) the Redemption or (B) the acquisition of Tendered Units by the Managing Member pursuant to Section 15.1(b) hereof on the Specified Redemption Date, that either (I) the actual and constructive ownership of REIT Shares by the Tendering Party and to the best of its knowledge any Related Party remain unchanged from that disclosed in the affidavit required by Section 15.1(g)(i) or (II) after giving effect to the Redemption or the acquisition of Tendered Units by the Managing Member pursuant to Section 15.1(b) hereof, neither the Tendering Party nor, to the best of its knowledge, any other Person shall own REIT Shares in violation of the Ownership Limit; and

(iv) In connection with any Special Redemption, the Managing Member shall have the right to receive an opinion of counsel reasonably satisfactory to it to the effect that the proposed Special Redemption will not cause the Company or the Managing Member to violate any federal or state securities laws or regulations applicable to the Special Redemption, the issuance and sale of the Tendered Units to the Tendering Party or the issuance and sale of REIT Shares to the Tendering Party pursuant to Section 15.1(b) of this Agreement.

(h) Holders of LTIP Units shall not be entitled to the right of Redemption provided for in Section 15.1 of this Agreement, unless and until such LTIP Units have been converted into Common Units (or any other class or series of Common Units entitled to such right of Redemption) in accordance with their terms.

Section 15.2 *Addresses and Notice.* Any notice, demand, request or report required or permitted to be given or made to a Member or Assignee under this Agreement shall be in writing and shall be deemed given or made when delivered in person or when sent by first class United States mail or by other means of written or electronic communication (including by telecopy, facsimile, electronic mail or commercial courier service) to the Member, or Assignee at the address set forth in the Member Registry or such other address of which the Member shall notify the Managing Member in accordance with this Section 15.2.

Section 15.3 *Titles and Captions*. All article or section titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Except as specifically *provided* otherwise, references to "Articles" or "Sections" are to Articles and Sections of this Agreement.

Section 15.4 *Pronouns and Plurals*. Whenever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 15.5 *Further Action*. The parties shall execute and deliver all documents, provide all information and take or refrain from taking action as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 15.6 *Binding Effect*. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns.

Section 15.7 *Waiver*.

(a) No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute waiver of any such breach or any other covenant, duty, agreement or condition.

(b) The restrictions, conditions and other limitations on the rights and benefits of the Members contained in this Agreement, and the duties, covenants and other requirements of performance or notice by the Members, are for the benefit of the Company and, except for an obligation to pay money to the Company, may be waived or relinquished by the Managing Member, in its sole and absolute discretion, on behalf of the Company in one or more instances from time to time and at any time; *provided*, *however*, that any such waiver or relinquishment may not be made if it would have the effect of (i) creating liability for any other Member, (ii) causing the Company to cease to qualify as a limited liability company, (iii) reducing the amount of cash otherwise distributable to the Members (other than any such reduction that affects all of the Members holding the same class or series of Membership Units on a uniform or pro rata basis, if approved by a Majority in Interest of the Members holding such class or series of Membership Units), (iv) resulting in the classification of the Company as an association or publicly traded partnership taxable as a corporation or (v) violating the Securities Act, the Exchange Act or any state "blue sky" or other securities laws; and *provided*, *further*, that any waiver relating to compliance with the Ownership Limit or other restrictions in the Charter shall be made and shall be effective only as provided in the Charter.

Section 15.8 *Counterparts*. This Agreement may be executed in counterparts, all of which together shall constitute one agreement binding on all the parties hereto, notwithstanding that all such parties are not signatories to the original or the same counterpart. Each party shall become bound by this Agreement immediately upon affixing its signature hereto.

Section 15.9 *Applicable Law; Consent to Jurisdiction; Waiver of Jury Trial*.

(a) This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of law. In the event of a conflict between any provision of this Agreement and any non-mandatory provision of the Act, the provisions of this Agreement shall control and take precedence.

(b) Each Member hereby (i) submits to the non-exclusive jurisdiction of any state or federal court sitting in the State of Delaware (collectively, the "*Delaware Courts*"), with respect to any dispute arising out of this Agreement or any transaction contemplated hereby to the extent such courts would have subject matter jurisdiction with respect to such dispute, (ii) to the fullest extent permitted by law, irrevocably waives, and agrees not to assert by way of motion, defense, or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of any of the Delaware Courts, that its property is exempt or immune from attachment or execution, that the action is brought in an inconvenient forum, or that the venue of the action is improper, (iii) agrees that notice or the service of process in any action, suit or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be properly served or delivered if delivered to such Member at such Member's last known address as set forth in the Company's books and records, and (iv) irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or related to this Agreement or the transactions contemplated hereby.

Section 15.10 *Entire Agreement*. This Agreement contains all of the understandings and agreements between and among the Members with respect to the subject matter of this Agreement and the rights, interests and obligations of the Members with respect to the Company. Notwithstanding the immediately preceding sentence, the Members hereby acknowledge and agree that the Managing Member, without the approval of any Member, may enter into side letters or similar written agreements with Members that are not Affiliates of the Managing Member, executed contemporaneously with the admission of such Member to the Company, affecting the terms hereof, as negotiated with such Member and which the Managing Member in its sole discretion deems necessary, desirable or appropriate. The parties hereto agree that any terms, conditions or provisions contained in such side letters or similar written agreements with a Member shall govern with respect to such Member notwithstanding the provisions of this Agreement.

Section 15.11 *Invalidity of Provisions*. If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby.

Section 15.12 *Limitation to Preserve REIT Status*. Notwithstanding anything else in this Agreement, to the extent that the amount to be paid, credited, distributed or reimbursed by the Company to any REIT Member or its officers, directors, employees or agents, whether as a reimbursement, fee, expense or indemnity (a "*REIT Payment*"), would constitute gross income to the REIT Member for purposes of Code Section 856(c)(2) or Code Section 856(c)(3), then, notwithstanding any other provision of this Agreement, the amount of such REIT Payments, as selected by the Managing Member in its discretion from among items of potential distribution, reimbursement, fees, expenses and indemnities, shall be reduced for any Fiscal Year so that the REIT Payments, as so reduced, for or with respect to such REIT Member shall not exceed the lesser of:

(a) an amount equal to the excess, if any, of (i) four percent (4%) of the REIT Member's total gross income (but excluding the amount of any REIT Payments and any amounts excluded from gross income pursuant to Section 856(c) of the Code) for the Fiscal Year that is described in subsections (A) through (I) of Code Section 856(c)(2) over (ii) the amount of gross income (within the meaning of Code Section 856(c)(2)) derived by the REIT Member from sources other than those described in subsections (A) through (I) of Code Section 856(c)(2) (but not including the amount of any REIT Payments or any amounts excluded from gross income pursuant to Section 856(c) of the Code); or

(b) an amount equal to the excess, if any, of (i) twenty-four percent (24%) of the REIT Member's total gross income (but excluding the amount of any REIT Payments and any amounts excluded from gross income pursuant to Section 856(c) of the Code) for the Fiscal Year that is described in subsections (A) through (I) of Code Section 856(c)(3) over (ii) the amount of gross income (within the meaning of Code Section 856(c)(3)) derived by the REIT Member from sources other than those described in subsections (A) through (I) of Code Section 856(c)(3) (but not including the amount of any REIT Payments or any amounts excluded from gross income pursuant to Section 856(c) of the Code);

provided, *however*, that REIT Payments in excess of the amounts set forth in clauses (a) and (b) above may be made if the Managing Member, as a condition precedent, obtains an opinion of tax counsel that the receipt of such excess amounts should not adversely affect the REIT Member's ability to qualify as a REIT. To the extent that REIT Payments may not be made in a Fiscal Year as a consequence of the limitations set forth in this Section 15.12, such REIT Payments shall carry over and shall be treated as arising in the following Fiscal Year if such carry over does not adversely affect the REIT Member's ability to qualify as a REIT, *provided*, *however*, that any such REIT Payment shall not be carried over more than three Fiscal Years, and any such remaining payments shall no longer be due and payable. The purpose of the limitations contained in this Section 15.12 is to prevent any REIT Member from failing to qualify as a REIT under the Code by reason of such REIT Member's share of items, including distributions, reimbursements, fees, expenses or indemnities, receivable directly or indirectly from the Company, and this Section 15.12 shall be interpreted and applied to effectuate such purpose.

Section 15.13 *No Partition*. No Member nor any successor-in-interest to a Member shall have the right while this Agreement remains in effect to have any property of the Company partitioned, or to file a complaint or institute any proceeding at law or in equity to have such property of the Company partitioned, and to the fullest extent permitted by law, each Member, on behalf of itself and its successors and assigns hereby waives any such right. It is the intention of the Members that the rights of the parties hereto and their successors-in-interest to Membership property, as among themselves, shall be governed by the terms of this Agreement, and that the rights of the Members and their respective successors-in-interest shall be subject to the limitations and restrictions as set forth in this Agreement.

Section 15.14 *No Third-Party Rights Created Hereby*. The provisions of this Agreement are solely for the purpose of defining the interests of the Holders, inter se; and no other person, firm or entity (i.e., a party who is not a signatory hereto or a permitted successor to such signatory hereto) shall have any right, power, title or interest by way of subrogation or otherwise, in and to the rights, powers, title and provisions of this Agreement. No creditor or other third party having dealings with the Company (other than as expressly *provided* herein with respect to Indemnitees) shall have the right to enforce the right or obligation of any Member to make Capital Contributions or loans to the Company or to pursue any other right or remedy hereunder or at law or in equity. None of the rights or obligations of the Members herein set forth to make Capital Contributions or loans to the Company shall be deemed an asset of the Company for any purpose by any creditor or other third party, nor may any such rights or obligations be sold, transferred or assigned by the Company or pledged or encumbered by the Company to secure any debt or other obligation of the Company or any of the Members.

Section 15.15 *No Rights as Stockholders*. Nothing contained in this Agreement shall be construed as conferring upon the Holders of Membership Units any rights whatsoever as stockholders of the Managing Member, including without limitation any right to receive dividends or other distributions made to stockholders of the Managing Member or to vote or to consent or receive notice as stockholders in respect of any meeting of stockholders for the election of directors of the Managing Member or any other matter.

ARTICLE 16
LTIP UNITS

Section 16.1 *Designation*. A class of Membership Units in the Company designated as the "LTIP Units" is hereby established. The number of LTIP Units that may be issued is not limited by this Agreement.

Section 16.2 *Vesting*.

(a) *Vesting, Generally*. LTIP Units may, in the sole discretion of the Managing Member, be issued subject to vesting, forfeiture and additional restrictions on Transfer pursuant to the terms of the applicable LTIP Unit Agreement or Equity Plan. The terms of any LTIP Unit Agreement may be modified by the Managing Member from time to time in its sole discretion, subject to any restrictions on amendment imposed by the relevant LTIP Unit Agreement or by the Plan or any other applicable Equity Plan. LTIP Units that were fully vested and nonforfeitable when issued or that have vested and are no longer subject to forfeiture under the terms of an LTIP Unit Agreement are referred to as "*Vested LTIP Units*"; all other LTIP Units are referred to as "*Unvested LTIP Units*."

(b) *Forfeiture*. Upon the forfeiture of any LTIP Units in accordance with the applicable LTIP Unit Agreement and Equity Plan (including any forfeiture effected through repurchase), the LTIP Units so forfeited (or repurchased) shall immediately, and without any further action, be treated as cancelled and no longer outstanding for any purpose. Unless otherwise specified in the applicable LTIP Unit Agreement, no consideration or other payment shall be due with respect to any LTIP Units that have been forfeited, other than any distributions declared prior to the effective date of the forfeiture with respect to a Company Record Date and with respect to such LTIP Units. Except as otherwise provided in this Agreement (including without limitation Section 6.4(a)(ix)), the Plan (or other applicable Equity Plan) and the applicable LTIP Unit Agreement, in connection with any forfeiture (or repurchase) of such units, the balance of the portion of the Capital Account of the Holder of LTIP Units that is attributable to all of such Holder's LTIP Units shall be reduced by the amount, if any, by which it exceeds the target balance contemplated by Section 6.2(d), calculated with respect to such Holder's remaining LTIP Units, if any.

Section 16.3 *Adjustments.* The Company shall maintain at all times a one-to-one correspondence between LTIP Units and Common Units for conversion, distribution and other purposes, including, without limitation, complying with the following procedures; provided, that the foregoing is not intended to alter any of (a) the special allocations pursuant to Section 6.2(d) hereof, (b) differences between distributions to be made with respect to LTIP Units and Common Units pursuant to Section 13.2 and Section 16.4(b) hereof in the event that the Capital Accounts attributable to the LTIP Units are less than those attributable to Common Units due to insufficient special allocation pursuant to Section 6.2(d) or (c) any related provisions. If an Adjustment Event occurs, then the Managing Member shall take any action reasonably necessary, including any amendment to this Agreement, any LTIP Unit Agreement and/or any update to the Member Registry adjusting the number of outstanding LTIP Units or subdividing or combining outstanding LTIP Units, in any case, to maintain a one-for-one conversion and economic equivalence ratio between Common Units and LTIP Units. An "*Adjustment Event*" shall mean any of the following events: (i) the Company makes a distribution on all outstanding Common Units in Membership Units, (ii) the Company subdivides the outstanding Common Units into a greater number of units or combines the outstanding Common Units into a smaller number of units, (iii) the Company issues any Membership Units in exchange for its outstanding Common Units by way of a reclassification or recapitalization of its Common Units or (iv) any other non-recurring event or transaction that would, as determined by the Managing Member in its sole discretion, have the similar effect of diluting or expanding the rights or benefits (or potential benefits) intended to be conferred by outstanding LTIP Units. If more than one Adjustment Event occurs, any adjustment to the LTIP Units may be made only once using a single formula that takes into account each and every Adjustment Event as if all Adjustment Events occurred simultaneously. For the avoidance of doubt, the following shall not be Adjustment Events: (x) the issuance of Membership Units in a financing, reorganization, acquisition or other similar business transaction, (y) the issuance of Membership Units pursuant to any employee benefit or compensation plan or distribution reinvestment plan, or (z) the issuance of any Membership Units to the Managing Member in respect of a Capital Contribution to the Company of proceeds from the sale of securities by the Managing Member. If the Company takes an action affecting the Common Units other than actions specifically described above as "Adjustment Events" and in the opinion of the Managing Member such action would require an action to maintain the one-to-one correspondence described above, the Managing Member shall have the right to take such action, to the extent permitted by law, in such manner and at such time as the Managing Member, in its sole discretion, may determine to be reasonably appropriate under the circumstances to preserve the one-to-one correspondence described above. If an amendment is made to this Agreement adjusting the number of outstanding LTIP Units as herein provided, the Company shall promptly file in the books and records of the Company an officer's certificate setting forth a brief statement of the facts requiring such adjustment, which certificate shall be conclusive evidence of the correctness of such adjustment absent manifest error. Promptly after filing of such certificate, the Company shall mail a notice to each Holder of LTIP Units setting forth the adjustment to such Holder's LTIP Units and the effective date of such adjustment.

Section 16.4 *Distributions*.

(a) *Operating Distributions*. Except as otherwise provided in this Agreement, any LTIP Unit Agreement, the Plan (or any other applicable Equity Plan), or by the Managing Member with respect to any particular class or series of LTIP Units, Holders of LTIP Units shall be entitled to receive, if, when and as authorized by the Managing Member out of funds or other property legally available for the payment of distributions, regular, special, extraordinary or other distributions (other than distributions upon the occurrence of a Liquidating Event or proceeds from a Terminating Capital Transaction) which may be made from time to time, in an amount per unit equal to (i) with respect to any LTIP Units that are not Performance LTIP Units, the amount of any such distributions that would have been payable to such holders if the LTIP Units had been Common Units (if applicable, assuming such LTIP Units were held for the entire period to which such distributions relate) and (ii) with respect to any Performance LTIP Units, an amount equal to (A) in the case of unvested Performance LTIP Units, the product of the distribution made to holders of Common Units per Common Unit multiplied by the Performance Unit Sharing Percentage, and (B) in the case of a vested Performance LTIP Unit, the distribution made to holders of Common Units per Common Unit, in each case, if applicable, assuming such LTIP Units were held for the entire period to which such distributions relate.

(b) *Liquidating Distributions*. Holders of LTIP Units shall also be entitled to receive, if, when and as authorized by the Managing Member out of funds or other property legally available for the payment of distributions, distributions upon the occurrence of a Liquidating Event or representing proceeds from a Terminating Capital Transaction in an amount per LTIP Unit equal to the amount of any such distributions payable on one Common Unit, whether made prior to, on or after the LTIP Unit Distribution Payment Date, provided that the amount of such distributions shall not exceed the positive balances of the Capital Accounts of the holders of such LTIP Units to the extent attributable to the ownership of such LTIP Units.

(c) *Distributions Generally*. Distributions on the LTIP Units, if authorized, shall be payable on such dates and in such manner as may be authorized by the Managing Member (any such date, an "*LTIP Unit Distribution Payment Date*"). Absent a contrary determination by the Managing Member, the LTIP Unit Distribution Payment Date shall be the same as the corresponding date relating to the corresponding distribution on the Common Units. The record date for determining which Holders of LTIP Units are entitled to receive a distribution shall be the Company Record Date.

Section 16.5 *Allocations*.

(a) Holders of LTIP Units that are not Performance LTIP Units and Holders of vested Performance LTIP Units shall be allocated Net Income and Net Loss in amounts per LTIP Unit equal to the amounts allocated per Common Unit. The allocations provided by the preceding sentence shall be subject to Sections 6.2(a) and 6.2(b), and in addition to any special allocations required by Section 6.2(d).

(b) Holders of unvested Performance LTIP Units shall be allocated Net Income and Net Loss in amounts per unvested Performance LTIP Unit equal to the amounts allocated per vested Performance LTIP Unit; provided, however, that for purposes of allocations of Net Income and Net Loss pursuant to Sections 6.2(a), 6.2(b) and 6.4, the term Percentage Interest when used with respect to an unvested Performance LTIP Unit shall refer to the Percentage Interest of a Common Unit multiplied by the Performance Unit Sharing Percentage.

(c) The Managing Member is authorized in its discretion to delay or accelerate the participation of the LTIP Units in allocations of Net Income and Net Loss under this Section 16.5, or to adjust the allocations made under this Section 16.5, so that the ratio of (i) the total amount of Net Income or Net Loss allocated with respect to each LTIP Unit in the taxable year in which that LTIP Unit's LTIP Unit Distribution Payment Date falls (excluding special allocations under Section 6.2(d)), to (ii) the total amount distributed to that LTIP Unit with respect to such period, is more nearly equal to the ratio of (i) the Net Income and Net Loss allocated with respect to the Managing Member's Common Units in such taxable year to (ii) the amounts distributed to the Managing Member with respect to such Common Units and such taxable year.

Section 16.6 *Transfers*. Subject to the terms and limitations contained in an applicable LTIP Unit Agreement and the Plan (or any other applicable Equity Plan) and except as expressly provided in this Agreement with respect to LTIP Units, a Holder of LTIP Units shall be entitled to transfer such Holder's LTIP Units to the same extent, and subject to the same restrictions, as Holders of Common Units are entitled to transfer their Common Units pursuant to Article 11.

Section 16.7 *Redemption*. The Redemption Right provided to Qualifying Parties under Section 15.1 shall not apply with respect to LTIP Units unless and until they are converted to Common Units as provided in Section 16.9 below.

Section 16.8 *Legend*. Any certificate evidencing an LTIP Unit shall bear an appropriate legend, as determined by the Managing Member, indicating that additional terms, conditions and restrictions on transfer, including without limitation under any LTIP Unit Agreement and the Plan (or any other applicable Equity Plan), apply to the LTIP Unit.

Section 16.9 *Conversion to Common Units*.

(a) A Qualifying Party holding LTIP Units shall have the right (the "*Conversion Right*"), at such Qualifying Party's option, at any time to convert all or a portion of such Qualifying Party's Vested LTIP Units into Common Units, taking into account all adjustments (if any) made pursuant to Section 16.3; provided, however, that a Qualifying Party may not exercise the Conversion Right for less than one thousand (1,000) Vested LTIP Units or, if such Qualifying Party holds less than one thousand (1,000) Vested LTIP Units, all of the Vested LTIP Units held by such Qualifying Party to the extent not subject to the limitation on conversion under Section 16.9(b) below. Qualifying Parties shall not have the right to convert Unvested LTIP Units into Common Units until they become Vested LTIP Units; provided, however, that in anticipation of any event that will cause such Qualifying Party's Unvested LTIP Units to become Vested LTIP Units (and subject to the timing requirements set forth in Section 16.9(b) below), such Qualifying Party may give the Company a Conversion Notice conditioned upon and effective as of the time of vesting and such Conversion Notice, unless subsequently revoked by the Qualifying Party in writing prior to such vesting event, shall be accepted by the Company subject to such condition. In all cases, the conversion of any LTIP Units into Common Units shall be subject to the conditions and procedures set forth in this Section 16.9.

(b) A Qualifying Party may convert such Qualifying Party's Vested LTIP Units into an equal number of fully paid and non-assessable Common Units, giving effect to all adjustments (if any) made pursuant to Section 16.3. Notwithstanding the foregoing, in no event may a Qualifying Party convert a number of Vested LTIP Units that exceeds the Capital Account Limitation. In order to exercise such Qualifying Party's Conversion Right, a Qualifying Party shall deliver a written notice (a "*Conversion Notice*") in substantially the form attached as Exhibit C to the Company (with a copy to the Managing Member) not less than 3 calendar days nor more than 10 calendar days prior to the date (the "*Conversion Date*") specified in such Conversion Notice; provided, however, that if the Managing Member has not given to the Qualifying Party notice of a proposed or upcoming Transaction (as defined below) at least thirty (30) days prior to the effective date of such Transaction, then the Qualifying Party shall have the right to deliver a Conversion Notice until the earlier of (x) the tenth (10th) calendar day after such notice from the Managing Member of a Transaction or (y) the third Business Day immediately preceding the effective date of such Transaction. A Conversion Notice shall be provided in the manner provided in Section 15.2. Each Qualifying Party seeking to convert Vested LTIP Units covenants and agrees with the Company that all Vested LTIP Units to be converted pursuant to this Section 16.9 shall be free and clear of all liens and encumbrances. Notwithstanding anything herein to the contrary, if the Initial Holding Period with respect to the Common Units into which the Vested LTIP Units are convertible has elapsed, a Qualifying Party may deliver a Notice of Redemption pursuant to Section 15.1(a) relating to such Common Units in advance of the Conversion Date; provided, however, that the redemption of such Common Units by the Company shall in no event take place until on or after the Conversion Date. For clarity, it is noted that the objective of this paragraph is to put a Qualifying Party in a position where, if such Qualifying Party so wishes, the Common Units into which such Qualifying Party's Vested LTIP Units will be converted can be redeemed by the Company pursuant to Section 15.1(a) simultaneously with such conversion, with the further consequence that, if the Managing Member elects to assume the Company's redemption obligation with respect to such Common Units under Section 15.1(b) by delivering to such Qualifying Party REIT Shares rather than cash, then such Qualifying Party can have such REIT Shares issued to such Qualifying Party simultaneously with the conversion of such Qualifying Party's Vested LTIP Units into Common Units. The Managing Member shall use commercially reasonable efforts to cooperate with a Qualifying Party to coordinate the timing of the different events described in the foregoing sentence.

(c) The Company, at any time at the election of the Managing Member, may cause any number of Vested LTIP Units to be converted (a "*Forced Conversion*") into an equal number of Common Units, giving effect to all adjustments (if any) made pursuant to Section 16.3; provided, however, that the Company may not cause a Forced Conversion of any LTIP Units that would not at the time be eligible for conversion at the election of such Qualifying Party pursuant to Section 16.9(b). In order to exercise its right of Forced Conversion, the Company shall deliver a notice (a "*Forced Conversion Notice*") in substantially the form attached hereto as Exhibit D to the applicable Holder of LTIP Units not less than 3 calendar days prior to the Conversion Date specified in such Forced Conversion Notice. A Forced Conversion Notice shall be provided in the manner provided in Section 15.2.

(d) A conversion of Vested LTIP Units for which the Holder thereof has given a Conversion Notice or the Company has given a Forced Conversion Notice shall occur automatically after the close of business on the applicable Conversion Date without any action on the part of such Holder of LTIP Units, other than the surrender of any certificate or certificates evidencing such Vested LTIP Units, as of which time such Holder of LTIP Units shall be credited on the books and records of the Company as of the opening of business on the next day with the number of Common Units into which such LTIP Units were converted. After the conversion of LTIP Units as aforesaid, the Company shall deliver to such Holder of LTIP Units, upon such Holder's written request, a certificate of the Managing Member certifying the number of Common Units and remaining LTIP Units, if any, held by such person immediately after such conversion. The Assignee of any Member pursuant to Article 11 hereof may exercise the rights of such Member pursuant to this Section 16.9 and such Member shall be bound by the exercise of such rights by the Assignee.

(e) For purposes of making future allocations under Section 6.2(d) and applying the Capital Account Limitation, the portion of the Economic Capital Account Balance of the applicable Holder of LTIP Units that is treated as attributable to such Holder's LTIP Units shall be reduced, as of the date of conversion, by the product of the number of LTIP Units converted and the Common Unit Economic Balance.

(f) If the Company or the Managing Member shall be a party to any transaction (including without limitation a merger, consolidation, unit exchange, self-tender offer for all or substantially all Common Units or other business combination or reorganization, or sale of all or substantially all of the Company's assets, but excluding any transaction which constitutes an Adjustment Event) in each case as a result of which Common Units shall be exchanged for or converted into the right, or the Holders shall otherwise be entitled, to receive cash, securities or other property or any combination thereof (each of the foregoing being referred to herein as a "*Transaction*"), then the Managing Member shall, immediately prior to the Transaction, exercise its right to cause a Forced Conversion with respect to the maximum number of LTIP Units then eligible for conversion, taking into account any allocations that occur in connection with the Transaction or that would occur in connection with the Transaction if the assets of the Company were sold at the Transaction price or, if applicable, at a value determined by the Managing Member in good faith using the value attributed to the Common Units in the context of the Transaction (in which case the Conversion Date shall be the effective date of the Transaction and the conversion shall occur immediately prior to the effectiveness of the Transaction). In anticipation of such Forced Conversion and the consummation of the Transaction, the Company shall use commercially reasonable efforts to cause each Holder of LTIP Units to be afforded the right to receive in connection with such Transaction in consideration for the Common Units into which such Holder's LTIP Units will be converted the same kind and amount of cash, securities and other property (or any combination thereof) receivable upon the consummation of such Transaction by a Holder of the same number of Common Units, assuming such Holder is not a Person with which the Company consolidated or into which the Company merged or which merged into the Company or to which such sale or transfer was made, as the case may be (a "*Constituent Person*"), or an affiliate of a Constituent Person. In the event that Holders of Common Units have the opportunity to elect the form or type of consideration to be received upon consummation of the Transaction, prior to such Transaction the Managing Member shall give prompt written notice to each Holder of LTIP Units of such opportunity, and shall use commercially reasonable efforts to afford the Holder of LTIP Units the right to elect, by written notice to the Managing Member, the form or type of consideration to be received upon conversion of each LTIP Unit held by such Holder into Common Units in connection with such Transaction. If a Holder of LTIP Units fails to make such an election, such Holder (and any of such Holder's transferees) shall receive upon conversion of each LTIP Unit held by such Holder (or by any of such Holder's transferees) the same kind and amount of consideration that a Holder of Common Units would receive if such Holder of Common Units failed to make such an election. Subject to the rights of the Company and the Managing Member under any LTIP Unit Agreement and the relevant terms of the Plan or any other applicable Equity Plan, the Company shall use commercially reasonable effort to cause the terms of any Transaction to be consistent with the provisions of this Section 16.9(f) and to enter into an agreement with the successor or purchasing entity, as the case may be, for the benefit of any Holder of LTIP Units whose LTIP Units will not be converted into Common Units in connection with the Transaction that will (i) contain provisions enabling the Qualifying Parties that remain outstanding after such Transaction to convert their LTIP Units into securities as comparable as reasonably practicable under the circumstances to the Common Units and (ii) preserve as far as reasonably practicable under the circumstances the distribution, special allocation, conversion, and other rights set forth in the Agreement for the benefit of the Holder of LTIP Units.

Section 16.10 *Voting*. Except as expressly provided in this Agreement, Members holding LTIP Units shall have the same voting rights as Members holding Common Units, with the LTIP Units voting together as a single class with the Common Units and having one vote per LTIP Unit and Holders of LTIP Units shall not be entitled to approve, vote on or consent to any other matter. The foregoing voting provision will not apply if, at or prior to the time when the action with respect to which such vote would otherwise be required will be effected, all outstanding LTIP Units shall have been converted (or provision is made for such conversion to occur as of or prior to such time) into Common Units.

Section 16.11 *Section 83 Safe Harbor*. Each Member authorizes the Managing Member to elect to apply the safe harbor (the "*Section 83 Safe Harbor*") set forth in proposed Regulations Section 1.83-3(l) and proposed IRS Revenue Procedure published in Notice 2005-43 (together, the "*Proposed Section 83 Safe Harbor Regulation*") (under which the fair market value of a Membership Interest that is Transferred in connection with the performance of services is treated as being equal to the liquidation value of the interest), or in similar Regulations or guidance, if such Proposed Section 83 Safe Harbor Regulation or similar Regulations are promulgated as final or temporary Regulations. If the Managing Member determines that the Company should make such election, the Managing Member is hereby authorized to amend this Agreement without the consent of any other Member to provide that (i) the Company is authorized and directed to elect the Section 83 Safe Harbor, (ii) the Company and each of its Members (including any Person to whom a Membership Interest, including an LTIP Unit, is Transferred in connection with the performance of services) will comply with all requirements of the Section 83 Safe Harbor with respect to all Membership Interests Transferred in connection with the performance of services while such election remains in effect and (iii) the Company and each of its Members will take all actions necessary, including providing the Company with any required information, to permit the Company to comply with the requirements set forth or referred to in the applicable Regulations for such election to be effective until such time (if any) as the Managing Member determines, in its sole discretion, that the Company should terminate such election. The Managing Member is further authorized to amend this Agreement to modify Article 6 to the extent the Managing Member determines in its discretion that such modification is necessary or desirable as a result of the issuance of any applicable law, Regulations, notice or ruling relating to the tax treatment of the transfer of a Membership Interests in connection with the performance of services. Notwithstanding anything to the contrary in this Agreement, each Member expressly confirms that it will be legally bound by any such amendment.

ARTICLE 17
CLASS L PREFERRED UNITS

Section 17.1 *Designation and number*. A series of Membership Units in the Company designated as the "5.125% Class L Cumulative Redeemable Preferred Units" (the "Class L Preferred Units") is hereby established, with the rights, priorities and preferences set forth herein. The number of Class L Preferred Units shall be 8,945.

Section 17.2 *Distributions*.

(a) *Payment of Distributions*. Subject to the rights of Holders of Parity Preferred Units as to the payment of distributions, pursuant to Section 5.1, the Managing Member, as holder of the Class L Preferred Units, will be entitled to receive, when, as and if declared by the Company acting through the Managing Member, out of Available Cash, cumulative preferential cash distributions in an amount equal to the Class L Priority Return. Such distributions shall be cumulative, shall accrue from and including January 15, 2023 and will be payable (i) quarterly in arrears on January 15, April 15, July 15 and October 15 of each year, commencing on April 15, 2023, and, (ii), in the event of a redemption of Class L Preferred Units, on the redemption date (each a "Class L Preferred Unit Distribution Payment Date"). If any date on which distributions are to be made on the Class L Preferred Units is not a Business Day, then payment of the distribution to be made on such date will be made on the next succeeding day that is a Business Day.

(b) *Distributions Cumulative*. Notwithstanding anything to the contrary in this Agreement, distributions on the Class L Preferred Units will accrue whether or not the Company has earnings, whether or not there are funds legally available for the payment of the distributions and whether or not the distributions are authorized or declared. Accrued but unpaid distributions on the Class L Preferred Units will not bear interest.

(c) *Priority of Distributions*.

(i) Except as provided in Section 17.2(c)(ii), unless full cumulative distributions on the Class L Preferred Unit have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past distribution periods, no distributions (other than in the form of Common Units or other Junior Units) shall be declared or paid or set apart for payment and no other distribution shall be declared or made upon any Junior Units or Parity Preferred Units nor shall any Junior Units or Parity Preferred Units be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such Junior Units or Parity Preferred Units) by the Company (except by conversion into or exchange for Junior Units).

(ii) If any shares of Class L Preferred Units are outstanding, no full distributions shall be declared or paid or set apart for payment on any Parity Preferred Units or Junior Units for any period unless full cumulative distributions have been or contemporaneously are declared and paid (contemporaneously with the respective dates that the distributions on the Parity Preferred Units or Junior Units are so declared and so paid) or declared and a sum sufficient for the payment thereof set apart for such payment on the Class L Preferred Units for all past distribution periods. When distributions are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the shares of the Class L Preferred Units and any Parity Preferred Units, all distributions declared upon the shares of the Class L Preferred Units and any such Parity Preferred Units shall be declared pro rata so that the amount of distributions declared per unit on the Class L Preferred Units and all other such Parity Preferred Units shall in all cases bear to each other the same ratio that accrued and unpaid distributions per unit on the units of the Class L Preferred Units and all other such Parity Preferred Units bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any distribution payment or payments on the Class L Preferred Units which may be in arrears.

(d) *No Further Rights.* The Managing Member, as holder of the Class L Preferred Units, shall not be entitled to any distributions, whether payable in cash, other property or otherwise, in excess of the full cumulative distributions described herein. Any distribution payment made on the Class L Preferred Units shall first be credited against the earliest accrued but unpaid distribution due with respect to such Class L Preferred Units which remains payable. Accrued but unpaid distributions on the Class L Preferred Units will accumulate as of the Class L Preferred Unit Distribution Payment Date on which they first become payable.

Section 17.3 *Liquidation Proceeds*.

(a) *Distributions*. Upon any voluntary or involuntary liquidation, dissolution or winding-up of the Company, distributions on the Class L Preferred Units shall be made in accordance with Article 13.

(b) Notice. Written notice of any such voluntary or involuntary liquidation, dissolution or winding-up of the Company, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by the Managing Member pursuant to Section 13.5.

(c) No Further Rights. After payment of the full amount of the liquidating distributions to which it is entitled, the Managing Member, as holder of the Class L Preferred Units, will have no right or claim to any of the remaining assets of the Company.

(d) Consolidation, Merger or Certain Other Transactions. The voluntary sale, conveyance, lease, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property or assets of the Company to, or the consolidation or merger or other business combination of the Company with or into, any corporation, trust or other entity (or of any corporation, trust or other entity with or into the Company) shall not be deemed to constitute a liquidation, dissolution or winding-up of the Company and shall not be entitled to any other distribution in the event of liquidation, dissolution or winding up of the affairs of the Company.

Section 17.4 *Ranking*. The Class L Preferred Units shall, with respect to distribution rights and rights upon voluntary or involuntary liquidation, winding-up or dissolution of the Company, rank (i) senior to the Common Units and to all other Membership Units the terms of which provide that such Membership Units shall rank junior to the Class L Preferred Units; (ii) on a parity with all Parity Preferred Units, including the Class M Preferred Units; and (iii) junior to all Membership Units the terms of which provide that such Membership Units shall rank senior to the Class L Preferred Units.

Section 17.5 *Voting Rights*. The Managing Member shall not have any voting or consent rights in respect of its membership interest represented by the Class L Preferred Units.

Section 17.6 *Transfer Restrictions*. The Class L Preferred Units shall not be transferable except in accordance with Article 11.

Section 17.7 *No Sinking Fund*. No sinking fund shall be established for the retirement or redemption of Class L Preferred Units.

ARTICLE 18
CLASS M PREFERRED UNITS

Section 18.1 *Designation and number*. A series of Membership Units in the Company designated as the "5.25% Class M Cumulative Redeemable Preferred Units" (the "Class M Preferred Units") is hereby established, with the rights, priorities and preferences set forth herein. The number of Class M Preferred Units shall be 10,489.

Section 18.2 *Distributions*.

(a) *Payment of Distributions*. Subject to the rights of Holders of Parity Preferred Units as to the payment of distributions, pursuant to Section 5.1, the Managing Member, as holder of the Class M Preferred Units, will be entitled to receive, when, as and if declared by the Company acting through the Managing Member, out of Available Cash, cumulative preferential cash distributions in an amount equal to the Class M Priority Return. Such distributions shall be cumulative, shall accrue from and including January 15, 2023 and will be payable (i) quarterly in arrears on January 15, April 15, July 15 and October 15 of each year, commencing on April 15, 2023, and, (ii), in the event of a redemption of Class M Preferred Units, on the redemption date (each a "Class M Preferred Unit Distribution Payment Date"). If any date on which distributions are to be made on the Class M Preferred Units is not a Business Day, then payment of the distribution to be made on such date will be made on the next succeeding day that is a Business Day.

(b) *Distributions Cumulative*. Notwithstanding anything to the contrary in this Agreement, distributions on the Class M Preferred Units will accrue whether or not the Company has earnings, whether or not there are funds legally available for the payment of the distributions and whether or not the distributions are authorized or declared. Accrued but unpaid distributions on the Class M Preferred Units will not bear interest.

(c) *Priority of Distributions*.

(i) Except as provided in Section 18.2(c)(ii), unless full cumulative distributions on the Class M Preferred Unit have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past distribution periods, no distributions (other than in the form of Common Units or other Junior Units) shall be declared or paid or set apart for payment and no other distribution shall be declared or made upon any Junior Units or Parity Preferred Units nor shall any Junior Units or Parity Preferred Units be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any shares of any such Junior Units or Parity Preferred Units) by the Company (except by conversion into or exchange for Junior Units).

(ii) If any shares of Class M Preferred Units are outstanding, no full distributions shall be declared or paid or set apart for payment on any Parity Preferred Units or Junior Units for any period unless full cumulative distributions have been or contemporaneously are declared and paid (contemporaneously with the respective dates that the distributions on the Parity Preferred Units or Junior Units are so declared and so paid) or declared and a sum sufficient for the payment thereof set apart for such payment on the Class M Preferred Units for all past distribution periods. When distributions are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the shares of the Class M Preferred Units and any Parity Preferred Units, all distributions declared upon the shares of the Class M Preferred Units and any such Parity Preferred Units shall be declared pro rata so that the amount of distributions declared per unit on the Class M Preferred Units and all other such Parity Preferred Units shall in all cases bear to each other the same ratio that accrued and unpaid distributions per unit on the units of the Class M Preferred Units and all other such Parity Preferred Units bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any distribution payment or payments on the Class M Preferred Units which may be in arrears.

(d) *No Further Rights.* The Managing Member, as holder of the Class M Preferred Units, shall not be entitled to any distributions, whether payable in cash, other property or otherwise, in excess of the full cumulative distributions described herein. Any distribution payment made on the Class M Preferred Units shall first be credited against the earliest accrued but unpaid distribution due with respect to such Class M Preferred Units which remains payable. Accrued but unpaid distributions on the Class M Preferred Units will accumulate as of the Class M Preferred Unit Distribution Payment Date on which they first become payable.

Section 18.3 *Liquidation Proceeds*.

(a) *Distributions*. Upon any voluntary or involuntary liquidation, dissolution or winding-up of the Company, distributions on the Class M Preferred Units shall be made in accordance with Article 13.

(b) Notice. Written notice of any such voluntary or involuntary liquidation, dissolution or winding-up of the Company, stating the payment date or dates when, and the place or places where, the amounts distributable in such circumstances shall be payable, shall be given by the Managing Member pursuant to Section 13.5.

(c) No Further Rights. After payment of the full amount of the liquidating distributions to which it is entitled, the Managing Member, as holder of the Class M Preferred Units, will have no right or claim to any of the remaining assets of the Company.

(d) Consolidation, Merger or Certain Other Transactions. The voluntary sale, conveyance, lease, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property or assets of the Company to, or the consolidation or merger or other business combination of the Company with or into, any corporation, trust or other entity (or of any corporation, trust or other entity with or into the Company) shall not be deemed to constitute a liquidation, dissolution or winding-up of the Company and shall not be entitled to any other distribution in the event of liquidation, dissolution or winding up of the affairs of the Company.

Section 18.4 *Ranking*. The Class M Preferred Units shall, with respect to distribution rights and rights upon voluntary or involuntary liquidation, winding-up or dissolution of the Company, rank (i) senior to the Common Units and to all other Membership Units the terms of which provide that such Membership Units shall rank junior to the Class M Preferred Units; (ii) on a parity with all Parity Preferred Units, including the Class L Preferred Units; and (iii) junior to all Membership Units the terms of which provide that such Membership Units shall rank senior to the Class M Preferred Units.

Section 18.5 *Voting Rights*. The Managing Member shall not have any voting or consent rights in respect of its membership interest represented by the Class M Preferred Units.

Section 18.6 *Transfer Restrictions*. The Class M Preferred Units shall not be transferable except in accordance with Article 11.

Section 18.7 *No Sinking Fund*. No sinking fund shall be established for the retirement or redemption of Class M Preferred Units.

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.

MANAGING MEMBER:

KIMCO REALTY CORPORATION
a Maryland corporation

By: /s/ Glenn G. Cohen
Name: Glenn G. Cohen
Its: Executive Vice President, Chief Financial Officer and Treasurer

EXHIBIT A

EXAMPLES REGARDING ADJUSTMENT FACTOR

For purposes of the following examples, it is assumed that (a) the Adjustment Factor in effect on is 1.0 and (b) on (the "*Company Record Date*" for purposes of these examples), prior to the events described in the examples, there are 100 REIT Shares issued and outstanding.

Example 1

On the Company Record Date, the Managing Member declares a dividend on its outstanding REIT Shares in REIT Shares. The amount of the dividend is one REIT Share paid in respect of each REIT Share owned. Pursuant to Paragraph (a) of the definition of "Adjustment Factor," the Adjustment Factor shall be adjusted on the Company Record Date, effective immediately after the stock dividend is declared, as follows:

1.0 * 200/100 = 2.0

Accordingly, the Adjustment Factor after the stock dividend is declared is 2.0.

Example 2

On the Company Record Date, the Managing Member distributes options to purchase REIT Shares to all holders of its REIT Shares. The amount of the distribution is one option to acquire one REIT Share in respect of each REIT Share owned. The strike price is $4.00 a share. The Value of a REIT Share on the Company Record Date is $5.00 per share. Pursuant to Paragraph (b) of the definition of "Adjustment Factor," the Adjustment Factor shall be adjusted on the Company Record Date, effective immediately after the options are distributed, as follows:

1.0 * (100 + 100)/(100 + [100 * $4.00/$5.00]) = 1.1111

Accordingly, the Adjustment Factor after the options are distributed is 1.1111. If the options expire or become no longer exercisable, then the retroactive adjustment specified in Paragraph (b) of the definition of "Adjustment Factor" shall apply.

Example 3

On the Company Record Date, the Managing Member distributes assets to all holders of its REIT Shares. The amount of the distribution is one asset with a fair market value (as determined by the Managing Member) of $1.00 in respect of each REIT Share owned. It is also assumed that the assets do not relate to assets received by the Managing Member pursuant to a pro rata distribution by the Company. The Value of a REIT Share on the Company Record Date is $5.00 a share. Pursuant to Paragraph (c) of the definition of "Adjustment Factor," the Adjustment Factor shall be adjusted on the Company Record Date, effective immediately after the assets are distributed, as follows:

1.0 * $5.00/($5.00 - $1.00) = 1.25

Accordingly, the Adjustment Factor after the assets are distributed is 1.25.

EXHIBIT B

NOTICE OF REDEMPTION

To: [●]

The undersigned Member or Assignee hereby irrevocably tenders for Redemption Common Units in KIMCO REALTY OP, LLC in accordance with the terms of the Limited Liability Company Agreement of KIMCO REALTY OP, LLC, dated as of January 3, 2023 (the "*Agreement*"), and the Redemption rights referred to therein. The undersigned Member or Assignee:

(a) undertakes (i) to surrender such Common Units and any certificate therefor at the closing of the Redemption and (ii) to furnish to the Managing Member, prior to the Specified Redemption Date, the documentation, instruments and information required under Section 15.1(a) and Section 15.1(g) of the Agreement;

(b) directs that the certified check representing the Cash Amount, or the REIT Shares Amount, as applicable, deliverable upon the closing of such Redemption be delivered to the address specified below;

(c) represents, warrants, certifies and agrees that:

(i) the undersigned Member or Assignee is a Qualifying Party,

(ii) the undersigned Member or Assignee has, and at the closing of the Redemption will have, good, marketable and unencumbered title to such Common Units, free and clear of the rights or interests of any other person or entity,

(iii) the undersigned Member or Assignee has, and at the closing of the Redemption will have, the full right, power and authority to tender and surrender such Common Units as *provided* herein, and

(iv) the undersigned Member or Assignee has obtained the consent or approval of all persons and entities, if any, having the right to consent to or approve such tender and surrender; and

(d) acknowledges that the undersigned Member or Assignee will continue to own such Common Units until and unless either (i) such Common Units are acquired by the Managing Member pursuant to Section 15.1(b) of the Agreement or (ii) such redemption transaction closes.

All capitalized terms used herein and not otherwise defined shall have the same meaning ascribed to them respectively in the Agreement.

Dated:

Name of Member or Assignee:

(Signature of Member or Assignee)

(Street Address)

(City) (State) (Zip Code)
Signature Medallion Guaranteed by:

Issue Check Payable to:

Please insert social security or identifying number:

EXHIBIT C

NOTICE OF ELECTION BY MEMBER TO CONVERT LTIP UNITS INTO COMMON UNITS

The undersigned holder of LTIP Units hereby irrevocably (i) elects to convert the number of LTIP Units in KIMCO REALTY OP, LLC (the "*Company*") set forth below into Common Units in accordance with the terms of the Limited Liability Company Agreement of the Company; and (ii) directs that any cash in lieu of Common Units that may be deliverable upon such conversion to be deliverable upon such conversion be delivered to the address specified below. The undersigned hereby represents, warrants, and certifies that the undersigned (a) has title to such LTIP Units, free and clear of the rights or interests of any other person or entity other than the Company; (b) has the full right, power, and authority to cause the conversion of such LTIP Units as *provided* herein; and (c) has obtained the consent or approval of all persons or entities, if any, having the right to consent or approve such conversion.

Name of LTIP Unit Holder:

Please Print Name as Registered with the Company

Number of LTIP Units to be Converted:

Date of this Notice:

(Signature of LTIP Unit Holder)

(Street Address)

(City) (State) (Zip Code)

Signature Medallion Guaranteed by:

Issue Check Payable to:

Please insert social security or identifying number:

EXHIBIT D

NOTICE OF ELECTION BY COMPANY TO FORCE CONVERSION OF LTIP UNITS INTO COMMON UNITS

KIMCO REALTY OP, LLC (the "*Company*") hereby irrevocably elects to cause the number of LTIP Units held by the LTIP Unit Holder set forth below to be converted into Common Units in accordance with the terms of the Limited Liability Company Agreement of the Company.

Name of LTIP Unit Holder:

Please Print Name as Registered with the Company

Number of LTIP Units to be Converted:

Date of this Notice:

Exhibit 4.1

EXECUTION VERSION

EIGHTH SUPPLEMENTAL INDENTURE

dated as of January 3, 2023

between

KIMCO REALTY OP, LLC, as Issuer

and

KIMCO REALTY CORPORATION, as Guarantor

and

THE BANK OF NEW YORK MELLON, as Trustee

SENIOR DEBT SECURITIES
of
KIMCO REALTY OP, LLC

THIS EIGHTH SUPPLEMENTAL INDENTURE is entered into as of January 3, 2023 (the "Eighth Supplemental Indenture"), by and between Kimco Realty OP, LLC, a Delaware limited liability company (the "Company"), Kimco Realty Corporation, a Maryland corporation (the "Guarantor"), and The Bank of New York Mellon (as successor to IBJ Schroder Bank & Trust Company), a banking corporation organized under the laws of the State of New York, as trustee (the "Trustee").

WHEREAS, pursuant to that certain Agreement and Plan of Merger, dated as of December 15, 2022, by and among the Company, then known as Kimco Realty Corporation, the Guarantor, then known as New KRC Corp., a Maryland corporation, which was a wholly-owned subsidiary of the Company prior to the Merger (as defined below), and KRC Merger Sub, Corp., a Maryland corporation ("Merger Sub"), which was a wholly-owned subsidiary of the Guarantor prior to the Merger, Merger Sub merged with and into the Company, with the Company continuing as the surviving entity (the "Merger");

WHEREAS, in connection with the Merger, the Guarantor changed its name to "Kimco Realty Corporation," and, following the Merger, the Company converted to a Delaware limited liability company and changed its name to Kimco Realty OP, LLC;

WHEREAS, in connection with the Merger, the Company desires to enter into this Eight Supplemental Indenture pursuant to Sections 901(2) and 901(9) of the Original Indenture (as defined below), which provide, among other things, that, without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental to the Indenture, in form satisfactory to the Trustee, to (i) add to the covenants of the Company for the benefit of the Holders of all or any series of Securities, or (ii) cure any ambiguity, correct or supplement any provision in the Indenture which may be defective or inconsistent with any other provision in the Indenture, or make any other provisions with respect to matters or questions arising under the Indenture which shall not be inconsistent with the provisions of the Indenture, provided that, in the case of clause (ii), such provisions shall not adversely affect the interests of the Holders of Securities of any series or any related coupons in any material respect;

WHEREAS, the Company desires to enter into this Eighth Supplemental Indenture pursuant to Sections 901(2) and 901(9) of the Original Indenture to (i) amend the Indenture to provide a full and unconditional guarantee of the obligations of the Company by the Guarantor in respect of (x) each series of the Outstanding Securities (as defined below) and (y) at the election of the Company as set out in Article Four of the Original Indenture, as amended and supplemented by this Eighth Supplemental Indenture, for the benefit of Holders of each series of Securities created on or after the date hereof, in each case in accordance with Section 901(2) of the Original Indenture, and (ii) make certain other changes to the Indenture consistent with the foregoing provisions in accordance with Section 901(9) of the Original Indenture;

WHEREAS, prior to the date hereof, the following series of senior debt securities issued by the Company under the Indenture remain outstanding: 2.70% Notes due 2024, 3.30% Notes due 2025, 2.80% Notes due 2026, 3.80% Notes due 2027, 1.90% Notes due 2028, 2.70% Notes due 2030, 2.25% Notes due 2031, 3.20% Notes due 2032, 4.600% Notes due 2033, 4.25% Notes due 2045, 4.125% Notes due 2046, 4.45% Notes due 2047, 3.70% Notes due 2049 (collectively, the "Outstanding Securities");

WHEREAS, Kimco Realty Corporation, a Delaware corporation and predecessor to the Company (the "Delaware Company"), and the Trustee have entered into the Indenture dated as of September 1, 1993 ("Original Indenture"), relating to the Delaware Company's senior debt securities;

WHEREAS, the Company and the Trustee entered into the First Supplemental Indenture dated as of August 4, 1994 (the "First Supplemental Indenture"), pursuant to which the Company assumed all obligations of the Delaware Company under the Original Indenture pursuant to Section 801 of the Original Indenture;

WHEREAS, the Company and the Trustee entered into the Second Supplemental Indenture dated as of April 7, 1995 (the "Second Supplemental Indenture"), pursuant to which certain provisions of the Indenture were amended and certain additional provisions to the Indenture were added for the benefit of Holders of all series of Securities created on or after April 7, 1995 in accordance with Section 901 of the Indenture;

WHEREAS, the Company and the Trustee entered into the Third Supplemental Indenture dated as of June 2, 2006 (the "Third Supplemental Indenture"), pursuant to which certain provisions of the Indenture were amended and certain additional provisions to the Indenture were added for the benefit of Holders of all series of Securities created on or after June 2, 2006 in accordance with Section 901 of the Indenture;

WHEREAS, the Company and the Trustee entered into the Fourth Supplemental Indenture dated as of April 26, 2007 (the "Fourth Supplemental Indenture"), pursuant to which certain provisions of the Indenture were amended and certain additional provisions to the Indenture were added for the benefit of Holders of all series of Securities created on or after April 26, 2007 in accordance with Section 901 of the Indenture;

WHEREAS, the Company and the Trustee entered into the Fifth Supplemental Indenture dated as of September 24, 2009 (the "Fifth Supplemental Indenture"), pursuant to which certain provisions of the Indenture were amended and certain additional provisions to the Indenture were added for the benefit of Holders of all series of Securities created on or after September 24, 2009 in accordance with Section 901 of the Indenture;

WHEREAS, the Company and the Trustee entered into the Sixth Supplemental Indenture dated as of May 23, 2013 (the "Sixth Supplemental Indenture"), pursuant to which certain provisions of the Indenture were amended and certain additional provisions to the Indenture were added for the benefit of Holders of all series of Securities created on or after May 23, 2013 in accordance with Section 901 of the Indenture;

WHEREAS, the Company and the Trustee entered into the Seventh Supplemental Indenture dated as of April 24, 2014 (the "Seventh Supplemental Indenture" and, together with the Original Indenture, the First Supplemental Indenture, the Second Supplemental Indenture, the Third Supplemental Indenture, the Fourth Supplemental Indenture, the Fifth Supplemental Indenture and the Sixth Supplemental Indenture, the "Indenture"), pursuant to which certain provisions of the Indenture were amended and certain additional provisions to the Indenture were added for the benefit of Holders of all series of Securities created on or after April 24, 2014 in accordance with Section 901 of the Indenture; and

WHEREAS, the Company and the Trustee are authorized to enter into this Eighth Supplemental Indenture.

NOW, THEREFORE, the Company and the Trustee agree as follows:

Section 1. Relation to Indenture. This Eighth Supplemental Indenture amends and supplements the Indenture and shall be part and subject to all the terms thereof. Except as amended and supplemented hereby, the Indenture and Securities issued thereunder shall continue in full force and effect.

Section 2. Definitions. Each term used herein which is defined in the Indenture has the meaning assigned to such term in the Indenture unless otherwise specifically defined herein, in which case the definition set forth herein shall govern.

Section 3. Amendment. The Original Indenture is hereby amended and restated as set forth on Exhibit A attached hereto.

Section 4. Guarantee. The payment of principal, interest and certain other amounts on each series of the Outstanding Securities is hereby fully and unconditionally guaranteed by the Guarantor on a senior unsecured basis, as set out in Article Four of the Original Indenture, as amended and supplemented by this Eighth Supplemental Indenture.

Section 5. Counterparts. This Eighth Supplemental Indenture may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the same counterpart.

Section 6. Trustee's Acceptance. The Trustee hereby accepts this Eighth Supplemental Indenture and agrees to perform the same under the terms and conditions set forth in the Indenture.

Section 7. Reference to the Effect on the Indenture.

(a) On and after the effective date of this Eighth Supplemental Indenture, each reference in the Indenture to "this Indenture," "hereunder," "hereof," or "herein" shall mean and be a reference to the Indenture as supplemented by this Eighth Supplemental Indenture unless the context otherwise requires.

(b) Except as specifically modified or amended by this Eighth Supplemental Indenture, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. Upon the execution and delivery of this Eighth Supplemental Indenture by the Company and the Trustee, this Eighth Supplemental Indenture shall form a part of the Indenture for all purposes. Any and all references, whether within the Indenture or in any notice, certificate or other instrument or document, shall be deemed to include a reference to this Eighth Supplemental Indenture (whether or not made), unless the context shall otherwise require.

Section 8. Governing Law. THIS EIGHTH SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF).

Section 9. Trust Indenture Act Controls. If any provision of this Eighth Supplemental Indenture limits, qualifies or conflicts with another provision of this Eighth Supplemental Indenture or the Indenture that is required to be included by the Trust Indenture Act of 1939, as amended (the "Act"), as in force at the date this Eighth Supplemental Indenture is executed, the provision required by the Act shall control.

Section 10. Benefits of Eighth Supplemental Indenture or the Securities. Nothing in this Eighth Supplemental Indenture or the Securities, express or implied, shall give to any Person, other than the parties hereto and thereto and their successors hereunder and thereunder and the Holders of the Securities, any benefit of any legal or equitable right, remedy or claim under the Indenture, this Eighth Supplemental Indenture or the Securities.

Section 11. Successors. All agreements of each of the Company and the Guarantor in this Eighth Supplemental Indenture shall bind its successors. All agreements of the Trustee in this Eighth Supplemental Indenture shall bind its successors.

Section 12. Concerning the Trustee. The Trustee shall not be responsible for any recital herein (other than the eleventh recital as it applies to the Trustee) as such recitals shall be taken as statements of the Company, or the validity of the execution by the Company of this Eighth Supplemental Indenture. The Trustee makes no representations as to the validity or sufficiency of this Eighth Supplemental Indenture.

Section 13. Certain Duties and Responsibilities of the Trustee. In entering into this Eighth Supplemental Indenture, the Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the liability or affording protection to the Trustee, including indemnification, whether or not elsewhere herein so provided.

Section 14. Titles. Section titles are for descriptive purposes only and shall not control or alter the meaning of this Eighth Supplemental Indenture as set forth in the text.

Section 15. Severability. In case any one or more of the provisions in this Eighth Supplemental Indenture shall be held invalid, illegal or unenforceable, in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions shall not in any way be affected or impaired thereby, it being intended that all of the provisions hereof shall be enforceable to the full extent permitted by law.

IN WITNESS WHEREOF, Kimco Realty OP, LLC has caused this Eighth Supplemental Indenture to be duly executed by its Chief Financial Officer hereunto duly authorized, Kimco Realty Corporation has caused this Eighth Supplemental Indenture to be duly executed by its Chief Financial Officer hereunto duly authorized, and The Bank of New York Mellon has caused this Eighth Supplemental Indenture to be duly executed by one of its Vice Presidents thereunto duly authorized.

KIMCO REALTY OP, LLC, as Issuer
a Delaware limited liability company

By: /s/ Glenn G. Cohen
Name: Glenn G. Cohen
Title: Chief Financial Officer

KIMCO REALTY CORPORATION, as Guarantor
a Maryland corporation

By: /s/ Glenn G. Cohen
Name: Glenn G. Cohen
Title: Chief Financial Officer

THE BANK OF NEW YORK MELLON, solely in its capacity as Trustee, and not in its individual capacity

By: /s/ Stacey B. Poindexter
Name: Stacey B. Poindexter
Title: Vice President

[Signature Page to Eighth Supplemental Indenture]

Exhibit A

Amended and Restated Original Indenture

[Attached.]

KIMCO REALTY OP, LLC,
as Issuer,

KIMCO REALTY CORPORATION,
as Guarantor,

and

THE BANK OF NEW YORK MELLON,
as Trustee

Amended and Restated Indenture

Dated as of January 3, 2023

Senior Debt Securities

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TESTIMONIUM
SIGNATURES
ACKNOWLEDGMENTS
EXHIBIT A – FORMS OF CERTIFICATION

KIMCO REALTY OP, LLC

Reconciliation and tie between Trust Indenture Act of 1939
(the "1939 Act") and Indenture, dated as of January 3, 2023

Trust Indenture Act Section	Indenture Section
§ 310 (a) (1)	708
(a) (2)	708
(a) (3)	Not Applicable
(a) (4)	Not Applicable
(a) (5)	708
(b)	708, 709
§ 311 (a)	Not Applicable
(b)	Not Applicable
(c)	Not Applicable
§ 312 (a)	801, 804
(b)	801
(c)	801
§ 313 (a)	802
(b)	802
(c)	802
(d)	Not Applicable
§ 314 (a)	803, 1111
(b)	Not Applicable
(c)	102
(d)	Not Applicable
(e)	102
§ 315 (a)	703
(b)	702, 703
(c)	703
(d)	703
(e)	615
§ 316 (a) (last sentence)	101 ("Outstanding")
(a) (1) (A)	602, 612
(a) (1) (B)	613
(a) (2)	Not Applicable
(b)	608
(c)	104
§ 317 (a) (1)	603
(a) (2)	604
(b)	1103
§ 318	111

NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

Attention should also be directed to Section 318(c) of the 1939 Act, which provides that the provisions of Sections 310 to and including 317 of the 1939 Act are a part of and govern every qualified indenture, whether or not physically contained therein.

This AMENDED AND RESTATED INDENTURE, dated as of January 3, 2023, between KIMCO REALTY OP, LLC, a Delaware limited liability company (hereinafter called the "Issuer"), having its principal office at 500 N. Broadway, Suite 201, Jericho, New York 11753, KIMCO REALTY CORPORATION, a Maryland corporation (hereinafter called the "Guarantor"), having its principal office at 500 N. Broadway, Suite 201, Jericho, New York 11753, and THE BANK OF NEW YORK MELLON, a banking corporation organized under the laws of the State of New York, as Trustee hereunder (hereinafter called the "Trustee"), having its Corporate Trust Office at 500 Ross Street, 12th Floor, Pittsburgh, Pennsylvania 15262, amends and restates in its entirety the Indenture, dated as of September 1, 1993, between the Issuer, formerly known as Kimco Realty Corporation, and IBJ Schroder Bank & Trust Company (as predecessor in interest to the Trustee), as trustee (the "Original Indenture").

RECITALS

The Issuer deems it necessary to issue from time to time for its lawful purposes senior debt securities (hereinafter called the "Securities") evidencing its unsecured and unsubordinated indebtedness, and has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of the Securities, unlimited as to principal amount, to bear interest at the rates or formulas, to mature at such times and to have such other provisions as shall be fixed as hereinafter provided.

The Guarantor deems it necessary to provide its Guarantee (as defined herein) of the Issuer's obligations under some or all of the Securities as contemplated herein.

This Indenture has been amended and restated in its entirety pursuant to the Eighth Supplemental Indenture to the Original Indenture, dated January 3, 2023, among the Issuer, the Guarantor and the Trustee, in accordance with Sections 901(2) and 901(9) of the Original Indenture, in order to (i) amend the Original Indenture to provide a full and unconditional guarantee of the obligations of the Issuer by the Guarantor in respect of (x) each series of the Outstanding Securities (as defined herein) and (y) at the election of the Issuer, as set out in Article Four of this Indenture, for the benefit of Holders of each series of Securities created on or after the date hereof, in each case in accordance with Section 901(2) of the Original Indenture, and (ii) make certain other changes to the Indenture consistent with the foregoing provisions in accordance with Section 901(9) of the Original Indenture.

This Indenture is subject to the provisions of the Trust Indenture Act of 1939, as amended, that are deemed to be incorporated into this Indenture and shall, to the extent applicable, be governed by such provisions.

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

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 101. Definitions. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

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

(2) all other terms used herein which are defined in the TIA, either directly or by reference therein, have the meanings assigned to them therein, and the terms "cash transaction" and "self-liquidating paper", as used in TIA Section 311, shall have the meanings assigned to them in the rules of the Commission adopted under the TIA;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; and

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

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

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

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

"Authenticating Agent" means any authenticating agent appointed by the Trustee pursuant to Section 711.

"Authorized Newspaper" means a newspaper, printed in the English language or in an official language of the country of publication, customarily published on each Business Day, whether or not published on Saturdays, Sundays or holidays, and of general circulation in each place in connection with which the term is used or in the financial community of each such place. Whenever successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different Authorized Newspapers in the same city meeting the foregoing requirements and in each case on any Business Day.

"Bankruptcy Law" has the meaning specified in Section 601.

"Bearer Security" means any Security established pursuant to Section 201 which is payable to bearer.

"Board of Directors" means, in the case of the Issuer, the managing member or members of the Issuer or any controlling committee of managing members thereof duly authorized to act hereunder or, in the case of the Guarantor, the board of directors of the Guarantor, the executive committee or any committee of thereof duly authorized to act hereunder.

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

"Business Day", when used with respect to any Place of Payment or any other particular location referred to in this Indenture or in the Securities, means, unless otherwise specified with respect to any Securities pursuant to Section 301, any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in that Place of Payment or particular location are authorized or required by law, regulation or executive order to close.

"Clearstream" means Clearstream Banking, *société anonyme*, or its successor.

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

"Common Stock" means, with respect to any Person, capital stock issued by such Person other than Preferred Stock.

"Consolidated Income Available for Debt Service" for any period means Consolidated Net Income of the Issuer and its Subsidiaries plus amounts which have been deducted for (a) interest on Debt of the Issuer and its Subsidiaries, (b) provision for taxes of the Issuer and its Subsidiaries based on income, (c) amortization of debt discount, (d) depreciation and amortization and (e) the effect of any noncash charge resulting from a change in accounting principles in determining Consolidated Net Income for such period.

"Consolidated Net Income" for any period means the amount of consolidated net income (or loss) of the Issuer and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP.

"Conversion Event" means the cessation of use of (i) a Foreign Currency (other than the ECU) both by the government of the country which issued such currency and for the settlement of transactions by a central bank or other public institutions of or within the international banking community, (ii) the ECU or (iii) any currency unit (or composite currency) other than the ECU for the purposes for which it was established.

"Corporate Trust Office" means the office of the Trustee at which, at any particular time, its corporate trust business shall be principally administered, which office at the date hereof is located at 500 Ross Street, 12th Floor, Pittsburgh, Pennsylvania 15262.

"corporation" includes corporations, associations, companies and business trusts.

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

"Custodian" has the meaning specified in Section 601.

"Debt" of the Issuer or any of its Subsidiaries means any indebtedness of the Issuer or any of its Subsidiaries, whether or not contingent, in respect of (i) borrowed money or evidenced by bonds, notes, debentures or similar instruments, (ii) indebtedness secured by any mortgage, pledge, lien, charge, encumbrance or any security interest existing on property owned by the Issuer or any of its Subsidiaries, (iii) letters of credit or amounts representing the balance deferred and unpaid of the purchase price of any property except any such balance that constitutes an accrued expense or trade payable or (iv) any lease of property by the Issuer or any of its Subsidiaries as lessee which is reflected on the Issuer's Consolidated Balance Sheet as a capitalized lease in accordance with GAAP, in the case of items of indebtedness under (i) through (iii) above to the extent that any such items (other than letters of credit) would appear as a liability on the Issuer's Consolidated Balance Sheet in accordance with GAAP, and also includes, to the extent not otherwise included, any obligation by the Issuer or any of its Subsidiaries to be liable for, or to pay, as obligor, guarantor or otherwise (other than for purposes of collection in the ordinary course of business), indebtedness of another person (other than the Issuer or any of its Subsidiaries).

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

"Dollar" or "$" means a dollar or other equivalent unit in such coin or currency of the United States of America as at the time shall be legal tender for the payment of public and private debts.

"DTC" means The Depositary Trust Company.

"ECU" means the single currency of the participating member states from time to time of the European Union described in legislation of the European Counsel for the operation of a single unified European currency (whether known as the Euro or otherwise).

"EDGAR" has the meaning specified in Section 803.

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

"Euroclear" means Euroclear Bank, S.A./N.V., or its successor as operator of the Euroclear System.

"Event of Default" has the meaning specified in Article Six.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, as any statute successor thereto, in each case as amended from time to time.

"Foreign Currency" means any currency, currency unit or composite currency, including, without limitation, the ECU issued by the government of one or more countries other than the United States of America or by any recognized confederation or association of such governments.

"Funds from Operations" for any period means the Consolidated Net Income of the Issuer and its Subsidiaries for such period without giving effect to depreciation and amortization, gains or losses from extraordinary items, gains or losses on sales of real estate, gains or losses on investments in marketable securities and any provision/benefit for income taxes for such period, plus funds from operations of unconsolidated joint ventures, all determined on a consistent basis in accordance with GAAP.

"GAAP" means generally accepted accounting principles, as in effect from time to time, as used in the United States applied on a consistent basis.

"Government Obligations" means securities which are (i) direct obligations of the United States of America or the government which issued the Foreign Currency in which the Securities of a particular series are payable, for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or such government which issued the foreign currency in which the Securities of such series are payable, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America or such other government, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on or principal of any such Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of the Government Obligation evidenced by such depository receipt.

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

"Guarantor" means Kimco Realty Corporation, a Maryland corporation, and any and all permitted successors thereto pursuant to this Indenture.

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

"Indenture" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, and shall include the terms of particular series of Securities established as contemplated by Section 301; provided, however, that, if at any time more than one Person is acting as Trustee under this instrument, "Indenture" shall mean, with respect to any one or more series of Securities for which such Person is Trustee, this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of the or those particular series of Securities for which such Person is Trustee established as contemplated by Section 301, exclusive, however, of any provisions or terms which relate solely to other series of Securities for which such Person is Trustee, regardless of when such terms or provisions were adopted, and exclusive of any provisions or terms adopted by means of one or more indentures supplemental hereto executed and delivered after such Person had become such Trustee but to which such Person, as such Trustee, was not a party.

"Indexed Security" means a Security the terms of which provide that the principal amount thereof payable at Stated Maturity may be more or less than the principal face amount thereof at original issuance.

"interest", when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, shall mean interest payable after Maturity, and, when used with respect to a Security which provides for the payment of Additional Amounts pursuant to Section 1112, includes such Additional Amounts.

"Interest Payment Date", when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

"Issuer" means the Person named as the "Issuer" in the first paragraph of this Indenture and all permitted successors pursuant to this Indenture.

"Issuer Request" and "Issuer Order" mean, respectively, a written request or order signed in the name of the Issuer by its Chairman of the Board, the President or a Vice President, and by its Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Issuer, and delivered to the Trustee.

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

"Maximum Annual Service Charge" as of any date means the maximum amount which may become payable in any period of 12 consecutive calendar months from such date for interest on, and required amortization of, Debt. The amount payable for amortization shall include the amount of any sinking fund or other analogous fund for the retirement of Debt and the amount payable on account of principal on any such Debt which matures serially other than at the final maturity date of such Debt.

"Obligors" means, collectively, the Issuer and the Guarantor, and "Obligor" means either of the Obligors, which in each case for the avoidance of doubt only relates to the Guarantor of Guarantees applicable to the particular Securities.

"Officers' Certificate" means a certificate signed by the Chairman of the Board of Directors, the President or a Vice President and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Issuer or the Guarantor, as applicable, and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for the Issuer or the Guarantor, as applicable, or who may be an employee of or other counsel for the Issuer or the Guarantor, as applicable, and who shall be satisfactory to the Trustee, and which shall be delivered to the Trustee.

"Original Indenture" has the meaning specified in the first paragraph of this Indenture.

"Original Issue Discount Security" means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 602.

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

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

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

(iii) Securities, except to the extent provided in Sections 1502 and 1503, with respect to which the Issuer has effected defeasance and/or covenant defeasance as provided in Article Fifteen;

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

(v) Securities converted into Common Stock or Preferred Stock pursuant to or in accordance with this Indenture if the terms of such Securities provide for convertibility pursuant to Section 301; and

(vi) lost, stolen or destroyed Securities, when new Securities have been duly and validly issued in substitution for them pursuant to Section 306;

provided, however, that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder or are present at a meeting of Holders for quorum purposes, and for the purpose of making the calculations required by TIA Section 313, (i) the principal amount of an Original Issue Discount Security that may be counted in making such determination or calculation and that shall be deemed to be Outstanding for such purpose shall be equal to the amount of principal thereof that would be (or shall have been declared to be) due and payable, at the time of such determination, upon a declaration of acceleration of the maturity thereof pursuant to Section 602, (ii) the principal amount of any Security denominated in a Foreign Currency that may be counted in making such determination or calculation and that shall be deemed Outstanding for such purpose shall be equal to the Dollar equivalent, determined pursuant to Section 301 as of the date such Security is originally issued by the Issuer, of the principal amount (or, in the case of an Original Issue Discount Security, the Dollar equivalent as of such date of original issuance of the amount determined as provided in clause (i) above) of such Security, (iii) the principal amount of any Indexed Security that may be counted in making such determination or calculation and that shall be deemed outstanding for such purpose shall be equal to the principal face amount of such Indexed Security at original issuance, unless otherwise provided with respect to such Security pursuant to Section 301, and (iv) Securities owned by the Issuer or any other obligor upon the Securities or any Affiliate of the Issuer or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in making such calculation or in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Issuer or any other obligor upon the Securities or any Affiliate of the Issuer or of such other obligor.

"Paying Agent" means any Person authorized by the Issuer to pay the principal of (and premium, if any) or interest on any Securities or coupons on behalf of the Issuer.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Place of Payment", when used with respect to the Securities of or within any series, means the place or places where the principal of (and premium, if any) and interest on such Securities are payable as specified as contemplated by Sections 301 and 1102.

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

"Preferred Stock" means, with respect to any Person, capital stock issued by such Person that is entitled to a preference or priority over any other capital stock issued by such Person upon any distribution of such Person's assets, whether by dividend or upon liquidation.

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

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

"Registered Security" shall mean any Security which is registered in the Security Register.

"Regular Record Date" for the interest payable on any Interest Payment Date on the Registered Securities of or within any series means the date specified for that purpose as contemplated by Section 301, whether or not a Business Day.

"Repayment Date" means, when used with respect to any Security to be repaid at the option of the Holder, the date fixed for such repayment by or pursuant to this Indenture.

"Repayment Price" means, when used with respect to any Security to be repaid at the option of the Holder, the price at which it is to be repaid by or pursuant to this Indenture.

"Responsible Officer", when used with respect to the Trustee, means any vice president, a secretary, any assistant secretary, any treasurer, any trust officer or assistant trust officer or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such officer's knowledge and familiarity with the particular subject.

"Sanctions" has the meaning specified in Section 1116.

"Security" has the meaning stated in the first recital of this Indenture and, more particularly, means any Security or Securities authenticated and delivered under this Indenture; provided, however, that, if at any time there is more than one Person acting as Trustee under this Indenture, "Securities" with respect to the Indenture as to which such Person is Trustee shall have the meaning stated in the first recital of this Indenture and shall more particularly mean Securities authenticated and delivered under this Indenture, exclusive, however, of Securities of any series as to which such Person is not Trustee.

"Securities Act" means the Securities Act of 1933, as amended, and any statute successor thereto, in each case as amended from time to time.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 305.

"Significant Subsidiary" means any Subsidiary which is a "significant subsidiary" (as defined in Article I, Rule 1-02 of Regulation S-X, promulgated under the Securities Act) of an Obligor.

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

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

"Subsidiary" means a corporation or other organization a majority of the outstanding voting securities of which is owned, directly or indirectly, by any Person or by one or more other Subsidiaries of such Person. For the purposes of this definition, "voting securities" means securities having voting power for the election of directors (or comparable members of the governing body), whether at all times or only so long as no senior class of securities has such voting power by reason of any contingency.

"Total Assets" means, as of any date, the sum of (i) the Issuer's Undepreciated Real Estate Assets and (ii) all other assets of the Issuer determined in accordance with GAAP (but excluding goodwill and amortized debt costs).

"Trust Indenture Act" or "TIA" means the Trust Indenture Act of 1939, as amended and as in force at the date as of which this Indenture was executed, except as provided in Section 1005.

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

"Unencumbered Total Asset Value" means as of any date the sum of the Issuer's Total Assets that are unencumbered by any mortgage, lien, charge, pledge or security interest that secures the payment of any obligations under any Debt; provided, however, that in determining Unencumbered Total Asset Value for purposes of Section 1114 of the Indenture, (i) all investments of the Issuer and any of its Subsidiaries in unconsolidated joint ventures shall be excluded from the Issuer's Total Assets and (ii) the Issuer's Total Assets shall include the Issuer's proportionate interest in the aggregate book value of the real estate assets held by the Issuer's and its Subsidiaries' unconsolidated joint ventures, before depreciation and amortization, that are not encumbered by any mortgage, lien, charge, pledge or security interest that secures the payment of any obligations under any of its indebtedness; for the avoidance of doubt, all other asserts of unconsolidated joint ventures shall be excluded from the Issuer's Total Assets.

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

"United States" means, unless otherwise specified with respect to any Securities pursuant to Section 301, the United States of America (including the states and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

"United States person" means, unless otherwise specified with respect to any Securities pursuant to Section 301, an individual who is a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States or an estate or trust the income of which is subject to United States federal income taxation regardless of its source.

"Yield to Maturity" means the yield to maturity, computed at the time of issuance of a Security (or, if applicable, at the most recent redetermination of interest on such Security) and as set forth in such Security in accordance with generally accepted United States bond yield computation principles.

SECTION 102. Compliance Certificates and Opinions. Upon any application or request by the Issuer to the Trustee to take any action under any provision of this Indenture, the Issuer shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (including certificates delivered pursuant to Section 1111) shall include:

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

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

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

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

SECTION 103. Form of Documents Delivered to Trustee. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion as to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

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

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

SECTION 104. Acts of Holders. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of the Outstanding Securities of all series or one or more series, as the case may be, may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agents duly appointed in writing. If Securities of a series are issuable as Bearer Securities, any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Securities of such series may, alternatively, be embodied in and evidenced by the record of Holders of Securities of such series voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Securities of such series duly called and held in accordance with the provisions of Article Sixteen, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Obligors. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments or so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Obligors and any agent of the Trustee or the Obligors, if made in the manner provided in this Section. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 1606.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other reasonable manner which the Trustee deems sufficient.

(c) The ownership of Registered Securities shall be proved by the Security Register.

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

(e) If the Issuer shall solicit from the Holders of Registered Securities any request, demand, authorization, direction, notice, consent, waiver or other Act, the Issuer may, at its option, in or pursuant to a Board Resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Issuer shall have no obligation to do so. Notwithstanding TIA Section 316(c), such record date shall be the record date specified in or pursuant to such Board Resolution, which shall be a date not earlier than the date 30 days prior to the first solicitation of Holders generally in connection therewith and not later than the date such solicitation is completed. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of Outstanding Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Securities shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than eleven months after the record date.

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

SECTION 105. Notices, etc. to Trustee, Issuer and Guarantor. Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder or by the Issuer or the Guarantor shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office, or

(2) the Issuer or the Guarantor by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first class postage prepaid, to the Issuer or the Guarantor, as applicable, addressed to it at the address of its principal office specified in the first paragraph of this Indenture or at any other address previously furnished in writing to the Trustee by the Issuer or the Guarantor.

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

SECTION 106. Notice to Holders; Waiver. Where this Indenture provides for notice of any event to Holders of Registered Securities by the Issuer or the Trustee, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, or delivered pursuant to applicable Depositary procedures to each such Holder affected by such event, at its address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders of Registered Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders of Registered Securities or the sufficiency of any notice to Holders of Bearer Securities given as provided herein. Any notice mailed to a Holder in the manner herein prescribed shall be conclusively deemed to have been received by such Holder, whether or not such Holder actually receives such notice.

If by reason of the suspension of or irregularities in regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification to Holders of Registered Securities as shall be made with the approval of the Trustee shall constitute a sufficient notification to such Holders for every purpose hereunder.

Except as otherwise expressly provided herein or otherwise specified with respect to any Securities pursuant to Section 301, where this Indenture provides for notice to Holders of Bearer Securities of any event, such notice shall be sufficiently given if published in an Authorized Newspaper in The City of New York and in such other city or cities as may be specified in such Securities on a Business Day, such publication to be not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. Any such notice shall be deemed to have been given on the date of such publication or, if published more than once, on the date of the first such publication.

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

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

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

SECTION 107. Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 108. Successors and Assigns. All covenants and agreements in this Indenture by the Issuer and the Guarantor shall bind their respective successors and assigns, whether so expressed or not.

SECTION 109. Separability Clause. In case any provision in this Indenture or in any Security or coupon shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 110. Benefits of Indenture. Nothing in this Indenture or in the Securities or coupons, express or implied, shall give to any Person, other than the parties hereto, any Security Registrar, any Paying Agent, any Authenticating Agent and their successors hereunder and the Holders any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 111. Governing Law. This Indenture and the Securities and coupons shall be governed by and construed in accordance with the law of the State of New York. This Indenture is subject to the provisions of the TIA that are required to be part of this Indenture and shall, to the extent applicable, be governed by such provisions.

SECTION 112. Legal Holidays. In any case where any Interest Payment Date, Redemption Date, Repayment Date, sinking fund payment date, Stated Maturity or Maturity of any Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or any Security or coupon other than a provision in the Securities of any series which specifically states that such provision shall apply in lieu hereof), payment of interest or any Additional Amounts or principal (and premium, if any) need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date, Redemption Date, Repayment Date or sinking fund payment date, or at the Stated Maturity or Maturity, provided that no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date, Repayment Date, sinking fund payment date, Stated Maturity or Maturity, as the case may be.

ARTICLE TWO

SECURITIES FORMS

SECTION 201. Forms of Securities. The Registered Securities, if any, of each series and the Bearer Securities, if any, of each series and related coupons and, in each case, the related Guarantees, if any, shall be in substantially the forms as shall be established in one or more indentures supplemental hereto or approved from time to time by or pursuant to a Board Resolution in accordance with Section 301, shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or any indenture supplemental hereto, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements placed thereon as the Issuer may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Securities may be listed, or to conform to usage.

Unless otherwise specified as contemplated by Section 301, Bearer Securities shall have interest coupons attached.

The definitive Securities and coupons shall be printed, lithographed or engraved or produced by any combination of these methods on a steel engraved border or steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities or coupons, as evidenced by their execution of such Securities or coupons.

SECTION 202. Form of Trustee's Certificate of Authentication. Subject to Section 711, the Trustee's certificate of authentication shall be in substantially the following form:

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

THE BANK OF NEW YORK MELLON, as Trustee

By: _____
Authorized Signatory

SECTION 203. Securities Issuable in Global Form. If Securities of or within a series are issuable in global form, as specified as contemplated by Section 301, then, notwithstanding clause (8) of Section 301 and the provisions of Section 302, any such Security shall represent such of the Outstanding Securities of such series as shall be specified therein and may provide that it shall represent the aggregate amount of Outstanding Securities of such series from time to time endorsed thereon and that the aggregate amount of Outstanding Securities of such series represented thereby may from time to time be increased or decreased to reflect exchanges. Any endorsement of a Security in global form to reflect the amount, or any increase or decrease in the amount, of Outstanding Securities represented thereby shall be made by the Trustee in such manner and upon instructions given by such Person or Persons as shall be specified therein or in the Issuer Order to be delivered to the Trustee pursuant to Section 303 or 304. Subject to the provisions of Section 303 and, if applicable, Section 304, the Trustee shall deliver and redeliver any Security in permanent global form in the manner and upon instructions given by the Person or Persons specified therein or in the applicable Issuer Order. If an Issuer Order pursuant to Section 303 or 304 has been, or simultaneously is, delivered, any instructions by the Issuer with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing but need not comply with Section 102 and need not be accompanied by an Opinion of Counsel.

The provisions of the last sentence of Section 303 shall apply to any Security represented by a Security in global form if such Security was never issued and sold by the Issuer and the Issuer delivers to the Trustee the Security in global form together with written instructions (which need not comply with Section 102 and need not be accompanied by an Opinion of Counsel) with regard to the reduction in the principal amount of Securities represented thereby, together with the written statement contemplated by the last sentence of Section 303.

Notwithstanding the provisions of Section 307, unless otherwise specified as contemplated by Section 301, payment of principal of and any premium and interest on any Security in permanent global form shall be made to the Person or Persons specified therein.

Notwithstanding the provisions of Section 308 and except as provided in the preceding paragraph, the Issuer, the Trustee and any agent of the Issuer and the Trustee shall treat as the Holder of such principal amount of Outstanding Securities represented by a permanent global Security (i) in the case of a permanent global Security in registered form, the Holder of such permanent global Security in registered form, or (ii) in the case of a permanent global Security in bearer form, Euroclear or Clearstream.

ARTICLE THREE

THE SECURITIES

SECTION 301. Amount Unlimited; Issuable in Series. The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in one or more Board Resolutions or pursuant to authority granted by one or more Board Resolutions and, subject to Section 303, set forth, or determined in the manner provided, in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series, any or all of the following, as applicable (each of which (except for the matters set forth in clauses (1), (2) and (15) below), if so provided, may be determined from time to time by the Issuer with respect to unissued Securities of the series when issued from time to time):

(1) the title of the Securities of the series (which shall distinguish the Securities of such series from all other series of Securities);

(2) any limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Section 304, 305, 306, 1006, 1207 or 1405);

(3) the date or dates, or the method by which such date or dates will be determined, on which the principal of the Securities of the series shall be payable;

(4) the rate or rates at which the Securities of the series shall bear interest, if any, or the method by which such rate or rates shall be determined, the date or dates from which such interest shall accrue or the method by which such date or dates shall be determined, the Interest Payment Dates on which such interest will be payable and the Regular Record Date, if any, for the interest payable on any Registered Security on any Interest Payment Date, or the method by which such date shall be determined, and the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months;

(5) the place or places, if any, other than or in addition to the Borough of Manhattan, The City of New York, where the principal of (and premium, if any), interest, if any, on, and Additional Amounts, if any, payable in respect of, Securities of the series shall be payable, any Registered Securities of the series may be surrendered for registration of transfer, exchange or conversion and notices or demands to or upon the Issuer in respect of the Securities of the series and this Indenture may be served;

(6) the period or periods within which, the price or prices at which, the currency or currencies, currency unit or units or composite currency or currencies in which, and other terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Issuer, if the Issuer is to have the option;

(7) the obligation, if any, of the Issuer to redeem, repay or purchase Securities of the series pursuant to any sinking fund or analogous provision or at the option of a Holder thereof, and the period or periods within which or the date or dates on which, the price or prices at which, the currency or currencies, currency unit or units or composite currency or currencies in which, and other terms and conditions upon which Securities of the series shall be redeemed, repaid or purchased, in whole or in part, pursuant to such obligation;

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

(9) if other than the Trustee, the identity of each Security Registrar and/or Paying Agent;

(10) if other than the principal amount thereof, the portion of the principal amount of Securities of the series that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 602 or, if applicable, the portion of the principal amount of Securities of the series that is convertible in accordance with the provisions of this Indenture, or the method by which such portion shall be determined;

(11) if other than Dollars, the Foreign Currency or Currencies in which payment of the principal of (and premium, if any) or interest or Additional Amounts, if any, on the Securities of the series shall be payable or in which the Securities of the series shall be denominated;

(12) whether the amount of payments of principal of (and premium, if any) or interest, if any, on the Securities of the series may be determined with reference to an index, formula or other method (which index, formula or method may be based, without limitation, on one or more currencies, currency units, composite currencies, commodities, equity indices or other indices), and the manner in which such amounts shall be determined;

(13) whether the principal of (and premium, if any) or interest or Additional Amounts, if any, on the Securities of the series are to be payable, at the election of the Issuer or a Holder thereof, in a currency or currencies, currency unit or units or composite currency or currencies other than that in which such Securities are denominated or stated to be payable, the period or periods within which, and the terms and conditions upon which, such election may be made, and the time and manner of, and identity of the exchange rate agent with responsibility for, determining the exchange rate between the currency or currencies, currency unit or units or composite currency or currencies in which such Securities are denominated or stated to be payable and the currency or currencies, currency unit or units or composite currency or currencies in which such Securities are to be so payable;

(14) provisions, if any, granting special rights to the Holders of Securities of the series upon the occurrence of such events as may be specified;

(15) any deletions from, modifications of or additions to the Events of Default or covenants of the Issuer or, if applicable, the Guarantor with respect to Securities of the series, whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth herein;

(16) whether Securities of the series are to be issuable as Registered Securities, Bearer Securities (with or without coupons) or both, any restrictions applicable to the offer, sale or delivery of Bearer Securities and the terms upon which Bearer Securities of the series may be exchanged for Registered Securities of the series and vice versa (if permitted by applicable laws and regulations), whether any Securities of the series are to be issuable initially in temporary global form and whether any Securities of the series are to be issuable in permanent global form with or without coupons and, if so, whether beneficial owners of interests in any such permanent global Security may exchange such interests for Securities of such series and of like tenor of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in Section 305, and, if Registered Securities of the series are to be issuable as a global Security, the identity of the depositary for such series;

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

(18) the Person to whom any interest on any Registered Security of the series shall be payable, if other than the Person in whose name that Security (or one or more Predecessor Securities) is registered, at the close of business on the Regular Record Date for such interest, the manner in which, or the Person to whom, any interest on any Bearer Security of the series shall be payable, if otherwise than upon presentation and surrender of the coupons appertaining thereto as they severally mature, and the extent to which, or the manner in which, any interest payable on a temporary global Security on an Interest Payment Date will be paid if other than in the manner provided in Section 304;

(19) the applicability, if any, of Sections 1502 and/or 1503 to the Securities of the series and any provisions in modification of, in addition to or in lieu of any of the provisions of Article Fifteen;

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

(21) whether and under what circumstances the Issuer will pay Additional Amounts as contemplated by Section 1112 on the Securities of the series to any Holder who is not a United States person (including any modification to the definition of such term) in respect of any tax, assessment or governmental charge and, if so, whether the Issuer will have the option to redeem such Securities rather than pay such Additional Amounts (and the terms of any such option);

(22) the obligation, if any, of the Issuer to permit the conversion of the Securities of such series into the Issuer's Common Stock or Preferred Stock, as the case may be, and the terms and conditions upon which such conversion shall be effected (including, without limitation, the initial conversion price or rate, the conversion period, any adjustment of the applicable conversion price and any requirements relative to the reservation of such shares for purposes of conversion);

(23) whether the Guarantees as contemplated by Article Four of this Indenture shall apply to the series; and

(24) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture).

All Securities of any one series and the coupons appertaining to any Bearer Securities of such series shall be substantially identical except, in the case of Registered Securities, as to denomination and except as may otherwise be provided in or pursuant to such Board Resolution (subject to Section 303) and set forth in such Officers' Certificate or in any such indenture supplemental hereto. All Securities of any one series need not be issued at the same time and, unless otherwise provided, a series may be reopened, without the consent of the Holders, for issuances of additional Securities of such series.

If any of the terms of the Securities of any series are established by action taken pursuant to one or more Board Resolutions, a copy of an appropriate record of such action(s) shall be certified by the Secretary or an Assistant Secretary of the Issuer and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the Securities of such series.

SECTION 302. Denominations. The Securities of each series shall be issuable in such denominations as shall be specified as contemplated by Section 301. With respect to Securities of any series denominated in Dollars, in the absence of any such provisions with respect to the Securities of any series, the Registered Securities of such series, other than Registered Securities issued in global form (which may be of any denomination), shall be issuable in denominations of $2,000 and integral multiple of $1,000 in excess thereof and the Bearer Securities of such series, other than Bearer Securities issued in global form (which may be of any denomination), shall be issuable in a denomination of $5,000.

SECTION 303. Execution, Authentication, Delivery and Dating. The Securities and any coupons appertaining thereto shall be executed on behalf of the Issuer by its Chairman of the Board, its President or one of its Vice Presidents. The related Guarantees, if any, shall be executed on behalf of the Guarantor by its Chairman of the Board, its President or one of its Vice Presidents. The signature of any of these officers on the Securities, coupons or Guarantee, as applicable, may be manual, facsimile or electronic signatures of the present or any future such authorized officer and may be imprinted or otherwise reproduced on the Securities or Guarantees, as applicable.

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

At any time and from time to time after the execution and delivery of this Indenture, the Issuer may deliver Securities of any series, together with any coupon or Guarantees appertaining thereto, executed by the Issuer to the Trustee for authentication, together with an Issuer Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Issuer Order shall authenticate and deliver such Securities; provided, however, that, in connection with its original issuance, no Bearer Security shall be mailed or otherwise delivered to any location in the United States; and provided further that, unless otherwise specified with respect to any series of Securities pursuant to Section 301, a Bearer Security may be delivered in connection with its original issuance only if the Person entitled to receive such Bearer Security shall have furnished a certificate to Euroclear or Clearstream, as the case may be, in the form set forth in Exhibit A-1 to this Indenture or such other certificate as may be specified with respect to any series of Securities pursuant to Section 301, dated no earlier than 15 days prior to the earlier of the date on which such Bearer Security is delivered and the date on which any temporary Security first becomes exchangeable for such Bearer Security in accordance with the terms of such temporary Security and this Indenture. If any Security shall be represented by a permanent global Bearer Security, then, for purposes of this Section and Section 304, the notation of a beneficial owner's interest therein upon original issuance of such Security or upon exchange of a portion of a temporary global Security shall be deemed to be delivery in connection with its original issuance of such beneficial owner's interest in such permanent global Security. Except as permitted by Section 306, the Trustee shall not authenticate and deliver any Bearer Security unless all appurtenant coupons for interest then matured have been detached and cancelled.

If all the Securities of any series are not to be issued at one time and if the Board Resolution or supplemental indenture establishing such series shall so permit, such Issuer Order may set forth procedures acceptable to the Trustee for the issuance of such Securities and determining the terms of particular Securities of such series, such as interest rate or formula, maturity date, date of issuance and date from which interest shall accrue.

In authenticating the Securities of any Series hereunder, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to TIA Sections 315(a) through 315(d)) shall be fully protected in relying upon,

(i) an Opinion of Counsel stating that

(a) the form or forms of such Securities, any coupons and the related Guarantees, if any, have been established in conformity with the provisions of this Indenture;

(b) the terms of such Securities, any coupons and the related Guarantees, if any, have been established in conformity with the provisions of this Indenture; and

(c) such Securities, together with any coupons or Guarantees, if any, appertaining thereto, when completed by appropriate insertions and executed and delivered by the Issuer to the Trustee for authentication in accordance with this Indenture, authenticated and delivered by the Trustee in accordance with this Indenture and issued by the Issuer and the Guarantor, as applicable, in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute legal, valid and binding obligations of the Issuer and, if applicable, the Guarantor, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization and other similar laws of general applicability relating to or affecting the enforcement of creditors' rights generally and to general equitable principles; and

(ii) an Officers' Certificate stating that all conditions precedent provided for in this Indenture relating to the authentication, issuance and delivery of the Securities have been complied with and that, to the best of the knowledge of the signers of such certificate, that no Event of Default with respect to any of the Securities shall have occurred and be continuing.

If such form or terms have been so established, the Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties, obligations or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Notwithstanding the provisions of Section 301 and of the preceding paragraph, if all the Securities of any series are not to be issued at one time, it shall not be necessary to deliver an Officers' Certificate otherwise required pursuant to Section 301 or an Issuer Order, or an Opinion of Counsel or an Officers' Certificate otherwise required pursuant to the preceding paragraph at the time of issuance of each Security of such series, but such order, opinion and certificates, with appropriate modifications to cover such future issuances, shall be delivered at or before the time of issuance of the first Security of such series.

Each Registered Security and related Guarantee, if any, shall be dated the date of its authentication and each Bearer Security shall be dated as of the date specified as contemplated by Section 301.

No Security or coupon shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security or Security to which such coupon appertains a certificate of authentication substantially in the form provided for herein duly executed by the Trustee by manual, facsimile or electronic signature of an authorized signatory, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Issuer, and the Issuer shall deliver such Security to the Trustee for cancellation as provided in Section 309 together with a written statement (which need not comply with Section 102 and need not be accompanied by an Opinion of Counsel) stating that such Security has never been issued and sold by the Issuer, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

SECTION 304. Temporary Securities. (a) Pending the preparation of definitive Securities of any series, the Issuer may execute, and upon Issuer Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued, in registered form, or, if authorized, in bearer form with one or more coupons or without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as conclusively evidenced by their execution of such Securities. In the case of Securities of any series, such temporary Securities may be in global form.

Except in the case of temporary Securities in global form (which shall be exchanged in accordance with Section 304(b) or as otherwise provided in or pursuant to a Board Resolution), if temporary Securities of any series are issued, the Issuer will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Issuer in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series (accompanied by any non-matured coupons appertaining thereto), the Issuer shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of the same series of authorized denominations; provided, however, that no definitive Bearer Security shall be delivered in exchange for a temporary Registered Security; and provided further that a definitive Bearer Security shall be delivered in exchange for a temporary Bearer Security only in compliance with the conditions set forth in Section 303. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

(b) Unless otherwise provided in or pursuant to a Board Resolution, this Section 304(b) shall govern the exchange of temporary Securities issued in global form other than through the facilities of DTC. If any such temporary Security is issued in global form, then such temporary global Security shall, unless otherwise provided therein, be delivered to the London office of a depositary or common depositary (the "Common Depositary"), for the benefit of Euroclear and Clearstream, for credit to the respective accounts of the beneficial owners of such Securities (or to such other accounts as they may direct).

Without unnecessary delay but in any event not later than the date specified in, or determined pursuant to the terms of, any such temporary global Security (the "Exchange Date"), the Issuer shall deliver to the Trustee definitive Securities, in aggregate principal amount equal to the principal amount of such temporary global Security, executed by the Issuer. On or after the Exchange Date, such temporary global Security shall be surrendered by the Common Depositary to the Trustee, as the Issuer's agent for such purpose, to be exchanged, in whole or from time to time in part, for definitive Securities without charge, and the Trustee shall authenticate and deliver, in exchange for each portion of such temporary global Security, an equal aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such temporary global Security to be exchanged. The definitive Securities to be delivered in exchange for any such temporary global Security shall be in bearer form, registered form, permanent global bearer form or permanent global registered form, or any combination thereof, as specified as contemplated by Section 301, and, if any combination thereof is so specified, as requested by the beneficial owner thereof; provided, however, that, unless otherwise specified in such temporary global Security, upon such presentation by the Common Depositary, such temporary global Security is accompanied by a certificate dated the Exchange Date or a subsequent date and signed by Euroclear as to the portion of such temporary global Security held for its account then to be exchanged and a certificate dated the Exchange Date or a subsequent date and signed by Clearstream as to the portion of such temporary global Security held for its account then to be exchanged, each in the form set forth in Exhibit A-2 to this Indenture or in such other form as may be established pursuant to Section 301; and provided further that definitive Bearer Securities shall be delivered in exchange for a portion of a temporary global Security only in compliance with the requirements of Section 303.

Unless otherwise specified in such temporary global Security, the interest of a beneficial owner of Securities of a series in a temporary global Security shall be exchanged for definitive Securities of the same series and of like tenor following the Exchange Date when the account holder instructs Euroclear or Clearstream, as the case may be, to request such exchange on his behalf and delivers to Euroclear or Clearstream, as the case may be, a certificate in the form set forth in Exhibit A-1 to this Indenture (or in such other form as may be established pursuant to Section 301), dated no earlier than 15 days prior to the Exchange Date, copies of which certificate shall be available from the offices of Euroclear and Clearstream, the Trustee, any Authenticating Agent appointed for such series of Securities and each Paying Agent. Unless otherwise specified in such temporary global Security, any such exchange shall be made free of charge to the beneficial owners of such temporary global Security, except that a Person receiving definitive Securities must bear the cost of insurance, postage, transportation and the like unless such Person takes delivery of such definitive Securities in Person at the offices of Euroclear or Clearstream. Definitive Securities in bearer form to be delivered in exchange for any portion of a temporary global Security shall be delivered only outside the United States.

Until exchanged in full as hereinabove provided, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of the same series and of like tenor authenticated and delivered hereunder, except that, unless otherwise specified as contemplated by Section 301, interest payable on a temporary global Security on an Interest Payment Date for Securities of such series occurring prior to the applicable Exchange Date shall be payable to Euroclear and Clearstream on such Interest Payment Date upon delivery by Euroclear and Clearstream to the Trustee of a certificate or certificates in the form set forth in Exhibit A-2 to this Indenture (or in such other forms as may be established pursuant to Section 301), for credit without further interest on or after such Interest Payment Date to the respective accounts of Persons who are the beneficial owners of such temporary global Security on such Interest Payment Date and who have each delivered to Euroclear or Clearstream, as the case may be, a certificate dated no earlier than 15 days prior to the Interest Payment Date occurring prior to such Exchange Date in the form set forth as Exhibit A-1 to this Indenture (or in such other forms as may be established pursuant to Section 301). Notwithstanding anything to the contrary herein contained, the certifications made pursuant to this paragraph shall satisfy the certification requirements of the preceding two paragraphs of this Section 304(b) and of the third paragraph of Section 303 of this Indenture and the interests of the Persons who are the beneficial owners of the temporary global Security with respect to which such certification was made will be exchanged for definitive Securities of the same series and of like tenor on the Exchange Date or the date of certification if such date occurs after the Exchange Date, without further act or deed by such beneficial owners. Except as otherwise provided in this paragraph, no payments of principal or interest owing with respect to a beneficial interest in a temporary global Security will be made unless and until such interest in such temporary global Security shall have been exchanged for an interest in a definitive Security. Any interest so received by Euroclear and Clearstream and not paid as herein provided shall be returned to the Trustee prior to the expiration of two years after such Interest Payment Date in order to be repaid to the Issuer.

SECTION 305. Registration, Registration of Transfer and Exchange. The Issuer shall cause to be kept at the Corporate Trust Office of the Trustee or in any office or agency of the Issuer in a Place of Payment a register for each series of Securities (the registers maintained in such office or in any such office or agency of the Issuer in a Place of Payment being herein sometimes referred to collectively as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Issuer shall provide for the registration of Registered Securities and of transfers of Registered Securities. The Security Register shall be in written form or any other form capable of being converted into written form within a reasonable time. The Trustee, at its Corporate Trust Office, is hereby initially appointed "Security Registrar" for the purpose of registering Registered Securities and transfers of Registered Securities on such Security Register as herein provided. In the event that the Trustee shall cease to be Security Registrar, it shall have the right to examine the Security Register at all reasonable times.

Subject to the provisions of this Section 305, upon surrender for registration of transfer of any Registered Security of any series at any office or agency of the Issuer in a Place of Payment for that series, the Issuer shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Securities of the same series, of any authorized denominations and of a like aggregate principal amount, bearing a number not contemporaneously outstanding, and containing identical terms and provisions.

Subject to the provisions of this Section 305, at the option of the Holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series, of any authorized denomination or denominations and of a like aggregate principal amount, containing identical terms and provisions, upon surrender of the Registered Securities to be exchanged at any such office or agency. Whenever any such Registered Securities are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the Registered Securities which the Holder making the exchange is entitled to receive. Unless otherwise specified with respect to any series of Securities as contemplated by Section 301, Bearer Securities may not be issued in exchange for Registered Securities.

If (but only if) permitted by the applicable Board Resolution and (subject to Section 303) set forth in the applicable Officers' Certificate, or in any indenture supplemental hereto, delivered as contemplated by Section 301, at the option of the Holder, Bearer Securities of any series may be exchanged for Registered Securities of the same series of any authorized denominations and of a like aggregate principal amount and tenor, upon surrender of the Bearer Securities to be exchanged at any such office or agency, with all unmatured coupons and all matured coupons in default thereto appertaining. If the Holder of a Bearer Security is unable to produce any such unmatured coupon or coupons or matured coupon or coupons in default, any such permitted exchange may be effected if the Bearer Securities are accompanied by payment in funds acceptable to the Issuer in an amount equal to the face amount of such missing coupon or coupons, or the surrender of such missing coupon or coupons may be waived by the Issuer and the Trustee if there is furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to any Paying Agent any such missing coupon in respect of which such a payment shall have been made, such Holder shall be entitled to receive the amount of such payment; provided, however, that, except as otherwise provided in Section 1102, interest represented by coupons shall be payable only upon presentation and surrender of those coupons at an office or agency located outside the United States. Notwithstanding the foregoing, in case a Bearer Security of any series is surrendered at any such office or agency in a permitted exchange for a Registered Security of the same series and like tenor after the close of business at such office or agency on (i) any Regular Record Date and before the opening of business at such office or agency on the relevant Interest Payment Date, or (ii) any Special Record Date and before the opening of business at such office or agency on the related proposed date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the coupon relating to such Interest Payment Date or proposed date for payment, as the case may be, and interest or Defaulted Interest, as the case may be, will not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such coupon when due in accordance with the provisions of this Indenture. Whenever any Securities are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the Securities which the Holder making the exchange is entitled to receive.

Notwithstanding the foregoing, except as otherwise specified as contemplated by Section 301, any permanent global Security shall be exchangeable only as provided in this paragraph. If the depositary for any permanent global Security is DTC, then, unless the terms of such global Security expressly permit such global Security to be exchanged in whole or in part for definitive Securities, a global Security may be transferred, in whole but not in part, only to a nominee of DTC, or by a nominee of DTC to DTC, or to a successor to DTC for such global Security selected or approved by the Issuer or to a nominee of such successor to DTC. If at any time DTC notifies the Issuer that it is unwilling or unable to continue as depositary for the applicable global Security or Securities or if at any time DTC ceases to be a clearing agency registered under the Exchange Act if so required by applicable law or regulation, the Issuer shall appoint a successor depositary with respect to such global Security or Securities. If (x) a successor depositary for such global Security or Securities is not appointed by the Issuer within 90 days after the Issuer receives such notice or becomes aware of such unwillingness, inability or ineligibility, (y) an Event of Default has occurred and is continuing and the beneficial owners representing a majority in principal amount of the applicable series of Securities represented by such global Security or Securities advise DTC to cease acting as depositary for such global Security or Securities or (z) the Issuer, in its sole discretion, determines at any time that all Outstanding Securities (but not less than all) of any series issued or issuable in the form of one or more global Securities shall no longer be represented by such global Security or Securities, then the Issuer shall execute, and the Trustee shall authenticate and deliver definitive Securities of like series, rank, tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of such global Security or Securities. If any beneficial owner of an interest in a permanent global Security is otherwise entitled to exchange such interest for Securities of such series and of like tenor and principal amount of another authorized form and denomination, as specified as contemplated by Section 301 and provided that any applicable notice provided in the permanent global Security shall have been given, then without unnecessary delay but in any event not later than the earliest date on which such interest may be so exchanged, the Issuer shall execute, and the Trustee shall authenticate and deliver definitive Securities in aggregate principal amount equal to the principal amount of such beneficial owner's interest in such permanent global Security. On or after the earliest date on which such interests may be so exchanged, such permanent global Security shall be surrendered for exchange by DTC or such other depositary as shall be specified in the Issuer Order with respect thereto to the Trustee, as the Issuer's agent for such purpose; provided, however, that no such exchanges may occur during a period beginning at the opening of business 15 days before any selection of Securities to be redeemed and ending on the relevant Redemption Date if the Security for which exchange is requested may be among those selected for redemption; and provided further that no Bearer Security delivered in exchange for a portion of a permanent global Security shall be mailed or otherwise delivered to any location in the United States. If a Registered Security is issued in exchange for any portion of a permanent global Security after the close of business at the office or agency where such exchange occurs on (i) any Regular Record Date and before the opening of business at such office or agency on the relevant Interest Payment Date, or (ii) any Special Record Date and the opening of business at such office or agency on the related proposed date for payment of Defaulted Interest, interest or Defaulted Interest, as the case may be, will not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of such Registered Security, but will be payable on such Interest Payment Date or proposed date for payment, as the case may be, only to the Person to whom interest in respect of such portion of such permanent global Security is payable in accordance with the provisions of this Indenture.

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

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

No service charge shall be made for any registration of transfer or exchange of Securities, but the Issuer may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 304, 1006, 1207 or 1405 not involving any transfer.

The Issuer or the Trustee, as applicable, shall not be required (i) to issue, register the transfer of or exchange any Security if such Security may be among those selected for redemption during a period beginning at the opening of business 15 days before selection of the Securities to be redeemed under Section 1203 and ending at the close of business on (A) if such Securities are issuable only as Registered Securities, the day of the mailing of the relevant notice of redemption and (B) if such Securities are issuable as Bearer Securities, the day of the first publication of the relevant notice of redemption or, if such Securities are also issuable as Registered Securities and there is no publication, the mailing of the relevant notice of redemption, or (ii) to register the transfer of or exchange any Registered Security so selected for redemption in whole or in part, except, in the case of any Registered Security to be redeemed in part, the portion thereof not to be redeemed, or (iii) to exchange any Bearer Security so selected for redemption except that such a Bearer Security may be exchanged for a Registered Security of that series and like tenor, provided that such Registered Security shall be simultaneously surrendered for redemption, or (iv) to issue, register the transfer of or exchange any Security which has been surrendered for repayment at the option of the Holder, except the portion, if any, of such Security not to be so repaid.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Common Depositary participants or beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Neither the Trustee nor any agent shall have any responsibility for any actions taken or not taken by the Common Depositary.

SECTION 306. Mutilated, Destroyed, Lost and Stolen Securities. If any mutilated Security or a Security with a mutilated coupon or Guarantee appertaining to it is surrendered to the Trustee or the Issuer, together with, in proper cases, such security or indemnity as may be required by the Issuer or the Trustee to save each of them or any agent of either of them harmless, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series and principal amount, containing identical terms and provisions and bearing a number not contemporaneously outstanding, with coupons or Guarantees corresponding to the coupons or Guarantees, if any, appertaining to the surrendered Security or to the Security to which such destroyed, lost or stolen coupon or Guarantee appertains.

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

Notwithstanding the provisions of the previous two paragraphs, in case any such mutilated, destroyed, lost or stolen Security, coupon or Guarantee has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Security, with coupons corresponding to the coupons, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen coupon or Guarantee appertains, pay such Security or coupon; provided, however, that payment of principal of (and premium, if any), any interest on and any Additional Amounts with respect to, Bearer Securities shall, except as otherwise provided in Section 1102, be payable only at an office or agency located outside the United States and, unless otherwise specified as contemplated by Section 301, any interest on Bearer Securities shall be payable only upon presentation and surrender of the coupons or Guarantees appertaining thereto.

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

Every new Security of any series with its coupons or Guarantees, if any, issued pursuant to this Section in lieu of any destroyed, lost or stolen Security, or in exchange for a Security to which a destroyed, lost or stolen coupon or Guarantee appertains, shall constitute an original additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Security and its coupons and related Guarantees, if any, or the destroyed, lost or stolen coupon or Guarantee shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series and their coupons and Guarantees, if any, duly issued hereunder.

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

SECTION 307. Payment of Interest; Interest Rights Preserved. Except as otherwise specified with respect to a series of Securities in accordance with the provisions of Section 301, interest on any Registered Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest at the office or agency of the Issuer maintained for such purpose pursuant to Section 1102; provided, however, that each installment of interest on any Registered Security may at the Issuer's option be paid by (i) mailing a check for such interest, payable to or upon the written order of the Person entitled thereto pursuant to Section 308, to the address of such Person as it appears on the Security Register or (ii) transfer to an account maintained by the payee located inside the United States.

Unless otherwise provided as contemplated by Section 301 with respect to the Securities of any series, payment of interest may be made, in the case of a Bearer Security, by transfer to an account maintained by the payee with a bank located outside the United States.

Unless otherwise provided as contemplated by Section 301, every permanent global Security will provide that interest, if any, payable on any Interest Payment Date will be paid to DTC, Euroclear and/or Clearstream, as the case may be, with respect to that portion of such permanent global Security held for its account by Cede & Co. or the Common Depositary, as the case may be, for the purpose of permitting such party to credit the interest received by it in respect of such permanent global Security to the accounts of the beneficial owners thereof.

In case a Bearer Security of any series is surrendered in exchange for a Registered Security of such series after the close of business (at an office or agency in a Place of Payment for such series) on any Regular Record Date and before the opening of business (at such office or agency) on the next succeeding Interest Payment Date, such Bearer Security shall be surrendered without the coupon relating to such Interest Payment Date and interest will not be payable on such Interest Payment Date in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such coupon when due in accordance with the provisions of this Indenture.

Except as otherwise specified with respect to a series of Securities in accordance with the provisions of Section 301, any interest on any Registered Security of any series that is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered Holder thereof on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Issuer, at its election in each case, as provided in clause (1) or (2) below:

(1) The Issuer may elect to make payment of any Defaulted Interest to the Persons in whose names the Registered Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Issuer shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Registered Security of such series and the date of the proposed payment (which shall not be less than 20 days after such notice is received by the Trustee), and at the same time the Issuer shall deposit with the Trustee an amount of money in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Registered Securities of such series at his address as it appears in the Security Register not less than 10 days prior to such Special Record Date. The Trustee may, in its discretion, in the name and at the expense of the Issuer, cause a similar notice to be published at least once in an Authorized Newspaper in each place of payment, but such publications shall not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names the Registered Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2). In case a Bearer Security of any series is surrendered at the office or agency in a Place of Payment for such series in exchange for a Registered Security of such series after the close of business at such office or agency on any Special Record Date and before the opening of business at such office or agency on the related proposed date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the coupon relating to such proposed date of payment and Defaulted Interest will not be payable on such proposed date of payment in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such coupon when due in accordance with the provisions of this Indenture.

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

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

SECTION 308. Persons Deemed Owners. Prior to due presentment of a Registered Security for registration of transfer, the Issuer, the Guarantor (if applicable), the Trustee and any agent of the Issuer, the Guarantor (if applicable) or the Trustee may treat the Person in whose name such Registered Security is registered as the owner of such Security for the purpose of receiving payment of principal of (and premium, if any), and (subject to Sections 305 and 307) interest on, such Registered Security and for all other purposes whatsoever, whether or not such Registered Security be overdue, and neither the Issuer, the Guarantor (if applicable), the Trustee nor any agent of the Issuer, the Guarantor (if applicable) or the Trustee shall be affected by notice to the contrary.

Title to any Bearer Security and any coupons appertaining thereto shall pass by delivery. The Issuer, the Guarantor (if applicable), the Trustee and any agent of the Issuer, the Guarantor (if applicable) or the Trustee may treat the Holder of any Bearer Security and the Holder of any coupon as the absolute owner of such Security or coupon for the purpose of receiving payment thereof or on account thereof and for all other purposes whatsoever, whether or not such Security or coupon be overdue, and neither the Issuer, the Guarantor (if applicable), the Trustee nor any agent of the Issuer, the Guarantor (if applicable) or the Trustee shall be affected by notice to the contrary.

None of the Issuer, the Guarantor (if applicable), the Trustee, any Paying Agent or the Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Security in global form or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Notwithstanding the foregoing, with respect to any global Security, nothing herein shall prevent the Issuer, the Guarantor (if applicable), the Trustee, or any agent of the Issuer, the Guarantor (if applicable) or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by any depositary, as a Holder, with respect to such global Security or impair, as between such depositary and owners of beneficial interests in such global Security, the operation of customary practices governing the exercise of the rights of such depositary (or its nominee) as Holder of such global Security.

SECTION 309. Cancellation. All Securities and coupons surrendered for payment, redemption, repayment at the option of the Holder, registration of transfer or exchange or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and coupons and Securities and coupons surrendered directly to the Trustee for any such purpose shall be promptly cancelled by it. The Issuer may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Issuer may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Issuer has not issued and sold, and all Securities so delivered shall be promptly cancelled by the Trustee. If the Issuer shall so acquire any of the Securities, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are surrendered to the Trustee for cancellation. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. Cancelled Securities and coupons held by the Trustee shall be destroyed by the Trustee and the Trustee shall deliver a certificate of such destruction to the Issuer, unless by an Issuer Order the Issuer directs their return to it.

SECTION 310. Computation of Interest. Except as otherwise specified as contemplated by Section 301 with respect to Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

SECTION 311. CUSIP Numbers. The Issuer in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in all notices issued to Holders as a convenience to such Holders; *provided* that the Trustee shall have no liability for any defect in the "CUSIP" numbers as they appear on any Security, notice or elsewhere, and, *provided, further,* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or on such notice and that reliance may be placed only on the other identification numbers printed on the Securities. The Issuer shall promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

ARTICLE FOUR

GUARANTEES

SECTION 401. Applicability of Article; Guarantees. As of January 3, 2023, all Securities previously issued under the Indenture and Outstanding shall have the benefit of the Guarantees as set forth in this Article Four, and, if the Issuer elects to issue any series of Securities on any date after January 3, 2023 with the benefit of the Guarantees as set forth in this Article then the provisions of this Article Four (with such modifications thereto as may be specified pursuant to Section 301 with respect to any series of Securities issued after January 3, 2023), will be applicable to such Securities. Each reference in this Article Four to a "Security" or "the Securities" refers to the Securities of the particular series as to which provision has been made for such Guarantees (including, for the avoidance of doubt, all Securities which, as of January 3, 2023 have been previously issued under the Indenture and are Outstanding). If more than one series of Securities as to which such provision has been made are Outstanding at any time, the provisions of this Article Four shall be applied separately to each such series.

Subject to this Article Four, the Guarantor fully and unconditionally guarantees to each Holder of a Security of any series issued with the benefit of the Guarantees and which Security has been authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, such Security or the obligations of the Issuer hereunder or thereunder, that:

(1) the principal of, premium, if any, and interest on such Security will be promptly paid in full when due, whether at stated maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of, premium, if any, and interest on such Security, if any, if lawful, and all other obligations of the Issuer to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(2) in case of any extension of time of payment or renewal of any Securities of that series or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration, redemption or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantor will be obligated to pay the same immediately. The Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

The Guarantor hereby agrees that its obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of the Securities of any series issued with the benefit of the Guarantees or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Securities of that series with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor, other than payment in full of all obligations under the Securities of that series. The Guarantor in respect of a series of Securities hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer in respect of that series, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever and covenants that this Guarantee will not be discharged except by complete performance of the obligations contained in such Securities and this Indenture.

If any Holder or the Trustee is required by any court or otherwise to return to the Issuer, the Guarantor or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuer or the Guarantor, any amount paid by either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

The Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. The Guarantor further agrees that, as between the Guarantor, on the one hand, and the Holders and the Trustee, on the other hand, (1) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article Six hereof for the purposes of its Guarantee notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any acceleration of such obligations as provided in Article Six hereof, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantor for the purpose of its Guarantee.

SECTION 402. Limitation on Guarantor Liability. The Guarantor and, by its acceptance of Securities of any series issued with the benefit of the Guarantees as set forth in this Article Four, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of the Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantor hereby irrevocably agree that the obligations of the Guarantor will, after giving effect to any maximum amount and all other contingent and fixed liabilities of the Guarantor that are relevant under such laws, not result in the obligations of the Guarantor under its Guarantee constituting a fraudulent transfer or conveyance.

SECTION 403. Execution and Delivery of Guarantee. For all Securities issued after January 3, 2023 as to which the Issuer elects to issue with the benefit of the Guarantees as set forth in this Article Four, to evidence its Guarantee set forth in Section 401 in respect of Securities of a series issued with the benefit of the Guarantees, the Guarantor hereby agrees that a notation of such Guarantee substantially in the form as shall be established in one or more indentures supplemental hereto or approved from time to time pursuant to Board Resolutions in accordance with Section 301, will be endorsed by an officer of the Guarantor on each Security of that series authenticated and delivered by the Trustee and that this Indenture will be executed on behalf of the Guarantor by one of its officers.

The Guarantor hereby agrees that all of its Guarantees will remain in full force and effect notwithstanding any failure to endorse on each Security of that series a notation of such Guarantee.

If an officer whose signature is on this Indenture or on the Guarantee no longer holds that office at the time the Trustee authenticates the Security of that series on which a Guarantee is endorsed, such Guarantee will be valid nevertheless.

The delivery of any Security of a series issued with the benefit of the Guarantees by the Trustee, after the authentication thereof hereunder, will constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantor (including, for the avoidance of doubt, all Securities which, as of January 3, 2023, have been previously issued, and authenticated by the Trustee, and which remain Outstanding).

ARTICLE FIVE

SATISFACTION AND DISCHARGE

SECTION 501. Satisfaction and Discharge of Indenture. This Indenture and any related Guarantee shall upon Issuer Request cease to be of further effect with respect to any series of Securities specified in such Issuer Request (except as to any surviving rights of registration of transfer or exchange of Securities of such series herein expressly provided for and any right to receive Additional Amounts, as provided in Section 1112), and the Trustee, upon receipt of an Issuer Order, and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture as to such series when

(1) either

(A) all Securities of such series theretofore authenticated and delivered and all coupons, if any, appertaining thereto (other than (i) coupons appertaining to Bearer Securities surrendered for exchange for Registered Securities and maturing after such exchange, whose surrender is not required or has been waived as provided in Section 305, (ii) Securities and coupons of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 306, (iii) coupons appertaining to Securities called for redemption and maturing after the relevant Redemption Date, whose surrender has been waived as provided in Section 1206, and (iv) Securities and coupons of such series for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from such trust, as provided in Section 1103) have been delivered to the Trustee for cancellation; or

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

(i) have become due and payable, or

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

(iii) if redeemable at the option of the Issuer, are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Issuer, and the Issuer, in the case of (i), (ii) or (iii) above, has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable, sufficient to pay and discharge the entire indebtedness on such Securities and such coupons not theretofore delivered to the Trustee for cancellation, for principal (and premium, if any) and interest, and any Additional Amounts with respect thereto, to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

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

(3) the Issuer has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture as to such series have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Issuer to the Trustee and any predecessor Trustee under Section 707, the obligations of the Issuer to any Authenticating Agent under Section 711 and, if money shall have been deposited with and held by the Trustee pursuant to subclause (B) of clause (1) of this Section, the obligations of the Trustee under Section 502 and the last paragraph of Section 1103 shall survive. At such time as satisfaction and discharge of this Indenture shall be effective with respect to the Securities of a particular series, the Guarantor will be released from its Guarantee of the Securities of such series.

SECTION 502. Application of Trust Funds. Subject to the provisions of the last paragraph of Section 1103, all money deposited with the Trustee pursuant to Section 501 shall be held in trust and applied by it, in accordance with the provisions of the Securities, the coupons and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any), and any interest and Additional Amounts for whose payment such money has been deposited with or received by the Trustee, but such money need not be segregated from other funds except to the extent required by law.

ARTICLE SIX

REMEDIES

SECTION 601. Events of Default. "Event of Default", wherever used herein with respect to any particular series of Securities, means any one of the following events (whatever the reason for such Event of Default and whether or not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

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

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

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

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

(5) a default under any bond, debenture, note or other evidence of indebtedness of an Obligor, or under any mortgage, indenture or other instrument of an Obligor (including a default with respect to Securities of any series other than that series) under which there may be issued or by which there may be secured any indebtedness of such Obligor (or by any Subsidiary of such Obligor, the repayment of which such Obligor has guaranteed or for which such Obligor is directly responsible or liable as obligor or guarantor), whether such indebtedness now exists or shall hereafter be created, which default shall constitute a failure to pay an aggregate principal amount exceeding $10,000,000 of such indebtedness when due and payable after the expiration of any applicable grace period with respect thereto and shall have resulted in such indebtedness in an aggregate principal amount exceeding $10,000,000 becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable, without such indebtedness having been discharged, or such acceleration having been rescinded or annulled, within a period of 10 days after there shall have been given, by registered or certified mail, to such Obligor by the Trustee or to such Obligor and the Trustee by the Holders of at least 10% in principal amount of the Outstanding Securities of that series a written notice specifying such default and requiring such Obligor to cause such indebtedness to be discharged or cause such acceleration to be rescinded or annulled and stating that such notice is a "Notice of Default" hereunder; or

(6) an Obligor or any Significant Subsidiary of such Obligor pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a Custodian of it or for all or substantially all of its property, or

(D) makes a general assignment for the benefit of its creditors; or

(7) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against an Obligor or any Significant Subsidiary of such Obligor in an involuntary case,

(B) appoints a Custodian of an Obligor or any Significant Subsidiary of such Obligor or for all or substantially all of either of their property, or

(C) orders the liquidation of an Obligor or any Significant Subsidiary of such Obligor,

and the order or decree remains unstayed and in effect for 90 days;

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

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

As used in this Section 601, the term "Bankruptcy Law" means title 11, U.S. Code or any similar Federal or State law for the relief of debtors and the term "Custodian" means any receiver, trustee, assignee, liquidator or other similar official under any Bankruptcy Law.

SECTION 602. Acceleration of Maturity; Rescission and Annulment. If an Event of Default with respect to Securities of any series at the time Outstanding occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal (or, if any Securities are Original Issue Discount Securities or Indexed Securities, such portion of the principal as may be specified in the terms thereof) of all the Securities of that series to be due and payable immediately, by a notice in writing to the Issuer and the Guarantor (and to the Trustee if given by the Holders), and upon any such declaration such principal or specified portion thereof shall become immediately due and payable.

At any time after such a declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the Outstanding Securities of that series, by written notice to the Issuer, the Guarantor and the Trustee, may rescind and annul such declaration and its consequences if:

(1) the Issuer or the Guarantor has paid or deposited with the Trustee a sum sufficient to pay in the currency, currency unit or composite currency in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series):

(A) all overdue installments of interest on and any Additional Amounts payable in respect of all Outstanding Securities of that series and any related coupons,

(B) the principal of (and premium, if any, on) any Outstanding Securities of that series which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates borne by or provided for in such Securities,

(C) to the extent that payment of such interest is lawful, interest upon overdue installments of interest and any Additional Amounts at the rate or rates borne by or provided for in such Securities, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(2) all Events of Default with respect to Securities of that series, other than the nonpayment of the principal of (or premium, if any) or interest on Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 613.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

SECTION 603. Collection of Indebtedness and Suits for Enforcement by Trustee. The Issuer covenants that if:

(1) default is made in the payment of any installment of interest or Additional Amounts, if any, on any Security of any series and any related coupon when such interest or Additional Amount becomes due and payable and such default continues for a period of 30 days, or

(2) default is made in the payment of the principal of (or premium, if any, on) any Security of any series at its Maturity,

then the Issuer will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities of such series and coupons, the whole amount then due and payable on such Securities and coupons for principal (and premium, if any) and interest and Additional Amount, with interest upon any overdue principal (and premium, if any) and, to the extent that payment of such interest shall be legally enforceable, upon any overdue installments of interest or Additional Amounts, if any, at the rate or rates borne by or provided for in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Issuer fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Issuer or any other obligor (including the Guarantor, if applicable) upon such Securities of such series and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Issuer or any other obligor (including the Guarantor, if applicable) upon such Securities of such series, wherever situated.

If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series and any related coupons by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

SECTION 604. Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to an Obligor or any other obligor upon the Securities or the property of such Obligor or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities of any series shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Issuer for the payment of overdue principal, premium, if any, or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount, or such lesser amount as may be provided for in the Securities of such series, of principal (and premium, if any) and interest and Additional Amounts, if any, owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the. Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding, and

(ii) to collect and receive any moneys 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 Holder of Securities of such series and coupons to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee and any predecessor Trustee, their agents and counsel, and any other amounts due the Trustee or any predecessor Trustee under Section 707.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Security or coupon any plan of reorganization, arrangement, adjustment or composition affecting the Securities or coupons or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder of a Security or coupon in any such proceeding.

SECTION 605. Trustee May Enforce Claims Without Possession of Securities or Coupons. All rights of action and claims under this Indenture or any of the Securities or coupons may be prosecuted and enforced by the Trustee without the possession of any of the Securities or coupons or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities and coupons in respect of which such judgment has been recovered.

SECTION 606. Application of Money Collected. Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest and any Additional Amounts, upon presentation of the Securities or coupons, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee, including its agents and attorneys, and any predecessor Trustee under Section 707;

SECOND: To the payment of the amounts then due and unpaid upon the Securities and coupons for principal (and premium, if any) and interest and any Additional Amounts payable, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the aggregate amounts due and payable on such Securities and coupons for principal (and premium, if any), interest and Additional Amounts, respectively; and

THIRD: To the payment of the remainder, if any, to the Issuer.

SECTION 607. Limitation on Suits. No Holder of any Security of any series or any related coupon shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that series;

(2) the Holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities to be incurred in compliance with such request;

(4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

SECTION 608. Unconditional Right of Holders to Receive Principal, Premium, if any, Interest and Additional Amounts. Notwithstanding any other provision in this Indenture, the Holder of any Security or coupon shall have the right which is absolute and unconditional to receive payment of the principal of (and premium, if any) and (subject to Sections 305 and 307) interest on, and any Additional Amounts in respect of, such Security or payment of such coupon on the respective due dates expressed in such Security or coupon (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

SECTION 609**.** Restoration of Rights and Remedies. If the Trustee or any Holder of a Security or coupon has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, the Issuer, the Guarantor (if applicable), the Trustee and the Holders of Securities and coupons shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

SECTION 610. Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or coupons in the last paragraph of Section 306, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Securities or coupons is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 611. Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Security or coupon to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders of Securities or coupons, as the case may be.

SECTION 612. Control by Holders of Securities. The Holders of not less than a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Securities of such series, provided that

(1) such direction shall not be in conflict with any rule of law or with this Indenture,

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and

(3) the Trustee need not take any action which might involve it in personal liability or be unduly prejudicial to the Holders of Securities of such series not joining therein.

SECTION 613. Waiver of Past Defaults. The Holders of not less than a majority in principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series, any related coupons and any related Guarantees waive any past default hereunder with respect to such series and its consequences, except a default

(1) in the payment of the principal of (or premium, if any) or interest on or Additional Amounts payable in respect of any Security of such series or any related coupons, or

(2) in respect of a covenant or provision hereof which under Article Ten cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

SECTION 614. Waiver of Usury, Stay or Extension Laws. Each of the Obligors covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and each of the Obligors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

SECTION 615. Undertaking for Costs. All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of any undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Security on or after the respective Stated Maturities expressed in such Security (or, in the case of redemption, on or after the Redemption Date).

ARTICLE SEVEN

THE TRUSTEE

SECTION 701. Certain Duties and Responsibilities. Section 315 of the Trust Indenture Act is hereby incorporated by reference. Except during the continuance of an Event of Default, the Trustee shall be subject and act in accordance with Section 315(a) of the Trust Indenture Act. In case an Event of Default has occurred and is continuing, the Trustee shall be subject to and act in accordance with Section 315(c) of the Trust Indenture Act.

SECTION 702. Notice of Defaults. Within 90 days after a Responsible Officer of the Trustee receives written notice of the occurrence of any default hereunder with respect to the Securities of any series, the Trustee shall transmit in the manner and to the extent provided in TIA Section 313(c), notice of such default hereunder, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on or any Additional Amounts with respect to any Security of such series, or in the payment of any sinking fund installment with respect to the Securities of such series, the Trustee shall be protected in withholding such notice if and so long as Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Holders of the Securities and coupons of such series; and provided further that in the case of any default or breach of the character specified in Section 601(4) with respect to the Securities and coupons of such series, no such notice to Holders shall be given until at least 60 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to the Securities of such series.

SECTION 703. Certain Rights of Trustee. Subject to the provisions of TIA Sections 315(a) through 315(d):

(1) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(2) any request or direction of the Issuer mentioned herein shall be sufficiently evidenced by an Issuer Request or Issuer Order and any resolution of the Board of Directors of the Issuer may be sufficiently evidenced by a Board Resolution;

(3) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

(4) the Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders of Securities of any series or any related coupons pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer, personally or by agent or attorney;

(7) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(8) the Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(9) in no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(10) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it;

(11) the Trustee shall not be deemed to have notice of any Default or Event of Default unless written notice of any event which is in fact such a default is received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture;

(12) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(13) in no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, epidemics or pandemics, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances; and

(14) the Trustee may request that the Issuer deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

SECTION 704. Not Responsible for Recitals or Issuance of Securities. The recitals contained herein and in the Securities, except the Trustee's certificate of authentication, and in any coupons shall be taken as the statements of the Obligors, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities or coupons, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and perform its obligations hereunder. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Issuer of Securities or the proceeds thereof.

SECTION 705. May Hold Securities. The Trustee, any Paying Agent, Security Registrar, Authenticating Agent or any other agent of the Issuer, in its individual or any other capacity, may become the owner or pledgee of Securities and coupons and, subject to TIA Sections 310(b) and 311, may otherwise deal with the Issuer with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar, Authenticating Agent or such other agent.

SECTION 706. Money Held in Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Issuer.

SECTION 707. Compensation and Reimbursement. The Issuer agrees:

(1) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse each of the Trustee and any predecessor Trustee upon its request for all reasonable expenses, disbursements and. advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and

(3) to indemnify each of the Trustee and any predecessor Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or bad faith on its own part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 601(6) or Section 601(7), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or state bankruptcy, insolvency or other similar law.

As security for the performance of the obligations of the Issuer under this Section, the Trustee shall have a lien prior to the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (or premium, if any) or interest on particular Securities or any coupons.

The provisions of this Section shall survive the termination of this Indenture.

SECTION 708. Corporate Trustee Required; Eligibility; Conflicting Interests. There shall at all times be a Trustee hereunder which shall be eligible to act as Trustee under TIA Section 310(a)(1) and shall have a combined capital and surplus of at least $50,000,000. If such corporation publishes reports of condition at least annually, pursuant to law or the requirements of Federal, State, Territorial or District of Columbia supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

SECTION 709. Resignation and Removal; Appointment of Successor. (a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 710.

(b) The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Issuer. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series, upon 30 days' written notice, delivered to the Trustee and to the Issuer.

(d) If at any time:

(1) the Trustee shall fail to comply with the provisions of TIA Section 310(b) after written request therefor by the Issuer or by any Holder of a Security who has been a bona fide Holder of a Security for at least six months, or

(2) the Trustee shall cease to be eligible under Section 708 and shall fail to resign after written request therefor by the Issuer or by any Holder of a Security who has been a bona fide Holder of a Security for at least six months, or

(3) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Issuer by or pursuant to a Board Resolution may remove the Trustee and appoint a successor Trustee with respect to all Securities, or (ii) subject to TIA Section 315(e), any Holder of a Security who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause with respect to the Securities of one or more series, the Issuer, by or pursuant to a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series). If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Issuer and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Issuer. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Issuer or the Holders of Securities and accepted appointment in the manner hereinafter provided, any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to Securities of such series.

(f) The Issuer shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series in the manner provided for notices to the Holders of Securities in Section 106. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

SECTION 710. Acceptance of Appointment by Successor. (a) In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee shall execute, acknowledge and deliver to the Issuer and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Issuer or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its claim, if any, provided for in Section 707.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Obligors, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto, pursuant to Article Ten hereof, wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Issuer or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any such successor Trustee, the Issuer shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (a) or (b) of this Section, as the case may be.

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

SECTION 711. Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities or coupons shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities or coupons so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities or coupons. In case any Securities or coupons shall not have been authenticated by such predecessor Trustee, any such successor Trustee may authenticate and deliver such Securities or coupons, in either its own name or that of its predecessor Trustee, with the full force and effect which this Indenture provides for the certificate of authentication of the Trustee.

SECTION 712. Appointment of Authenticating Agent. At any time when any of the Securities remain Outstanding, the Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, registration of transfer or partial redemption or repayment thereof, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Any such appointment shall be evidenced by an instrument in writing signed by a Responsible Officer of the Trustee, a copy of which instrument shall be promptly furnished to the Issuer. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Issuer and shall at all times be a bank or trust company or corporation organized and doing business and in good standing under the laws of the United States of America or of any State or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by Federal or State authorities. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent for any series of Securities may at any time resign by giving written notice of resignation to the Trustee for such series and to the Obligors. The Trustee for any series of Securities may at any time terminate the agency of an Authenticating Agent by giving written notice of termination to such Authenticating Agent and to the Obligors. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee for such series may appoint a successor Authenticating Agent which shall be acceptable to the Issuer and shall give notice of such appointment to all Holders of Securities of the series with respect to which such Authenticating Agent will serve in the manner set forth in Section 106. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent herein. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Issuer agrees to pay to each Authenticating Agent from time to time reasonable compensation including reimbursement of its reasonable expenses for its services under this Section.

If an appointment with respect to one or more series is made pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to or in lieu of the Trustee's certificate of authentication, an alternate certificate of authentication substantially in the following form:

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

THE BANK OF NEW YORK MELLON, as Trustee

By: _____
as Authenticating Agent

By: _____
Authorized Signatory

ARTICLE EIGHT

HOLDERS' LISTS AND REPORTS BY TRUSTEE AND ISSUER

SECTION 801. Disclosure of Names and Addresses of Holders. Every Holder of Securities or coupons, by receiving and holding the same, agrees with the Issuer and the Trustee that neither the Issuer nor the Trustee nor any Authenticating Agent nor any Paying Agent nor any Security Registrar shall be held accountable by reason of the disclosure of any information as to the names and addresses of the Holders of Securities in accordance with TIA Section 312, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under TIA Section 312(b).

SECTION 802. Reports by Trustee. Within 60 days after May 15 of each year commencing with the first May 15 after the first issuance of Securities pursuant to this Indenture, the Trustee shall transmit by mail to all Holders of Securities as provided in TIA Section 313(c) a brief report dated as of such May 15 if required by TIA Section 313(a).

SECTION 803. Reports by Guarantor. The Guarantor will:

(1) file with the Trustee, within 15 days after the Guarantor is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Guarantor may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act; or, if the Guarantor is not required to file information, documents or reports pursuant to either of such Sections, then it will file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations (it being understood, in the case of each of the foregoing, that any information, documents and other reports filed or furnished on the Electronic Data Gathering, Analysis and Retrieval system ("EDGAR") or such other system of the Commission or the website of the Guarantor will be deemed to be furnished to the Trustee once such information, documents and other reports are so filed on EDGAR or the Commission's website or the website of the Guarantor);

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Obligors with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) transmit by mail to the Holders of Securities, within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in TIA Section 313(c), such summaries of any information, documents and reports required to be filed by the Guarantor pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive notice or knowledge of any information contained therein or determinable from information contained therein, including the Obligors' compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

SECTION 804. Issuer to Furnish Trustee Names and Addresses of Holders. The Issuer will furnish or cause to be furnished to the Trustee:

(a) semi-annually, not later than 15 days after the Regular Record Date for interest for each series of Securities, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Registered Securities of such series as of such Regular Record Date, or if there is no Regular Record Date for interest for such series of Securities, semi-annually, upon such dates as are set forth in the Board Resolution or indenture supplemental hereto authorizing such series, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Issuer of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished,

provided, however, that, so long as the Trustee is the Security Registrar, no such list shall be required to be furnished.

ARTICLE NINE

CONSOLIDATION, MERGER, SALE, LEASE OR CONVEYANCE

SECTION 901. Consolidations and Mergers of Issuer and Sales, Leases and Conveyances Permitted Subject to Certain Conditions. The Issuer may consolidate with, or sell, lease or convey all or substantially all of its assets to, or merge with or into any other corporation, provided that in any such case, (1) either the Issuer shall be the continuing corporation, or the successor corporation shall be a corporation organized and existing under the laws of the United States or a State thereof and such successor corporation shall expressly assume the due and punctual payment of the principal of (and premium, if any) and any interest (including all Additional Amounts, if any, payable pursuant to Section 1112) on all of the Securities, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Issuer by supplemental indenture, complying with Article Ten hereof, satisfactory to the Trustee, executed and delivered to the Trustee by such corporation and (2) immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of the Issuer or any of its Subsidiaries as a result thereof as having been incurred by the Issuer or such Subsidiary at the time of such transaction, no Event of Default, and no event which, after notice or the lapse of time, or both, would become an Event of Default, shall have occurred and be continuing.

SECTION 902. Consolidations and Mergers of Guarantor and Sales, Leases and Conveyances Permitted Subject to Certain Conditions. The Guarantor may consolidate with, or sell, lease or convey all or substantially all of its assets to, or merge with or into any other corporation, provided that in any such case, (1) either the Guarantor shall be the continuing corporation, or the successor corporation shall be a corporation organized and existing under the laws of the United States or a State thereof and such successor corporation shall expressly assume all of the obligations of the Guarantor under the Guarantees and this Indenture, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Guarantor, by supplemental indenture, complying with Article Ten hereof, satisfactory to the Trustee, executed and delivered to the Trustee by such corporation and (2) immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of the Guarantor or any of its Subsidiaries as a result thereof as having been incurred by the Issuer or such Subsidiary of the Issuer at the time of such transaction, no Event of Default, and no event which, after notice or the lapse of time, or both, would become an Event of Default, shall have occurred and be continuing.

SECTION 903. Rights and Duties of Successor Corporation. In case of any such consolidation, merger, sale, lease or conveyance and upon any such assumption by a successor corporation, such successor corporation shall succeed to and be substituted for the applicable Obligor, with the same effect as if it had been named herein as the party of the first part, and the predecessor corporation, except in the event of a lease, shall be relieved of any further obligation under this Indenture, the Securities and, as applicable, the Guarantees. Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of such Obligor, any or all of the Securities or Guarantees, as applicable, issuable hereunder which theretofore shall not have been signed by such Obligor and delivered to the Trustee; and, upon the order of such successor corporation, instead of such Obligor, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities or Guarantees, as applicable, which previously shall have been signed and delivered by the officers of such Obligor to the Trustee for authentication, and any Securities or Guarantees, as applicable, which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Securities and/or Guarantees so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities and Guarantees theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities and Guarantees had been issued at the date of the execution hereof.

In case of any such consolidation, merger, sale, lease or conveyance, such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

SECTION 904. Officers' Certificate and Opinion of Counsel. Any consolidation, merger, sale, lease or conveyance permitted under Sections 901 and 902 is also subject to the condition that the Trustee receive an Officers' Certificate and an Opinion of Counsel to the effect that any such consolidation, merger, sale, lease or conveyance, and the assumption by any successor corporation, complies with the provisions of this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

ARTICLE TEN

SUPPLEMENTAL INDENTURES

SECTION 1001. Supplemental Indentures Without Consent of Holders. Without the consent of any Holders of Securities or coupons, the Issuer, when authorized by or pursuant to a Board Resolution, the Guarantor and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Issuer and the assumption by any such successor of the covenants of the Issuer herein and in the Securities contained; or

(2) to evidence the succession of another Person to the Guarantor and the assumption by any such successor of the covenants of the Guarantor in the Guarantees, this Indenture and the related Securities; or

(3) to add to the covenants of the Obligors for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Obligors; or

(4) to add any additional Events of Default for the benefit of the Holders of all or any series of Securities (and if such Events of Default are to be for the benefit of less than all series of Securities, stating that such Events of Default are expressly being included solely for the benefit of such series); provided, however, that in respect of any such additional Events of Default such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default or may limit the right of the Holders of a majority in aggregate principal amount of that or those series of Securities to which such additional Events of Default apply to waive such default; or

(5) to add to or change any of the provisions of this Indenture to provide that Bearer Securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal of or any premium or interest on Bearer Securities, to permit Bearer Securities to be issued in exchange for Registered Securities, to permit Bearer Securities to be issued in exchange for Bearer Securities of other authorized denominations or to permit or facilitate the issuance of Securities in uncertificated form, provided that any such action shall not adversely affect the interests of the Holders of Securities of any series or any related coupons in any material respect; or

(6) to change or eliminate any of the provisions of this Indenture, provided that any such change or elimination shall become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision; or

(7) to secure the Securities; or

(8) to establish the form or terms of Securities of any series and any related coupons as permitted by Sections 201 and 301, including the provisions and procedures relating to Securities convertible into Common Stock or Preferred Stock, as the case may be; or

(9) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee; or

(10) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not be inconsistent with the provisions of this Indenture, provided such provisions shall not adversely affect the interests of the Holders of Securities of any series or any related coupons in any material respect; or

(11) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Sections 501, 1502 and 1503; provided that any such action shall not adversely affect the interests of the Holders of Securities of such series and any related coupons or any other series of Securities in any material respect;

(12) in the case of Securities issued after January 3, 2023, to add to or change any of the provisions of this Indenture in respect of one or more series of Securities solely to conform such provisions to the description of the Securities contained in the prospectus or other offering document pursuant to which such Securities were sold; or

(13) in the case of Securities issued after January 3, 2023, to amend or supplement any provision contained herein or in any supplemental indenture; provided that such amendment or supplement shall not adversely affect the interests of the Holders of Securities of any series or any related coupons in any material respect.

SECTION 1002. Supplemental Indentures with Consent of Holders. With the consent of the Holders of not less than a majority in principal amount of all Outstanding Securities affected by such supplemental indenture, by Act of said Holders delivered to the Issuer and the Trustee, the Issuer and the Guarantor, when authorized by or pursuant to a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities and any related coupons under this Indenture or any applicable Guarantee; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby:

(1) change the Stated Maturity of the principal of (or premium, if any, on) or any installment of principal of or interest on, any Security; or reduce the principal amount thereof or the rate or amount of interest thereon or any Additional Amounts payable in respect thereof, or any premium payable upon the redemption thereof, or change any obligation of the Issuer to pay Additional Amounts pursuant to Section 1112 (except as contemplated by Section 901(1) and permitted by Section 1001(1)), or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 602 or the amount thereof provable in bankruptcy pursuant to Section 604, or adversely affect any right of repayment at the option of the Holder of any Security, or change any Place of Payment where, or the currency or currencies, currency unit or units or composite currency or currencies in which, any Security or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption or repayment at the option of the Holder, on or after the Redemption Date or the Repayment Date, as the case may be), or

(2) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver with respect to such series (or compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or reduce the requirements of Section 1604 for quorum or voting, or

(3) modify any of the provisions of this Section, Section 613 or Section 1113, except to increase the required percentage to effect such action or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby; or

(4) amend the applicability of any Guarantee to the related Securities or the terms of any Guarantee in a manner that adversely affects the interest of Holders of the related Securities or any related coupons in any material respect.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

SECTION 1003. Execution of Supplemental Indentures. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

SECTION 1004. Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder and of any coupon appertaining thereto shall be bound thereby.

SECTION 1005. Conformity with Trust Indenture Act. Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

SECTION 1006. Reference in Securities to Supplemental Indentures. Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall, if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Issuer shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Issuer, to any such supplemental indenture may be prepared and executed by the Issuer and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

ARTICLE ELEVEN

COVENANTS

SECTION 1101. Payment of Principal, Premium, if any, Interest and Additional Amounts. The Issuer covenants and agrees for the benefit of the Holders of each series of Securities that it will duly and punctually pay the principal of (and premium, if any) and interest on and any Additional Amounts payable in respect of the Securities of that series in accordance with the terms of such series of Securities, any coupons appertaining thereto and this Indenture. Unless otherwise specified as contemplated by Section 301 with respect to any series of Securities, any interest due on and any Additional Amounts payable in respect of Bearer Securities on or before Maturity, other than Additional Amounts, if any, payable as provided in Section 1112 in respect of principal of (or premium, if any, on) such a Security, shall be payable only upon presentation and surrender of the several coupons for such interest installments as are evidenced thereby as they severally mature. Unless otherwise specified with respect to Securities of any series pursuant to Section 301, at the option of the Issuer, all payments of principal may be paid by check to the registered Holder of the Registered Security or other person entitled thereto against surrender of such Security.

SECTION 1102. Maintenance of Office or Agency. If Securities of a series are issuable only as Registered Securities, the Issuer shall maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment or conversion, where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Issuer in respect of the Securities of that series and this Indenture may be served. If Securities of a series are issuable as Bearer Securities, the Issuer will maintain: (A) in the Borough of Manhattan, The City of New York, an office or agency where any Registered Securities of that series may be presented or surrendered for payment or conversion, where any Registered Securities of that series may be surrendered for registration of transfer, where Securities of that series may be surrendered for exchange, where notices and demands to or upon the Issuer in respect of the Securities of that series and this Indenture may be served and where Bearer Securities of that series and related coupons may be presented or surrendered for payment or conversion in the circumstances described in the following paragraph (and not otherwise); (B) subject to any laws or regulations applicable thereto, in a Place of Payment for that series which is located outside the United States, an office or agency where Securities of that series and related coupons may be presented and surrendered for payment (including payment of any Additional Amounts payable on Securities of that series pursuant to Section 1112) or conversion; provided, however, that if the Securities of that series are listed on the Luxembourg Stock Exchange or any other stock exchange located outside the United States and such stock exchange shall so require, the Issuer will maintain a Paying Agent for the Securities of that series in Luxembourg or any other required city located outside the United States, as the case may be, so long as the Securities of that series are listed on such exchange; and (C) subject to any laws or regulations applicable thereto, in a Place of Payment for that series located outside the United States an office or agency where any Registered Securities of that series may be surrendered for registration of transfer, where Securities of that series may be surrendered for exchange and where notices and demands to or upon the Issuer in respect of the Securities of that series and this Indenture may be served. The Issuer will give prompt written notice to the Trustee of the location, and any change in the location, of each such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, except that Bearer Securities of that series and the related coupons may be presented and surrendered for payment (including payment of any Additional Amounts payable on Bearer Securities of that series pursuant to Section 1112) or conversion at the offices specified in the Security, in London, England, and the Issuer hereby appoints the same as its agent to receive such respective presentations, surrenders, notices and demands, and the Issuer hereby appoints the Trustee its agent to receive all such presentations, surrenders, notices and demands.

Unless otherwise specified with respect to any Securities pursuant to Section 301, no payment of principal, premium or interest on or Additional Amounts in respect of Bearer Securities shall be made at any office or agency of the Issuer in the United States or by check mailed to any address in the United States or by transfer to an account maintained with a bank located in the United States; provided, however, that, if the Securities of a series are payable in Dollars, payment of principal of and any premium and interest on any Bearer Security (including any Additional Amounts payable on Securities of such series pursuant to Section 1112) shall be made at the office of the Issuer's Paying Agent, if (but only if) payment in Dollars of the full amount of such principal, premium, interest or Additional Amounts, as the case may be, at all offices or agencies outside the United States maintained for the purpose by the Issuer in accordance with this Indenture, is illegal or effectively precluded by exchange controls or other similar restrictions.

The Issuer may from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all of such purposes, and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Issuer of its obligation to maintain an office or agency in accordance with the requirements set forth above for Securities of any series for such purposes. The Issuer will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. Unless otherwise specified with respect to any Securities pursuant to Section 301 with respect to a series of Securities, the Issuer hereby designates as a Place of Payment for each series of Securities the office or agency of the Issuer, and initially appoints the Trustee at its Corporate Trust Office as Paying Agent and as its agent to receive all such presentations, surrenders, notices and demands.

Unless otherwise specified with respect to any Securities pursuant to Section 301, if and so long as the Securities of any series (i) are denominated in a Foreign Currency or (ii) may be payable in a Foreign Currency, or so long as it is required under any other provision of the Indenture, then the Issuer will maintain with respect to each such series of Securities, or as so required, at least one exchange rate agent.

SECTION 1103. Money for Securities Payments to Be Held in Trust. If the Issuer shall at any time act as its own Paying Agent with respect to any series of any Securities and any related coupons, the Issuer will, on or before each due date of the principal of (and premium, if any), or interest on or Additional Amounts in respect of, any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) sufficient to pay the principal (and premium, if any) or interest or Additional Amounts so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and will promptly notify the Trustee of its action or failure so to act.

Whenever the Issuer shall have one or more Paying Agents for any series of Securities and any related coupons, the Issuer will, on or before each due date of the principal of (and premium, if any), or interest on or Additional Amounts in respect of, any Securities of that series, deposit with a Paying Agent a sum (in the currency or currencies, currency unit or units or composite currency or currencies described in the preceding paragraph) sufficient to pay the principal (and premium, if any) or interest or Additional Amounts, so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest or Additional Amounts and (unless such Paying Agent is the Trustee) the Issuer will promptly notify the Trustee of its action or failure so to act.

The Issuer will cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will

(1) hold all sums held by it for the payment of principal of (and premium, if any) or interest on Securities in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Obligors (or any other obligor upon the Securities) in the making of any such payment of principal (and premium, if any) or interest; and

(3) at any time during the continuance of any such default upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Issuer may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Issuer or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Issuer or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such sums.

Except as otherwise provided in the Securities of any series, any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of (and premium, if any) or interest on, or any Additional Amounts in respect of, any Security of any series and remaining unclaimed for two years after such principal (and premium, if any), interest or Additional Amounts has become due and payable shall be paid to the Issuer upon Issuer Request or (if then held by the Issuer) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Issuer for payment of such principal of (and premium, if any) or interest on, or any Additional Amounts in respect of, any Security, without interest thereon, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Issuer cause to be published once, in an Authorized Newspaper, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Issuer.

SECTION 1104. Limitations on Incurrence of Debt. (a) The Issuer will not, and will not permit any of its Subsidiaries to, incur any Debt if, immediately after giving effect to the incurrence of such additional Debt, the aggregate principal amount of all outstanding Debt of the Issuer and its Subsidiaries on a consolidated basis determined in accordance with GAAP is greater than 65% of Total Assets as of the end of the calendar quarter covered in the Issuer's Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, most recently filed with the Commission (or, if such filing is not permitted under the Exchange Act , with the Trustee) prior to the incurrence of such additional Debt;

(b) In addition to the limitation set forth in subsection (a) of this Section 1104, the Issuer will not, and will not permit any of its Subsidiaries to, incur any Debt if Consolidated Income Available for Debt Service for any 12 consecutive calendar months within the 15 calendar months immediately preceding the date on which such additional Debt is to be incurred shall have been less than 1.5 times the Maximum Annual Service Charge on the Debt of the Issuer and all of its Subsidiaries to be outstanding immediately after the incurring of such additional Debt.

(c) In addition to the limitations set forth in subsections (a) and (b) of this Section 1104, the Issuer will not, and will not permit any of its Subsidiaries to, incur any Debt secured by any mortgage, lien, charge, pledge, encumbrance or security interest of any kind upon any of the property of the Issuer or any of its Subsidiaries, whether owned at the date hereof or hereafter acquired, if, immediately after giving effect to the incurrence of such additional Debt, the aggregate principal amount of all outstanding Debt of the Issuer and its Subsidiaries which is secured by any mortgage, lien, charge, pledge, encumbrance or security interest on property of the Issuer or any of its Subsidiaries is greater than 40% of Total Assets as of the end of the calendar quarter covered in the Issuer's Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, most recently filed with the Commission (or, if such filing is not permitted under the Exchange Act, with the Trustee) prior to the incurrence of such additional Debt.

(d) For purposes of this Section 1104, Debt shall be deemed to be "incurred" by the Issuer or one of its Subsidiaries whenever the Issuer or such Subsidiary shall create, assume, guarantee or otherwise become liable in respect thereof.

SECTION 1105. [Reserved].

SECTION 1106. Existence. Subject to Article Nine, the Issuer and, as applicable, the Guarantor, will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises; provided, however, that the Issuer and, as applicable, the Guarantor, shall not be required to preserve any right or franchise if the Board of Directors of the Issuer or, as applicable, the Guarantor shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Issuer and, as applicable, the Guarantor and that the loss thereof is not disadvantageous in any material respect to the Holders.

SECTION 1107. Maintenance of Properties. The Issuer will cause all of its properties used or useful in the conduct of its business or the business of any of its Subsidiaries to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Issuer may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; provided, however, that nothing in this Section shall prevent the Issuer or any of its Subsidiaries from selling or otherwise disposing for value its properties in the ordinary course of its business.

SECTION 1108. Insurance. The Issuer will, and will cause each of its Subsidiaries to, keep all of its insurable properties insured against loss or damage at least equal to their then full insurable value with insurers of recognized responsibility and having a rating of at least A:VIII in Best's Key Rating Guide.

SECTION 1109. Payment of Taxes and Other Claims. The Issuer will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (1) all taxes, assessments and governmental charges levied or imposed upon it or any of its Subsidiaries or upon the income, profits or property of the Issuer or any of its Subsidiaries, and (2) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon the property of the Issuer or any of its Subsidiaries; provided, however, that the Issuer shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings.

SECTION 1110. Provision of Financial Information. Whether or not the Guarantor is subject to Section 13 or 15(d) of the Exchange Act, the Guarantor will, to the extent permitted under the Exchange Act, file with the Commission the annual reports, quarterly reports and other documents which the Guarantor would have been required to file with the Commission pursuant to such Section 13 or 15(d) (the "Financial Statements") if the Guarantor were so subject, such documents to be filed with the Commission on or prior to the respective dates (the "Required Filing Dates") by which the Guarantor would have been required so to file such documents if the Guarantor were so subject.

The Guarantor will also in any event (x) within 15 days of each Required Filing Date (i) transmit by mail to all Holders, as their names and addresses appear in the Security Register, without cost to such Holders, copies of the annual reports and quarterly reports which the Guarantor would have been required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act if the Guarantor were subject to such Sections, and (ii) file with the Trustee copies of the annual reports, quarterly reports and other documents which the Guarantor would have been required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act if the Guarantor were subject to such Sections, and (y) if filing such documents by the Guarantor with the Commission is not permitted under the Exchange Act, promptly upon written request and payment of the reasonable cost of duplication and delivery, supply copies of such documents to any prospective Holder.

For purposes of this Section 1110, any information, documents and other reports filed or furnished on EDGAR or such other system of the Commission or the website of the Guarantor will be deemed to be furnished to the Holders and the Trustee once such information, documents and other reports are so filed on EDGAR or the Commission's website or the website of the Guarantor. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive notice or knowledge of any information contained therein or determinable from information contained therein, including the Guarantor's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

SECTION 1111. Statement as to Compliance. The Issuer will deliver to the Trustee, within 120 days after the end of each fiscal year, a brief certificate from the principal executive officer, principal financial officer or principal accounting officer as to his or her knowledge of the Obligors' compliance with all conditions and covenants under this Indenture and, in the event of any noncompliance, specifying such noncompliance and the nature and status thereof. For purposes of this Section 1111, such compliance shall be determined without regard to any period of grace or requirement of notice under this Indenture.

SECTION 1112. Additional Amounts. If any Securities of a series provide for the payment of Additional Amounts, the Issuer will pay to the Holder of any Security of such series or any coupon appertaining thereto Additional Amounts as may be specified as contemplated by Section 301. Whenever in this Indenture there is mentioned, in any context except in the case of Section 602(1), the payment of the principal of or any premium or interest on, or in respect of, any Security of any series or payment of any related coupon or the net proceeds received on the sale or exchange of any Security of any series, such mention shall be deemed to include mention of the payment of Additional Amounts provided by the terms of such series established pursuant to Section 301 to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to such terms and express mention of the payment of Additional Amounts (if applicable) in any provisions hereof shall not be construed as excluding Additional Amounts in those provisions hereof where such express mention is not made.

Except as otherwise specified as contemplated by Section 301, if the Securities of a series provide for the payment of Additional Amounts, at least 10 days prior to the first Interest Payment Date with respect to that series of Securities (or if the Securities of that series will not bear interest prior to Maturity, the first day on which a payment of principal and any premium is made), and at least 10 days prior to each date of payment of principal and any premium or interest if there has been any change with respect to the matters set forth in the below-mentioned Officers' Certificate, the Issuer will furnish the Trustee and the Issuer's principal Paying Agent or Paying Agents, if other than the Trustee, with an Officers' Certificate instructing the Trustee and such Paying Agent or Paying Agents whether such payment of principal of and any premium or interest on the Securities of that series shall be made to Holders of Securities of that series or any related coupons who are not United States persons without withholding for or on account of any tax, assessment or other governmental charge described in the Securities of the series. If any such withholding shall be required, then such Officers' Certificate shall specify by country the amount, if any, required to be withheld on such payments to such Holders of Securities of that series or related coupons and the Issuer will pay to the Trustee or such Paying Agent the Additional Amounts required by the terms of such Securities. In the event that the Trustee or any Paying Agent, as the case may be, shall not so receive the above-mentioned certificate, then the Trustee or such Paying Agent shall be entitled (i) to assume that no such withholding or deduction is required with respect to any payment of principal or interest with respect to any Securities of a series or related coupons until it shall have received a certificate advising otherwise and (ii) to make all payments of principal and interest with respect to the Securities of a series or related coupons without withholding or deductions until otherwise advised. The Issuer covenants to indemnify the Trustee and any Paying Agent for, and to hold them harmless against, any loss, liability or expense reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them or in reliance on any Officers' Certificate furnished pursuant to this Section or in reliance on the Issuer not furnishing such an Officers' Certificate.

SECTION 1113. Waiver of Certain Covenants. The Obligors may omit in any particular instance to comply with any term, provision or condition set forth in Sections 1104 to 1110, inclusive, and Section 1114 if before or after the time for such compliance the Holders of at least a majority in principal amount of all outstanding Securities of such series, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Obligors and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

SECTION 1114. Maintenance of Unencumbered Total Asset Value. The Issuer will at all times maintain an Unencumbered Total Asset Value in an amount of not less than one hundred fifty percent (150%) of the aggregate principal amount of all outstanding Debt of the Issuer and its Subsidiaries that is unsecured.

SECTION 1115. Foreign Account Tax Compliance Act (FATCA). In order to comply with applicable tax laws, rules and regulations (inclusive of directives, guidelines and interpretations promulgated by competent authorities) in effect from time to time ("Applicable Law") that a foreign financial institution, issuer, trustee, paying agent, holder or other institution is or has agreed to be subject to related to the Indenture, the Issuer agrees (i) to provide to The Bank of New York Mellon upon reasonable written request relevant information in the Issuer's possession or control, or is reasonable obtainable by the Issuer, about the applicable parties and/or transactions (including any modification to the terms of such transactions) so The Bank of New York Mellon can determine whether it has tax related obligations under Applicable Law, and (ii) that The Bank of New York Mellon shall be entitled to make any withholding or deduction from payments under this Indenture to the extent necessary to comply with Applicable Law. The obligations imposed on the Issuer under this paragraph are limited to the extent that the provision of such information to The Bank of New York Mellon will not result in any breach of this Indenture or the Securities or violate any applicable law. The terms of this section shall survive the termination of this Indenture.

SECTION 1116. Economic Sanctions. (a) The Issuer represents that neither it nor, to the knowledge of the Issuer, any of its affiliates, subsidiaries, directors or officers are the target or subject of any sanctions enforced by the government of the United States of America (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State), the United Nations Security Council, the European Union, His Majesty's Treasury, or other relevant sanctions authority (collectively "Sanctions");

(b) The Issuer covenants that it will not directly or indirectly use any payments made pursuant to this agreement, (i) to fund or facilitate any activities of or business with any person who, at the time of such funding or facilitation, is the subject or target of Sanctions or (ii) to fund or facilitate any activities of or business with any country or territory that is the target or subject of Sanctions.

ARTICLE TWELVE

REDEMPTION OF SECURITIES

SECTION 1201. Applicability of Article. Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 301 for Securities of any series) in accordance with this Article.

SECTION 1202. Election to Redeem; Notice to Trustee. The election of the Issuer to redeem any Securities shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Issuer of less than all of the Securities of any series, the Issuer shall, at least 45 days prior to the giving of the notice of redemption in Section 1204 (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee of such Redemption Date and of the principal amount of Securities of such series to be redeemed. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Issuer shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction.

SECTION 1203. Selection of Securities to Be Redeemed. If less than all the Securities of any series issued on the same day with the same terms are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date, from the Outstanding Securities of such series issued on such date with the same terms not previously called for redemption, in accordance with applicable Depositary procedures and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof) of the principal amount of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series.

The Trustee shall promptly notify the Issuer and the Security Registrar (if other than itself) in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security which has been or is to be redeemed.

SECTION 1204. Notice of Redemption. Notice of redemption shall be given in the manner provided in Section 106, not less than 30 days nor more than 60 days prior to the Redemption Date, unless a shorter period is specified by the terms of such series established pursuant to Section 301, to each Holder of Securities to be redeemed, but failure to give such notice in the manner herein provided to the Holder of any Security designated for redemption as a whole or in part, or any defect in the notice to any such Holder, shall not affect the validity of the proceedings for the redemption of any other such Security or portion thereof.

Any notice that is mailed to the Holders of Registered Securities in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives the notice.

All notices of redemption shall state:

(1) the Redemption Date,

(2) the Redemption Price, accrued interest to the Redemption Date payable as provided in Section 1206, if any, and Additional Amounts, if any,

(3) if less than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amount) of the particular Security or Securities to be redeemed,

(4) in case any Security is to be redeemed in part only, the notice which relates to such Security shall state that on and after the Redemption Date, upon surrender of such Security, the holder will receive, without a charge, a new Security or Securities of authorized denominations for the principal amount thereof remaining unredeemed,

(5) that on the Redemption Date the Redemption Price and accrued interest to the Redemption Date payable as provided in Section 1206, if any, will become due and payable upon each such Security, or the portion thereof, to be redeemed and, if applicable, that interest thereon shall cease to accrue on and after said date,

(6) the Place or Places of Payment where such Securities, together in the case of Bearer Securities with all coupons appertaining thereto, if any, maturing after the Redemption Date, are to be surrendered for payment of the Redemption Price and accrued interest, if any, or for conversion,

(7) that the redemption is for a sinking fund, if such is the case,

(8) that, unless otherwise specified in such notice, Bearer Securities of any series, if any, surrendered for redemption must be accompanied by all coupons maturing subsequent to the date fixed for redemption or the amount of any such missing coupon or coupons will be deducted from the Redemption Price, unless security or indemnity satisfactory to the Issuer, the Trustee for such series and any Paying Agent is furnished,

(9) if Bearer Securities of any series are to be redeemed and any Registered Securities of such series are not to be redeemed, and if such Bearer Securities may be exchanged for Registered Securities not subject to redemption on this Redemption Date pursuant to Section 305 or otherwise, the last date, as determined by the Issuer, on which such exchanges may be made,

(10) the CUSIP number of such Security, if any, and

(11) if applicable, that a Holder of Securities who desires to convert Securities for redemption must satisfy the requirements for conversion contained in such Securities, the then existing conversion price or rate, and the date and time when the option to convert shall expire.

Notice of redemption of Securities to be redeemed shall be given by the Issuer or, at the Issuer's request, by the Trustee in the name and at the expense of the Issuer.

SECTION 1205. Deposit of Redemption Price. At least one Business Day prior to any Redemption Date, the Issuer shall deposit with the Trustee or with a Paying Agent (or, if the Issuer is acting as its own Paying Agent, which it may not do in the case of a sinking fund payment under Article Thirteen, segregate and hold in trust as provided in Section 1103) an amount of money in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) sufficient to pay on the Redemption Date the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date, unless otherwise specified pursuant to Section 301 for the Securities of such series) accrued interest on, all the Securities or portions thereof which are to be redeemed on that date.

SECTION 1206. Payable on Redemption Date. Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) (together with accrued interest, if any, to the Redemption Date), and from and after such date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) such Securities shall, if the same were interest-bearing, cease to bear interest and the coupons for such interest appertaining to any Bearer Securities so to be redeemed, except to the extent provided below, shall be void. Upon surrender of any such Security for redemption in accordance with said notice, together with all coupons, if any, appertaining thereto maturing after the Redemption Date, such Security shall be paid by the Issuer at the Redemption Price, together with accrued interest, if any, to the Redemption Date; provided, however, that installments of interest on Bearer Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable only at an office or agency located outside the United States (except as otherwise provided in Section 1102) and, unless otherwise specified as contemplated by Section 301, only upon presentation and surrender of coupons for such interest; and provided further that, except as otherwise provided with respect to Securities convertible into Common Stock or Preferred Stock, and as otherwise specified pursuant to Section 301 for the Securities of such series, installments of interest on Registered Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 307.

If any Bearer Security surrendered for redemption shall not be accompanied by all appurtenant coupons maturing after the Redemption Date, such Security may be paid after deducting from the Redemption Price an amount equal to the face amount of all such missing coupons, or the surrender of such missing coupon or coupons may be waived by the Issuer and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to the Trustee or any Paying Agent any such missing coupon in respect of which a deduction shall have been made from the Redemption Price, such Holder shall be entitled to receive the amount so deducted; provided, however, that interest represented by coupons shall be payable only at an office or agency located outside the United States (except as otherwise provided in Section 1102) and, unless otherwise specified as contemplated by Section 301, only upon presentation and surrender of those coupons.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate borne by the Security.

SECTION 1207. Securities Redeemed in Part. Any Registered Security which is to be redeemed only in part (pursuant to the provisions of this Article or of Article Thirteen) shall be surrendered at a Place of Payment therefor (with, if the Issuer or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuer and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Issuer shall execute and the Trustee shall authenticate and deliver to the Holder of such Security without service charge a new Security or Securities of the same series, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

ARTICLE THIRTEEN

SINKING FUNDS

SECTION 1301. Applicability of Article. The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 301 for Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a “mandatory sinking fund payment”, and any payment in excess of such minimum amount provided for by the terms of such Securities of any series is herein referred to as an “optional sinking fund payment”. If provided for by the terms of any Securities of any series, the cash amount of any mandatory sinking fund payment may be subject to reduction as provided in Section 1302. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

SECTION 1302. Satisfaction of Sinking Fund Payments with Securities. The Issuer may, in satisfaction of all or any part of any mandatory sinking fund payment with respect to the Securities of a series, (1) deliver Outstanding Securities of such series (other than any previously called for redemption) together in the case of any Bearer Securities of such series with all unmatured coupons appertaining thereto and (2) apply as a credit Securities of such series which have been redeemed either at the election of the Issuer pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, as provided for by the terms of such Securities, or which have otherwise been acquired by the Issuer; provided that such Securities so delivered or applied as a credit have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the applicable Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such mandatory sinking fund payment shall be reduced accordingly.

SECTION 1303. Redemption of Securities for Sinking Fund. Not less than 60 days prior to each sinking fund payment date for Securities of any series, the Issuer will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 1302, and the optional amount, if any, to be added in cash to the next ensuing mandatory sinking fund payment, and will also deliver to the Trustee any Securities to be so delivered and credited. If such Officers' Certificate shall specify an optional amount to be added in cash to the next ensuing mandatory sinking fund payment, the Issuer shall thereupon be obligated to pay the amount therein specified. Not less than 30 days before each such sinking fund payment date the Securities to be redeemed upon such sinking fund payment date shall be selected in the manner specified in Section 1203 and cause notice of the redemption thereof to be given in the name of and at the expense of the Issuer in the manner provided in Section 1204. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 1206 and 1207.

ARTICLE FOURTEEN

REPAYMENT AT THE OPTION OF HOLDERS

SECTION 1401. Applicability of Article. Repayment of Securities of any series before their Stated Maturity at the option of Holders thereof shall be made in accordance with the terms of such Securities, if any, and (except as otherwise specified by the terms of such series established pursuant to Section 301) in accordance with this Article.

SECTION 1402. Repayment of Securities. Securities of any series subject to repayment in whole or in part at the option of the Holders thereof will, unless otherwise provided in the terms of such Securities, be repaid at a price equal to the principal amount thereof, together with interest, if any, thereon accrued to the Repayment Date specified in or pursuant to the terms of such Securities. The Issuer covenants that at least one Business Day prior to the Repayment Date it will deposit with the Trustee or with a Paying Agent (or, if the Issuer is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1103) an amount of money in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) sufficient to pay the principal (or, if so provided by the terms of the Securities of any series, a percentage of the principal) of, and (except if the Repayment Date shall be an Interest Payment Date, unless otherwise specified pursuant to Section 301 for the Securities of such series) accrued interest on, all the Securities or portions thereof, as the case may be, to be repaid on such date.

SECTION 1403. Exercise of Option. Securities of any series subject to repayment at the option of the Holders thereof will contain an "Option to Elect Repayment" form on the reverse of such Securities. In order for any Security to be repaid at the option of the Holder, the Trustee must receive at the Place of Payment therefor specified in the terms of such Security (or at such other place or places of which the Issuer shall from time to time notify the Holders of such Securities) not earlier than 60 days nor later than 30 days prior to the Repayment Date (1) the Security so providing for such repayment together with the "Option to Elect Repayment" form on the reverse thereof duly completed by the Holder (or by the Holder's attorney duly authorized in writing) or (2) a telegram, telex, facsimile transmission or a letter from a member of a national securities exchange, or the National Association of Securities Dealers, Inc. ("NASD"), or a commercial bank or trust company in the United States setting forth the name of the Holder of the Security, the principal amount of the Security, the principal amount of the Security to be repaid, the CUSIP number, if any, or a description of the tenor and terms of the Security, a statement that the option to elect repayment is being exercised thereby and a guarantee that the Security to be repaid, together with the duly completed form entitled "Option to Elect Repayment" on the reverse of the Security, will be received by the Trustee not later than the fifth Business Day after the date of such telegram, telex, facsimile transmission or letter; provided, however, that such telegram, telex, facsimile transmission or letter shall only be effective if such Security and form duly completed are received by the Trustee by such fifth Business Day. If less than the entire principal amount of such Security is to be repaid in accordance with the terms of such Security, the principal amount of such Security to be repaid, in increments of the minimum denomination for Securities of such series, and the denomination or denominations of the Security or Securities to be issued to the Holder for the portion of the principal amount of such Security surrendered that is not to be repaid, must be specified. The principal amount of any Security providing for repayment at the option of the Holder thereof may not be repaid in part if, following such repayment, the unpaid principal amount of such Security would be less than the minimum authorized denomination of Securities of the series of which such Security to be repaid is a part. Except as otherwise may be provided by the terms of any Security providing for repayment at the option of the Holder thereof, exercise of the repayment option by the Holder shall be irrevocable unless waived by the Issuer.

SECTION 1404. When Securities Presented for Repayment Become Due and Payable. If Securities of any series providing for repayment at the option of the Holders thereof shall have been surrendered as provided in this Article and as provided by or pursuant to the terms of such Securities, such Securities or the portions thereof, as the case may be, to be repaid shall become due and payable and shall be paid by the Issuer on the Repayment Date therein specified, and on and after such Repayment Date (unless the Issuer shall default in the payment of such Securities on such Repayment Date) such Securities shall, if the same were interest-bearing, cease to bear interest and the coupons for such interest appertaining to any Bearer Securities so to be repaid, except to the extent provided below, shall be void. Upon surrender of any such Security for repayment in accordance with such provisions, together with all coupons, if any, appertaining thereto maturing after the Repayment Date, the principal amount of such Security so to be repaid shall be paid by the Issuer, together with accrued interest, if any, to the Repayment Date; provided, however, that coupons whose Stated Maturity is on or prior to the Repayment Date shall be payable only at an office or agency located outside the United States (except as otherwise provided in Section 1102) and, unless otherwise specified pursuant to Section 301, only upon presentation and surrender of such coupons; and provided further that, in the case of Registered Securities, unless otherwise specified pursuant to Section 301 for the Securities of such series, installments of interest, if any, whose Stated Maturity is on or prior to the Repayment Date shall be payable (but without interest thereon, unless the Issuer shall default in the payment thereof) to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 307.

If any Bearer Security surrendered for repayment shall not be accompanied by all appurtenant coupons maturing after the Repayment Date, such Security may be paid after deducting from the amount payable therefor as provided in Section 1402 an amount equal to the face amount of all such missing coupons, or the surrender of such missing coupon or coupons may be waived by the Issuer and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to the Trustee or any Paying Agent any such missing coupon in respect of which a deduction shall have been made as provided in the preceding sentence, such Holder shall be entitled to receive the amount so deducted; provided, however, that interest represented by coupons shall be payable only at an office or agency located outside the United States (except as otherwise provided in Section 1102) and, unless otherwise specified as contemplated by Section 301, only upon presentation and surrender of those coupons.

If the principal amount of any Security surrendered for repayment shall not be so repaid upon surrender thereof, such principal amount (together with interest, if any, thereon accrued to such Repayment Date) shall, until paid, bear interest from the Repayment Date at the rate of interest or Yield to Maturity (in the case of Original Issue Discount Securities) set forth in such Security.

SECTION 1405. Securities Repaid in Part. Upon surrender of any Registered Security which is to be repaid in part only, the Issuer shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge and at the expense of the Issuer, a new Registered Security or Securities of the same series, of any authorized denomination specified by the Holder, in an aggregate principal amount equal to and in exchange for the portion of the principal of such Security so surrendered which is not to be repaid.

ARTICLE FIFTEEN

DEFEASANCE AND COVENANT DEFEASANCE

SECTION 1501. Applicability of Article; Issuer's Option to Effect Defeasance or Covenant Defeasance. If, pursuant to Section 301, provision is made for either or both of (a) defeasance of the Securities of or within a series under Section 1502 or (b) covenant defeasance of the Securities of or within a series under Section 1503, then the provisions of such Section or Sections, as the case may be, together with the other provisions of this Article (with such modifications thereto as may be specified pursuant to Section 301 with respect to any Securities), shall be applicable to such Securities, any coupons appertaining thereto and any related Guarantee, and the Issuer may at its option by Board Resolution, at any time, with respect to such Securities, any coupons appertaining thereto and any related Guarantee, elect to have Section 1502 (if applicable) or Section 1503 (if applicable) be applied to such Outstanding Securities, any coupons appertaining thereto and any related Guarantee upon compliance with the conditions set forth below in this Article.

SECTION 1502. Defeasance and Discharge. Upon the Issuer's exercise of the above option applicable to this Section with respect to any Securities of or within a series, the Obligors shall be deemed to have been discharged from their obligations with respect to such Outstanding Securities, any coupons appertaining thereto and any related Guarantee, including, with respect to the Guarantor, release from its Guarantees of the Securities of such series, on the date the conditions set forth in Section 1504 are satisfied (hereinafter, "defeasance"). For this purpose, such defeasance means that the Issuer shall be deemed to have paid and discharged the entire indebtedness represented by such Outstanding Securities, any coupons appertaining thereto and any related Guarantee, which shall thereafter be deemed to be "Outstanding" only for the purposes of Section 1505 and the other Sections of this Indenture referred to in clauses (A) and (B) below, and to have satisfied all of their other obligations under such Securities, any coupons appertaining thereto and any related Guarantee and this Indenture insofar as such Securities, any coupons appertaining thereto and any related Guarantee are concerned (and the Trustee, at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (A) the rights of Holders of such Outstanding Securities, any coupons appertaining thereto and any related Guarantee to receive, solely from the trust fund described in Section 1504 and as more fully set forth in such Section, payments in respect of the principal of (and premium, if any) and interest, if any, on such Securities and any coupons appertaining thereto when such payments are due, (B) the Obligors' obligations with respect to such Securities under Sections 305, 306, 1102 and 1103 and with respect to the payment of Additional Amounts, if any, on such Securities as contemplated by Section 1112, (C) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (D) this Article. Subject to compliance with this Article Fifteen, the Issuer may exercise its option under this Section notwithstanding the prior exercise of its option under Section 1503 with respect to such Securities and any coupons appertaining thereto.

SECTION 1503. Covenant Defeasance. Upon the Issuer's exercise of the above option applicable to this Section with respect to any Securities of or within a series, the Obligors shall be released from their obligations under Sections 1104 to 1110, inclusive, and Section 1114 and, if specified pursuant to Section 301, their obligations under any other covenant, with respect to such Outstanding Securities, any coupons appertaining thereto and any related Guarantee, including, with respect to the Guarantor, release from its Guarantees of the Securities of such series, on and after the date the conditions set forth in Section 1504 are satisfied (hereinafter, "covenant defeasance"), and such Securities, any coupons appertaining thereto and any related Guarantee shall thereafter be deemed to be not "Outstanding" for the purposes of any direction, waiver, consent or declaration or Act of Holders (and the consequences of any thereof) in connection with Sections 1104 to 1110, inclusive, and Section 1114 and, if specified pursuant to Section 301, such other covenant, but shall continue to be deemed "Outstanding" for all other purposes hereunder. For this purpose, such covenant defeasance means that, with respect to such Outstanding Securities, any coupons appertaining thereto and any related Guarantee, the Obligors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such Section or such other covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such Section or such other covenant or by reason of reference in any such Section or such other covenant to any other provision herein or in any other document and such omission to comply shall not constitute a default or an Event of Default under Section 601(4) or 601(9) or otherwise, as the case may be, but, except as specified above, the remainder of this Indenture and such Securities, any coupons appertaining thereto and any related Guarantee shall be unaffected thereby.

SECTION 1504. Conditions to Defeasance or Covenant Defeasance. The following shall be the conditions to application of Section 1502 or Section 1503 to any Outstanding Securities of or within a series, any coupons appertaining thereto and any related Guarantee:

(a) The Issuer shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 709 who shall agree to comply with the provisions of this Article Fifteen applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities, any coupons appertaining thereto and any related Guarantee, (1) an amount in such currency, currencies or currency unit in which such Securities, any coupons appertaining thereto and any related Guarantee are then specified as payable at Stated Maturity, or (2) Government Obligations applicable to such Securities, coupons appertaining thereto and any related Guarantee (determined on the basis of the currency, currencies or currency unit in which such Securities, any coupons appertaining thereto and any related Guarantee are then specified as payable at Stated Maturity) which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment of principal of (and premium, if any) and interest, if any, on such Securities, any coupons appertaining thereto and any related Guarantee, money in an amount, or (3) a combination thereof, in any case, in an amount, sufficient, without consideration of any reinvestment of such principal and interest, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, (i) the principal of (and premium, if any) and interest, if any, on such Outstanding Securities, any coupons appertaining thereto and any related Guarantee on the Stated Maturity of such principal or installment of principal or interest and (ii) any mandatory sinking fund payments or analogous payments applicable to such Outstanding Securities, any coupons appertaining thereto and any related Guarantee on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Securities, any coupons appertaining thereto and any related Guarantee.

(b) Such defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other material agreement or instrument to which the Issuer or the Guarantor is a party or by which it is bound.

(c) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to such Securities, any coupons appertaining thereto and any related Guarantee shall have occurred and be continuing on the date of such deposit or, insofar as Sections 601(6) and 601(7) are concerned, at any time during the period ending on the 91st day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until the expiration of such period).

(d) In the case of an election under Section 1502, the Issuer shall have delivered to the Trustee an Opinion of Counsel stating that (i) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) since the date of execution of this Indenture, there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the Holders of such Outstanding Securities, any coupons appertaining thereto and any related Guarantee will not recognize income, gain or loss for Federal income tax purposes as a result of such defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred.

(e) In the case of an election under Section 1503, the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Outstanding Securities, any coupons appertaining thereto and any related Guarantee will not recognize income, gain or loss for Federal income tax purposes as a result of such covenant defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred.

(f) The Issuer shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance under Section 1502 or the covenant defeasance under Section 1503 (as the case may be) have been complied with and an Opinion of Counsel to the effect that either (i) as a result of a deposit pursuant to subsection (a) above and the related exercise of the Issuer's option under Section 1502 or Section 1503 (as the case may be), registration is not required under the Investment Company Act of 1940, as amended, by the Issuer, with respect to the trust funds representing such deposit or by the Trustee for such trust funds or (ii) all necessary registrations under said Act have been effected.

(g) Notwithstanding any other provisions of this Section, such defeasance or covenant defeasance shall be effected in compliance with any additional or substitute terms, conditions or limitations which may be imposed on the Issuer or the Guarantor in connection therewith pursuant to Section 301.

SECTION 1505. Deposited Money and Government Obligations to Be Held in Trust; Other Miscellaneous Provisions. Subject to the provisions of the last paragraph of Section 1103, all money and Government Obligations (or other property as may be provided pursuant to Section 301) (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 1505, the "Trustee") pursuant to Section 1504 in respect of any Outstanding Securities, any coupons appertaining thereto and any related Guarantee shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities, any coupons appertaining thereto and any related Guarantee and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Trustee may determine, to the Holders of such Securities, any coupons appertaining thereto and any related Guarantee of all sums due and to become due thereon in respect of principal (and premium, if any) and interest and Additional Amounts, if any, but such money need not be segregated from other funds except to the extent required by law.

Unless otherwise specified with respect to any Security pursuant to Section 301, if, after a deposit referred to in Section 1504(a) has been made, (a) the Holder of a Security in respect of which such deposit was made is entitled to, and does, elect pursuant to Section 301 or the terms of such Security to receive payment in a currency or currency unit other than that in which the deposit pursuant to Section 1504(a) has been made in respect of such Security, or (b) a Conversion Event occurs in respect of the currency or currency unit in which the deposit pursuant to Section 1504(a) has been made, the indebtedness represented by such Security and any coupons appertaining thereto shall be deemed to have been, and will be, fully discharged and satisfied through the payment of the principal of (and premium, if any), and interest, if any, on such Security as the same becomes due out of the proceeds yielded by converting (from time to time as specified below in the case of any such election) the amount or other property deposited in respect of such Security into the currency or currency unit in which such Security becomes payable as a result of such election or Conversion Event based on the applicable market exchange rate for such currency or currency unit in effect on the second Business Day prior to each payment date, except, with respect to a Conversion Event, for such currency or currency unit in effect (as nearly as feasible) at the time of the Conversion Event.

The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the Government Obligations deposited pursuant to Section 1504 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of such Outstanding Securities, any coupons appertaining thereto and any related Guarantee.

Anything in this Article to the contrary notwithstanding, subject to Section 707, the Trustee shall deliver or pay to the Issuer from time to time upon Issuer Request any money or Government Obligations (or other property and any proceeds therefrom) held by it as provided in Section 1504 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect a defeasance or covenant defeasance, as applicable, in accordance with this Article.

ARTICLE SIXTEEN

MEETINGS OF HOLDERS OF SECURITIES

SECTION 1601. Purposes for Which Meetings May Be Called. A meeting of Holders of Securities of any series may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Securities of such series.

SECTION 1602. Call, Notice and Place of Meetings. (a) The Trustee may at any time call a meeting of Holders of Securities of any series for any purpose specified in Section 1601, to be held at such time and at such place in the Borough of Manhattan, The City of New York, or in London as the Trustee shall determine. Notice of every meeting of Holders of Securities of any series, setting forth the time and the place of such meeting and, in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 106, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Issuer, pursuant to a Board Resolution, or the Holders of at least 10% in principal amount of the Outstanding Securities of any series shall have requested the Trustee to call a meeting of the Holders of Securities of such series for any purpose specified in Section 1601, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have made the first publication of the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Issuer or the Holders of Securities of such series in the amount above specified, as the case may be, may determine the time and the place in the Borough of Manhattan, The City of New York, or in London for such meeting and may call such meeting for such purposes by giving notice thereof as provided in subsection (a) of this Section.

SECTION 1603. Persons Entitled to Vote at Meetings. To be entitled to vote at any meeting of Holders of Securities of any series, a Person shall be (1) a Holder of one or more Outstanding Securities of such series, or (2) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities of such series by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Securities of any series shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Issuer and its counsel.

SECTION 1604. Quorum; Action. The Persons entitled to vote a majority in principal amount of the Outstanding Securities of a series shall constitute a quorum for a meeting of Holders of Securities of such series; provided, however, that if any action is to be taken at such meeting with respect to a consent or waiver which this Indenture expressly provides may be given by the Holders of not less than a specified percentage in principal amount of the Outstanding Securities of a series, the Persons entitled to vote such specified percentage in principal amount of the Outstanding Securities of such series shall constitute a quorum. In the absence of a quorum within 30 minutes after the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities of such series, be dissolved. In any other case the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 1602(a), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of any adjourned meeting shall state expressly the percentage, as provided above, of the principal amount of the outstanding Securities of such series which shall constitute a quorum.

Except as limited by the proviso to Section 1002, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted by the affirmative vote of the Holders of a majority in principal amount of the Outstanding Securities of that series; provided, however, that, except as limited by the proviso to Section 1002, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action which this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Securities of that series.

Any resolution passed or decision taken at any meeting of Holders of Securities of any series duly held in accordance with this Section shall be binding on all the Holders of Securities of such series and the related coupons, whether or not present or represented at the meeting.

Notwithstanding the foregoing provisions of this Section 1604, if any action is to be taken at a meeting of Holders of Securities of any series with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage in principal amount of all Outstanding Securities affected thereby, or of the Holders of such series and one or more additional series:

(i) there shall be no minimum quorum requirement for such meeting; and

(ii) the principal amount of the Outstanding Securities of such series that vote in favor of such request, demand, authorization, direction, notice, consent, waiver or other action shall be taken into account in determining whether such request, demand, authorization, direction, notice, consent, waiver or other action has been made, given or taken under this Indenture.

SECTION 1605. Determination of Voting Rights; Conduct and Adjournment of Meetings. (a) Notwithstanding any provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities of a series in regard to proof of the holding of Securities of such series and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 104 and the appointment of any proxy shall be proved in the manner specified in Section 104 or by having the signature of the Person executing the proxy witnessed or guaranteed by any trust company, bank or banker authorized by Section 104 to certify to the holding of Bearer Securities. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 104 or other proof.

(b) The Trustee shall, by an instrument in writing appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Issuer or by Holders of Securities as provided in Section 1602(b), in which case the Issuer or the Holders of Securities of the series calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting.

(c) At any meeting each Holder of a Security of such series or proxy shall be entitled to one vote for each $1,000 principal amount of the Outstanding Securities of such series held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Security of such series or proxy.

(d) Any meeting of Holders of Securities of any series duly called pursuant to Section 1602 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting, and the meeting may be held as so adjourned without further notice.

SECTION 1606. Counting Votes and Recording Action of Meetings. The vote upon any resolution submitted to any meeting of Holders of Securities of any series shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities of such series or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities of such series held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record, at least in duplicate, of the proceedings of each meeting of Holders of Securities of any Series shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the fact, setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 1602 and, if applicable, Section 1604. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Issuer and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

* * * * *

This Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Indenture.

Exhibit A

Forms of Certification

Exhibit A-1

Form of Certificate to be Given by Person Entitled to Receive Bearer Security or to Obtain Interest Payable Prior to the Exchange Date

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EXHIBIT A

FORMS OF CERTIFICATION

EXHIBIT A-1

FORM OF CERTIFICATE TO BE GIVEN BY PERSON ENTITLED TO RECEIVE BEARER SECURITY OR TO OBTAIN INTEREST PAYABLE PRIOR TO THE EXCHANGE DATE

CERTIFICATE

[Insert title or sufficient description of Securities to be delivered]

This is to certify that, as of the date hereof, and except as set forth below, the above-captioned Securities held by you for our account (i) are owned by person(s) that are not citizens or residents of the United States, domestic partnerships, domestic corporations or any estate or trust the income of which is subject to United States federal income taxation regardless of its source ("United States person(s)"), (ii) are owned by United States person(s) that are (a) foreign branches of United States financial institutions (financial institutions, as defined in United States Treasury Regulations Section 2.165-12(c)(1)(v) are herein referred to as "financial institutions") purchasing for their own account or for resale, or (b) United States person(s) who acquired the Securities through foreign branches of United States financial institutions and who hold the Securities through such United States financial institutions on the date hereof (and in either case (a) or (b), each such United States financial institution hereby agrees, on its own behalf or through its agent, that you may advise Kimco Realty OP, LLC or its agent that such financial institution will comply with the requirements of Section 165(j)(3)(A), (B) or (C) of the United States Internal Revenue Code of 1986, as amended, and the regulations thereunder), or (iii) are owned by United States or foreign financial institution(s) for purposes of resale during the restricted period (as defined in United States Treasury Regulations Section 1.163-5(c)(2)(i)(D)(7)), and, in addition, if the owner is a United States or foreign financial institution described in clause (iii) above (whether or not also described in clause (i) or (ii)), this is to further certify that such financial institution has not acquired the Securities for purposes of resale directly or indirectly to a United States person or to a person within the United States or its possessions.

As used herein, "United States" means the United States of America (including the States and the District of Columbia); and its "possessions" include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

We undertake to advise you promptly by tested telex on or prior to the date on which you intend to submit your certification relating to the above-captioned Securities held by you for our account in accordance with your Operating Procedures if any applicable statement herein is not correct on such date, and in the absence of any such notification it may be assumed that this certification applies as of such date.

This certificate excepts and does not relate to (U.S.$) _____ of such interest in the above-captioned Securities in respect of which we are not able to certify and as to which we understand an exchange for an interest in a Permanent Global Security or an exchange for and delivery of definitive Securities (or, if relevant, collection of any interest) cannot be made until we do so certify.

We understand that this certificate may be required in connection with certain tax legislation in the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings.

Dated: _____, 20____
[To be dated no earlier than the 15th day prior to (i) the Exchange Date or (ii) the relevant Interest Payment Date occurring prior to the Exchange Date, as applicable]

[Name of Person Making Certification]

(Authorized Signatory)
Name:
Title:

Exhibit A

Forms of Certification

Exhibit A-2

Form of Certificate to be Given by Euroclear and Clearstream
in Connection with the Exchange of a Portion of a Temporary Global Security
or to Obtain Interest Payable Prior to the Exchange Date

EXHIBIT A-2

FORM OF CERTIFICATE TO BE GIVEN BY EUROCLEAR
AND CLEARSTREAM IN CONNECTION WITH THE EXCHANGE OF
A PORTION OF A TEMPORARY GLOBAL SECURITY OR TO
OBTAIN INTEREST PAYABLE PRIOR TO THE EXCHANGE DATE

CERTIFICATE

[Insert title or sufficient description of Securities to be delivered]

This is to certify that, based solely on written certifications that we have received in writing, by tested telex or by electronic transmission from each of the persons appearing in our records as persons entitled to a portion of the principal amount set forth below (our "Member Organizations") substantially in the form attached hereto, as of the date hereof, [U.S.$] _____ principal amount of the above-captioned Securities (i) is owned by person(s) that are not citizens or residents of the United States, domestic partnerships, domestic corporations or any estate or trust the income of which is subject to United States Federal income taxation regardless of its source ("United States person(s)"), (ii) is owned by United States person(s) that are (a) foreign branches of United States financial institutions (financial institutions, as defined in U.S. Treasury Regulations Section 1.165-12(c)(1)(v) are herein referred to as "financial institutions") purchasing for their own account or for resale, or (b) United States person(s) who acquired the Securities through foreign branches of United States financial institutions and who hold the Securities through such United States financial institutions on the date hereof (and in either case (a) or (b), each such financial institution has agreed, on its own behalf or through its agent, that we may advise Kimco Realty OP, LLC or its agent that such financial institution will comply with the requirements of Section 165(j)(3)(A), (B) or (C), of the Internal Revenue Code of 1986, as amended, and the regulations thereunder), or (iii) is owned by United States or foreign financial institution(s) for purposes of resale during the restricted period. (as defined in United States Treasury Regulations Section 1.163-5(c)(2)(i)(D)(7)), and, to the further effect, that financial institutions described in clause (iii) above (whether or not also described in clause (i) or (ii)) have certified that they have not acquired the Securities for purposes of resale directly or indirectly to a United States person or to a person within the United States or its possessions.

As used herein, "United States" means the United States of America (including the States and the District of Columbia); and its "possessions" include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

We further certify that (i) we are not making available herewith for exchange (or, if relevant, collection of any interest) any portion of the temporary global Security representing the above captioned Securities excepted in the above referenced certificates of Member Organizations and (ii) as of the date hereof we have not received any notification from any of our Member organizations to the effect that the statements made by such Member Organizations with respect to any portion of the part submitted herewith for exchange (or, if relevant, collection of any interest) are no longer true and cannot be relied upon as of the date hereof.

We understand that this certification is required in connection with certain tax legislation in the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings.

Dated: _____, 20____
[To be dated no earlier than the Exchange Date or the relevant Interest Payment Date occurring prior to the Exchange Date, as applicable]

[Euroclear Bank, S.A./N.V.,] as
Operator of the Euroclear System
[Clearstream]

By: _____

Exhibit 4.2

EXECUTION VERSION

KIMCO REALTY OP, LLC, as the Company,

KIMCO REALTY CORPORATION, as the Guarantor and

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

FOURTH SUPPLEMENTAL INDENTURE

Dated as of January 3, 2023

Supplementing the Indenture, dated as of May 1, 1995,
between Kimco Realty Corporation (as successor in interest to Weingarten Realty Investors)
and The Bank of New York Mellon Trust Company, N.A. (as successor in interest to J.P. Morgan Trust Company, National Association,
as successor in interest to Texas Commerce Bank National Association)
as supplemented by
a First Supplemental Indenture dated August 2, 2006,
a Second Supplemental Indenture dated October 9, 2012 and
a Third Supplemental Indenture dated August 3, 2021

THIS FOURTH SUPPLEMENTAL INDENTURE is entered into as of January 3, 2023 (the "Fourth Supplemental Indenture"), by and between Kimco Realty OP, LLC (as successor to Kimco Realty Corporation, a Maryland corporation and successor in interest to Weingarten Realty Investors, a Texas real estate investment trust ("Old Kimco")), a Delaware limited liability company (the "Company"), Kimco Realty Corporation, a Maryland corporation (the "Guarantor"), and The Bank of New York Mellon Trust Company, N.A. (as successor to J.P. Morgan Trust Company, National Association, successor in interest to Texas Commerce Bank National Association), a banking corporation organized under the laws of the State of New York, as trustee (the "Trustee").

WHEREAS, pursuant to that certain Agreement and Plan of Merger, dated as of December 15, 2022, by and among the Company, then known as Kimco Realty Corporation, the Guarantor, then known as New KRC Corp., a Maryland corporation, which was a wholly-owned subsidiary of the Company prior to the Merger (as defined below), and KRC Merger Sub Corp., a Maryland corporation ("Merger Sub"), which was a wholly-owned subsidiary of the Guarantor prior to the Merger, Merger Sub merged with and into the Company, with the Company continuing as the surviving entity (the "Merger");

WHEREAS, in connection with the Merger, the Guarantor changed its name to "Kimco Realty Corporation," and, following the Merger, the Company converted to a Delaware limited liability company and changed its name to Kimco Realty OP, LLC;

WHEREAS, in connection with the Merger, the Company desires to enter into this Fourth Supplemental Indenture pursuant to Sections 901(2) and 901(9) of the Original Indenture (as defined below), which provide, among other things, that, without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental to the Indenture, in form satisfactory to the Trustee, to (i) add to the covenants of the Company for the benefit of the Holders of all or any series of Securities, or (ii) cure any ambiguity, correct or supplement any provision in the Indenture which may be defective or inconsistent with any other provision in the Indenture, or make any other provisions with respect to matters or questions arising under the Indenture which shall not be inconsistent with the provisions of the Indenture, *provided* that, in the case of clause (ii), such provisions shall not adversely affect the interests of the Holders of Securities of any series or any related coupons in any material respect;

WHEREAS, the Company desires to enter into this Fourth Supplemental Indenture pursuant to Sections 901(2) and 901(9) of the Original Indenture to (i) amend the Indenture to provide a full and unconditional guarantee of the obligations of the Company by the Guarantor in respect of (x) each series of the Outstanding Securities (as defined below) and (y) at the election of the Company as set out in Article Four of the Original Indenture, as amended and supplemented by this Fourth Supplemental Indenture, for the benefit of Holders of each series of Securities created on or after the date hereof, in each case in accordance with Section 901(2) of the Original Indenture, and (ii) make certain other changes to the Indenture consistent with the foregoing provisions in accordance with Section 901(9) of the Original Indenture;

WHEREAS, prior to the date hereof, the following series of senior debt securities issued by the Company under the Indenture remain outstanding: 4.450% Notes due 2024, 3.850% Notes due 2025, 6.64% Notes due 2026, 3.250% Notes due 2026, 6.60% Notes due 2026, 6.88% Notes due 2027, 6.65% Notes due 2027 and 6.46% Notes due 2028 (collectively, the "Outstanding Securities");

WHEREAS, Weingarten Realty Investors, a Texas real estate investment trust and predecessor to the Company ("WRI"), and the Trustee have entered into the Indenture dated as of May 1, 1995 ("Original Indenture"), relating to WRI's senior debt securities;

WHEREAS, WRI and the Trustee entered into the First Supplemental Indenture dated as of August 2, 2006 (the "First Supplemental Indenture"), pursuant to which the terms of a series of notes entitled the "3.95% Convertible Senior Notes due 2026" were established, in accordance with Sections 301 and 901 of the Original Indenture;

WHEREAS, WRI and the Trustee entered into the Second Supplemental Indenture dated as of October 9, 2012 (the "Second Supplemental Indenture"), pursuant to which certain provisions of the Original Indenture were amended and certain additional provisions to the Original Indenture were added for the benefit of Holders of all series of Securities created on or after the date of such Second Supplemental Indenture, in accordance with Section 901 of the Original Indenture;

WHEREAS, WRI, the Company and the Trustee entered into the Third Supplemental Indenture dated as of August 3, 2021 (the "Third Supplemental Indenture" and, together with the Original Indenture, the First Supplemental Indenture and the Second Supplemental Indenture, the "Indenture"), pursuant to which Old Kimco, predecessor to the Company, assumed all obligations of WRI under the Original Indenture, in accordance with Section 801 of the Original Indenture; and

WHEREAS, the Company and the Trustee are authorized to enter into this Fourth Supplemental Indenture.

NOW, THEREFORE, the Company and the Trustee agree as follows:

Section 1. Relation to Indenture. This Fourth Supplemental Indenture amends and supplements the Indenture and shall be part and subject to all the terms thereof. Except as amended and supplemented hereby, the Indenture and Securities issued thereunder shall continue in full force and effect.

Section 2. Definitions. Each term used herein which is defined in the Indenture has the meaning assigned to such term in the Indenture unless otherwise specifically defined herein, in which case the definition set forth herein shall govern.

Section 3. Amendment. The Original Indenture is hereby amended and restated as set forth on Exhibit A attached hereto.

Section 4. Guarantee. The payment of principal, interest and certain other amounts on each series of the Outstanding Securities is hereby fully and unconditionally guaranteed by the Guarantor on a senior unsecured basis, as set out in Article Four of the Original Indenture, as amended and supplemented by this Fourth Supplemental Indenture.

Section 5. Counterparts. This Fourth Supplemental Indenture may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one agreement binding on all parties hereto, notwithstanding that all the parties have not signed the same counterpart.

Section 6. Trustee's Acceptance. The Trustee hereby accepts this Fourth Supplemental Indenture and agrees to perform the same under the terms and conditions set forth in the Indenture.

Section 7. Reference to the Effect on the Indenture.

(a) On and after the effective date of this Fourth Supplemental Indenture, each reference in the Indenture to "this Indenture," "hereunder," "hereof," or "herein" shall mean and be a reference to the Indenture as supplemented by this Fourth Supplemental Indenture unless the context otherwise requires.

(b) Except as specifically modified or amended by this Fourth Supplemental Indenture, the Indenture is in all respects ratified and confirmed and all the terms, conditions and provisions thereof shall remain in full force and effect. Upon the execution and delivery of this Fourth Supplemental Indenture by the Company and the Trustee, this Fourth Supplemental Indenture shall form a part of the Indenture for all purposes. Any and all references, whether within the Indenture or in any notice, certificate or other instrument or document, shall be deemed to include a reference to this Fourth Supplemental Indenture (whether or not made), unless the context shall otherwise require.

Section 8. Governing Law. THIS FOURTH SUPPLEMENTAL INDENTURE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF).

Section 9. Trust Indenture Act Controls. If any provision of this Fourth Supplemental Indenture limits, qualifies or conflicts with another provision of this Fourth Supplemental Indenture or the Indenture that is to be included by the Trust Indenture Act of 1939, as amended (the "Act"), as in force at the date this Fourth Supplemental Indenture is executed, the provision required by the Act shall control.

Section 10. Benefits of Fourth Supplemental Indenture or the Securities. Nothing in this Fourth Supplemental Indenture or the Securities, express or implied, shall give to any Person, other than the parties hereto and thereto and their successors hereunder and thereunder and the Holders of the Securities, any benefit of any legal or equitable right, remedy or claim under the Indenture, this Fourth Supplemental Indenture or the Securities.

Section 11. Successors. All agreements of each of the Company and the Guarantor in this Fourth Supplemental Indenture shall bind its successors. All agreements of the Trustee in this Fourth Supplemental Indenture shall bind its successors.

Section 12. Concerning the Trustee. The Trustee shall not be responsible for any recital herein (other than the eleventh recital as it applies to the Trustee) as such recitals shall be taken as statements of the Company, or the validity of the execution by the Company of this Fourth Supplemental Indenture. The Trustee makes no representations as to the validity or sufficiency of this Fourth Supplemental Indenture.

Section 13. Certain Duties and Responsibilities of the Trustee. In entering into this Fourth Supplemental Indenture, the Trustee shall be entitled to the benefit of every provision of the Indenture relating to the conduct or affecting the liability or affording protection to the Trustee, including indemnification, whether or not elsewhere herein so provided.

Section 14. Titles. Section titles are for descriptive purposes only and shall not control or alter the meaning of this Fourth Supplemental Indenture as set forth in the text.

Section 15. Severability. In case any one or more of the provisions in this Fourth Supplemental Indenture shall be held invalid, illegal or unenforceable, in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions shall not in any way be affected or impaired thereby, it being intended that all of the provisions hereof shall be enforceable to the full extent permitted by law.

IN WITNESS WHEREOF, Kimco Realty OP, LLC has caused this Fourth Supplemental Indenture to be duly executed by its Chief Financial Officer hereunto duly authorized, Kimco Realty Corporation has caused this Fourth Supplemental Indenture to be duly executed by its Chief Financial Officer hereunto duly authorized and The Bank of New York Mellon has caused this Fourth Supplemental Indenture to be duly executed by one of its Vice Presidents thereunto duly authorized.

KIMCO REALTY OP, LLC, as Issuer
a Delaware limited liability company
By: /s/ Glenn G. Cohen
Name: Glenn G. Cohen
Title: Chief Financial Officer

KIMCO REALTY CORPORATION, as Guarantor
a Maryland corporation
By: /s/ Glenn G. Cohen
Name: Glenn G. Cohen
Title: Chief Financial Officer

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., solely in its capacity as Trustee, and not in its individual capacity
By: /s/ Ann M. Dolezal
Name: Ann M. Dolezal
Title: Vice President

[Signature Page to Fourth Supplemental Indenture]

Exhibit A

Amended and Restated Original Indenture

[Attached.]

KIMCO REALTY OP, LLC,
as Issuer,

KIMCO REALTY CORPORATION,
as Guarantor,

and

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

Amended and Restated Indenture

Dated as of January 3, 2023

Senior Debt Securities

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KIMCO REALTY OP, LLC

Reconciliation and tie between Trust Indenture Act of 1939
(the "1939 Act") and Indenture, dated as of January 3. 2023

Trust Indenture Act Section		Indenture Section
§ 310	(a) (1)	708
	(a) (2)	708
	(a) (3)	Not Applicable
	(a) (4)	Not Applicable
	(a) (5)	708
	(b)	708, 709
§ 311	(a)	Not Applicable
	(b)	Not Applicable
	(c)	Not Applicable
§ 312	(a)	801, 804
	(b)	801
	(c)	801
§ 313	(a)	802
	(b)	802
	(c)	802
	(d)	Not Applicable
§ 314	(a)	803, 1111
	(b)	Not Applicable
	(c)	102
	(d)	Not Applicable
	(e)	102
§ 315	(a)	703
	(b)	702, 703
	(c)	703
	(d)	703
	(e)	615
§ 316	(a) (last sentence)	101 ("Outstanding")
	(a) (1) (A)	602, 612
	(a) (1) (B)	613
	(a) (2)	Not Applicable
	(b)	608
	(c)	104
§ 317	(a) (1)	603
	(a) (2)	604
	(b)	1103
§ 318		111

NOTE: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

Attention should also be directed to Section 318(c) of the 1939 Act, which provides that the provisions of Sections 310 to and including 317 of the 1939 Act are a part of and govern every qualified indenture, whether or not physically contained therein.

This AMENDED AND RESTATED INDENTURE, dated as of January 3, 2023, between KIMCO REALTY OP, LLC, a Delaware limited liability company (hereinafter called the "Issuer"), having its principal office at 500 N. Broadway, Suite 201, Jericho, New York 11753, KIMCO REALTY CORPORATION, a Maryland corporation (hereinafter called the "Guarantor"), having its principal office at 500 N. Broadway, Suite 201, Jericho, New York 11753, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized under the laws of the United States of America, as Trustee hereunder (hereinafter called the "Trustee"), having its Corporate Trust Office at 500 Ross Street, 12th Floor, Pittsburgh, Pennsylvania 15262, amends and restates in its entirety the Indenture, dated as of May 1, 1995, between Weingarten Realty Investors (as predecessor in interest to the Issuer, formerly known as Kimco Realty Corporation) and Texas Commerce Bank National Association (as predecessor in interest to the Trustee), as trustee (the "Original Indenture").

RECITALS

The Issuer deems it necessary to issue from time to time for its lawful purposes senior debt securities (hereinafter called the "Securities") evidencing its unsecured and unsubordinated indebtedness, and has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of the Securities, unlimited as to principal amount, to bear interest at the rates or formulas, to mature at such times and to have such other provisions as shall be fixed as hereinafter provided.

The Guarantor deems it necessary to provide its Guarantee (as defined herein) of the Issuer's obligations under some or all of the Securities as contemplated herein.

This Indenture has been amended and restated in its entirety pursuant to the Fourth Supplemental Indenture to the Original Indenture, dated January 3, 2023, among the Issuer, the Guarantor and the Trustee, in accordance with Sections 901(2) and 901(9) of the Original Indenture, in order to (i) amend the Original Indenture to provide a full and unconditional guarantee of the obligations of the Issuer by the Guarantor in respect of (x) each series of the Outstanding Securities (as defined herein) and (y) at the election of the Issuer, as set out in Article Four of this Indenture, for the benefit of Holders of each series of Securities created on or after the date hereof, in each case in accordance with Section 901(2) of the Original Indenture, and (ii) make certain other changes to the Indenture consistent with the foregoing provisions in accordance with Section 901(9) of the Original Indenture.

This Indenture is subject to the provisions of the Trust Indenture Act of 1939, as amended, that are deemed to be incorporated into this Indenture and shall, to the extent applicable, be governed by such provisions.

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

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

For and in consideration of the premises and the purchase of the Securities by the holders thereof ("Holders"), it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

ARTICLE ONE

DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

SECTION 101. Definitions. For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

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

(2) all other terms used herein which are defined in the TIA, either directly or by reference therein, have the meanings assigned to them therein, and the terms "cash transaction" and "self-liquidating paper", as used in TIA Section 311, shall have the meanings assigned to them in the rules of the Commission adopted under the TIA;

(3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; and

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

"Acquired Debt" means Debt of a Person (i) existing at the time such Person becomes a Subsidiary or (ii) assumed in connection with the acquisition of assets from such Person, in each case, other than Debt incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or such acquisition. Acquired Debt shall be deemed to be incurred on the date of the related acquisition of assets from any Person or the date the acquired Person becomes a Subsidiary.

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

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

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

"Annual Service Charge" as of any date means the maximum amount which is payable in any period for interest on, and original issue discount of, Debt of the Issuer and its Subsidiaries and the amount of dividends which are payable in respect of any Disqualified Stock.

"Authenticating Agent" means any authenticating agent appointed by the Trustee pursuant to Section 711.

"Authorized Newspaper" means a newspaper, printed in the English language or in an official language of the country of publication, customarily published on each Business Day, whether or not published on Saturdays, Sundays or holidays, and of general circulation in each place in connection with which the term is used or in the financial community of each such place. Whenever successive publications are required to be made in Authorized Newspapers, the successive publications may be made in the same or in different Authorized Newspapers in the same city meeting the foregoing requirements and in each case on any Business Day.

"Bankruptcy Law" has the meaning specified in Section 601.

"Bearer Security" means any Security established pursuant to Section 201 which is payable to bearer.

"Board of Directors" means, in the case of the Issuer, the managing member or members of the Issuer or any controlling committee of managing members thereof duly authorized to act hereunder or, in the case of the Guarantor, the board of directors of the Guarantor, the executive committee or any committee of thereof duly authorized to act hereunder.

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

"Business Day", when used with respect to any Place of Payment or any other particular location referred to in this Indenture or in the Securities, means, unless otherwise specified with respect to any Securities pursuant to Section 301, any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in that Place of Payment or particular location are authorized or required by law, regulation or executive order to close.

"Capital Stock" means, with respect to any Person, any capital stock (including preferred stock), interests, participations or other ownership interests (however designated) of such Person and any rights (other than debt securities convertible into or exchangeable for capital stock), warrants or options to purchase any thereof.

"Clearstream" means Clearstream Banking, *société anonyme*, or its successor.

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

"Common Depositary" has the meaning specified in Section 304(b).

"Common Stock" means, with respect to any Person, Capital Stock issued by such Person other than Preferred Stock.

"Consolidated Income Available for Debt Service" for any period means Funds from Operations of the Issuer and its Subsidiaries plus amounts which have been deducted for interest on Debt of the Issuer and its Subsidiaries.

"Conversion Event" means the cessation of use of (i) a Foreign Currency (other than the ECU) both by the government of the country which issued such currency and for the settlement of transactions by a central bank or other public institutions of or within the international banking community, (ii) the ECU or (iii) any currency unit (or composite currency) other than the ECU for the purposes for which it was established.

"Corporate Trust Office" means the office of the Trustee at which, at any particular time, its corporate trust business shall be principally administered, which office at the date hereof is located at 500 Ross Street, 12th Floor, Pittsburgh, Pennsylvania 15262.

"corporation" includes corporations, associations, partnerships, companies and business trusts.

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

"Custodian" has the meaning specified in Section 601.

"Debt" of the Issuer or any of its Subsidiaries means any indebtedness of the Issuer, or any of its Subsidiaries, other than contingent liabilities (except to the extent set forth in (iii) below, in respect of (without duplication) (i) borrowed money or evidenced by bonds, notes, debentures or similar instruments, (ii) indebtedness secured by any mortgage, pledge, lien, charge, encumbrance or any security interest existing on property owned by the Issuer or any of its Subsidiaries, (iii) the reimbursement obligations, contingent or otherwise, in connection with any letters of credit actually issued or amounts representing the balance deferred and unpaid of the purchase price of any property or services, except any such balance that constitutes an accrued expense or trade payable, or all conditional sale obligations or obligations under any title retention agreement, (iv) the principal amount of all obligations of the Issuer or any of its Subsidiaries with respect to redemption, repayment or other repurchase of any Disqualified Stock or (v) any lease of property by the Issuer or any of its Subsidiaries as lessee which is reflected on the Issuer's consolidated balance sheet as a capitalized lease in accordance with GAAP to the extent, in the case of items of indebtedness under (i) through (iii) above, that any such items (other than letters of credit) would appear as a liability on the Issuer's consolidated balance sheet in accordance with GAAP, but does not include any obligation of the Issuer or any of its Subsidiaries to be liable for, or to pay, as obligor, guarantor or otherwise, Debt of another Person (other than the Issuer or any of its Subsidiaries) unless and until the Issuer or such Subsidiary shall become directly liable in respect thereof).

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

"Disqualified Stock" means, with respect to any Person, any Capital Stock of such Person which by the terms of such Capital Stock (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 (i) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, (ii) is convertible into or exchangeable or exercisable for debt or Disqualified Stock or (iii) is redeemable at the option of the holder thereof, in whole or in part, in each case on or prior to the Stated Maturity of the Securities.

"Dollar" or "$" means a dollar or other equivalent unit in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

"DTC" means The Depositary Trust Company.

"ECU" means the single currency of the participating member states from time to time of the European Union described in legislation of the European Counsel for the operation of a single unified European currency (whether known as the Euro or otherwise).

"EDGAR" has the meaning specified in Section 803.

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

"Euroclear" means Euroclear Bank, S.A./N.V., or its successor as operator of the Euroclear System.

"Event of Default" has the meaning specified in Article Six.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, as any statute successor thereto, in each case as amended from time to time.

"Exchange Date" has the meaning specified in Section 304(b).

"Foreign Currency" means any currency, currency unit or composite currency, including, without limitation, the ECU issued by the government of one or more countries other than the United States of America or by any recognized confederation or association of such governments.

"Funds from Operations" for any period means net income plus depreciation, amortization and extraordinary charges, excluding gains and losses on sales of properties and securities.

"GAAP" means generally accepted accounting principles, as in effect from time to time, as used in the United States applied on a consistent basis.

"Government Obligations" means securities which are (i) direct obligations of the United States of America or the government which issued the Foreign Currency in which the Securities of a particular series are payable, for the payment of which its full faith and credit is pledged or (ii) obligations of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or such government which issued the foreign currency in which the Securities of such series are payable, the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America or such other government, which, in either case, are not callable or redeemable at the option of the issuer thereof, and shall also include a depository receipt issued by a bank or trust company as custodian with respect to any such Government Obligation or a specific payment of interest on or principal of any such Government Obligation held by such custodian for the account of the holder of a depository receipt, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depository receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of interest on or principal of the Government Obligation evidenced by such depository receipt.

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

"Guarantor" means Kimco Realty Corporation, a Maryland corporation, and any and all permitted successors thereto pursuant to this Indenture.

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

"Indenture" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, and shall include the terms of particular series of Securities established as contemplated by Section 301; provided, however, that, if at any time more than one Person is acting as Trustee under this instrument, "Indenture" shall mean, with respect to any one or more series of Securities for which such Person is Trustee, this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of the or those particular series of Securities for which such Person is Trustee established as contemplated by Section 301, exclusive, however, of any provisions or terms which relate solely to other series of Securities for which such Person is not Trustee, regardless of when such terms or provisions were adopted, and exclusive of any provisions or terms adopted by means of one or more indentures supplemental hereto executed and delivered after such Person had become such Trustee but to which such Person, as such Trustee, was not a party.

"Indexed Security" means a Security the terms of which provide that the principal amount thereof payable at Stated Maturity may be more or less than the principal face amount thereof at original issuance.

"interest", when used with respect to an Original Issue Discount Security which by its terms bears interest only after Maturity, shall mean interest payable after Maturity, and, when used with respect to a Security which provides for the payment of Additional Amounts pursuant to Section 1111, includes such Additional Amounts.

"Interest Payment Date", when used with respect to any Security, means the Stated Maturity of an installment of interest on such Security.

"Issuer" means the Person named as the "Issuer" in the first paragraph of this Indenture and all permitted successors pursuant to this Indenture.

"Issuer Request" and "Issuer Order" mean, respectively, a written request or order signed in the name of the Issuer by its Chairman of the Board, the President or a Vice President, and by its Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Issuer, and delivered to the Trustee.

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

"Obligors" means, collectively, the Issuer and the Guarantor, and "Obligor" means either of the Obligors, which in each case for the avoidance of doubt only relates to the Guarantor of Guarantees applicable to the particular Securities.

"Officers' Certificate" means a certificate signed by the Chairman of the Board of Directors, the President or a Vice President and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Issuer or the Guarantor, as applicable, and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for the Issuer or the Guarantor, as applicable, or who may be an employee of or other counsel for the Issuer or the Guarantor, as applicable, and who shall be satisfactory to the Trustee, and which shall be delivered to the Trustee.

"Original Indenture" has the meaning specified in the first paragraph of this Indenture.

"Original Issue Discount Security" means any Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 602.

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

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

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

(iii) Securities, except to the extent provided in Sections 1502 and 1503, with respect to which the Issuer has effected defeasance and/or covenant defeasance as provided in Article Fifteen;

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

(v) Securities converted into Common Stock or Preferred Stock pursuant to or in accordance with this Indenture if the terms of such Securities provide for convertibility pursuant to Section 301; and

(vi) lost, stolen or destroyed Securities, when new Securities have been duly and validly issued in substitution for them pursuant to Section 306;

provided, however, that in determining whether the Holders of the requisite principal amount of the Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder or are present at a meeting of Holders for quorum purposes, and for the purpose of making the calculations required by TIA Section 313, (i) the principal amount of an Original Issue Discount Security that may be counted in making such determination or calculation and that shall be deemed to be Outstanding for such purpose shall be equal to the amount of principal thereof that would be (or shall have been declared to be) due and payable, at the time of such determination, upon a declaration of acceleration of the maturity thereof pursuant to Section 602, (ii) the principal amount of any Security denominated in a Foreign Currency that may be counted in making such determination or calculation and that shall be deemed Outstanding for such purpose shall be equal to the Dollar equivalent, determined pursuant to Section 301 as of the date such Security is originally issued by the Issuer, of the principal amount (or, in the case of an Original Issue Discount Security, the Dollar equivalent as of such date of original issuance of the amount determined as provided in clause (i) above) of such Security, (iii) the principal amount of any Indexed Security that may be counted in making such determination or calculation and that shall be deemed outstanding for such purpose shall be equal to the principal face amount of such Indexed Security at original issuance, unless otherwise provided with respect to such Security pursuant to Section 301, and (iv) Securities owned by the Issuer or any other obligor upon the Securities or any Affiliate of the Issuer or of such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in making such calculation or in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which the Trustee knows to be so owned shall be so disregarded. Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Issuer or any other obligor upon the Securities or any Affiliate of the Issuer or of such other obligor.

"Paying Agent" means any Person authorized by the Issuer to pay the principal of (and premium, if any) or interest on any Securities or coupons on behalf of the Issuer.

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or government or any agency or political subdivision thereof.

"Place of Payment", when used with respect to the Securities of or within any series, means the place or places where the principal of (and premium, if any) and interest on such Securities are payable as specified as contemplated by Sections 301 and 1102.

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

"Preferred Stock" means, with respect to any Person, Capital Stock issued by such Person that is entitled to a preference or priority over any other capital stock issued by such Person upon any distribution of such Person's assets, whether by dividend or upon liquidation.

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

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

"Registered Security" shall mean any Security which is registered in the Security Register.

"Regular Record Date" for the interest payable on any Interest Payment Date on the Registered Securities of or within any series means the date specified for that purpose as contemplated by Section 301, whether or not a Business Day.

"Repayment Date" means, when used with respect to any Security to be repaid at the option of the Holder, the date fixed for such repayment by or pursuant to this Indenture.

"Repayment Price" means, when used with respect to any Security to be repaid at the opinion of the Holder, the price at which it is to be repaid by or pursuant to this Indenture.

"Responsible Officer", when used with respect to the Trustee, means any vice president, a secretary, any assistant secretary, any treasurer, any trust officer or assistant trust officer or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of such officer's knowledge and familiarity with the particular subject.

"Sanctions" has the meaning specified in Section 1115.

"Security" has the meaning stated in the first recital of this Indenture and, more particularly, means any Security or Securities authenticated and delivered under this Indenture; provided, however, that, if at any time there is more than one Person acting as Trustee under this Indenture, "Securities" with respect to the Indenture as to which such Person is Trustee shall have the meaning stated in the first recital of this Indenture and shall more particularly mean Securities authenticated and delivered under this Indenture, exclusive, however, of Securities of any series as to which such Person is not Trustee.

"Securities Act" means the Securities Act of 1933, as amended, and any statute successor thereto, in each case as amended from time to time.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 305.

"Significant Subsidiary" means any Subsidiary which is a "significant subsidiary" (as defined in Article I, Rule 1-02 of Regulation S-X, promulgated under the Securities Act) of an Obligor.

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

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

"Subsidiary" means a corporation or other organization a majority of the outstanding voting securities of which is owned, directly or indirectly, by any Person or by one or more other Subsidiaries of such Person. For the purposes of this definition, "voting securities" means securities having voting power for the election of directors (or comparable members of the governing body), whether at all times or only so long as no senior class of securities has such voting power by reason of any contingency.

"Total Assets" as of any date means the sum of (i) the Issuer's Undepreciated Real Estate Assets and (ii) all other assets of the Issuer determined in accordance with GAAP (but excluding goodwill and unamortized debt costs).

"Trust Indenture Act" or "TIA" means the Trust Indenture Act of 1939, as amended and as in force at the date as of which this Indenture was executed, except as provided in Section 1005.

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

"Undepreciated Real Estate Assets" as of any date means the cost (original cost plus capital improvements) of real estate assets of the Issuer and its Subsidiaries on such date, before depreciation and amortization determined on a consolidated basis in accordance with GAAP.

"Unencumbered Total Asset Value" means as of any date the sum of the Issuer's Total Assets which are unencumbered by any mortgage, lien, charge, pledge or security interest.

"United States" means, unless otherwise specified with respect to any Securities pursuant to Section 301, the United States of America (including the states and the District of Columbia), its territories, its possessions and other areas subject to its jurisdiction.

"United States person" means, unless otherwise specified with respect to any Securities pursuant to Section 301, an individual who is a citizen or resident of the United States, a corporation, partnership or other entity created or organized in or under the laws of the United States or an estate or trust the income of which is subject to United States federal income taxation regardless of its source.

"Yield to Maturity" means the yield to maturity, computed at the time of issuance of a Security (or, if applicable, at the most recent redetermination of interest on such Security) and as set forth in such Security in accordance with generally accepted United States bond yield computation principles.

SECTION 102. Compliance Certificates and Opinions. Upon any application or request by the Issuer to the Trustee to take any action under any provision of this Indenture, the Issuer shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Indenture relating to such particular application or request, no additional certificate or opinion need be furnished.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (including certificates delivered pursuant to Section 1110) shall include:

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

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

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

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

SECTION 103. Form of Documents Delivered to Trustee. In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion as to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

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

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

SECTION 104. Acts of Holders. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of the Outstanding Securities of all series or one or more series, as the case may be, may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agents duly appointed in writing. If Securities of a series are issuable as Bearer Securities, any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders of Securities of such series may, alternatively, be embodied in and evidenced by the record of Holders of Securities of such series voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders of Securities of such series duly called and held in accordance with the provisions of Article Sixteen, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Obligors. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments or so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Security, shall be sufficient for any purpose of this Indenture. The record of any meeting of Holders of Securities shall be proved in the manner provided in Section 1606.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him the execution thereof. Where such execution is by a signer acting in a capacity other than his individual capacity, such certificate or affidavit shall also constitute sufficient proof of his authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other reasonable manner which the Trustee deems sufficient.

(c) The ownership of Registered Securities shall be proved by the Security Register.

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

(e) If the Issuer shall solicit from the Holders of Registered Securities any request, demand, authorization, direction, notice, consent, waiver or other Act, the Issuer may, at its option, in or pursuant to a Board Resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Issuer shall have no obligation to do so. Notwithstanding TIA Section 316(c), such record date shall be the record date specified in or pursuant to such Board Resolution, which shall be a date not earlier than the date 30 days prior to the first solicitation of Holders generally in connection therewith and not later than the date such solicitation is completed. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of Outstanding Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the Outstanding Securities shall be computed as of such record date; provided that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than eleven months after the record date.

In the absence of any such record date fixed by the Issuer, regardless as to whether a solicitation of the Holders is occurring on behalf of the Issuer or any Holder, the Trustee may, at its option, fix in advance a record date for the determination of such Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Trustee shall have no obligation to do so. Any such record date shall be a date not more than 30 days prior to the first solicitation of Holders generally in connection therewith no later than the date of such solicitation.

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

SECTION 105. Notices, etc., to Trustee, Issuer and Guarantor. Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder or by the Issuer or the Guarantor shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office.

(2) the Issuer or the Guarantor by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first class postage prepaid, to the Issuer or the Guarantor, as applicable, addressed to it at the address of its principal office specified in the first paragraph of this Indenture or at any other address previously furnished in writing to the Trustee by the Issuer or the Guarantor.

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

SECTION 106. Notice to Holders; Waiver. Where this Indenture provides for notice of any event to Holders of Registered Securities by the Issuer or the Trustee, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, or delivered pursuant to applicable Depositary procedures to each such Holder affected by such event, at its address as it appears in the Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. In any case where notice to Holders of Registered Securities is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders of Registered Securities or the sufficiency of any notice to Holders of Bearer Securities given as provided herein. Any notice mailed to a Holder in the manner herein prescribed shall be conclusively deemed to have been received by such Holder, whether or not such Holder actually receives such notice.

If by reason of the suspension of or irregularities in regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification to Holders of Registered Securities as shall be made with the approval of the Trustee shall constitute a sufficient notification to such Holders for every purpose hereunder.

Except as otherwise expressly provided herein or otherwise specified with respect to any Securities pursuant to Section 301, where this Indenture provides for notice to Holders of Bearer Securities of any event, such notice shall be sufficiently given if published in an Authorized Newspaper in New York City and in such other city or cities as may be specified in such Securities on a Business Day, such publication to be not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. Any such notice shall be deemed to have been given on the date of such publication or, if published more than once, on the date of the first such publication.

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

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

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

SECTION 107. Effect of Headings and Table of Contents. The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

SECTION 108. Successors and Assigns. All covenants and agreements in this Indenture by the Issuer and the Guarantor shall bind their respective successors and assigns, whether so expressed or not.

SECTION 109. Separability Clause. In case any provision in this Indenture or in any Security or coupon shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

SECTION 110. Benefits of Indenture. Nothing in this Indenture or in the Securities or coupons, express or implied, shall give to any Person, other than the parties hereto, any Security Registrar, any Paying Agent, any Authenticating Agent and their successors hereunder and the Holders any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 111. Governing Law. This Indenture and the Securities and coupons shall be governed by and construed in accordance with the law of the State of New York. This Indenture is subject to the provisions of the TIA that are required to be part of this Indenture and shall, to the extent applicable, be governed by such provisions.

SECTION 112. Legal Holidays. In any case where any Interest Payment Date, Redemption Date, Repayment Date, sinking fund payment date, Stated Maturity or Maturity of any Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or any Security or coupon other than a provision in the Securities of any series which specifically states that such provision shall apply in lieu hereof), payment of interest or any Additional Amounts or principal (and premium, if any) need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date, Redemption Date, Repayment Date or sinking fund payment date, or at the Stated Maturity or Maturity, provided that no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date, Repayment Date, sinking fund payment date, Stated Maturity or Maturity, as the case may be.

SECTION 113. Immunity of Shareholders, Trust Managers, Officers and Agents of the Issuer and the Guarantor. The Trustee recognizes and agrees that the obligations of the Issuer and the Guarantor under the Indenture and the Securities and all documents delivered in the name of the Issuer or the Guarantor, as applicable in connection herewith and therewith do not and shall not constitute personal obligations of the officers, directors, managers, employees, agents or shareholders of the Issuer or the Guarantor or any of them, and shall not involve any claim against or personal liability on the part of any of them, and that all persons including the Trustee shall look solely to the assets of the Issuer or the Guarantor, as applicable, for the payment of any claim thereunder or for the performance thereof and shall not seek recourse against such officers, directors, managers, employees, agents or shareholders of the Issuer or the Guarantor or any of them or any of their personal assets for such satisfaction.

The performance of the obligations of the Issuer and the Guarantor under the Indenture and the Securities and all documents delivered in the name of the Issuer and the Guarantor in connection therewith shall not be deemed a waiver of any rights or powers of the Issuer, its directors, managers or its shareholders, or of the Guarantor, its directors or its shareholders.

ARTICLE TWO
SECURITIES FORMS

SECTION 201. Forms of Securities. The Registered Securities, if any, of each series and the Bearer Securities, if any, of each series and related coupons and, in each case, the related Guarantees, if any, shall be in substantially the forms as shall be established in one or more indentures supplemental hereto or approved from time to time by or pursuant to a Board Resolution in accordance with Section 301, shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture or any indenture supplemental hereto, and may have such letters, numbers or other marks of identification or designation and such legends or endorsements placed thereon as the Issuer may deem appropriate and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any stock exchange on which the Securities may be listed, or to conform to usage.

Unless otherwise specified as contemplated by Section 301, Bearer Securities shall have interest coupons attached.

The definitive Securities and coupons shall be printed, lithographed or engraved or produced by any combination of these methods on a steel engraved border or steel engraved borders or may be produced in any other manner, all as determined by the officers executing such Securities or coupons, as evidenced by their execution of such Securities or coupons.

SECTION 202. Form of Trustee's Certificate of Authentication. Subject to Section 711, the Trustee's certificate of authentication shall be in substantially the following form:

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

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

By _____
Authorized Signatory

SECTION 203. Securities Issuable in Global Form. If Securities of or within a series are issuable in global form, as specified as contemplated by Section 301, then, notwithstanding clause (8) of Section 301 and the provisions of Section 302, any such Security shall represent such of the Outstanding Securities of such series as shall be specified therein and may provide that it shall represent the aggregate amount of Outstanding Securities of such series from time to time endorsed thereon and that the aggregate amount of Outstanding Securities of such series represented thereby may from time to time be increased or decreased to reflect exchanges. Any endorsement of a Security in global form to reflect the amount, or any increase or decrease in the amount, of Outstanding Securities represented thereby shall be made by the Trustee in such manner and upon instructions given by such Person or Persons as shall be specified therein or in the Issuer Order to be delivered to the Trustee pursuant to Section 303 or 304. Subject to the provisions of Section 303 and, if applicable, Section 304, the Trustee shall deliver and redeliver any Security in permanent global form in the manner and upon instructions given by the Person or Persons specified therein or in the applicable Issuer Order. If an Issuer Order pursuant to Section 303 or 304 has been, or simultaneously is, delivered, any instructions by the Issuer with respect to endorsement or delivery or redelivery of a Security in global form shall be in writing but need not comply with Section 102 and need not be accompanied by an Opinion of Counsel.

The provisions of the last sentence of Section 303 shall apply to any Security represented by a Security in global form if such Security was never issued and sold by the Issuer and the Issuer delivers to the Trustee the Security in global form together with written instructions (which need not comply with Section 102 and need not be accompanied by an Opinion of Counsel) with regard to the reduction in the principal amount of Securities represented thereby, together with the written statement contemplated by the last sentence of Section 303.

Notwithstanding the provisions of Section 307, unless otherwise specified as contemplated by Section 301, payment of principal of and any premium and interest on any Security in permanent global form shall be made to the Person or Persons specified therein.

Notwithstanding the provisions of Section 308 and except as provided in the preceding paragraph, the Issuer, the Trustee and any agent of the Issuer and the Trustee shall treat as the Holder of such principal amount of Outstanding Securities represented by a permanent global Security (i) in the case of a permanent global Security in registered form, the Holder of such permanent global Security in registered form, or (ii) in the case of a permanent global Security in bearer form, Euroclear or Clearstream.

ARTICLE THREE
THE SECURITIES

SECTION 301. Amount Unlimited; Issuable in Series. The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited.

The Securities may be issued in one or more series. There shall be established in one or more Board Resolutions or pursuant to authority granted by one or more Board Resolutions and, subject to Section 303, set forth, or determined in the manner provided, in an Officers' Certificate, or established in one or more indentures supplemental hereto, prior to the issuance of Securities of any series, any or all of the following, as applicable (each of which (except for the matters set forth in clauses (1), (2) and (15) below), if so provided, may be determined from time to time by the Issuer with respect to unissued Securities of the series when issued from time to time):

(1) the title of the Securities of the series (which shall distinguish the Securities of such series from all other series of Securities);

(2) any limit upon the aggregate principal amount of the Securities of the series that may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities of the series pursuant to Sections 304, 305, 306, 1006, 1207 or 1405);

(3) the date or dates, or the method by which such date or dates will be determined, on which the principal of the Securities of the series shall be payable;

(4) the rate or rates at which the Securities of the series shall bear interest, if any, or the method by which such rate or rates shall be determined, the date or dates from which such interest shall accrue or the method by which such date or dates shall be determined, the Interest Payment Dates on which such interest will be payable and the Regular Record Date, if any, for the interest payable on any Registered Security on any Interest Payment Date, or the method by which such date shall be determined, and the basis upon which interest shall be calculated if other than that of a 360-day year of twelve 30-day months;

(5) the place or places, if any, other than or in addition to the Borough of Manhattan, New York City, where the principal of (and premium, if any), interest, if any, on, and Additional Amounts, if any, payable in respect of, Securities of the series shall be payable, any Registered Securities of the series may be surrendered for registration of transfer, exchange or conversion and notices or demands to or upon the Issuer in respect of the Securities of the series and this Indenture may be served;

(6) the period or periods within which, the price or prices at which, the currency or currencies, currency unit or units or composite currency or currencies in which, and other terms and conditions upon which Securities of the series may be redeemed, in whole or in part, at the option of the Issuer, if the Issuer is to have the option;

(7) the obligation, if any, of the Issuer to redeem, repay or purchase Securities of the series pursuant to any sinking fund or analogous provision or at the option of a Holder thereof, and the period or periods within which or the date or dates on which, the price or prices at which, the currency or currencies, currency unit or units or composite currency or currencies in which, and other terms and conditions upon which Securities of the series shall be redeemed, repaid or purchased, in whole or in part, pursuant to such obligation;

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

(9) if other than the Trustee, the identity of each Security Registrar and/or Paying Agent;

(10) if other than the principal amount thereof, the portion of the principal amount of Securities of the series that shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 602 or, if applicable, the portion of the principal amount of Securities of the series that is convertible in accordance with the provisions of this Indenture, or the method by which such portion shall be determined;

(11) if other than Dollars, the Foreign Currency or Currencies in which payment of the principal of (and premium, if any) or interest or Additional Amounts, if any, on the Securities of the series shall be payable or in which the Securities of the series shall be denominated;

(12) whether the amount of payments of principal of (and premium, if any) or interest, if any, on the Securities of the series may be determined with reference to an index, formula or other method (which index, formula or method may be based, without limitation, on one or more currencies, currency units, composite currencies, commodities, equity indices or other indices), and the manner in which such amounts shall be determined;

(13) whether the principal of (and premium, if any) or interest or Additional Amounts, if any, on the Securities of the series are to be payable, at the election of the Issuer or a Holder thereof, in a currency or currencies, currency unit or units or composite currency or currencies other than that in which such Securities are denominated or stated to be payable, the period or periods within which, and the terms and conditions upon which, such election may be made, and the time and manner of, and identity of the exchange rate agent with responsibility for, determining the exchange rate between the currency or currencies, currency unit or units or composite currency or currencies in which such Securities are denominated or stated to be payable and the currency or currencies, currency unit or units or composite currency or currencies in which such Securities are to be so payable;

(14) provisions, if any, granting special rights to the Holders of Securities of the series upon the occurrence of such events as may be specified;

(15) any deletions from, modifications of or additions to the Events of Default or covenants of the Issuer or, if applicable, the Guarantor with respect to Securities of the series, whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth herein;

(16) whether Securities of the series are to be issuable as Registered Securities, Bearer Securities (with or without coupons) or both, any restrictions applicable to the offer, sale or delivery of Bearer Securities and the terms upon which Bearer Securities of the series may be exchanged for Registered Securities of the series and vice versa (if permitted by applicable laws and regulations), whether any Securities of the series are to be issuable initially in temporary global form and whether any Securities of the series are to be issuable in permanent global form with or without coupons and, if so, whether beneficial owners of interests in any such permanent global Security may exchange such interests for Securities of such series and of like tenor of any authorized form and denomination and the circumstances under which any such exchanges may occur, if other than in the manner provided in Section 305, and, if Registered Securities of the series are to be issuable as a global Security, the identity of the depositary for such series;

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

(18) the Person to whom any interest on any Registered Security of the series shall be payable, if other than the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, the manner in which, or the Person to whom, any interest on any Bearer Security of the series shall be payable, if otherwise than upon presentation and surrender of the coupons appertaining thereto as they severally mature, and the extent to which, or the manner in which, any interest payable on a temporary global Security on an Interest Payment Date will be paid if other than in the manner provided in Section 304;

(19) the applicability, if any, of Sections 1502 and/or 1503 to the Securities of the series and any provisions in modification of, in addition to or in lieu of any of the provisions of Article Fifteen;

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

(21) whether and under what circumstances the Issuer will pay Additional Amounts as contemplated by Section 1111 on the Securities of the series to any Holder who is not a United States person (including any modification to the definition of such term) in respect of any tax, assessment or governmental charge and, if so, whether the Issuer will have the option to redeem such Securities rather than pay such Additional Amounts (and the terms of any such option);

(22) the obligation, if any, of the Issuer to permit the conversion of the Securities of such series into the Issuer's Common Stock or Preferred Stock, as the case may be, and the terms and conditions upon which such conversion shall be effected (including, without limitation, the initial conversion price or rate, the conversion period, any adjustment of the applicable conversion price and any requirements relative to the reservation of such shares for purposes of conversion);

(23) whether the Guarantees as contemplated by Article Four of this Indenture shall apply to the series; and

(24) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture).

All Securities of any one series and the coupons appertaining to any Bearer Securities of such series shall be substantially identical except, in the case of Registered Securities, as to denomination and except as may otherwise be provided in or pursuant to such Board Resolution (subject to Section 303) and set forth in such Officers' Certificate or in any such indenture supplemental hereto. All Securities of any one series need not be issued at the same time and, unless otherwise provided, a series may be reopened, without the consent of the Holders, for issuances of additional Securities of such series.

If any of the terms of the Securities of any series are established by action taken pursuant to one or more Board Resolutions, a copy of an appropriate record of such action(s) shall be certified by the Secretary or an Assistant Secretary of the Issuer and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the Securities of such series.

SECTION 302. Denominations. The Securities of each series shall be issuable in such denominations as shall be specified as contemplated by Section 301. With respect to Securities of any series denominated in Dollars, in the absence of any such provisions with respect to the Securities of any series, the Registered Securities of such series, other than Registered Securities issued in global form (which may be of any denomination), shall be issuable in denominations of $1,000 and any integral multiple thereof and the Bearer Securities of such series, other than Bearer Securities issued in global form (which may be of any denomination), shall be issuable in denominations of $5,000, and in any integral multiple thereof.

SECTION 303. Execution, Authentication, Delivery and Dating.

The Securities and any coupons appertaining thereto shall be executed on behalf of the Issuer by its Chairman of the Board, its President or one of its Vice Presidents. The related Guarantees, if any, shall be executed on behalf of the Guarantor by its Chairman of the Board, its President or one of its Vice Presidents. The signature of any of these individuals on the Securities, coupons or Guarantee, as applicable, may be manual, facsimile or electronic signatures of the present or any future such authorized officer and may be imprinted or otherwise reproduced on the Securities or Guarantees, as applicable.

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

At any time and from time to time after the execution and delivery of this Indenture, the Issuer may deliver Securities of any series, together with any coupon or Guarantees appertaining thereto, executed by the Issuer to the Trustee for authentication, together with an Issuer Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Issuer Order shall authenticate and deliver such Securities; provided, however, that, unless otherwise specified with respect to any series of Securities pursuant to Section 301, a Bearer Security may be delivered in connection with its original issuance only if the Person entitled to receive such Bearer Security shall have furnished a certificate to Euroclear or Clearstream, as the case may be, in the form set forth in Exhibit A-1 to this Indenture or such other certificate as may be specified with respect to any series of Securities pursuant to Section 301, dated no earlier than 15 days prior to the earlier of the date on which such Bearer Security is delivered and the date on which any temporary Security first becomes exchangeable for such Bearer Security in accordance with the terms of such temporary Security and this Indenture. If any Security shall be represented by a permanent global Bearer Security, then, for purposes of this Section and Section 304, the notation of a beneficial owner's interest therein upon original issuance of such Security or upon exchange of a portion of a temporary global Security shall be deemed to be delivery in connection with its original issuance of such beneficial owner's interest in such permanent global Security. Except as permitted by Section 306, the Trustee or the Authenticating Agent shall not authenticate and deliver any Bearer Security unless all appurtenant coupons for interest then matured have been detached and cancelled.

If all of the Securities of any series are not to be issued at one time and if the Board Resolution or supplemental indenture establishing such series shall so permit, such Issuer Order may set forth procedures acceptable to the Trustee for the issuance of such Securities and determining the terms of particular Securities of such series, such as interest rate or formula, maturity date, date of issuance and date from which interest shall accrue. In authenticating the Securities of any series hereunder, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and (subject to TIA Sections 315(a) through 315(d)) shall be fully protected in relying upon;

(i) an Opinion of Counsel stating that:

(a) the form or forms of such Securities, any coupons and the related Guarantees, if any, have been established in conformity with the provisions of this Indenture;

(b) the terms of such Securities, any coupons and the related Guarantees, if any, have been established in conformity with the provisions of this Indenture; and

(c) such Securities, together with any coupons or Guarantees, if any, appertaining thereto, when completed by appropriate insertions and executed and delivered by the Issuer to the Trustee for authentication in accordance with this Indenture, authenticated and delivered by the Trustee in accordance with this Indenture and issued by the Issuer and the Guarantor, as applicable, in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute legal, valid and binding obligations of the Issuer and, if applicable, the Guarantor, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization and other similar laws of general applicability relating to or affecting the enforcement of creditors' rights generally and to general equitable principles; and

(ii) an Officers' Certificate stating that all conditions precedent provided for in this Indenture relating to the authentication, issuance and delivery of the Securities have been complied with and that, to the best of the knowledge of the signers of such certificate, no Event of Default with respect to any of the Securities shall have occurred and be continuing.

If such form or terms have been so established, the Trustee shall not be required to authenticate such Securities if the issue of such Securities pursuant to this Indenture will affect the Trustee's own rights, duties, obligations or immunities under the Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Notwithstanding the provisions of Section 301 and of the preceding paragraph, if all the Securities of any series are not to be issued at one time, it shall not be necessary to deliver an Officers' Certificate otherwise required pursuant to Section 301 or an Issuer Order, or an Opinion of Counsel or an Officers' Certificate otherwise required pursuant to the preceding paragraph at the time of issuance of each Security of such series, but such order, opinion and certificates, with appropriate modifications to cover such future issuances, shall be delivered at or before the time of issuance of the first Security of such series.

Each Registered Security and related Guarantee, if any, shall be dated the date of its authentication and each Bearer Security shall be dated as of the date specified as contemplated by Section 301.

No Security or coupon shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security or Security to which such coupon appertains a certificate of authentication substantially in the form provided for herein duly executed by the Trustee by manual, facsimile or electronic signature of an authorized signatory, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Issuer, and the Issuer shall deliver such Security to the Trustee for cancellation as provided in Section 309 together with a written statement (which need not comply with Section 102 and need not be accompanied by an Opinion of Counsel) stating that such Security has never been issued and sold by the Issuer, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

SECTION 304. Temporary Securities. (a) Pending the preparation of definitive Securities of any series, the Issuer may execute, and upon Issuer Order the Trustee shall authenticate and deliver, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued, in registered form, or, if authorized, in bearer form with one or more coupons or without coupons, and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as conclusively evidenced by their execution of such Securities. In the case of Securities of any series, such temporary Securities may be in global form.

Except in the case of temporary Securities in global form (which shall be exchanged in accordance with Section 304(b) or as otherwise provided in or pursuant to a Board Resolution), if temporary Securities of any series are issued, the Issuer will cause definitive Securities of that series to be prepared without unreasonable delay. After the preparation of definitive Securities of such series, the temporary Securities of such series shall be exchangeable for definitive Securities of such series upon surrender of the temporary Securities of such series at the office or agency of the Issuer in a Place of Payment for that series, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities of any series (accompanied by any non-matured coupons appertaining thereto), the Issuer shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of the same series of authorized denominations; provided, however, that no definitive Bearer Security shall be delivered in exchange for a temporary Registered Security; and provided further that a definitive Bearer Security shall be delivered in exchange for a temporary Bearer Security only in compliance with the conditions set forth in Section 303. Until so exchanged, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of such series.

(b) Unless otherwise provided in or pursuant to a Board Resolution, this Section 304(b) shall govern the exchange of temporary Securities issued in global form other than through the facilities of The Depository Trust Company. If any such temporary Security is issued in global form, then such temporary global Security shall, unless otherwise provided therein, be delivered to the London office of a depositary or common depositary (the "Common Depositary"), for the benefit of Euroclear and Clearstream, for credit to the respective accounts of the beneficial owners of such Securities (or to such other accounts as they may direct).

Without unnecessary delay but in any event not later than the date specified in, or determined pursuant to the terms of, any such temporary global Security (the "Exchange Date"), the Issuer shall deliver to the Trustee definitive Securities, in aggregate principal amount equal to the principal amount of such temporary global Security, executed by the Issuer. On or after the Exchange Date, such temporary global Security shall be surrendered by the Common Depositary to the Trustee, or its agent, as the Issuer's agent for such purpose, to be exchanged, in whole or from time to time in part, for definitive Securities without charge, and the Trustee shall authenticate and deliver, in exchange for each portion of such temporary global Security, an equal aggregate principal amount of definitive Securities of the same series of authorized denominations and of like tenor as the portion of such temporary global Security to be exchanged. The definitive Securities to be delivered in exchange for any such temporary global Security shall be in bearer form, registered form, permanent global bearer form or permanent global registered form, or any combination thereof, as specified as contemplated by Section 301, and, if any combination thereof is so specified, as requested by the beneficial owner thereof; provided, however, that, unless otherwise specified in such temporary global Security, upon such presentation by the Common Depositary, such temporary global Security is accompanied by a certificate dated the Exchange Date or a subsequent date and signed by Euroclear as to the portion of such temporary global Security held for its account then to be exchanged and a certificate dated the Exchange Date or a subsequent date and signed by Clearstream as to the portion of such temporary global Security held for its account then to be exchanged, each in the form set forth in Exhibit A-2 to this Indenture or in such other form as may be established pursuant to Section 301; and provided further that definitive Bearer Securities shall be delivered in exchange for a portion of a temporary global Security only in compliance with the requirements of Section 303.

Unless otherwise specified in such temporary global Security, the interest of a beneficial owner of Securities of a series in a temporary global Security shall be exchanged for definitive Securities of the same series and of like tenor following the Exchange Date when the account holder instructs Euroclear or Clearstream, as the case may be, to request such exchange on his behalf and delivers to Euroclear or Clearstream, as the case may be, a certificate in the form set forth in Exhibit A-1 to this Indenture (or in such other form as may be established pursuant to Section 301), dated no earlier than 15 days prior to the Exchange Date, copies of which certificate shall be available from the offices of Euroclear and Clearstream, the Trustee, any Authenticating Agent appointed for such series of Securities and each Paying Agent. Unless otherwise specified in such temporary global Security, any such exchange shall be made free of charge to the beneficial owners of such temporary global Security, except that a Person receiving definitive Securities must bear the cost of insurance, postage, transportation and the like unless such Person takes delivery of such definitive Securities in person at the offices of Euroclear or Clearstream. Definitive Securities in bearer form to be delivered in exchange for any portion of a temporary global Security shall be delivered only outside the United States.

Until exchanged in full as hereinabove provided, the temporary Securities of any series shall in all respects be entitled to the same benefits under this Indenture as definitive Securities of the same series and of like tenor authenticated and delivered hereunder, except that, unless otherwise specified as contemplated by Section 301, interest payable on a temporary global Security on an Interest Payment Date for Securities of such series occurring prior to the applicable Exchange Date shall be payable to Euroclear and Clearstream on such Interest Payment Date upon delivery by Euroclear and Clearstream to the Trustee of a certificate or certificates in the form set forth in Exhibit A-2 to this Indenture (or in such other forms as may be established pursuant to Section 301), for credit without further interest on or after such Interest Payment Date to the respective accounts of Persons who are the beneficial owners of such temporary global Security on such Interest Payment Date and who have each delivered to Euroclear or Clearstream, as the case may be, a certificate dated no earlier than 15 days prior to the Interest Payment Date occurring prior to such Exchange Date in the form set forth as Exhibit A-1 to this Indenture (or in such other forms as may be established pursuant to Section 301). Notwithstanding anything to the contrary herein contained, the certifications made pursuant to this paragraph shall satisfy the certification requirements of the preceding two paragraphs of this Section 304(b) and of the third paragraph of Section 303 of this Indenture and the interests of the Persons who are the beneficial owners of the temporary global Security with respect to which such certification was made will be exchanged for definitive Securities of the same series and of like tenor on the Exchange Date or the date of certification if such date occurs after the Exchange Date, without further act or deed by such beneficial owners. Except as otherwise provided in this paragraph, no payments of principal or interest owing with respect to a beneficial interest in a temporary global Security will be made unless and until such interest in such temporary global Security shall have been exchanged for an interest in a definitive Security. Any interest so received by Euroclear and Clearstream and not paid as herein provided shall be returned to the Trustee prior to the expiration of two years after such Interest Payment Date in order to be repaid to the Issuer.

SECTION 305. Registration, Registration of Transfer and Exchange. The Issuer shall cause to be kept at the Corporate Trust Office of the Trustee or in any office or agency of the Issuer in a Place of Payment a register for each series of Securities (the registers maintained in such office or in any such office or agency of the Issuer in a Place of Payment being herein sometimes referred to collectively as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Issuer shall provide for the registration of Registered Securities and of transfers of Registered Securities. The Security Register shall be in written form or any other form capable of being converted into written form within a reasonable time. The Trustee, at its Corporate Trust Office, is hereby appointed "Security Registrar" for the purpose of registering Registered Securities and transfers of Registered Securities on such Security Register as herein provided. In the event that the Trustee shall cease to be Security Registrar, it shall have the right to examine the Security Register at all reasonable times.

Subject to the provisions of this Section 305, upon surrender for registration of transfer of any Registered Security of any series at any office or agency of the Issuer in a Place of Payment for that series, the Issuer shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Registered Securities of the same series, of any authorized denominations and of a like aggregate principal amount, bearing a number not contemporaneously outstanding, and containing identical terms and provisions.

Subject to the provisions of this Section 305, at the option of the Holder, Registered Securities of any series may be exchanged for other Registered Securities of the same series, of any authorized denomination or denominations and of a like aggregate principal amount, containing identical terms and provisions, upon surrender of the Registered Securities to be exchanged at any such office or agency. Whenever any such Registered Securities are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the Registered Securities which the Holder making the exchange is entitled to receive. Unless otherwise specified with respect to any series of Securities as contemplated by Section 301, Bearer Securities may not be issued in exchange for Registered Securities.

If (but only if) permitted by the applicable Board Resolution and (subject to Section 303) set forth in the applicable Officers' Certificate, or in any indenture supplemental hereto, delivered as contemplated by Section 301, at the option of the Holder, Bearer Securities of any series may be exchanged for Registered Securities of the same series of any authorized denominations and of a like aggregate principal amount and tenor, upon surrender of the Bearer Securities to be exchanged at any such office or agency, with all unmatured coupons and all matured coupons in default thereto appertaining. If the Holder of a Bearer Security is unable to produce any such unmatured coupon or coupons or matured coupon or coupons in default, any such permitted exchange may be effected if the Bearer Securities are accompanied by payment in funds acceptable to the Issuer in an amount equal to the face amount of such missing coupon or coupons, or the surrender of such missing coupon or coupons may be waived by the Issuer and the Trustee if there is furnished to them such security or indemnity as they may require, in their sole discretion, to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to any Paying Agent any such missing coupon in respect of which such a payment shall have been made, such Holder shall be entitled to receive the amount of such payment; provided, however, that, except as otherwise provided in Section 1102, interest represented by coupons shall be payable only upon presentation and surrender of those coupons at an office or agency located outside the United States.

Notwithstanding the foregoing, in case a Bearer Security of any series is surrendered at any such office or agency in a permitted exchange for a Registered Security of the same series and like tenor after the close of business at such office or agency on (i) any Regular Record Date and before the opening of business at such office or agency on the relevant Interest Payment Date, or (ii) any Special Record Date and before the opening of business at such office or agency on the related proposed date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the coupon relating to such Interest Payment Date or proposed date for payment, as the case may be, and interest or Defaulted Interest, as the case may be, will not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such coupon when due in accordance with the provisions of this Indenture.

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

Notwithstanding the foregoing, except as otherwise specified as contemplated by Section 301, any permanent global Security shall be exchangeable only as provided in this paragraph. If the depositary for any permanent global Security is DTC, then, unless the terms of such global Security expressly permit such global Security to be exchanged in whole or in part for definitive Securities, a global Security may be transferred, in whole but not in part, only to a nominee of DTC, or by a nominee of DTC to DTC, or to a successor to DTC for such global Security selected or approved by the Issuer or to a nominee of such successor to DTC. If at any time DTC notifies the Issuer that it is unwilling or unable to continue as depositary for the applicable global Security or Securities or if at any time DTC ceases to be a clearing agency registered under the Exchange Act if so required by applicable law or regulation, the Issuer shall appoint a successor depositary with respect to such global Security or Securities. If (x) a successor depositary for such global Security or Securities is not appointed by the Issuer within 90 days after the Issuer receives such notice or becomes aware of such unwillingness, inability or ineligibility, (y) an Event of Default has occurred and is continuing and the beneficial owners representing a majority in principal amount of the applicable series of Securities represented by such global Security or Securities advise DTC to cease acting as depositary for such global Security or Securities or (z) the Issuer, in its sole discretion, determines at any time that all Outstanding Securities (but not less than all) of any series issued or issuable in the form of one or more global Securities shall no longer be represented by such global Security or Securities, then the Issuer shall execute, and the Trustee shall authenticate and deliver definitive Securities of like series, rank, tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of such global Security or Securities. If any beneficial owner of an interest in a permanent global Security is otherwise entitled to exchange such interest for Securities of such series and of like tenor and principal amount of another authorized form and denomination, as specified as contemplated by Section 301 and provided that any applicable notice provided in the permanent global Security shall have been given, then without unnecessary delay but in any event not later than the earliest date on which such interest may be so exchanged, the Issuer shall execute, and the Trustee shall authenticate and deliver definitive Securities in aggregate principal amount equal to the principal amount of such beneficial owner's interest in such permanent global Security. On or after the earliest date on which such interests may be so exchanged, such permanent global Security shall be surrendered for exchange by DTC or such other depositary as shall be specified in the Issuer Order with respect thereto to the Trustee, as the Issuer's agent for such purpose; provided, however, that no such exchanges may occur during a period beginning at the opening of business 15 days before any selection of Securities to be redeemed and ending on the relevant Redemption Date if the Security for which exchange is requested may be among those selected for redemption. If a Registered Security is issued in exchange for any portion of a permanent global Security after the close of business at the office or agency where such exchange occurs on (i) any Regular Record Date and before the opening of business at such office or agency on the relevant Interest Payment Date, or (ii) any Special Record Date and the opening of business at such office or agency on the related proposed date for payment of Defaulted Interest, interest or Defaulted Interest, as the case may be, will not be payable on such Interest Payment Date or proposed date for payment, as the case may be, in respect of such Registered Security, but will be payable on such Interest Payment Date or proposed date for payment, as the case may be, only to the Person to whom interest in respect of such portion of such permanent global Security is payable in accordance with the provisions of this Indenture.

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

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

No service charge shall be made for any registration of transfer or exchange of Securities, but the Issuer may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Sections 304, 1006, 1207 or 1405 not involving any transfer.

The Issuer or the Trustee, as applicable, shall not be required (i) to issue, register the transfer of or exchange any Security if such Security may be among those selected for redemption during a period beginning at the opening of business 15 days before selection of the Securities to be redeemed under Section 1203 and ending at the close of business on (A) if such Securities are issuable only as Registered Securities, the day of the mailing of the relevant notice of redemption and (B) if such Securities are issuable as Bearer Securities, the day of the first publication of the relevant notice of redemption or, if such Securities are also issuable as Registered Securities and there is no publication, the mailing of the relevant notice of redemption, or (ii) to register the transfer of or exchange any Registered Security so selected for redemption in whole or in part, except, in the case of any Registered Security to be redeemed in part, the portion thereof not to be redeemed, or (iii) to exchange any Bearer Security so selected for redemption except that such a Bearer Security may be exchanged for a Registered Security of that series and like tenor, provided that such Registered Security shall be simultaneously surrendered for redemption, or (iv) to issue, register the transfer of or exchange any Security which has been surrendered for repayment at the option of the Holder, except the portion, if any, of such Security not to be so repaid.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Security (including any transfers between or among Common Depositary participants or beneficial owners of interests in any Global Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Neither the Trustee nor any agent shall have any responsibility for any actions taken or not taken by the Common Depositary.

SECTION 306. Mutilated, Destroyed, Lost and Stolen Securities. If any mutilated Security or a Security with a mutilated coupon or Guarantee appertaining to it is surrendered to the Trustee or the Issuer, together with, in proper cases, such security or indemnity as may be required by the Issuer or the Trustee to save each of them or any agent of either of them harmless, the Issuer shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of the same series and principal amount, containing identical terms and provisions and bearing a number not contemporaneously outstanding, with coupons or Guarantees corresponding to the coupons or Guarantees, if any, appertaining to the surrendered Security or to the Security to which such destroyed, lost or stolen coupon or Guarantee appertains.

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

Notwithstanding the provisions of the previous two paragraphs, in case any such mutilated, destroyed, lost or stolen Security, coupon or Guarantee has become or is about to become due and payable, the Issuer in its discretion may, instead of issuing a new Security, with coupons corresponding to the coupons, if any, appertaining to such destroyed, lost or stolen Security or to the Security to which such destroyed, lost or stolen coupon or Guarantee appertains, pay such Security or coupon; provided, however, that payment of principal of (and premium, if any), any interest on and any Additional Amounts with respect to, Bearer Securities shall, except as otherwise provided in Section 1102, be payable only at an office or agency located outside the United States and, unless otherwise specified as contemplated by Section 301, any interest on Bearer Securities shall be payable only upon presentation and surrender of the coupons or Guarantees appertaining thereto.

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

Every new Security of any series with its coupons or Guarantees, if any, issued pursuant to this Section in lieu of any destroyed, lost or stolen Security, or in exchange for a Security to which a destroyed, lost or stolen coupon or Guarantee appertains, shall constitute an original additional contractual obligation of the Issuer, whether or not the destroyed, lost or stolen Security and its coupons and related Guarantees, if any, or the destroyed, lost or stolen coupon or Guarantee shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities of that series and their coupons and Guarantees, if any, duly issued hereunder.

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

SECTION 307. Payment of Interest; Interest Rights Preserved. Except as otherwise specified with respect to a series of Securities in accordance with the provisions of Section 301, interest on any Registered Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest at the office or agency of the Issuer maintained for such purpose pursuant to Section 1102; provided, however, that each installment of interest on any Registered Security may at the Issuer's option be paid by (i) mailing a check for such interest, payable to or upon the written order of the Person entitled thereto pursuant to Section 308, to the address of such Person as it appears on the Security Register or (ii) transfer to an account maintained by the payee located inside the United States.

Unless otherwise provided as contemplated by Section 301 with respect to the Securities of any series, payment of interest may be made, in the case of a Bearer Security, by transfer to an account maintained by the payee with a bank located outside the United States.

Unless otherwise provided as contemplated by Section 301, every permanent global Security will provide that interest, if any, payable on any Interest Payment Date will be paid to DTC, Euroclear and/or Clearstream, as the case may be, with respect to that portion of such permanent global Security held for its account by Cede & Co. or the Common Depositary, as the case may be, for the purpose of permitting such party to credit the interest received by it in respect of such permanent global Security to the accounts of the beneficial owners thereof.

In case a Bearer Security of any series is surrendered in exchange for a Registered Security of such series after the close of business (at an office or agency in a Place of Payment for such series) on any Regular Record Date and before the opening of business (at such office or agency) on the next succeeding Interest Payment Date, such Bearer Security shall be surrendered without the coupon relating to such Interest Payment Date and interest will not be payable on such Interest Payment Date in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such coupon when due in accordance with the provisions of this Indenture.

Except as otherwise specified with respect to a series of Securities in accordance with the provisions of Section 301, any interest on any Registered Security of any series that is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the registered Holder thereof on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Issuer, at its election in each case, as provided in clause (1) or (2) below:

(1) The Issuer may elect to make payment of any Defaulted Interest to the Persons in whose names the Registered Securities of such series (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Issuer shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Registered Security of such series and the date of the proposed payment (which shall not be less than 30 days after such notice is received by the Trustee), and at the same time the Issuer shall deposit with the Trustee an amount of money in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 15 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Issuer of such Special Record Date and, in the name and at the expense of the Issuer, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Registered Securities of such series at his address as it appears in the Security Register not less than 10 days prior to such Special Record Date. The Issuer may, in its discretion, direct the Trustee to publish in the name and at the expense of the Issuer, cause a similar notice to be published at least once in an Authorized Newspaper in each Place of Payment, but such publications shall not be a condition precedent to the establishment of such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names the Registered Securities of such series (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2). In case a Bearer Security of any series is surrendered at the office or agency in a Place of Payment for such series in exchange for a Registered Security of such series after the close of business at such office or agency on any Special Record Date and before the opening of business at such office or agency on the related proposed date for payment of Defaulted Interest, such Bearer Security shall be surrendered without the coupon relating to such proposed date of payment and Defaulted Interest will not be payable on such proposed date of payment in respect of the Registered Security issued in exchange for such Bearer Security, but will be payable only to the Holder of such coupon when due in accordance with the provisions of this Indenture.

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

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

SECTION 308. Persons Deemed Owners. Prior to due presentment of a Registered Security for registration of transfer, the Issuer, the Guarantor (if applicable), the Trustee and any agent of the Issuer, the Guarantor (if applicable) or the Trustee may treat the Person in whose name such Registered Security is registered as the owner of such Security for the purpose of receiving payment of principal of (and premium, if any), and (subject to Sections 305 and 307) interest on, such Registered Security and for all other purposes whatsoever, whether or not such Registered Security be overdue, and neither the Issuer, the Guarantor (if applicable), the Trustee nor any agent of the Issuer, the Guarantor (if applicable) or the Trustee shall be affected by notice to the contrary.

Title to any Bearer Security and any coupons appertaining thereto shall pass by delivery. The Issuer, the Guarantor (if applicable), the Trustee and any agent of the Issuer, the Guarantor (if applicable) or the Trustee may treat the Holder of any Bearer Security and the Holder of any coupon as the absolute owner of such Security or coupon for the purpose of receiving payment thereof or on account thereof and for all other purposes whatsoever, whether or not such Security or coupon be overdue, and neither the Issuer, the Guarantor (if applicable), the Trustee nor any agent of the Issuer, the Guarantor (if applicable) or the Trustee shall be affected by notice to the contrary.

None of the Issuer, the Guarantor (if applicable), the Trustee, any Paying Agent or the Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Security in global form or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Notwithstanding the foregoing, with respect to any global Security, nothing herein shall prevent the Issuer, the Guarantor (if applicable), the Trustee, or any agent of the Issuer, the Guarantor (if applicable) or the Trustee, from giving effect to any written certification, proxy or other authorization furnished by any depositary, as a Holder, with respect to such global Security or impair, as between such depositary and owners of beneficial interests in such global Security, the operation of customary practices governing the exercise of the rights of such depositary (or its nominee) as Holder of such global Security.

SECTION 309. Cancellation. All Securities and coupons surrendered for payment, redemption, repayment at the option of the Holder, registration of transfer or exchange or for credit against any sinking fund payment shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and coupons and Securities and coupons surrendered directly to the Trustee for any such purpose shall be promptly cancelled by it; provided, however, where the Place of Payment is located outside of the United States, the Paying Agent at such Place of Payment may cancel the Securities surrendered to it for such purposes prior to delivering the Securities to the Trustee. The Issuer may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder which the Issuer may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Securities previously authenticated hereunder which the Issuer has not issued and sold, and all Securities so delivered shall be promptly cancelled by the Trustee. If the Issuer shall so acquire any of the Securities, however, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Securities unless and until the same are surrendered to the Trustee for cancellation. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. Cancelled Securities and coupons held by the Trustee shall be destroyed by the Trustee and the Trustee shall deliver a certificate of such destruction to the Issuer, unless by an Issuer Order the Issuer directs their return to it.

SECTION 310. Computation of Interest. Except as otherwise specified as contemplated by Section 301 with respect to Securities of any series, interest on the Securities of each series shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

SECTION 311. CUSIP Numbers. The Issuer in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in all notices issued to Holders as a convenience to such Holders; provided that the Trustee shall have no liability for any defect in the "CUSIP" numbers as they appear on any Security, notice or elsewhere, and, provided, further, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or on such notice and that reliance may be placed only on the other identification numbers printed on the Securities. The Issuer shall promptly notify the Trustee in writing of any change in the "CUSIP" numbers.

ARTICLE FOUR
GUARANTEES

SECTION 401. Applicability of Article; Guarantees. As of January 3, 2023, all Securities previously issued under the Indenture and Outstanding shall have the benefit of the Guarantees as set forth in this Article Four, and, if the Issuer elects to issue any series of Securities on any date after January 3, 2023 with the benefit of the Guarantees as set forth in this Article then the provisions of this Article Four (with such modifications thereto as may be specified pursuant to Section 301 with respect to any series of Securities issued after January 3, 2023), will be applicable to such Securities. Each reference in this Article Four to a "Security" or "the Securities" refers to the Securities of the particular series as to which provision has been made for such Guarantees (including, for the avoidance of doubt, all Securities which, as of January 3, 2023 have been previously issued under the Indenture and are Outstanding). If more than one series of Securities as to which such provision has been made are Outstanding at any time, the provisions of this Article Four shall be applied separately to each such series.

Subject to this Article Four, the Guarantor fully and unconditionally guarantees to each Holder of a Security of any series issued with the benefit of the Guarantees and which Security has been authenticated and delivered by the Trustee and to the Trustee and its successors and assigns, irrespective of the validity and enforceability of this Indenture, such Security or the obligations of the Issuer hereunder or thereunder, that:

(1) the principal of, premium, if any, and interest on such Security will be promptly paid in full when due, whether at stated maturity, by acceleration, redemption or otherwise, and interest on the overdue principal of, premium, if any, and interest on such Security, if any, if lawful, and all other obligations of the Issuer to the Holders or the Trustee hereunder or thereunder will be promptly paid in full or performed, all in accordance with the terms hereof and thereof; and

(2) in case of any extension of time of payment or renewal of any Securities of that series or any of such other obligations, that same will be promptly paid in full when due or performed in accordance with the terms of the extension or renewal, whether at stated maturity, by acceleration, redemption or otherwise. Failing payment when due of any amount so guaranteed or any performance so guaranteed for whatever reason, the Guarantor will be obligated to pay the same immediately. The Guarantor agrees that this is a guarantee of payment and not a guarantee of collection.

The Guarantor hereby agrees that its obligations hereunder are unconditional, irrespective of the validity, regularity or enforceability of the Securities of any series issued with the benefit of the Guarantees or this Indenture, the absence of any action to enforce the same, any waiver or consent by any Holder of the Securities of that series with respect to any provisions hereof or thereof, the recovery of any judgment against the Issuer, any action to enforce the same or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor, other than payment in full of all obligations under the Securities of that series. The Guarantor in respect of a series of Securities hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of insolvency or bankruptcy of the Issuer in respect of that series, any right to require a proceeding first against the Issuer, protest, notice and all demands whatsoever and covenants that this Guarantee will not be discharged except by complete performance of the obligations contained in such Securities and this Indenture.

If any Holder or the Trustee is required by any court or otherwise to return to the Issuer, the Guarantor or any custodian, trustee, liquidator or other similar official acting in relation to either the Issuer or the Guarantor, any amount paid by either to the Trustee or such Holder, this Guarantee, to the extent theretofore discharged, will be reinstated in full force and effect.

The Guarantor agrees that it will not be entitled to any right of subrogation in relation to the Holders in respect of any obligations guaranteed hereby until payment in full of all obligations guaranteed hereby. The Guarantor further agrees that, as between the Guarantor, on the one hand, and the Holders and the Trustee, on the other hand, (1) the maturity of the obligations guaranteed hereby may be accelerated as provided in Article Six hereof for the purposes of its Guarantee notwithstanding any stay, injunction or other prohibition preventing such acceleration in respect of the obligations guaranteed hereby, and (2) in the event of any acceleration of such obligations as provided in Article Six hereof, such obligations (whether or not due and payable) will forthwith become due and payable by the Guarantor for the purpose of its Guarantee.

SECTION 402. Limitation on Guarantor Liability. The Guarantor and, by its acceptance of Securities of any series issued with the benefit of the Guarantees as set forth in this Article Four, each Holder, hereby confirms that it is the intention of all such parties that the Guarantee of the Guarantor not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state law to the extent applicable to any Guarantee. To effectuate the foregoing intention, the Trustee, the Holders and the Guarantor hereby irrevocably agree that the obligations of the Guarantor will, after giving effect to any maximum amount and all other contingent and fixed liabilities of the Guarantor that are relevant under such laws, not result in the obligations of the Guarantor under its Guarantee constituting a fraudulent transfer or conveyance.

SECTION 403. Execution and Delivery of Guarantee. For all Securities issued after January 3, 2023 as to which the Issuer elects to issue with the benefit of the Guarantees as set forth in this Article Four, to evidence its Guarantee set forth in Section 401 in respect of Securities of a series issued with the benefit of the Guarantees, the Guarantor hereby agrees that a notation of such Guarantee substantially in the form as shall be established in one or more indentures supplemental hereto or approved from time to time pursuant to Board Resolutions in accordance with Section 301, will be endorsed by an officer of the Guarantor on each Security of that series authenticated and delivered by the Trustee and that this Indenture will be executed on behalf of the Guarantor by one of its officers.

The Guarantor hereby agrees that all of its Guarantees will remain in full force and effect notwithstanding any failure to endorse on each Security of that series a notation of such Guarantee.

If an officer whose signature is on this Indenture or on the Guarantee no longer holds that office at the time the Trustee authenticates the Security of that series on which a Guarantee is endorsed, such Guarantee will be valid nevertheless.

The delivery of any Security of a series issued with the benefit of the Guarantees by the Trustee, after the authentication thereof hereunder, will constitute due delivery of the Guarantee set forth in this Indenture on behalf of the Guarantor (including, for the avoidance of doubt, all Securities which, as of January 3, 2023, have been previously issued, and authenticated by the Trustee, and which remain Outstanding).

ARTICLE FIVE
SATISFACTION AND DISCHARGE

SECTION 501. Satisfaction and Discharge of Indenture. This Indenture and any related Guarantee shall upon Issuer Request cease to be of further effect with respect to any series of Securities specified in such Issuer Request (except as to any surviving rights of registration of transfer or exchange of Securities of such series herein expressly provided for and any right to receive Additional Amounts, as provided in Section 1111), and the Trustee, upon receipt of an Issuer Order, and at the expense of the Issuer, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture as to such series when

(1) either

(A) all Securities of such series theretofore authenticated and delivered and all coupons, if any, appertaining thereto (other than (i) coupons appertaining to Bearer Securities surrendered for exchange for Registered Securities and maturing after such exchange, whose surrender is not required or has been waived as provided in Section 305, (ii) Securities and coupons of such series which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 306, (iii) coupons appertaining to Securities called for redemption and maturing after the relevant Redemption Date, whose surrender has been waived as provided in Section 1206, and (iv) Securities and coupons of such series for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Issuer and thereafter repaid to the Issuer or discharged from such trust, as provided in Section 1103) have been delivered to the Trustee for cancellation; or

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

(i) have become due and payable, or

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

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

and the Issuer, in the case of (i), (ii) or (iii) above, has irrevocably deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable, sufficient to pay and discharge the entire indebtedness on such Securities and such coupons not theretofore delivered to the Trustee for cancellation, for principal (and premium, if any) and interest, and any Additional Amounts with respect thereto, to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

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

(3) the Issuer has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture as to such series have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Issuer to the Trustee and any predecessor Trustee under Section 706, the obligations of the Issuer to any Authenticating Agent under Section 711 and, if money shall have been deposited with and held by the Trustee pursuant to subclause (B) of clause (1) of this Section, the obligations of the Trustee under Section 502 and the last paragraph of Section 1103 shall survive. At such time as satisfaction and discharge of this Indenture shall be effective with respect to the Securities of a particular series, the Guarantor will be released from its Guarantee of the Securities of such series.

SECTION 502. Application of Trust Funds. Subject to the provisions of the last paragraph of Section 1103, all money deposited with the Trustee pursuant to Section 501 shall be held in trust and applied by it, in accordance with the provisions of the Securities, the coupons and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any), and any interest and Additional Amounts for whose payment such money has been deposited with or received by the Trustee, but such money need not be segregated from other funds except to the extent required by law.

ARTICLE SIX
REMEDIES

SECTION 601. Events of Default. "Event of Default", wherever used herein with respect to any particular series of Securities, means any one of the following events (whatever the reason for such Event of Default and whether or not it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

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

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

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

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

(5) default under any bond, debenture, note or other evidence of indebtedness for money borrowed by an Obligor (including obligations under leases required to be capitalized on the balance sheet of the lessee under generally accepted accounting principles, but not including any indebtedness or obligations for which recourse is limited to property purchased) in an aggregate principal amount in excess of $25,000,000, or under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness for money borrowed by such Obligor (including such leases but not including such indebtedness or obligations for which recourse is limited to property purchased) in an aggregate principal amount in excess of $25,000,000 by such Obligor, whether such indebtedness now exists or shall hereafter be created, which default shall have resulted in such indebtedness becoming or being declared due and payable prior to the date on which it would otherwise have become due and payable or such obligations being accelerated, without such acceleration having been rescinded or annulled; or

(6) an Obligor or any Significant Subsidiary of such Obligor pursuant to or within the meaning of any Bankruptcy Law:

(A) commences a voluntary case,

(B) consents to the entry of an order for relief against it in an involuntary case,

(C) consents to the appointment of a Custodian of it or for all or substantially all of its property, or

(D) makes a general assignment for the benefit of its creditors; or

(7) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:

(A) is for relief against an Obligor or any Significant Subsidiary of such Obligor in an involuntary case,

(B) appoints a Custodian of an Obligor or any Significant Subsidiary of such Obligor or for all or substantially all of either of their property, or

(C) orders the liquidation of an Obligor or any Significant Subsidiary of such Obligor, and the order or decree remains unstayed and in effect for 90 days;

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

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

As used in this Section 601, the term "Bankruptcy Law" means title 11, U.S. Code or any similar Federal or State law for the relief of debtors and the term "Custodian" means any receiver, trustee, assignee, liquidator or other similar official under any Bankruptcy Law.

SECTION 602. Acceleration of Maturity; Rescission and Annulment. If an Event of Default with respect to Securities of any series at the time Outstanding occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities of that series may declare the principal (or, if any Securities are Original Issue Discount Securities or Indexed Securities, such portion of the principal as may be specified in the terms thereof) of all the Securities of that series to be due and payable immediately, by a notice in writing to the Issuer and the Guarantor (and to the Trustee if given by the Holders), and upon any such declaration such principal or specified portion thereof shall become immediately due and payable; provided, however, that if such Event of Default shall occur pursuant to Section 601(6) or Section 601(7) hereof, such acceleration shall be automatic and shall occur without notice.

At any time after such a declaration of acceleration with respect to Securities of any series has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter in this Article provided, the Holders of a majority in principal amount of the Outstanding Securities of that series, by written notice to the Issuer, the Guarantor and the Trustee, may rescind and annul such declaration and its consequences if:

(1) the Issuer or the Guarantor has paid or deposited with the Trustee a sum sufficient to pay in the currency or currency unit or composite currency in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series):

(A) all overdue installments of interest on and any Additional Amounts payable in respect of all Outstanding Securities of that series and any related coupons,

(B) the principal of (and premium, if any, on) any Outstanding Securities of that series which have become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates borne by or provided for in such Securities,

(C) to the extent that payment of such interest is lawful, interest upon overdue installments of interest and any Additional Amounts at the rate or rates borne by or provided for in such Securities, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel; and

(2) all Events of Default with respect to Securities of that series, other than the nonpayment of the principal of (or premium, if any) or interest on Securities of that series which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 613.

No such rescission shall affect any subsequent default or impair any right consequent thereon.

SECTION 603. Collection of Indebtedness and Suits for Enforcement by Trustee. The Issuer covenants that if:

(1) default is made in the payment of any installment of interest or Additional Amounts, if any, on any Security of any series and any related coupon when such interest or Additional Amount becomes due and payable and such default continues for a period of 30 days, or

(2) default is made in the payment of the principal of (or premium, if any, on) any Security of any series at its Maturity,

then the Issuer will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities of such series and coupons, the whole amount then due and payable on such Securities and coupons for principal (and premium, if any) and interest and Additional Amounts, with interest upon any overdue principal (and premium, if any) and, to the extent that payment of such interest shall be legally enforceable, upon any overdue installments of interest or Additional Amounts, if any, at the rate or rates borne by or provided for in such Securities, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel.

If the Issuer fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Issuer or any other obligor (including the Guarantor, if applicable) upon such Securities of such series and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Issuer or any other obligor (including the Guarantor, if applicable) upon such Securities of such series, wherever situated.

If an Event of Default with respect to Securities of any series occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities of such series and any related coupons by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

SECTION 604. Trustee May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to an Obligor or any other obligor upon the Securities or the property of such Obligor or of such other obligor or their creditors, the Trustee (irrespective of whether the principal of the Securities of any series shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Issuer for the payment of overdue principal, premium, if any, or interest) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount, or such lesser amount as may be provided for in the Securities of such series, of principal (and premium, if any) and interest and Additional Amounts, if any, owing and unpaid in respect of the Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceeding, and

(ii) to collect and receive any moneys 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 Holder of Securities of such series and coupons to make such payments to the Trustee, and in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Trustee and any predecessor Trustee, their agents and counsel, and any other amounts due the Trustee or any predecessor Trustee under Section 706.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder of a Security or coupon any plan of reorganization, arrangement, adjustment or composition affecting the Securities or coupons or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder of a Security or coupon in any such proceeding.

SECTION 605. Trustee May Enforce Claims Without Possession of Securities or Coupons. All rights of action and claims under this Indenture or any of the Securities or coupons may be prosecuted and enforced by the Trustee without the possession of any of the Securities or coupons or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Securities and coupons in respect of which such judgment has been recovered.

SECTION 606. Application of Money Collected. Any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal (or premium, if any) or interest and any Additional Amounts, upon presentation of the Securities or coupons, or both, as the case may be, and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and any predecessor Trustee under Section 706;

SECOND: To the payment of the amounts then due and unpaid upon the Securities and coupons for principal (and premium, if any) and interest and any Additional Amounts payable, in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the aggregate amounts due and payable on such Securities and coupons for principal (and premium, if any), interest and Additional Amounts, respectively; and

THIRD: To the payment of the remainder, if any, to the Issuer.

SECTION 607. Limitation on Suits. No Holder of any Security of any series or any related coupon shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless:

(1) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities of that series;

(2) the Holders of not less than 25% in principal amount of the Outstanding Securities of that series shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(3) such Holder or Holders have offered to the Trustee indemnity reasonably satisfactory to the Trustee, in its sole discretion, against the costs, expenses and liabilities to be incurred in compliance with such request;

(4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and

(5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities of that series;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other of such Holders, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

SECTION 608. Unconditional Right of Holders to Receive Principal, Premium, if any, Interest and Additional Amounts. Notwithstanding any other provision in this Indenture, the Holder of any Security or coupon shall have the right which is absolute and unconditional to receive payment of the principal of (and premium, if any) and (subject to Sections 305 and 307) interest on, and any Additional Amounts in respect of, such Security or payment of such coupon on the respective due dates expressed in such Security or coupon (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

SECTION 609. Restoration of Rights and Remedies. If the Trustee or any Holder of a Security or coupon has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, the Issuer, the Guarantor (if applicable), the Trustee and the Holders of Securities and coupons shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

SECTION 610. Rights and Remedies Cumulative. Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities or coupons in the last paragraph of Section 306, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders of Securities or coupons is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 611. Delay or Omission Not Waiver. No delay or omission of the Trustee or of any Holder of any Security or coupon to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders of Securities or coupons, as the case may be.

SECTION 612. Control by Holders of Securities. The Holders of not less than a majority in principal amount of the Outstanding Securities of any series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Securities of such series, provided that

(1) such direction shall not be in conflict with any rule of law or with this Indenture,

(2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction, and

(3) the Trustee need not take any action which might involve it in personal liability or be unduly prejudicial to the Holders of Securities of such series not joining therein.

SECTION 613. Waiver of Past Defaults. The Holders of not less than a majority in principal amount of the Outstanding Securities of any series may on behalf of the Holders of all the Securities of such series, any related coupons and any related Guarantees waive any past default hereunder with respect to such series and its consequences, except a default

(1) in the payment of the principal of (or premium, if any) or interest on or Additional Amounts payable in respect of any Security of such series or any related coupons, or

(2) in respect of a covenant or provision hereof which under Article Ten cannot be modified or amended without the consent of the Holder of each Outstanding Security of such series affected.

Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

SECTION 614. Waiver of Usury, Stay or Extension Laws. Each of the Obligors covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and each of the Obligors (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

SECTION 615. Undertaking for Costs. All parties to this Indenture agree, and each Holder of any Security by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of any undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Outstanding Securities, or to any suit instituted by any Holder for the enforcement of the payment of the principal of (or premium, if any) or interest on any Security on or after the respective Stated Maturities expressed in such Security (or, in the case of redemption, on or after the Redemption Date).

ARTICLE SEVEN
THE TRUSTEE

SECTION 701. Notice of Defaults. Within 90 days after a Responsible Officer of the Trustee receives written notice of the occurrence of any default hereunder with respect to the Securities of any series, the Trustee shall transmit in the manner and to the extent provided in TIA Section 313(c), notice of such default hereunder, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on or any Additional Amounts with respect to any Security of such series, or in the payment of any sinking fund installment with respect to the Securities of such series, the Trustee shall be protected in withholding such notice if and so long as Responsible Officers of the Trustee in good faith determine that the withholding of such notice is in the interests of the Holders of the Securities and coupons of such series; and provided further that in the case of any default or breach of the character specified in Section 601(4) with respect to the Securities and coupons of such series, no such notice to Holders shall be given until at least 60 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default with respect to the Securities of such series.

SECTION 702. Certain Duties and Responsibilities.

(a) Except during the continuance of an Event of Default:

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions furnished to the Trustee and conforming to the requirements of this Indenture; but in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(b) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

(1) this Subsection shall not be construed to limit the effect of Subsection (a) of this Section;

(2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(3) the Trustee shall not be liable with respect to any action taken, suffered or omitted to be taken by it with respect to the Securities in good faith in accordance with the direction of the Holders of not less than a majority in principal amount of the outstanding Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, under this Indenture; and

(4) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds in its sole discretion for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

SECTION 703. Certain Rights of Trustee. Subject to the Section 702 hereto:

(1) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(2) any request or direction of the Issuer mentioned herein shall be sufficiently evidenced by an Issuer Request or Issuer Order and any resolution of the Board of Directors of the Issuer may be sufficiently evidenced by a Board Resolution;

(3) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;

(4) the Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(5) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders of Securities of any series or any related coupons pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(6) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, coupon or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to make reasonable examination of the books, records and premises of the Issuer, personally or by agent or attorney following reasonable notice to the Issuer;

(7) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any willful misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(8) the Trustee shall not be liable for any action taken, suffered or omitted by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(9) in no event shall the Trustee be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(10) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it;

(11) the Trustee shall not be deemed to have notice of any Default or Event of Default unless written notice of any event which is in fact such a default is received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Securities and this Indenture;

(12) the rights, privileges, protections, immunities and benefits given to the Trustee, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(13) in no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, epidemics or pandemics, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances; and

(14) the Trustee may request that the Issuer deliver a certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture.

SECTION 704. Not Responsible for Recitals or Issuance of Securities. The recitals contained herein and in the Securities, except the Trustee's certificate of authentication, and in any coupons shall be taken as the statements of the Obligors, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities or coupons, except that the Trustee represents that it is duly authorized to execute and deliver this Indenture, authenticate the Securities and perform its obligations hereunder. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Issuer of Securities or the proceeds thereof.

SECTION 705. May Hold Securities. The Trustee, any Paying Agent, Security Registrar, Authenticating Agent or any other agent of the Issuer, in its individual or any other capacity, may become the owner or pledgee of Securities and coupons and, subject to TIA Sections 310(b) and 311, may otherwise deal with the Issuer with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar, Authenticating Agent or such other agent.

SECTION 706. Money Held in Trust. Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Issuer.

SECTION 707. Compensation and Reimbursement. The Issuer agrees:

(1) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(2) except as otherwise expressly provided herein, to reimburse each of the Trustee and any predecessor Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or willful misconduct; and

(3) to indemnify each of the Trustee and any predecessor Trustee for, and to hold it harmless against, any loss, liability or expense incurred without negligence or willful misconduct on its own part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 601(6) or Section 601(7), the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or state bankruptcy, insolvency or other similar law.

As security for the performance of the obligations of the Issuer under this Section, the Trustee shall have a lien prior to the Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the payment of principal of (or premium, if any) or interest on particular Securities or any coupons.

The provisions of this Section shall survive the termination of this Indenture.

SECTION 708. Corporate Trustee Required; Eligibility; Conflicting Interests. There shall at all times be a Trustee hereunder which shall be eligible to act as Trustee under TIA Section 310(a)(1) and shall have a combined capital and surplus of at least $50,000,000. If such corporation publishes reports of condition at least annually, pursuant to law or the requirements of Federal, State, Territorial or District of Columbia supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

SECTION 709. Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 710.

(b) The Trustee may resign at any time with respect to the Securities of one or more series by giving written notice thereof to the Issuer. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(c) The Trustee may be removed at any time with respect to the Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Trustee and to the Issuer.

(d) If at any time:

(1) the Trustee shall fail to comply with the provisions of TIA Section 310(b) after written request therefor by the Issuer or by any Holder of a Security who has been a bona fide Holder of a Security for at least six months, or

(2) the Trustee shall cease to be eligible under Section 708 and shall fail to resign after written request therefor by the Issuer or by any Holder of a Security who has been a bona fide Holder of a Security for at least six months, or

(3) the Trustee shall become incapable of acting or shall be adjudged a bankrupt or insolvent or a receiver of the Trustee or of its property shall be appointed or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, (i) the Issuer by or pursuant to a Board Resolution may remove the Trustee and appoint a successor Trustee with respect to all Securities, or (ii) subject to TIA Section 315(e), any Holder of a Security who has been a bona fide Holder of a Security for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee with respect to all Securities and the appointment of a successor Trustee or Trustees.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause with respect to the Securities of one or more series, the Issuer, by or pursuant to a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Securities of any particular series). If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities of such series delivered to the Issuer and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee with respect to the Securities of such series and to that extent supersede the successor Trustee appointed by the Issuer. If no successor Trustee with respect to the Securities of any series shall have been so appointed by the Issuer or the Holders of Securities and accepted appointment in the manner hereinafter provided, any Holder of a Security who has been a bona fide Holder of a Security of such series for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to Securities of such series.

(f) The Issuer shall give notice of each resignation and each removal of the Trustee with respect to the Securities of any series and each appointment of a successor Trustee with respect to the Securities of any series in the manner provided for notices to the Holders of Securities in Section 106. Each notice shall include the name of the successor Trustee with respect to the Securities of such series and the address of its Corporate Trust Office.

SECTION 710. Acceptance of Appointment by Successor. (a) In case of the appointment hereunder of a successor Trustee with respect to all Securities, every such successor Trustee shall execute, acknowledge and deliver to the Issuer and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on request of the Issuer or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee, and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder, subject nevertheless to its claim, if any, provided for in Section 707.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Securities of one or more (but not all) series, the Obligors, the retiring Trustee and each successor Trustee with respect to the Securities of one or more series shall execute and deliver an indenture supplemental hereto, pursuant to Article Ten hereof, wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee with respect to the Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Issuer or any successor Trustee, such retiring Trustee shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Securities of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any such successor Trustee, the Issuer shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and trusts referred to in paragraph (a) or (b) of this Section, as the case may be.

(d) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this Article.

SECTION 711. Merger, Conversion, Consolidation or Succession to Business. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities or coupons shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities or coupons so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities or coupons. In case any Securities or coupons shall not have been authenticated by such predecessor Trustee, any such successor Trustee may authenticate and deliver such Securities or coupons, in either its own name or that of its predecessor Trustee, with the full force and effect which this Indenture provides for the certificate of authentication of the Trustee.

SECTION 712. Appointment of Authenticating Agent. At any time when any of the Securities remain Outstanding, the Trustee may appoint an Authenticating Agent or Agents with respect to one or more series of Securities which shall be authorized to act on behalf of the Trustee to authenticate Securities of such series issued upon exchange, registration of transfer or partial redemption or repayment thereof, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Any such appointment shall be evidenced by an instrument in writing signed by a Responsible Officer of the Trustee, a copy of which instrument shall be promptly furnished to the Issuer. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Issuer and shall at all times be a bank or trust company or corporation organized and doing business and in good standing under the laws of the United States of America or of any State or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than $50,000,000 and subject to supervision or examination by Federal or State authorities. If such Authenticating Agent publishes reports of condition at least annually, pursuant to law or the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent for any series of Securities may at any time resign by giving written notice of resignation to the Trustee for such series and to the Obligors. The Trustee for any series of Securities may at any time terminate the agency of an Authenticating Agent by giving written notice of termination to such Authenticating Agent and to the Obligors. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee for such series may appoint a successor Authenticating Agent which shall be acceptable to the Issuer and shall give notice of such appointment to all Holders of Securities of the series with respect to which such Authenticating Agent will serve in the manner set forth in Section 106. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent herein. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Issuer agrees to pay to each Authenticating Agent from time to time reasonable compensation including reimbursement of its reasonable expenses for its services under this Section.

If an appointment with respect to one or more series is made pursuant to this Section, the Securities of such series may have endorsed thereon, in addition to or in lieu of the Trustee's certificate of authentication, an alternate certificate of authentication substantially in the following form:

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

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

By: _____
as Authenticating Agent

By: _____
Authorized Signatory

ARTICLE EIGHT
HOLDERS' LISTS AND REPORTS BY TRUSTEE AND ISSUER

SECTION 801. Disclosure of Names and Addresses of Holders. Every Holder of Securities or coupons, by receiving and holding the same, agrees with the Issuer and the Trustee that neither the Issuer nor the Trustee nor any Authenticating Agent nor any Paying Agent nor any Security Registrar shall be held accountable by reason of the disclosure of any information as to the names and addresses of the Holders of Securities in accordance with TIA Section 312, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under TIA Section 312(b).

SECTION 802. Reports by Trustee. Within 60 days after May 15 of each year commencing with the first May 15 after the first issuance of Securities pursuant to this Indenture, the Trustee shall transmit by mail to all Holders of Securities as provided in TIA Section 313(c) a brief report dated as of such May 15 if required by TIA Section 313(a).

SECTION 803. Reports by Guarantor. The Guarantor will:

(1) file with the Trustee, within 15 days after the Guarantor is required to file the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may from time to time by rules and regulations prescribe) which the Guarantor may be required to file with the Commission pursuant to Sections 13 or Section 15(d) of the Exchange Act; or, if the Guarantor is not required to file information, documents or reports pursuant to either of such Sections, then it will file with the Trustee, in accordance with rules and regulations prescribed from time to time by the Commission, such of the supplementary and periodic information, documents and reports which may be required pursuant to Section 13 of the Exchange Act in respect of a security listed and registered on a national securities exchange as may be prescribed from time to time in such rules and regulations (it being understood, in the case of each of the foregoing, that any information, documents and other reports filed or furnished on the Electronic Data Gathering, Analysis and Retrieval system ("EDGAR") or such other system of the Commission or the website of the Guarantor will be deemed to be furnished to the Trustee once such information, documents and other reports are so filed on EDGAR or the Commission's website or the website of the Guarantor);

(2) file with the Trustee and the Commission, in accordance with rules and regulations prescribed from time to time by the Commission, such additional information, documents and reports with respect to compliance by the Obligors with the conditions and covenants of this Indenture as may be required from time to time by such rules and regulations; and

(3) provide to the Holders of Securities, within 30 days after the filing thereof with the Trustee, in the manner and to the extent provided in TIA Section 313(c), such summaries of any information, documents and reports required to be filed by the Guarantor pursuant to paragraphs (1) and (2) of this Section as may be required by rules and regulations prescribed from time to time by the Commission.

Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive notice or knowledge of any information contained therein or determinable from information contained therein, including the Obligors' compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

SECTION 804. Issuer to Furnish Trustee Names and Addresses of Holders. The Issuer will furnish or cause to be furnished to the Trustee:

(a) semi-annually, not later than 15 days after the Regular Record Date for interest for each series of Securities, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders of Registered Securities of such series as of such Regular Record Date, or if there is no Regular Record Date for interest for such series of Securities, semi-annually, upon such dates as are set forth in the Board Resolution or indenture supplemental hereto authorizing such series, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Issuer of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished, provided, however, that, so long as the Trustee is the Security Registrar, no such list shall be required to be furnished.

ARTICLE NINE
CONSOLIDATION, MERGER, SALE, LEASE OR CONVEYANCE

SECTION 901. Consolidations and Mergers of Issuer and Sales, Leases and Conveyances Permitted Subject to Certain Conditions. The Issuer may consolidate with, or sell, lease or convey all or substantially all of its assets to, or merge with or into any other corporation, provided that in any such case, (1) either the Issuer shall be the continuing corporation, or the successor corporation shall be a corporation organized and existing under the laws of the United States or a State thereof and such successor corporation shall expressly assume the due and punctual payment of the principal of (and premium, if any) and any interest (including all Additional Amounts, if any, payable pursuant to Section 1111) on all of the Securities, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Issuer by supplemental indenture, complying with Article Ten hereof, satisfactory to the Trustee, executed and delivered to the Trustee by such corporation and (2) immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of the Issuer or any of its Subsidiaries as a result thereof as having been incurred by the Issuer or such Subsidiary at the time of such transaction, no Event of Default, and no event which, after notice or the lapse of time, or both, would become an Event of Default, shall have occurred and be continuing.

SECTION 902. Consolidations and Mergers of Guarantor and Sales, Leases and Conveyances Permitted Subject to Certain Conditions. The Guarantor may consolidate with, or sell, lease or convey all or substantially all of its assets to, or merge with or into any other corporation, provided that in any such case, (1) either the Guarantor shall be the continuing corporation, or the successor corporation shall be a corporation organized and existing under the laws of the United States or a State thereof and such successor corporation shall expressly assume all of the obligations of the Guarantor under the Guarantees and this Indenture, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Guarantor, by supplemental indenture, complying with Article Ten hereof, satisfactory to the Trustee, executed and delivered to the Trustee by such corporation and (2) immediately after giving effect to such transaction and treating any indebtedness which becomes an obligation of the Guarantor or any of its Subsidiaries as a result thereof as having been incurred by the Issuer or such Subsidiary of the Issuer at the time of such transaction, no Event of Default, and no event which, after notice or the lapse of time, or both, would become an Event of Default, shall have occurred and be continuing.

SECTION 903. Rights and Duties of Successor Corporation. In case of any such consolidation, merger, sale, lease or conveyance and upon any such assumption by a successor corporation, such successor corporation shall succeed to and be substituted for the applicable Obligor, with the same effect as if it had been named herein as the party of the first part, and the predecessor corporation, except in the event of a lease, shall be relieved of any further obligation under this Indenture, the Securities and, as applicable, the Guarantees. Such successor corporation thereupon may cause to be signed, and may issue either in its own name or in the name of such Obligor, any or all of the Securities or Guarantees, as applicable, issuable hereunder which theretofore shall not have been signed by such Obligor and delivered to the Trustee; and, upon the order of such successor corporation, instead of such Obligor, and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities or Guarantees, as applicable, which previously shall have been signed and delivered by the officers of such Obligor to the Trustee for authentication, and any Securities or Guarantees, as applicable, which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Securities and/or Guarantees so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities and Guarantees theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Securities and Guarantees had been issued at the date of the execution hereof.

In case of any such consolidation, merger, sale, lease or conveyance, such changes in phraseology and form (but not in substance) may be made in the Securities thereafter to be issued as may be appropriate.

SECTION 904. Officers' Certificate and Opinion of Counsel. Any consolidation, merger, sale, lease or conveyance permitted under Sections 901 and 902 is also subject to the condition that the Trustee receive an Officers' Certificate and an Opinion of Counsel to the effect that any such consolidation, merger, sale, lease or conveyance, and the assumption by any successor corporation, complies with the provisions of this Article and that all conditions precedent herein provided for relating to such transaction have been complied with.

ARTICLE TEN
SUPPLEMENTAL INDENTURES

SECTION 1001. Supplemental Indentures without Consent of Holders. Without the consent of any Holders of Securities or coupons, the Issuer, when authorized by or pursuant to a Board Resolution, the Guarantor and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another Person to the Issuer and the assumption by any such successor of the covenants of the Issuer herein and in the Securities contained; or

(2) to evidence the succession of another Person to the Guarantor and the assumption by any such successor of the covenants of the Guarantor in the Guarantees, this Indenture and the related Securities; or

(3) to add to the covenants of the Obligors for the benefit of the Holders of all or any series of Securities (and if such covenants are to be for the benefit of less than all series of Securities, stating that such covenants are expressly being included solely for the benefit of such series) or to surrender any right or power herein conferred upon the Obligors; or

(4) to add any additional Events of Default for the benefit of the Holders of all or any series of Securities (and if such Events of Default are to be for the benefit of less than all series of Securities, stating that such Events of Default are expressly being included solely for the benefit of such series); provided, however, that in respect of any such additional Events of Default such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default or may limit the right of the Holders of a majority in aggregate principal amount of that or those series of Securities to which such additional Events of Default apply to waive such default; or

(5) to add to or change any of the provisions of this Indenture to provide that Bearer Securities may be registrable as to principal, to change or eliminate any restrictions on the payment of principal of or any premium or interest on Bearer Securities, to permit Bearer Securities to be issued in exchange for Registered Securities, to permit Bearer Securities to be issued in exchange for Bearer Securities of other authorized denominations or to permit or facilitate the issuance of Securities in uncertificated form, provided that any such action shall not adversely affect the interests of the Holders of Securities of any series or any related coupons in any material respect; or

(6) to change or eliminate any of the provisions of this Indenture, provided that any such change or elimination shall become effective only when there is no Security Outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision; or

(7) to secure the Securities; or

(8) to establish the form or terms of Securities of any series and any related coupons as permitted by Sections 201 and 301, including the provisions and procedures relating to Securities convertible into Common Stock or Preferred Stock, as the case may be; or

(9) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee; or

(10) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not be inconsistent with the provisions of this Indenture, provided such provisions shall not adversely affect the interests of the Holders of Securities of any series or any related coupons in any material respect; or

(11) to supplement any of the provisions of this Indenture to such extent as shall be necessary to permit or facilitate the defeasance and discharge of any series of Securities pursuant to Sections 501, 1502 and 1503; provided that any such action shall not adversely affect the interests of the Holders of Securities of such series and any related coupons or any other series of Securities in any material respect;

(12) in the case of Securities issued after January 3, 2023, to add to or change any of the provisions of this Indenture in respect of one or more series of Securities solely to conform such provisions to the description of the Securities contained in the prospectus or other offering document pursuant to which such Securities were sold; or

(13) in the case of Securities issued after January 3, 2023, to amend or supplement any provision contained herein or in any supplemental indenture; provided that such amendment or supplement shall not adversely affect the interests of the Holders of Securities of any series or any related coupons in any material respect.

SECTION 1002. Supplemental Indentures with Consent of Holders. With the consent of the Holders of not less than a majority in principal amount of all Outstanding Securities affected by such supplemental indenture, by Act of said Holders delivered to the Issuer and the Trustee, the Issuer and the Guarantor, when authorized by or pursuant to a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities and any related coupons under this Indenture or any applicable Guarantee; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby:

(1) change the Stated Maturity of the principal of (or premium, if any, on) or any installment of principal of or interest on, any Security; or reduce the principal amount thereof or the rate or amount of interest thereon or any Additional Amounts payable in respect thereof, or any premium payable upon the redemption thereof, or change any obligation of the Issuer to pay Additional Amounts pursuant to Section 1111 (except as contemplated by Section 901(1) and permitted by Section 1001(1)), or reduce the amount of the principal of an Original Issue Discount Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 602 or the amount thereof provable in bankruptcy pursuant to Section 604, or adversely affect any right of repayment at the option of the Holder of any Security, or change any Place of Payment where, or the currency or currencies, currency unit or units or composite currency or currencies in which, any Security or any premium or the interest thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption or repayment at the option of the Holder, on or after the Redemption Date or the Repayment Date, as the case may be), or

(2) reduce the percentage in principal amount of the Outstanding Securities of any series, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver with respect to such series (or compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences) provided for in this Indenture, or reduce the requirements of Section 1604 for quorum or voting, or

(3) modify any of the provisions of this Section, Section 613 or Section 1112, except to increase the required percentage to effect such action or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby; or

(4) amend the applicability of any Guarantee to the related Securities or the terms of any Guarantee in a manner that adversely affects the interest of Holders of the related Securities or any related coupons in any material respect.

It shall not be necessary for any Act of Holders under this Section to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Securities, or which modifies the rights of the Holders of Securities of such series with respect to such covenant or other provision, shall be deemed not to affect the rights under this Indenture of the Holders of Securities of any other series.

SECTION 1003. Execution of Supplemental Indentures. In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modification thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

SECTION 1004. Effect of Supplemental Indentures. Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder and of any coupon appertaining thereto shall be bound thereby.

SECTION 1005. Conformity with Trust Indenture Act. Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

SECTION 1006. Reference in Securities to Supplemental Indentures. Securities of any series authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall, if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Issuer shall so determine, new Securities of any series so modified as to conform, in the opinion of the Trustee and the Issuer, to any such supplemental indenture may be prepared and executed by the Issuer and authenticated and delivered by the Trustee in exchange for Outstanding Securities of such series.

ARTICLE ELEVEN
COVENANTS

SECTION 1101. Payment of Principal, Premium, if any, Interest and Additional Amounts. The Issuer covenants and agrees for the benefit of the Holders of each series of Securities that it will duly and punctually pay the principal of (and premium, if any) and interest on and any Additional Amounts payable in respect of the Securities of that series in accordance with the terms of such series of Securities, any coupons appertaining thereto and this Indenture. Unless otherwise specified as contemplated by Section 301 with respect to any series of Securities, any interest due on and any Additional Amounts payable in respect of Bearer Securities on or before Maturity, other than Additional Amounts, if any, payable as provided in Section 1111 in respect of principal of (or premium, if any, on) such a Security, shall be payable only upon presentation and surrender of the several coupons for such interest installments as are evidenced thereby as they severally mature. Unless otherwise specified with respect to Securities of any series pursuant to Section 301, at the option of the Issuer, all payments of principal may be paid by check to the registered Holder of the Registered Security or other person entitled thereto against surrender of such Security.

SECTION 1102. Maintenance of Office or Agency. If Securities of a series are issuable only as Registered Securities, the Issuer shall maintain in each Place of Payment for any series of Securities an office or agency where Securities of that series may be presented or surrendered for payment or conversion, where Securities of that series may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Issuer in respect of the Securities of that series and this Indenture may be served. If Securities of a series are issuable as Bearer Securities, the Issuer will maintain: (A) in the Borough of Manhattan, New York City, an office or agency where any Registered Securities of that series may be presented or surrendered for payment or conversion, where any Registered Securities of that series may be surrendered for registration of transfer, where Securities of that series may be surrendered for exchange, where notices and demands to or upon the Issuer in respect of the Securities of that series and this Indenture may be served and where Bearer Securities of that series and related coupons may be presented or surrendered for payment or conversion in the circumstances described in the following paragraph (and not otherwise); (B) subject to any laws or regulations applicable thereto, in a Place of Payment for that series which is located outside the United States, an office or agency where Securities of that series and related coupons may be presented and surrendered for payment (including payment of any Additional Amounts payable on Securities of that series pursuant to Section 1111) or conversion; provided, however, that if the Securities of that series are listed on the Luxembourg Stock Exchange or any other stock exchange located outside the United States and such stock exchange shall so require, the Issuer will maintain a Paying Agent for the Securities of that series in Luxembourg or any other required city located outside the United States, as the case may be, so long as the Securities of that series are listed on such exchange; and (C) subject to any laws or regulations applicable thereto, in a Place of Payment for that series located outside the United States an office or agency where any Registered Securities of that series may be surrendered for registration of transfer, where Securities of that series may be surrendered for exchange and where notices and demands to or upon the Issuer in respect of the Securities of that series and this Indenture may be served. The Issuer will give prompt written notice to the Trustee of the location, and any change in the location, of each such office or agency. If at any time the Issuer shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, except that Bearer Securities of that series and the related coupons may be presented and surrendered for payment (including payment of any Additional Amounts payable on Bearer Securities of that series pursuant to Section 1111) or conversion at the offices specified in the Security, in London, England, and the Issuer hereby appoints the same as its agent to receive such respective presentations, surrenders, notices and demands, and the Issuer hereby appoints the Trustee its agent to receive all such presentations, surrenders, notices and demands.

Unless otherwise specified with respect to any Securities pursuant to Section 301, no payment of principal, premium or interest on or Additional Amounts in respect of Bearer Securities shall be made at any office or agency of the Issuer in the United States or by check mailed to any address in the United States or by transfer to an account maintained with a bank located in the United States; provided, however, that, if the Securities of a series are payable in Dollars, payment of principal of and any premium and interest on any Bearer Security (including any Additional Amounts payable on Securities of such series pursuant to Section 1111) shall be made at the office of the designated agent of the Issuer's Paying Agent, if (but only if) payment in Dollars of the full amount of such principal, premium, interest or Additional Amounts, as the case may be, at all offices or agencies outside the United States maintained for the purpose by the Issuer in accordance with this Indenture, is illegal or effectively precluded by exchange controls or other similar restrictions.

The Issuer may from time to time designate one or more other offices or agencies where the Securities of one or more series may be presented or surrendered for any or all of such purposes, and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Issuer of its obligation to maintain an office or agency in accordance with the requirements set forth above for Securities of any series for such purposes. The Issuer will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. Unless otherwise specified with respect to any Securities pursuant to Section 301 with respect to a series of Securities, the Issuer hereby designates as a Place of Payment for each series of Securities the office or agency of the Issuer, and initially appoints the Trustee at its Corporate Trust Office as Paying Agent and as its agent to receive all such presentations, surrenders, notices and demands.

Unless otherwise specified with respect to any Securities pursuant to Section 301, if and so long as the Securities of any series (i) are denominated in a Foreign Currency or (ii) may be payable in a Foreign Currency, or so long as it is required under any other provision of the Indenture, then the Issuer will maintain with respect to each such series of Securities, or as so required, at least one exchange rate agent.

SECTION 1103. Money for Securities Payments to Be Held in Trust. If the Issuer shall at any time act as its own Paying Agent with respect to any series of any Securities and any related coupons, the Issuer will, on or before each due date of the principal of (and premium, if any), or interest on or Additional Amounts in respect of, any of the Securities of that series, segregate and hold in trust for the benefit of the Persons entitled thereto a sum in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) sufficient to pay the principal (and premium, if any) or interest or Additional Amounts so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and will promptly notify the Trustee of its action or failure so to act.

Whenever the Issuer shall have one or more Paying Agents for any series of Securities and any related coupons, the Issuer will, before each due date of the principal of (and premium, if any), or interest on or Additional Amounts in respect of, any Securities of that series, deposit with a Paying Agent a sum (in the currency or currencies, currency unit or units or composite currency or currencies described in the preceding paragraph) sufficient to pay the principal (and premium, if any) or interest or Additional Amounts, so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest or Additional Amounts and (unless such Paying Agent is the Trustee) the Issuer will promptly notify the Trustee of its action or failure so to act.

The Issuer will cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will

(1) hold all sums held by it for the payment of principal of (and premium, if any) or interest on Securities or Additional Amounts in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(2) give the Trustee notice of any default by the Obligors (or any other obligor upon the Securities) in the making of any such payment of principal (and premium, if any) or interest or Additional Amounts; and

(3) at any time during the continuance of any such default upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Issuer may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Issuer Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Issuer or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Issuer or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such sums.

Except as otherwise provided in the Securities of any series, any money deposited with the Trustee or any Paying Agent, or then held by the Issuer, in trust for the payment of the principal of (and premium, if any) or interest on, or any Additional Amounts in respect of, any Security of any series and remaining unclaimed for two years after such principal (and premium, if any), interest or Additional Amounts have become due and payable shall be paid to the Issuer upon Issuer Request or (if then held by the Issuer) shall be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Issuer for payment of such principal of (and premium, if any) or interest on, or any Additional Amounts in respect of, any Security, without interest thereon, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Issuer as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Issuer cause to be published once, in an Authorized Newspaper, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Issuer.

SECTION 1104. Limitations on Incurrence of Debt.

(a) The Issuer will not, and will not permit any of its Subsidiaries to, incur any Debt if, immediately after giving effect to the incurrence of such additional Debt and the application of the proceeds thereof, the aggregate principal amount of all outstanding Debt of the Issuer and its Subsidiaries on a consolidated basis determined in accordance with GAAP is greater than 60% of the sum of (without duplication) (i) the Issuer's Total Assets as of the end of the calendar quarter covered in the Issuer's Annual Report on Form 10-K or Quarterly Report on Form 10-Q, as the case may be, most recently filed with the Commission (or, if such filing is not permitted under the Exchange Act, with the Trustee) prior to the incurrence of such additional Debt, and (ii) the purchase price of any real estate assets or mortgages receivable acquired, and the amount of any securities offering proceeds received (to the extent such proceeds were not used to acquire real estate assets or mortgages receivable or used to reduce Debt), by the Issuer or any of its Subsidiaries since the end of such calendar quarter, including those proceeds obtained in connection with the incurrence of such additional Debt;

(b) In addition to the limitations set forth in subsection (a) of this Section 1104, the Issuer will not, and will not permit any of its Subsidiaries to, incur any Debt if the ratio of Consolidated Income Available for Debt Service to the Annual Service Charge for the four consecutive fiscal quarters most recently ended prior to the date on which such additional Debt is to be incurred shall have been less than 1.5, on a pro forma basis after giving effect thereto and to the application of the proceeds therefrom, and calculated on the assumption that (i) such Debt and any other Debt incurred by the Issuer and its Subsidiaries since the first day of such four-quarter period and the application of the proceeds therefrom, including to refinance other Debt, had occurred at the beginning of such period; (ii) the repayment or retirement of any other Debt by the Issuer and its Subsidiaries since the first day of such four-quarter period had been incurred, repaid or retired at the beginning of such period (except that, in making such computation, the amount of Debt under any revolving credit facility shall be computed based upon the average daily balance of such Debt during such period); (iii) in the case of Acquired Debt or Debt incurred in connection with any acquisition since the first day of such four-quarter period, the related acquisition had occurred as of the first day of such period with the appropriate adjustments with respect to such acquisition being included in such proforma calculation; and (iv) in the case of any acquisition or disposition by the Issuer or its Subsidiaries of any asset or group of assets since the first day of such four-quarter period, whether by merger, stock purchase or sale, or asset purchase or sale, such acquisition or disposition or any related repayment of Debt had occurred as of the first day of such period with the appropriate adjustments with respect to such acquisition or disposition being included in such proforma calculation.

(c) In addition to the limitation set forth in subsections (a) and (b) of this Section 1104, the Issuer will not, and will not permit any of its Subsidiaries to, incur any Debt secured by any mortgage, lien, charge, pledge, encumbrance or security interest of any kind upon any of the property of the Issuer or any of its Subsidiaries, whether owned at the date hereof or hereafter acquired, if, immediately after giving effect to the incurrence of such additional Debt and the application of the proceeds thereof, the aggregate principal amount of all outstanding Debt of the Issuer and its Subsidiaries on a consolidated basis which is secured by any mortgage, lien, charge, pledge, encumbrance or security interest on property of the Issuer or any of its Subsidiaries is greater than 40% of the Issuer's Total Assets.

(d) For purposes of this Section 1104 Debt shall be deemed to be "incurred" by the Issuer or one of its Subsidiaries whenever the Issuer or such Subsidiary shall create, assume, guarantee or otherwise become liable in respect thereof.

SECTION 1105. Existence. Subject to Article Nine, the Issuer and, as applicable, the Guarantor, will do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence, rights (charter and statutory) and franchises; provided, however, that the Issuer and, as applicable, the Guarantor, shall not be required to preserve any right or franchise if the Board Directors of the Issuer or, as applicable, the Guarantor shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Issuer and, as applicable, the Guarantor.

SECTION 1106. Maintenance of Properties. The Issuer will cause all of its material properties used or useful in the conduct of its business or the business of any of its Subsidiaries to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Issuer may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times.

SECTION 1107. Insurance. The Issuer will, and will cause each of its Subsidiaries to, keep all of its insurable properties insured against loss or damage at least equal to their then full insurable value with insurers of recognized responsibility and, if such insurer has publicly rated debt, the rating for such debt must be at least investment grade with a nationally recognized rating agency.

SECTION 1108. Payment of Taxes and Other Claims. The Issuer will pay or discharge or cause to be paid or discharged, before the same shall become delinquent, (1) all taxes, assessments and governmental charges levied or imposed upon it or any of its Subsidiaries or upon the income, profits or property of the Issuer or any of its Subsidiaries, and (2) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien upon the property of the Issuer or any of its Subsidiaries; provided, however, that the Issuer shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith.

SECTION 1109. Provision of Financial Information. Whether or not the Guarantor is subject to Section 13 or 15(d) of the Exchange Act, the Guarantor will prepare the annual reports, quarterly reports and other documents within 15 days of each of the respective dates by which the Guarantor would have been required to file with the Commission pursuant to such Section 13 or 15(d) and will (i) provide to all Holders copies of the annual reports, quarterly reports and other documents which the Guarantor would have been required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act if the Guarantor were subject to such Sections, (ii) file with the Trustee copies of the annual reports, quarterly reports and other documents which the Guarantor would have been required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act if the Guarantor were subject to such Sections, and (iii) promptly upon written request and payment of the reasonable cost of duplication and delivery, supply copies of such documents to any prospective Holder.

For purposes of this Section 1109, any information, documents and other reports filed or furnished on EDGAR or such other system of the Commission or the website of the Guarantor will be deemed to be furnished to the Holders and the Trustee once such information, documents and other reports are so filed on EDGAR or the Commission's website or the website of the Guarantor. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute actual or constructive notice or knowledge of any information contained therein or determinable from information contained therein, including the Guarantor's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

SECTION 1110. Statement as to Compliance. The Issuer will deliver to the Trustee, within 120 days after the end of each fiscal year, a brief certificate from the principal executive officer, principal financial officer or principal accounting officer as to his or her knowledge of the Obligors' compliance with all conditions and covenants under this Indenture and, in the event of any noncompliance, specifying such noncompliance and the nature and status thereof. For purposes of this Section 1110, such compliance shall be determined without regard to any period of grace or requirement of notice under this Indenture.

SECTION 1111. Additional Amounts. If any Securities of a series provide for the payment of Additional Amounts, the Issuer will pay to the Holder of any Security of such series or any coupon appertaining thereto Additional Amounts as may be specified as contemplated by Section 301. Whenever in this Indenture there is mentioned, in any context except in the case of Section 602(1), the payment of the principal of or any premium or interest on, or in respect of, any Security of any series or payment of any related coupon or the net proceeds received on the sale or exchange of any Security of any series, such mention shall be deemed to include mention of the payment of Additional Amounts provided by the terms of such series established pursuant to Section 301 to the extent that, in such context, Additional Amounts are, were or would be payable in respect thereof pursuant to such terms and express mention of the payment of Additional Amounts (if applicable) in any provisions hereof shall not be construed as excluding Additional Amounts in those provisions hereof where such express mention is not made.

Except as otherwise specified as contemplated by Section 301, if the Securities of a series provide for the payment of Additional Amounts, at least 10 days prior to the first Interest Payment Date with respect to that series of Securities (or if the Securities of that series will not bear interest prior to Maturity, the first day on which a payment of principal and any premium is made), and at least 10 days prior to each date of payment of principal and any premium or interest if there has been any change with respect to the matters set forth in the below-mentioned Officers' Certificate, the Issuer will furnish the Trustee and the Issuer's principal Paying Agent or Paying Agents, if other than the Trustee, with an Officers' Certificate instructing the Trustee and such Paying Agent or Paying Agents whether such payment of principal of and any premium or interest on the Securities of that series shall be made to Holders of Securities of that series or any related coupons who are not United States persons without withholding for or on account of any tax, assessment or other governmental charge described in the Securities of the series. If any such withholding shall be required, then such Officers' Certificate shall specify by country the amount, if any, required to be withheld on such payments to such Holders of Securities of that series or related coupons and the Issuer will pay to the Trustee or such Paying Agent the Additional Amounts required by the terms of such Securities. In the event that the Trustee or any Paying Agent, as the case may be, shall not so receive the above-mentioned certificate, then the Trustee or such Paying Agent shall be entitled (i) to assume that no such withholding or deduction is required with respect to any payment of principal or interest with respect to any Securities of a series or related coupons until it shall have received a certificate advising otherwise and (ii) to make all payments of principal and interest with respect to the Securities of a series or related coupons without withholding or deductions until otherwise advised. The Issuer covenants to indemnify the Trustee and any Paying Agent for, and to hold them harmless against, any loss, liability or expense reasonably incurred without negligence or bad faith on their part arising out of or in connection with actions taken or omitted by any of them or in reliance on any Officers' Certificate furnished pursuant to this Section or in reliance on the Issuer not furnishing such an Officers' Certificate.

SECTION 1112. Waiver of Certain Covenants. The Obligors may omit in any particular instance to comply with any term, provision or condition set forth in Sections 1104 to 1109, inclusive, and Section 1113 if before or after the time for such compliance the Holders of at least a majority in principal amount of all outstanding Securities of such series, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Obligors and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

SECTION 1113. Maintenance of Value of Unencumbered Assets to Unsecured Debt. The Issuer will at all times maintain an Unencumbered Total Asset Value in an amount of not less than 150% of the aggregate principal amount of all outstanding Debt of the Issuer and its Subsidiaries that is unsecured.

SECTION 1114. Foreign Account Tax Compliance Act (FATCA). In order to comply with applicable tax laws, rules and regulations (inclusive of directives, guidelines and interpretations promulgated by competent authorities) in effect from time to time ("Applicable Law") that a foreign financial institution, issuer, trustee, paying agent, holder or other institution is or has agreed to be subject to related to the Indenture, the Issuer agrees (i) to provide to The Bank of New York Mellon upon reasonable written request relevant information in the Issuer's possession or control, or is reasonable obtainable by the Issuer, about the applicable parties and/or transactions (including any modification to the terms of such transactions) so The Bank of New York Mellon can determine whether it has tax related obligations under Applicable Law, and (ii) that The Bank of New York Mellon shall be entitled to make any withholding or deduction from payments under this Indenture to the extent necessary to comply with Applicable Law. The obligations imposed on the Issuer under this paragraph are limited to the extent that the provision of such information to The Bank of New York Mellon will not result in any breach of this Indenture or the Securities or violate any applicable law. The terms of this section shall survive the termination of this Indenture.

SECTION 1115. Economic Sanctions. (a) The Issuer represents that neither it nor, to the knowledge of the Issuer, any of its affiliates, subsidiaries, directors or officers are the target or subject of any sanctions enforced by the government of the United States of America (including, without limitation, the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State), the United Nations Security Council, the European Union, His Majesty's Treasury, or other relevant sanctions authority (collectively "Sanctions");

(b) The Issuer covenants that it will not directly or indirectly use any payments made pursuant to this agreement, (i) to fund or facilitate any activities of or business with any person who, at the time of such funding or facilitation, is the subject or target of Sanctions or (ii) to fund or facilitate any activities of or business with any country or territory that is the target or subject of Sanctions.

ARTICLE TWELVE
REDEMPTION OF SECURITIES

SECTION 1201. Applicability of Article. Securities of any series which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 301 for Securities of any series) in accordance with this Article.

SECTION 1202. Election to Redeem; Notice to Trustee. The election of the Issuer to redeem any Securities shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Issuer of less than all of the Securities of any series, the Issuer shall, at least 45 days prior to the giving of the notice of redemption in Section 1204 (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date and of the principal amount of Securities of such series to be redeemed. In the case of any redemption of Securities prior to the expiration of any restriction on such redemption provided in the terms of such Securities or elsewhere in this Indenture, the Issuer shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction.

SECTION 1203. Selection of Securities to Be Redeemed. If less than all the Securities of any series issued on the same day with the same terms are to be redeemed, the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date, from the Outstanding Securities of such series issued on such date with the same terms not previously called for redemption, in accordance with applicable Depositary procedures and which may provide for the selection for redemption of portions (equal to the minimum authorized denomination for Securities of that series or any integral multiple thereof) of the principal amount of Securities of such series of a denomination larger than the minimum authorized denomination for Securities of that series.

The Trustee shall promptly notify the Issuer and the Security Registrar (if other than itself) in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed.

For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security which has been or is to be redeemed.

SECTION 1204. Notice of Redemption. Notice of redemption shall be given in the manner provided in Section 106, not less than 30 days nor more than 60 days prior to the Redemption Date, unless a shorter period is specified by the terms of such series established pursuant to Section 301, to each Holder of Securities to be redeemed, but failure to give such notice in the manner herein provided to the Holder of any Security designated for redemption as a whole or in part, or any defect in the notice to any such Holder, shall not affect the validity of the proceedings for the redemption of any other such Security or portion thereof.

Any notice that is mailed to the Holders of Registered Securities in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives the notice.

All notices of redemption shall state:

(1) the Redemption Date,

(2) the Redemption Price, accrued interest to the Redemption Date payable as provided in Section 1206, if any, and Additional Amounts, if any,

(3) if less than all Outstanding Securities of any series are to be redeemed, the identification (and, in the case of partial redemption, the principal amount) of the particular Security or Securities to be redeemed,

(4) in case any Security is to be redeemed in part only, the notice which relates to such Security shall state that on and after the Redemption Date, upon surrender of such Security, the holder will receive, without a charge, a new Security or Securities of authorized denominations for the principal amount thereof remaining unredeemed,

(5) that on the Redemption Date the Redemption Price and accrued interest to the Redemption Date payable as provided in Section 1206, if any, will become due and payable upon each such Security, or the portion thereof, to be redeemed and, if applicable, that interest thereon shall cease to accrue on and after said date,

(6) the Place or Places of Payment where such Securities, together in the case of Bearer Securities with all coupons appertaining thereto, if any, maturing after the Redemption Date, are to be surrendered for payment of the Redemption Price and accrued interest, if any, or for conversion,

(7) that the redemption is for a sinking fund, if such is the case,

(8) that, unless otherwise specified in such notice, Bearer Securities of any series, if any, surrendered for redemption must be accompanied by all coupons maturing subsequent to the date fixed for redemption or the amount of any such missing coupon or coupons will be deducted from the Redemption Price, unless security or indemnity satisfactory to the Issuer, the Trustee for such series and any Paying Agent is furnished,

(9) if Bearer Securities of any series are to be redeemed and any Registered Securities of such series are not to be redeemed, and if such Bearer Securities may be exchanged for Registered Securities not subject to redemption on this Redemption Date pursuant to Section 305 or otherwise, the last date, as determined by the Issuer, on which such exchanges may be made,

(10) the CUSIP number of such Security, if any, and

(11) if applicable, that a Holder of Securities who desires to convert Securities for redemption must satisfy the requirements for conversion contained in such Securities, the then existing conversion price or rate, and the date and time when the option to convert shall expire.

Notice of redemption of Securities to be redeemed shall be given by the Issuer or, at the Issuer's request, by the Trustee in the name and at the expense of the Issuer.

SECTION 1205. Deposit of Redemption Price. On any Redemption Date, the Issuer shall deposit with the Trustee or with a Paying Agent (or, if the Issuer is acting as its own Paying Agent, which it may not do in the case of a sinking fund payment under Article Thirteen, segregate and hold in trust as provided in Section 1103) an amount of money in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) sufficient to pay on the Redemption Date the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest on, all the Securities or portions thereof which are to be redeemed on that date.

SECTION 1206. Securities Payable on Redemption Date. Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) (together with accrued interest, if any, to the Redemption Date), and from and after such date (unless the Issuer shall default in the payment of the Redemption Price and accrued interest) such Securities shall, if the same were interest-bearing, cease to bear interest and the coupons for such interest appertaining to any Bearer Securities so to be redeemed, except to the extent provided below, shall be void. Upon surrender of any such Security for redemption in accordance with said notice, together with all coupons, if any, appertaining thereto maturing after the Redemption Date, such Security shall be paid by the Issuer at the Redemption Price, together with accrued interest, if any, to the Redemption Date; provided, however, that installments of interest on Bearer Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable only at an office or agency located outside the United States (except as otherwise provided in Section 1102) and, unless otherwise specified as contemplated by Section 301, only upon presentation and surrender of coupons for such interest; and provided further that, except as otherwise provided with respect to Securities convertible into Common Stock or Preferred Stock, installments of interest on Registered Securities whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 307.

If any Bearer Security surrendered for redemption shall not be accompanied by all appurtenant coupons maturing after the Redemption Date, such Security may be paid after deducting from the Redemption Price an amount equal to the face amount of all such missing coupons, or the surrender of such missing coupon or coupons may be waived by the Issuer and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to the Trustee or any Paying Agent any such missing coupon in respect of which a deduction shall have been made from the Redemption Price, such Holder shall be entitled to receive the amount so deducted; provided, however, that interest represented by coupons shall be payable only at an office or agency located outside the United States (except as otherwise provided in Section 1102) and, unless otherwise specified as contemplated by Section 301, only upon presentation and surrender of those coupons.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal (and premium, if any) shall, until paid, bear interest from the Redemption Date at the rate borne by the Security.

SECTION 1207. Securities Redeemed in Part. Any Registered Security which is to be redeemed only in part (pursuant to the provisions of this Article or of Article Thirteen) shall be surrendered at a Place of Payment therefor (with, if the Issuer or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Issuer and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing) and the Issuer shall execute and the Trustee shall authenticate and deliver to the Holder of such Security without service charge a new Security or Securities of the same series, of any authorized denomination as requested by such Holder in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered.

ARTICLE THIRTEEN
SINKING FUNDS

SECTION 1301. Applicability of Article. The provisions of this Article shall be applicable to any sinking fund for the retirement of Securities of a series except as otherwise specified as contemplated by Section 301 for Securities of such series.

The minimum amount of any sinking fund payment provided for by the terms of Securities of any series is herein referred to as a "mandatory sinking fund payment", and any payment in excess of such minimum amount provided for by the terms of such Securities of any series is herein referred to as an "optional sinking fund payment". If provided for by the terms of any Securities of any series, the cash amount of any mandatory sinking fund payment may be subject to reduction as provided in Section 1302. Each sinking fund payment shall be applied to the redemption of Securities of any series as provided for by the terms of Securities of such series.

SECTION 1302. Satisfaction of Sinking Fund Payments with Securities. The Issuer may, in satisfaction of all or any part of any mandatory sinking fund payment with respect to the Securities of a series, (1) deliver Outstanding Securities of such series (other than any previously called for redemption) together in the case of any Bearer Securities of such series with all unmatured coupons appertaining thereto and (2) apply as a credit Securities of such series which have been redeemed either at the election of the Issuer pursuant to the terms of such Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Securities, as provided for by the terms of such Securities, or which have otherwise been acquired by the Issuer; provided that such Securities so delivered or applied as a credit have not been previously so credited. Such Securities shall be received and credited for such purpose by the Trustee at the applicable Redemption Price specified in such Securities for redemption through operation of the sinking fund and the amount of such mandatory sinking fund payment shall be reduced accordingly.

SECTION 1303. Redemption of Securities for Sinking Fund. Not less than 60 days prior to each sinking fund payment date for Securities of any series, the Issuer will deliver to the Trustee an Officers' Certificate specifying the amount of the next ensuing mandatory sinking fund payment for that series pursuant to the terms of that series, the portion thereof, if any, which is to be satisfied by payment of cash in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) and the portion thereof, if any, which is to be satisfied by delivering and crediting Securities of that series pursuant to Section 1302, and the optional amount, if any, to be added in cash to the next ensuing mandatory sinking fund payment, and will also deliver to the Trustee any Securities to be so delivered and credited. If such Officers' Certificate shall specify an optional amount to be added in cash to the next ensuing mandatory sinking fund payment, the Issuer shall thereupon be obligated to pay the amount therein specified. Not less than 30 days before each such sinking fund payment date the Securities shall be selected to be redeemed upon such sinking fund payment date in the manner specified in Section 1203 and cause notice of the redemption thereof to be given in the name of and at the expense of the Issuer in the manner provided in Section 1204. Such notice having been duly given, the redemption of such Securities shall be made upon the terms and in the manner stated in Sections 1206 and 1207.

ARTICLE FOURTEEN
REPAYMENT AT THE OPTION OF HOLDERS

SECTION 1401. Applicability of Article. Repayment of Securities of any series before their Stated Maturity at the option of Holders thereof shall be made in accordance with the terms of such Securities, if any, and (except as otherwise specified by the terms of such series established pursuant to Section 301) in accordance with this Article.

SECTION 1402. Repayment of Securities. Securities of any series subject to repayment in whole or in part at the option of the Holders thereof will, unless otherwise provided in the terms of such Securities, be repaid at a price equal to the principal amount thereof, together with interest, if any, thereon accrued to the Repayment Date specified in or pursuant to the terms of such Securities. The Issuer covenants that at least one Business Day prior to the Repayment Date it will deposit with the Trustee or with a Paying Agent (or, if the Issuer is acting as its own Paying Agent, segregate and hold in trust as provided in Section 1103) an amount of money in the currency or currencies, currency unit or units or composite currency or currencies in which the Securities of such series are payable (except as otherwise specified pursuant to Section 301 for the Securities of such series) sufficient to pay the principal (or, if so provided by the terms of the Securities of any series, a percentage of the principal) of, and (except if the Repayment Date shall be an Interest Payment Date) accrued interest on, all the Securities or portions thereof, as the case may be, to be repaid on such date.

SECTION 1403. Exercise of Option. Securities of any series subject to repayment at the option of the Holders thereof will contain an "Option to Elect Repayment" form on the reverse of such Securities. In order for any Security to be repaid at the option of the Holder, the Trustee must receive at the Place of Payment therefor specified in the terms of such Security (or at such other place or places of which the Issuer shall from time to time notify the Holders of such Securities) not earlier than 60 days nor later than 30 days prior to the Repayment Date (1) the Security so providing for such repayment together with the "Option to Elect Repayment" form on the reverse thereof duly completed by the Holder (or by the Holder's attorney duly authorized in writing) or (2) a telegram, telex, facsimile transmission or a letter from a member of a national securities exchange, or the National Association of Securities Dealers, Inc. ("NASD"), or a commercial bank or trust company in the United States setting forth the name of the Holder of the Security, the principal amount of the Security, the principal amount of the Security to be repaid, the CUSIP number, if any, or a description of the tenor and terms of the Security, a statement that the option to elect repayment is being exercised thereby and a guarantee that the Security to be repaid, together with the duly completed form entitled "Option to Elect Repayment" on the reverse of the Security, will be received by the Trustee not later than the fifth Business Day after the date of such telegram, telex, facsimile transmission or letter; provided, however, that such telegram, telex, facsimile transmission or letter shall only be effective if such Security and form duly completed are received by the Trustee by such fifth Business Day. If less than the entire principal amount of such Security is to be repaid in accordance with the terms of such Security, the principal amount of such Security to be repaid, in increments of the minimum denomination for Securities of such series, and the denomination or denominations of the Security or Securities to be issued to the Holder for the portion of the principal amount of such Security surrendered that is not to be repaid, must be specified. The principal amount of any Security providing for repayment at the option of the Holder thereof may not be repaid in part if, following such repayment, the unpaid principal amount of such Security would be less than the minimum authorized denomination of Securities of the series of which such Security to be repaid is a part. Except as otherwise may be provided by the terms of any Security providing for repayment at the option of the Holder thereof, exercise of the repayment option by the Holder shall be irrevocable unless waived by the Issuer.

SECTION 1404. When Securities Presented for Repayment Become Due and Payable. If Securities of any series providing for repayment at the option of the Holders thereof shall have been surrendered as provided in this Article and as provided by or pursuant to the terms of such Securities, such Securities or the portions thereof, as the case may be, to be repaid shall become due and payable and shall be paid by the Issuer on the Repayment Date therein specified, and on and after such Repayment Date (unless the Issuer shall default in the payment of such Securities on such Repayment Date) such Securities shall, if the same were interest-bearing, cease to bear interest and the coupons for such interest appertaining to any Bearer Securities so to be repaid, except to the extent provided below, shall be void. Upon surrender of any such Security for repayment in accordance with such provisions, together with all coupons, if any, appertaining thereto maturing after the Repayment Date, the principal amount of such Security so to be repaid shall be paid by the Issuer, together with accrued interest, if any, to the Repayment Date; provided, however, that coupons whose Stated Maturity is on or prior to the Repayment Date shall be payable only at an office or agency located outside the United States (except as otherwise provided in Section 1102) and, unless otherwise specified pursuant to Section 301, only upon presentation and surrender of such coupons; and provided further that, in the case of Registered Securities, installments of interest, if any, whose Stated Maturity is on or prior to the Repayment Date shall be payable (but without interest thereon, unless the Issuer shall default in the payment thereof) to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to their terms and the provisions of Section 307.

If any Bearer Security surrendered for repayment shall not be accompanied by all appurtenant coupons maturing after the Repayment Date, such Security may be paid after deducting from the amount payable therefor as provided in Section 1402 an amount equal to the face amount of all such missing coupons, or the surrender of such missing coupon or coupons may be waived by the Issuer and the Trustee if there be furnished to them such security or indemnity as they may require to save each of them and any Paying Agent harmless. If thereafter the Holder of such Security shall surrender to the Trustee or any Paying Agent any such missing coupon in respect of which a deduction shall have been made as provided in the preceding sentence, such Holder shall be entitled to receive the amount so deducted; provided, however, that interest represented by coupons shall be payable only at an office or agency located outside the United States (except as otherwise provided in Section 1102) and, unless otherwise specified as contemplated by Section 301, only upon presentation and surrender of those coupons.

If the principal amount of any Security surrendered for repayment shall not be so repaid upon surrender thereof, such principal amount (together with interest, if any, thereon accrued to such Repayment Date) shall, until paid, bear interest from the Repayment Date at the rate of interest or Yield to Maturity (in the case of Original Issue Discount Securities) set forth in such Security.

SECTION 1405. Securities Repaid in Part. Upon surrender of any Registered Security which is to be repaid in part only, the Issuer shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge and at the expense of the Issuer, a new Registered Security or Securities of the same series, of any authorized denomination specified by the Holder, in an aggregate principal amount equal to and in exchange for the portion of the principal of such Security so surrendered which is not to be repaid.

ARTICLE FIFTEEN
DEFEASANCE AND COVENANT DEFEASANCE

SECTION 1501. Applicability of Article; Issuer's Option to Effect Defeasance or Covenant Defeasance. If, pursuant to Section 301, provision is made for either or both of (a) defeasance of the Securities of or within a series under Section 1502 or (b) covenant defeasance of the Securities of or within a series under Section 1503, then the provisions of such Section or Sections, as the case may be, together with the other provisions of this Article (with such modifications thereto as may be specified pursuant to Section 301 with respect to any Securities), shall be applicable to such Securities, any coupons appertaining thereto and any related Guarantee, and the Issuer may at its option by Board Resolution, at any time, with respect to such Securities, any coupons appertaining thereto and any related Guarantee, elect to have Section 1502 (if applicable) or Section 1503 (if applicable) be applied to such Outstanding Securities, any coupons appertaining thereto and any related Guarantee upon compliance with the conditions set forth below in this Article.

SECTION 1502. Defeasance and Discharge. Upon the Issuer's exercise of the above option applicable to this Section with respect to any Securities of or within a series, the Obligors shall be deemed to have been discharged from their obligations with respect to such Outstanding Securities, any coupons appertaining thereto and any related Guarantee, including, with respect to the Guarantor, release from its Guarantees of the Securities of such series, on the date the conditions set forth in Section 1504 are satisfied (hereinafter, "defeasance"). For this purpose, such defeasance means that the Issuer shall be deemed to have paid and discharged the entire indebtedness represented by such Outstanding Securities, any coupons appertaining thereto and any related Guarantee, which shall thereafter be deemed to be "Outstanding" only for the purposes of Section 1505 and the other Sections of this Indenture referred to in clauses (A) and (B) below, and to have satisfied all of their other obligations under such Securities, any coupons appertaining thereto and any related Guarantee and this Indenture insofar as such Securities, any coupons appertaining thereto and any related Guarantee are concerned (and the Trustee, at the expense of the Issuer, shall execute proper instruments acknowledging the same), except for the following which shall survive until otherwise terminated or discharged hereunder: (A) the rights of Holders of such Outstanding Securities, any coupons appertaining thereto and any related Guarantee to receive, solely from the trust fund described in Section 1504 and as more fully set forth in such Section, payments in respect of the principal of (and premium, if any) and interest, if any, on such Securities and any coupons appertaining thereto when such payments are due, (B) the Obligor's obligations with respect to such Securities under Sections 305, 306, 1102 and 1103 and with respect to the payment of Additional Amounts, if any, on such Securities as contemplated by Section 1111, (C) the rights, powers, trusts, duties and immunities of the Trustee hereunder and (D) this Article. Subject to compliance with this Article Fifteen, the Issuer may exercise its option under this Section notwithstanding the prior exercise of its option under Section 1503 with respect to such Securities and any coupons appertaining thereto.

SECTION 1503. Covenant Defeasance. Upon the Issuer's exercise of the above option applicable to this Section with respect to any Securities of or within a series, the Obligors shall be released from their obligations under Sections 1104 to 1109, inclusive, and Section 1113 and, if specified pursuant to Section 301, their obligations under any other covenant, with respect to such Outstanding Securities, any coupons appertaining thereto and any related Guarantee, including, with respect to the Guarantor, release from its Guarantees of the Securities of such series, on and after the date the conditions set forth in Section 1504 are satisfied (hereinafter, "covenant defeasance"), and such Securities, any coupons appertaining thereto and any related Guarantee shall thereafter be deemed to be not "Outstanding" for the purposes of any direction, waiver, consent or declaration or Act of Holders (and the consequences of any thereof) in connection with Sections 1104 to 1109, inclusive, and Section 1113 and, if specified pursuant to Section 301, such other covenant, but shall continue to be deemed "Outstanding" for all other purposes hereunder. For this purpose, such covenant defeasance means that, with respect to such Outstanding Securities, any coupons appertaining thereto and any related Guarantee, the Obligors may omit to comply with and shall have no liability in respect of any term, condition or limitation set forth in any such Section or such other covenant, whether directly or indirectly, by reason of any reference elsewhere herein to any such Section or such other covenant or by reason of reference in any such Section or such other covenant to any other provision herein or in any other document and such omission to comply shall not constitute a default or an Event of Default under Section 601(4) or 601(9) or otherwise, as the case may be, but, except as specified above, the remainder of this Indenture and such Securities, any coupons appertaining thereto and any related Guarantee shall be unaffected thereby.

SECTION 1504. Conditions to Defeasance or Covenant Defeasance. The following shall be the conditions to application of Section 1502 or Section 1503 to any Outstanding Securities of or within a series, any coupons appertaining thereto and any related Guarantee:

(a) The Issuer shall irrevocably have deposited or caused to be deposited with the Trustee (or another trustee satisfying the requirements of Section 709 who shall agree to comply with the provisions of this Article Fifteen applicable to it) as trust funds in trust for the purpose of making the following payments, specifically pledged as security for, and dedicated solely to, the benefit of the Holders of such Securities, any coupons appertaining thereto and any related Guarantee, (1) an amount in such currency, currencies or currency unit in which such Securities, any coupons appertaining thereto and any related Guarantee are then specified as payable at Stated Maturity, or (2) Government Obligations applicable to such Securities, coupons appertaining thereto and any related Guarantee (determined on the basis of the currency, currencies or currency unit in which such Securities, any coupons appertaining thereto and any related Guarantee are then specified as payable at Stated Maturity) which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than one day before the due date of any payment of principal of (and premium, if any) and interest, if any, on such Securities, any coupons appertaining thereto and any related Guarantee, money in an amount, or (3) a combination thereof, in any case, in an amount, sufficient, without consideration of any reinvestment of such principal and interest, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge, and which shall be applied by the Trustee (or other qualifying trustee) to pay and discharge, (i) the principal of (and premium, if any) and interest, if any, on such Outstanding Securities, any coupons appertaining thereto and any related Guarantee on the Stated Maturity of such principal or installment of principal or interest and (ii) any mandatory sinking fund payments or analogous payments applicable to such Outstanding Securities, any coupons appertaining thereto and any related Guarantee on the day on which such payments are due and payable in accordance with the terms of this Indenture and of such Securities, any coupons appertaining thereto and any related Guarantee.

(b) Such defeasance or covenant defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other material agreement or instrument to which the Issuer or the Guarantor is a party or by which it is bound.

(c) No Event of Default or event which with notice or lapse of time or both would become an Event of Default with respect to such Securities, any coupons appertaining thereto and any related Guarantee shall have occurred and be continuing on the date of such deposit or, insofar as Sections 601(6) and 601(7) are concerned, at any time during the period ending on the 91st day after the date of such deposit (it being understood that this condition shall not be deemed satisfied until the expiration of such period).

(d) In the case of an election under Section 1502, the Issuer shall have delivered to the Trustee an Opinion of Counsel stating that (i) the Issuer has received from, or there has been published by, the Internal Revenue Service a ruling, or (ii) since the date of execution of this Indenture, there has been a change in the applicable Federal income tax law, in either case to the effect that, and based thereon such opinion shall confirm that, the Holders of such Outstanding Securities, any coupons appertaining thereto and any related Guarantee will not recognize income, gain or loss for Federal income tax purposes as a result of such defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such defeasance had not occurred.

(e) In the case of an election under Section 1503, the Issuer shall have delivered to the Trustee an Opinion of Counsel to the effect that the Holders of such Outstanding Securities, any coupons appertaining thereto and any related Guarantee will not recognize income, gain or loss for Federal income tax purposes as a result of such covenant defeasance and will be subject to Federal income tax on the same amounts, in the same manner and at the same times as would have been the case if such covenant defeasance had not occurred.

(f) The Issuer shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent to the defeasance under Section 1502 or the covenant defeasance under Section 1503 (as the case may be) have been complied with and an Opinion of Counsel to the effect that either (i) as a result of a deposit pursuant to subsection (a) above and the related exercise of the Issuer's option under Section 1502 or Section 1503 (as the case may be), registration is not required under the Investment Company Act of 1940, as amended, by the Issuer, with respect to the trust funds representing such deposit or by the Trustee for such trust funds or (ii) all necessary registrations under said Act have been effected.

(g) Notwithstanding any other provisions of this Section, such defeasance or covenant defeasance shall be effected in compliance with any additional or substitute terms, conditions or limitations which may be imposed on the Issuer or the Guarantor in connection therewith pursuant to Section 301.

SECTION 1505. Deposited Money and Government Obligations to Be Held in Trust; Other Miscellaneous Provisions. Subject to the provisions of the last paragraph of Section 1103, all money and Government Obligations (or other property as may be provided pursuant to Section 301) (including the proceeds thereof) deposited with the Trustee (or other qualifying trustee, collectively for purposes of this Section 1505, the "Trustee") pursuant to Section 1504 in respect of any Outstanding Securities of any series, any coupons appertaining thereto and any related Guarantee shall be held in trust and applied by the Trustee, in accordance with the provisions of such Securities, any coupons appertaining thereto and any related Guarantee and this Indenture, to the payment, either directly or through any Paying Agent (including the Issuer acting as its own Paying Agent) as the Trustee may determine, to the Holders of such Securities, any coupons appertaining thereto and any related Guarantee of all sums due and to become due thereon in respect of principal (and premium, if any) and interest and Additional Amounts, if any, but such money need not be segregated from other funds except to the extent required by law.

Unless otherwise specified with respect to any Security pursuant to Section 301, if, after a deposit referred to in Section 1504(a) has been made, (a) the Holder of a Security in respect of which such deposit was made is entitled to, and does, elect pursuant to Section 301 or the terms of such Security to receive payment in a currency or currency unit other than that in which the deposit pursuant to Section 1504(a) has been made in respect of such Security, or (b) a Conversion Event occurs in respect of the currency or currency unit in which the deposit pursuant to Section 1504(a) has been made, the indebtedness represented by such Security and any coupons appertaining thereto shall be deemed to have been, and will be, fully discharged and satisfied through the payment of the principal of (and premium, if any), and interest, if any, on such Security as the same becomes due out of the proceeds yielded by converting (from time to time as specified below in the case of any such election) the amount or other property deposited in respect of such Security into the currency or currency unit in which such Security becomes payable as a result of such election or Conversion Event based on the applicable market exchange rate for such currency or currency unit in effect on the second Business Day prior to each payment date, except, with respect to a Conversion Event, for such currency or currency unit in effect (as nearly as feasible) at the time of the Conversion Event.

The Issuer shall pay and indemnify the Trustee against any tax, fee or other charge imposed on or assessed against the Government Obligations deposited pursuant to Section 1504 or the principal and interest received in respect thereof other than any such tax, fee or other charge which by law is for the account of the Holders of such Outstanding Securities, any coupons appertaining thereto and any related Guarantee.

Anything in this Article to the contrary notwithstanding, subject to Section 707, the Trustee shall deliver or pay to the Issuer from time to time upon Issuer Request any money or Government Obligations (or other property and any proceeds therefrom) held by it as provided in Section 1504 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, are in excess of the amount thereof which would then be required to be deposited to effect a defeasance or covenant defeasance, as applicable, in accordance with this Article.

ARTICLE SIXTEEN
MEETINGS OF HOLDERS OF SECURITIES

SECTION 1601. Purposes for Which Meetings May Be Called. A meeting of Holders of Securities of any series may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Securities of such series.

SECTION 1602. Call, Notice and Place of Meetings. (a) The Trustee may at any time call a meeting of Holders of Securities of any series for any purpose specified in Section 1601, to be held at such time and at such place in the Borough of Manhattan, New York City, or in London as the Trustee shall determine. Notice of every meeting of Holders of Securities of any series, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 106, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(b) In case at any time the Issuer, pursuant to a Board Resolution, or the Holders of at least 10% in principal amount of the Outstanding Securities of any series shall have requested the Trustee to call a meeting of the Holders of Securities of such series for any purpose specified in Section 1601, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have made the first publication of the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Issuer or the Holders of Securities of such series in the amount above specified, as the case may be, may determine the time and the place in the Borough of Manhattan, New York City, or in London for such meeting and may call such meeting for such purposes by giving notice thereof as provided in subsection (a) of this Section.

SECTION 1603. Persons Entitled to Vote at Meetings. To be entitled to vote at any meeting of Holders of Securities of any series, a Person shall be (1) a Holder of one or more Outstanding Securities of such series, or (2) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Securities of such series by such Holder or Holders. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Securities of any series shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Issuer and its counsel.

SECTION 1604. Quorum; Action. The Persons entitled to vote a majority in principal amount of the Outstanding Securities of a series shall constitute a quorum for a meeting of Holders of Securities of such series; provided, however, that if any action is to be taken at such meeting with respect to a consent or waiver which this Indenture expressly provides may be given by the Holders of not less than a specified percentage in principal amount of the Outstanding Securities of a series, the Persons entitled to vote such specified percentage in principal amount of the Outstanding Securities of such series shall constitute a quorum. In the absence of a quorum within 30 minutes after the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Securities of such series, be dissolved. In any other case the meeting may be adjourned for a period of not less than 10 days as determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at the reconvening of any such adjourned meeting, such adjourned meeting may be further adjourned for a period of not less than 10 days; at the reconvening of any meeting adjourned or further adjourned for lack of a quorum, the persons entitled to vote 25% in aggregate principal amount of the Securities at the time outstanding shall constitute a quorum for the taking of any action set forth in the notice of the original meeting. Notice of the reconvening of any adjourned meeting shall be given as provided in Section 1602(a), except that such notice need be given only once not less than five days prior to the date on which the meeting is scheduled to be reconvened.

Except as limited by the proviso to Section 1002, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted by the affirmative vote of the persons entitled to vote a majority in aggregate principal amount of the Outstanding Securities represented at such meeting; provided, however, that, except as limited by the proviso to Section 1002, any resolution with respect to any request, demand, authorization, direction, notice, consent, waiver or other action which this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Securities of a series may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Securities of that series.

Any resolution passed or decision taken at any meeting of Holders of Securities of any series duly held in accordance with this Section shall be binding on all the Holders of Securities of such series and the related coupons, whether or not present or represented at the meeting.

Notwithstanding the foregoing provisions of this Section 1604, if any action is to be taken at a meeting of Holders of Securities of any series with respect to any request, demand, authorization, direction, notice, consent, waiver or other action that this Indenture expressly provides may be made, given or taken by the Holders of a specified percentage in principal amount of all Outstanding Securities affected thereby, or of the Holders of such series and one or more additional series:

(i) there shall be no minimum quorum requirement for such meeting; and

(ii) the principal amount of the Outstanding Securities of such series that vote in favor of such request, demand, authorization, direction, notice, consent, waiver or other action shall be taken into account in determining whether such request, demand, authorization, direction, notice, consent, waiver or other action has been made, given or taken under this Indenture.

SECTION 1605. Determination of Voting Rights; Conduct and Adjournment of Meetings. (a) Notwithstanding any provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Securities of a series in regard to proof of the holding of Securities of such series and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Securities shall be proved in the manner specified in Section 104 and the appointment of any proxy shall be proved in the manner specified in Section 104 or by having the signature of the Person executing the proxy witnessed or guaranteed by any trust company, bank or banker authorized by Section 104 to certify to the holding of Bearer Securities. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 104 or other proof.

(b) The Trustee shall, by an instrument in writing appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Issuer or by Holders of Securities as provided in Section 1602(b), in which case the Issuer or the Holders of Securities of the series calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting.

(c) At any meeting each Holder of a Security of such series or proxy shall be entitled to one vote for each $1,000 principal amount of the Outstanding Securities of such series held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Security of such series or proxy.

(d) Any meeting of Holders of Securities of any series duly called pursuant to Section 1602 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in principal amount of the Outstanding Securities of such series represented at the meeting, and the meeting may be held as so adjourned without further notice.

SECTION 1606. Counting Votes and Recording Action of Meetings. The vote upon any resolution submitted to any meeting of Holders of Securities of any series shall be by written ballots on which shall be subscribed the signatures of the Holders of Securities of such series or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Securities of such series held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record, at least in duplicate, of the proceedings of each meeting of Holders of Securities of any Series shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the fact, setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 1602 and, if applicable, Section 1604. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Issuer and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

* * * * *

This Indenture may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same Indenture

EXHIBIT A

FORMS OF CERTIFICATION

EXHIBIT A-1

FORM OF CERTIFICATE TO BE GIVEN BY PERSON ENTITLED
TO RECEIVE BEARER SECURITY OR TO OBTAIN INTEREST
PAYABLE PRIOR TO THE EXCHANGE DATE

CERTIFICATE

[Insert title or sufficient description of Securities to be delivered]

This is to certify that, as of the date hereof, and except as set forth below, the above-captioned Securities held by you for our account (i) are owned by person(s) that are not citizens or residents of the United States, domestic partnerships, domestic corporations or any estate or trust the income of which is subject to United States federal income taxation regardless of its source ("United States person(s)"), (ii) are owned by United States person(s) that are (a) foreign branches of United States financial institutions (financial institutions, as defined in United States Treasury Regulations Section 2.165-12(c)(1)(v) are herein referred to as "financial institutions") purchasing for their own account or for resale, or (b) United States person(s) who acquired the Securities through foreign branches of United States financial institutions and who hold the Securities through such United States financial institutions on the date hereof (and in either case (a) or (b), each such United States financial institution hereby agrees, on its own behalf or through its agent, that you may advise Kimco Realty OP, LLC or its agent that such financial institution will comply with the requirements of Section 165(j)(3)(A), (B) or (C) of the United States Internal Revenue Code of 1986, as amended, and the regulations thereunder), or (iii) are owned by United States or foreign financial institution(s) for purposes of resale during the restricted period (as defined in United States Treasury Regulations Section 1.163-5(c)(2)(i)(D)(7)), and, in addition, if the owner is a United States or foreign financial institution described in clause (iii) above (whether or not also described in clause (i) or (ii)), this is to further certify that such financial institution has not acquired the Securities for purposes of resale directly or indirectly to a United States person or to a person within the United States or its possessions.

As used herein, "United States" means the United States of America (including the States and the District of Columbia); and its "possessions" include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

We undertake to advise you promptly by tested telex on or prior to the date on which you intend to submit your certification relating to the above-captioned Securities held by you for our account in accordance with your Operating Procedures if any applicable statement herein is not correct on such date, and in the absence of any such notification it may be assumed that this certification applies as of such date.

This certificate excepts and does not relate to [U.S.$] _____ of such interest in the above-captioned Securities in respect of which we are not able to certify and as to which we understand an exchange for an interest in a Permanent Global Security or an exchange for and delivery of definitive Securities (or, if relevant, collection of any interest) cannot be made until we do so certify.

We understand that this certificate may be required in connection with certain tax legislation in the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings.

Dated:_____ 20__

[To be dated no earlier than the 15th day prior to (i) the Exchange Date or (ii) the relevant Interest Payment Date occurring prior to the Exchange Date, as applicable]

[Name of Person Making Certification]

(Authorized Signatory)
Name:
Title:

EXHIBIT A-2

FORM OF CERTIFICATE TO BE GIVEN BY EUROCLEAR
AND CLEARSTREAM IN CONNECTION WITH THE EXCHANGE OF
A PORTION OF A TEMPORARY GLOBAL SECURITY OR TO
OBTAIN INTEREST PAYABLE PRIOR TO THE EXCHANGE DATE

CERTIFICATE

[Insert title or sufficient description of Securities to be delivered]

This is to certify that, based solely on written certifications that we have received in writing, by tested telex or by electronic transmission from each of the persons appearing in our records as persons entitled to a portion of the principal amount set forth below (our "Member Organizations") substantially in the form attached hereto, as of the date hereof, [U.S.$] _____ principal amount of the above-captioned Securities (i) is owned by person(s) that are not citizens or residents of the United States, domestic partnerships, domestic corporations or any estate or trust the income of which is subject to United States Federal income taxation regardless of its source ("United States person(s)"), (ii) is owned by United States person(s) that are (a) foreign branches of United States financial institutions (financial institutions, as defined in U.S. Treasury Regulations Section 1.165-12(c)(1)(v) are herein referred to as "financial institutions") purchasing for their own account or for resale, or (b) United States person(s) who acquired the Securities through foreign branches of United States financial institutions and who hold the Securities through such United States financial institutions on the date hereof (and in either case (a) or (b), each such financial institution has agreed, on its own behalf or through its agent, that we may advise Kimco Realty OP, LLC or its agent that such financial institution will comply with the requirements of Section 165(j)(3)(A), (B) or (C) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder), or (iii) is owned by United States or foreign financial institution(s) for purposes of resale during the restricted period (as defined in United States Treasury Regulations Section 1.163-5(c)(2)(i)(D)(7)), and, to the further effect, that financial institutions described in clause (iii) above (whether or not also described in clause (i) or (ii)) have certified that they have not acquired the Securities for purposes of resale directly or indirectly to a United States person or to a person within the United States or its possessions.

As used herein, "United States" means the United States of America (including the States and the District of Columbia); and its "possessions" include Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island and the Northern Mariana Islands.

We further certify that (i) we are not making available herewith for exchange (or, if relevant, collection of any interest) any portion of the temporary global Security representing the above-captioned Securities excepted in the above referenced certificates of Member Organizations and (ii) as of the date hereof we have not received any notification from any of our Member Organizations to the effect that the statements made by such Member Organizations with respect to any portion of the part submitted herewith for exchange (or, if relevant, collection of any interest) are no longer true and cannot be relied upon as of the date hereof.

We understand that this certification is required in connection with certain tax legislation in the United States. If administrative or legal proceedings are commenced or threatened in connection with which this certificate is or would be relevant, we irrevocably authorize you to produce this certificate or a copy thereof to any interested party in such proceedings.

Dated:_____ 20__

[To be dated no earlier than the Exchange Date or the relevant Interest Payment Date occurring prior to the Exchange Date, as applicable]

[Euroclear Bank, S.A./N.V.,] as Operator of the Euroclear System
[Clearstream]

By: _____

Exhibit 10.1

AMENDMENT NO. 3 TO AMENDED AND RESTATED CREDIT AGREEMENT

This **AMENDMENT NO. 3 TO AMENDED AND RESTATED CREDIT AGREEMENT**, dated as of January 3, 2023 (this "Amendment No. 3"), is by and among KIMCO REALTY OP, LLC, a Delaware limited liability company (as successor by conversion to Kimco Realty Corporation) (the "Borrower"), KIMCO REALTY CORPORATION, a Maryland corporation, and JPMORGAN CHASE BANK, N.A., as administrative agent for the Lenders defined below (the "Administrative Agent"). Reference is made to that certain Amended and Restated Credit Agreement dated as of February 27, 2020, as amended by Amendment No. 1 to Amended and Restated Credit Agreement dated as of December 6, 2021 and Amendment No. 2 to Amended and Restated Credit Agreement dated as of July 12, 2022 (as so amended, and as further amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among the Borrower, the several banks, financial institutions and other entities from time to time party thereto (collectively, the "Lenders"), and the Administrative Agent. Capitalized terms used herein without definition shall have the same meanings as set forth in the Credit Agreement, as amended hereby.

RECITALS

WHEREAS, pursuant to Section 7.2 of the Credit Agreement (prior to giving effect to this Amendment No. 3 ("Prior Section 7.2"), the Borrower is permitted to implement the Upreit Transactions (as defined in Prior Section 7.2) as a result of which Kimco (as the Borrower) becomes a direct or indirect Subsidiary of the Ultimate Parent (as defined in Prior Section 7.2);

WHEREAS, by notice dated December 6, 2022 the Borrower has informed the Administrative Agent and the Lenders of its intent to consummate the Upreit Transactions;

WHEREAS, the Borrower has further informed the Administrative Agent and the Lenders that the Upreit Transactions were structured as follows (the "Upreit Transaction Structure Summary"): (i) the current Borrower under the Credit Agreement named Kimco Realty Corporation ("Old Kimco") merged on January 1, 2023 with a wholly owned subsidiary of Old Kimco and a direct wholly owned subsidiary of New Kimco (as defined below), with Old Kimco surviving such merger, and then converted on January 3, 2023 to a Delaware limited liability company named Kimco Realty OP, LLC ("Kimco OP"); immediately after giving effect to such transaction, Kimco OP holds all of the assets and liabilities of Old Kimco as of immediately prior to such transaction and is the "Borrower" under the Credit Agreement and (ii) Old Kimco formed a new Maryland corporation named Kimco Realty Corporation ("New Kimco") as a direct subsidiary which, immediately after giving effect to the transactions described in the immediately preceding clause (i), is the Ultimate Parent, is an equity-oriented real estate investment trust under Sections 856 through 860 of the Code, Controls Kimco OP, initially owns more than 99% of the Capital Stock of Kimco OP, is the managing member of Kimco OP, and became "Guarantor" under the Credit Agreement;

WHEREAS, pursuant to Section 7.2 of the Credit Agreement, and notwithstanding anything to the contrary in Section 10.1 of the Credit Agreement, the Lenders have authorized the Administrative Agent to enter into an amendment to the Credit Agreement in order to implement the amendments and modifications (including any technical amendments not set forth in Section 7.2 of the Credit Agreement) required by Section 7.2 of the Credit Agreement and to permit the consummation of the Upreit Transactions.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

SECTION 1. AMENDMENT TO CREDIT AGREEMENT. As of the Amendment Effective Date (as defined in Section 3 hereof), the Credit Agreement (excluding the Exhibits and Schedules) is hereby amended as set forth on Exhibit A attached hereto such that all of the newly inserted bold, double-underlined text (indicated textually in the same manner as the following examples: double-underlined text and double-underlined text) and any formatting changes reflected therein shall be deemed to be inserted and reflected in the text of the Credit Agreement and all of the deleted stricken text (indicated textually in the same manner as the following examples: ~~stricken text~~ and ~~stricken text~~) shall be deemed to be deleted from the text of the Credit Agreement. For the avoidance of doubt, from and after the Amendment Effective Date, the "Borrower" under the Credit Agreement will be Kimco OP and the "Guarantor" under the Credit Agreement will be New Kimco. In addition, as of the Amendment Effective Date, Exhibit F to the Credit Agreement (the form of compliance certificate) is deemed amended to incorporate the changes set forth in the Amended Credit Agreement (as defined below).

SECTION 2. REPRESENTATIONS AND WARRANTIES OF THE BORROWER

In connection with this Amendment No. 3, Kimco OP (as the Borrower) represents and warrants to the Administrative Agent, the Lenders and the Issuing Lenders as follows:

(i) Each of Kimco OP (as the Borrower) and New Kimco (as the Guarantor) has the limited liability company or corporate power and authority, and the legal right, to make, deliver and perform each of this Amendment No. 3 and the Credit Agreement, as amended by this Amendment No. 3 (the "Amended Credit Agreement", and together with Amendment No. 3, the "Amendment Documents"), and Kimco OP (as the Borrower) and New Kimco (as the Guarantor) have taken all necessary limited liability company or corporate action to authorize the execution, delivery and performance of this Amendment No. 3. This Amendment No. 3 has been duly executed and delivered on behalf of Kimco OP (as the Borrower) and New Kimco (as the Guarantor);

(ii) Each of the representations and warranties made by Kimco OP (as the Borrower) in or pursuant to the Loan Documents are true and correct in all material respects (or, in the case of any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language, true and correct (after giving effect to any qualification therein) in all respects) on and as of the date hereof and will be true on and as of the Amendment Effective Date (after giving effect to the inclusion of this Amendment No. 3 as a "Loan Document" and the Upreit Transactions) as if made on and as of such date except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date; and

(iii) No Default or Event of Default has occurred and is continuing, or will occur immediately after giving effect to this Amendment No. 3 and the Upreit Transactions.

SECTION 3. CONDITIONS TO EFFECTIVENESS

This Amendment No. 3 shall become effective only upon the satisfaction of the following conditions precedent (the "Amendment Effective Date"):

A. The Administrative Agent (or its counsel) shall have received from each of Kimco OP (as the Borrower), New Kimco (as the Guarantor), and the Administrative Agent, either (x) a counterpart of this Amendment No. 3 signed on behalf of such party or (y) written evidence reasonably satisfactory to the Administrative Agent (which may include delivery of a signed signature page of this Amendment No. 3 by facsimile or other means of electronic transmission (e.g., "pdf")) that such party has signed a counterpart of this Amendment No. 3;

B. The Administrative Agent shall have received all reasonable out-of-pocket costs and expenses for which Kimco OP (as the Borrower) is responsible pursuant to Section 10.5 of the Credit Agreement and for which invoices have been presented (including the reasonable fees and expenses of legal counsel to the Administrative Agent for which Kimco OP (as the Borrower) agrees it is responsible pursuant to Section 10.5 of the Credit Agreement), incurred in connection with this Amendment No. 3;

C. The representations and warranties of Kimco OP (as the Borrower) in Section 2 are true and correct;

D. The Upreit Transactions shall have been consummated (or shall simultaneously be consummated) substantially in accordance with the Upreit Transactions Structure Summary;

E. Immediately after the consummation of the Upreit Transactions,

(i) no Person or group (within the meaning of the Securities Exchange Act of 1934, as amended, and the rules of the Securities Exchange Commission thereunder as in effect as of the date hereof) owned, beneficially or of record, Capital Stock of New Kimco representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Capital Stock of New Kimco;

(ii) New Kimco directly or indirectly owned and Controlled, beneficially and of record, at least 90% of the Capital Stock of Kimco OP (and its general partner or managing member or the equivalent);

(iii) New Kimco was an equity-oriented real estate investment trust under Sections 856 through 860 of the Code;

F. New Kimco shall have delivered a guarantee of all Obligations of Kimco OP and the Subsidiary Borrowers (if any) in accordance with Section 7.2 of the Credit Agreement;

G. The Lenders and the Administrative Agent shall have received all customary information regarding Kimco OP and New Kimco that has been reasonably requested in writing by the Administrative Agent or any Lender at least 5 Business Days prior to the Amendment Effective Date in order to comply with their obligations under applicable "know-your-customer" and anti-money laundering rules and regulations, including the Patriot Act;

H. The Administrative Agent shall have received such customary documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of Kimco OP and New Kimco, and the authorization of Kimco OP and New Kimco in respect of the transactions contemplated by this Amendment No. 3 or the other Loan Documents, certified to be true, correct and complete by a Responsible Officer as of the Amendment Effective Date.

Upon satisfaction of the foregoing conditions, the Administrative Agent shall deliver written notice to the Borrower and the Lenders of the Amendment Effective Date.

SECTION 4. MISCELLANEOUS

A. Reference to and Effect on the Credit Agreement and the Other Loan Documents.

(i) On and after the effective date of this Amendment No. 3, each reference in the Credit Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import referring to the Credit Agreement and each reference in the other Loan Documents to the "Credit Agreement", "thereunder", "thereof" or words of like import referring to the Credit Agreement shall mean and be a reference to the Amended Credit Agreement. This Amendment No. 3 shall be deemed to be a "Loan Document" under the Credit Agreement.

(ii) Except as specifically amended by this Amendment No. 3, the Credit Agreement and the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed.

(iii) The execution, delivery and performance of this Amendment No. 3 shall not, except as expressly provided herein, constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Administrative Agent or any Lender or Issuing Lender under the Credit Agreement or any of the other Loan Documents.

B. Headings. Section and subsection headings in this Amendment No. 3 are included herein for convenience of reference only and shall not constitute a part of this Amendment No. 3 for any other purpose or be given any substantive effect.

C. Applicable Law. THIS AMENDMENT NO. 3 AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

D. Counterparts; Effectiveness. This Amendment No. 3 may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Delivery of an executed counterpart of a signature page to this Amendment No. 3 by telecopy or other electronic means in accordance with Section 10.12 of the Credit Agreement shall be effective as delivery of a manually executed counterpart of this Amendment No. 3.

E. Jurisdiction; Waivers. The provisions of Section 10.16 and 10.18 of the Credit Agreement shall apply to this Amendment No. 3 and are hereby incorporated by reference.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 3 to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

Borrower:

KIMCO REALTY OP, LLC (successor by conversion to Kimco Realty Corporation)

By: KIMCO REALTY CORPORATION, its managing member

By: /s/Glenn G. Cohen
Name: Glenn G. Cohen
Title: Executive Vice President, Chief Financial Officer and Treasurer

Guarantor:

KIMCO REALTY CORPORATION

By: /s/ Glenn G. Cohen
Name: Glenn G. Cohen
Title: Executive Vice President, Chief Financial Officer and Treasurer

[Signature Page to Amendment No. 3 to Amended and Restated Credit Agreement]

JPMORGAN CHASE BANK, N.A., as Administrative Agent

By: /s/ Austin Lotito
Name: Austin Lotito
Title: Executive Director

[Signature Page to Amendment No. 3 to Amended and Restated Credit Agreement]

(Mod) J.P.Morgan

$2,000,000,000

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of February 27, 2020

Among

KIMCO REALTY ~~CORPORATION,~~**OP, LLC (as successor by conversion to Kimco Realty Corporation),**

The Subsidiary Borrowers
from time to time party hereto,

The Several Lenders
from time to time party hereto,

JPMORGAN CHASE BANK, N.A.,
WELLS FARGO BANK, NATIONAL ASSOCIATION,
PNC BANK, NATIONAL ASSOCIATION, and
ROYAL BANK OF CANADA,
as Issuing Lenders,

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent,

WELLS FARGO BANK, NATIONAL ASSOCIATION, PNC BANK, NATIONAL ASSOCIATION, RBC CAPITAL MARKETS[1], THE BANK OF NOVA SCOTIA
as Syndication Agents,

BANK OF AMERICA, N.A., BANK OF MONTREAL, BARCLAYS BANK, PLC, BNP PARIBAS, CITIBANK, N.A., MIZUHO BANK, LTD., REGIONS BANK, TD BANK, N.A., TRUIST BANK, U.S. BANK NATIONAL ASSOCIATION,
as Documentation Agents,

BANK OF NEW YORK MELLON, CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, DEUTSCHE BANK SECURITIES INC., MORGAN STANLEY SENIOR FUNDING, INC.,
as Senior Managing Agents

ASSOCIATED BANK, UBS SECURITIES LLC,
as Managing Agents,

JPMORGAN CHASE BANK, N.A., WELLS FARGO SECURITIES, LLC, PNC CAPITAL MARKETS LLC and RBC CAPITAL MARKETS,
as Joint Bookrunners

JPMORGAN CHASE BANK, N.A., WELLS FARGO SECURITIES, LLC, PNC CAPITAL MARKETS LLC, RBC CAPITAL MARKETS, THE BANK OF NOVA SCOTIA, BOFA SECURITIES, INC., CITIGROUP GLOBAL MARKETS INC., MIZUHO BANK, LTD., REGIONS CAPITAL MARKETS, U.S. BANK NATIONAL ASSOCIATION, BARCLAYS BANK PLC, TD SECURITIES (USA) LLC, SUNTRUST ROBINSON HUMPHREY, INC., BNP PARIBAS SECURITIES CORP. and BMO CAPITAL MARKETS CORP.
as Joint Lead Arrangers

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1 RBC Capital Markets is a marketing name for the investment banking activities of Royal Bank of Canada and its affiliates.

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AMENDED AND RESTATED CREDIT AGREEMENT, dated as of February 27, 2020, among ~~KIMCO REALTY CORPORATION, a Maryland corporation~~**KIMCO REALTY OP, LLC (as successor to Kimco Realty Corporation), a Delaware limited liability company, as successor by conversion to Kimco Realty Corporation** ("Kimco"), the Subsidiaries of Kimco from time to time parties hereto (collectively, the "Subsidiary Borrowers"; together with Kimco, the "Borrowers"), the several banks, financial institutions and other entities from time to time parties to this Agreement (collectively, the "Lenders"), the Issuing Lenders party hereto, WELLS FARGO BANK, NATIONAL ASSOCIATION, PNC BANK, NATIONAL ASSOCIATION, RBC CAPITAL MARKETS, and THE BANK OF NOVA SCOTIA, as Syndication Agents (in such capacity, collectively, the "Syndication Agents"), BANK OF AMERICA, N.A., BANK OF MONTREAL, BARCLAYS BANK, PLC, BNP PARIBAS, CITIBANK, N.A., MIZUHO BANK, LTD., REGIONS BANK, TD BANK, N.A., TRUIST BANK, and U.S. BANK NATIONAL ASSOCIATION, as Documentation Agents (in such capacity, collectively, the "Documentation Agents"), BANK OF NEW YORK MELLON, CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH, DEUTSCHE BANK SECURITIES INC., and MORGAN STANLEY SENIOR FUNDING, INC., , as Senior Managing Agents, and ASSOCIATED BANK and UBS SECURITIES LLC, as Managing Agents (in such capacity, collectively, the "Managing Agents"), and JPMORGAN CHASE BANK, N.A., a national banking association, as administrative agent for the Lenders hereunder (in such capacity, the "Administrative Agent").

RECITALS

WHEREAS, pursuant to an Amended and Restated Credit Agreement dated as of February 1, 2017 (as amended and in effect immediately before giving effect to the amendment and restatement contemplated hereby, the "Existing Revolving Credit Agreement") by and among the Borrowers, JPMorgan Chase Bank, N.A., as administrative agent and the other parties thereto, the lenders party thereto made loans and other extensions of credit available to the Borrowers for the purposes set forth therein;

WHEREAS, the Borrowers have requested to amend and restate the Existing Revolving Credit Agreement, and the Lenders, the Administrative Agent and the Issuing Lenders are willing to amend and restate the Existing Revolving Credit Agreement and to continue to provide financing to the Borrowers on the terms and conditions set forth herein; and

WHEREAS, the Lenders party hereto constitute all Existing Revolving Lenders and, in their capacity as such, together with each Existing Issuing Lender and the Administrative Agent, consent to amend and restate the Existing Revolving Credit Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, the Borrowers, the Lenders, the Administrative Agent and the Issuing Lenders each agree that on and as of the Effective Date (as hereinafter defined), the Existing Revolving Credit Agreement is hereby amended and restated in its entirety on the terms set forth herein, and in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.1 Defined Terms.

As used in this Agreement, the following terms shall have the following meanings:

"ABR": for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus ½ of 1% and (c) the Adjusted Term SOFR Rate for a one month Interest Period as published two U.S. Government Securities Business Days prior to such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; provided that for the purpose of this definition, the Adjusted Term SOFR Rate for any day shall be based on the Term SOFR Reference Rate at approximately 5:00 a.m. Chicago time on such day (or any amended publication time for the Term SOFR Reference Rate, as specified by the CME Term SOFR Administrator in the Term SOFR Reference Rate methodology). Any change in the ABR due to a change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted Term SOFR Rate, respectively. If the ABR is being used as an alternate rate of interest pursuant to Section 2.8 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.8(c)), then the ABR shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the ABR as determined pursuant to the foregoing would be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

"ABR Loans": Revolving Credit Loans (or Competitive Loans affected by Section 2.10) the rate of interest applicable to which is based upon the ABR.

"Acceptable Jurisdiction": a jurisdiction (other than the United States) acceptable to the Administrative Agent in its sole discretion, including, if requested by the Administrative Agent in its sole discretion, based on satisfactory advice received by it from local counsel in such jurisdiction with respect to the procedure for enforcement of a U.S. judgment in such jurisdiction, and the collection of such judgment from assets located there.

"Adherence Agreement": an agreement substantially in the form of Exhibit G executed and delivered by Kimco and a Subsidiary Borrower to the Administrative Agent in connection with the admission of such Subsidiary Borrower as a Borrower hereunder.

"Adjusted Daily Simple RFR": (i) with respect to any RFR Borrowing denominated in Sterling, an interest rate per annum equal to (a) the Daily Simple RFR for Sterling, *plus* (b) 0.0326% and (ii) with respect to any RFR Borrowing denominated in Dollars, an interest rate per annum equal to (a) the Daily Simple RFR for Dollars, *plus* (b) 0.10%; provided that if the Adjusted Daily Simple RFR as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

"Adjusted EURIBOR Rate": with respect to any Term Benchmark Borrowing denominated in Euros for any Interest Period, an interest rate per annum equal to (a) the EURIBOR Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Adjusted Net Income": for any period, as to Kimco and the Consolidated Entities, Consolidated Net Income; provided that there shall be excluded the income (or deficit) of any Person other than ~~Kimco~~**Ultimate Parent** accrued prior to the date it becomes a Subsidiary or is merged into or consolidated with ~~Kimco~~**Ultimate Parent** or any of its Subsidiaries.

"Adjusted Term SOFR Rate": with respect to any Term Benchmark Borrowing denominated in Dollars for any Interest Period, an interest rate per annum equal to (a) the Term SOFR Rate for such Interest Period, *plus* (b) 0.10%; provided that if the Adjusted Term SOFR Rate as so determined would be less than the Floor, such rate shall be deemed to be equal to the Floor for the purposes of this Agreement.

"Adjusted TIBOR Rate": with respect to any Term Benchmark Borrowing denominated in Yen for any Interest Period, an interest rate per annum equal to (a) the TIBOR Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Administrative Agent": as defined in the introductory paragraph hereof. With respect to Alternate Currency Borrowings, the Administrative Agent may be an Affiliate of JPMCB for purposes of administering such Borrowings, and all references herein to the term "Administrative Agent" shall be deemed to refer to the Administrative Agent in respect of the applicable Borrowing or to all Administrative Agents, as the context requires; provided, that in the event an Affiliate of JPMCB is designated as an Administrative Agent hereunder with respect to any Alternate Currency Borrowings, the Borrowers shall only be obligated to deal with JPMCB as Administrative Agent hereunder with respect to matters other than requests for Alternate Currency Loans or conversions or continuations thereof or requests for the issuance, renewal, extension or amendment of Letters of Credit denominated in Alternate Currencies, and all actions and other decisions taken and/or made by JPMCB as Administrative Agent hereunder shall be binding upon such Affiliate of JPMCB in its capacity as an Administrative Agent hereunder.

"Administrative Questionnaire": as defined in Section 10.6.

"Affected Financial Institution": (a) any EEA Financial Institution or (b) any UK Financial Institution**.**

"Affiliate": as to any Person, any other Person which, directly or indirectly, is in Control of, is Controlled by, or is under common Control with, such Person.

"Agent Parties": as defined in Section 10.2(d)(iii).

"Agreed Currency": Dollars and each Alternate Currency.

"Agreement": this Amended and Restated Credit Agreement.

"Alternate Currency": (a) EURO, Sterling, Yen or Canadian Dollars or (b) any other currency (other than dollars) that is freely tradable and exchangeable into dollars in the London market and approved in writing as an Alternate Currency by the Borrowers, the Administrative Agent and all the Lenders who have then-outstanding Tranche B Commitments or Tranche B Loans in each of their sole discretion.

"Alternate Currency Loan": a Tranche B Loan denominated in an Alternate Currency.

"Alternate Issuing Lender": as defined in Section 3.9(c).

"Anti-Corruption Laws": all laws, rules, and regulations of any jurisdiction applicable to the Borrowers and their respective Affiliates from time to time concerning or relating to bribery or corruption.

"Applicable Margin": with respect to each Revolving Credit Loan at any date, the applicable percentage per annum set forth below based upon the Status on such date:

	Level I Status	Level II Status	Level III Status	Level IV Status	Level V Status	Level VI Status
Term Benchmark Loans, RFR Loans, and Money Market Loans	0.700%	0.725%	0.775%	0.850%	1.050%	1.400%
ABR Loans and Canadian Prime Rate Loans	0.000%	0.000%	0.000%	0.000%	0.050%	0.400%

Notwithstanding the foregoing, from and after the date that Kimco provides to Administrative Agent, a notice (x) stating that its Sustainability Metric for its most recently ended fiscal year was less than or equal to the Sustainability Metric Target for such fiscal year, (y) together with the sustainability report that demonstrates that the Sustainability Metric for such fiscal year was less than or equal to the Sustainability Metric Target for such fiscal year and (z) requesting that the Applicable Margin be based on the following grid (the "Sustainability Grid Notice"), the Applicable Margin shall be based on the following grid (the "Sustainability Metric Grid") for the period commencing from the fifth Business Day following the date such Sustainability Grid Notice is delivered to Administrative Agent until the date that is 370 days from the date such Sustainability Grid Notice is delivered to the Administrative Agent, unless a Sustainability Grid Notice for the subsequent fiscal year is delivered to the Administrative Agent on or prior to such date, in which case the Sustainability Metric Grid shall remain in effect. The Administrative Agent may rely upon any Sustainability Grid Notice delivered by Kimco without any responsibility to verify the accuracy of the Sustainability Metric or any components thereof.

	Level I Status	Level II Status	Level III Status	Level IV Status	Level V Status	Level VI Status
Term Benchmark Loans, RFR Loans, and Money Market Loans	0.690%	0.715%	0.765%	0.840%	1.040%	1.390%
ABR Loans and Canadian Prime Rate Loans	0.000%	0.000%	0.000%	0.000%	0.040%	0.390%

In the event for any particular fiscal year the determination of the Sustainability Metric results in the Sustainability Metric Target being met by an additional 1% or more reduction of the Sustainability Baseline, the Applicable Margin in the grid immediately above shall be reduced by an additional one (1) basis point; provided that in no event shall the Applicable Margin be less than zero.

"Applicable Percentage": as to any Lender at any time, the percentage which such Lender's Revolving Commitment, Tranche A Commitment or Tranche B Commitment, as applicable, then constitutes of the aggregate Revolving Commitments, Tranche A Commitments or Tranche B Commitments, as applicable, of all Lenders (or, at any time after the Revolving Commitments shall have expired or terminated, the percentage which the aggregate principal amount of such Lender's Revolving Exposure, Tranche A Exposure or Tranche B Exposure, as applicable, then outstanding constitutes of the aggregate principal amount of the Revolving Exposure, Tranche A Exposure or Tranche B Exposure, as applicable, of all Lenders (disregarding any Defaulting Lender's Revolving Exposure, Tranche A Exposure or Tranche B Exposure) then outstanding (for purposes of this definition, treating the Issuing Lender as if it were a L/C Participant)); provided, that when used in Section 2.17, the term "Applicable Percentage" shall mean the percentage of the total Revolving Commitments, Tranche A Commitments or Tranche B Commitments, as applicable, of all Lenders (disregarding any Defaulting Lender's Revolving Commitment, Tranche A Commitment or Tranche B Commitment).

"Application": an application, in such form as the Issuing Lender may specify from time to time, requesting the Issuing Lender to issue a Letter of Credit.

"Approved Fund": any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Assignment and Assumption": as defined in Section 10.6.

"Available Commitment": as to any Lender, at any time of determination, an amount equal to such Lender's Revolving Commitment at such time minus such Lender's Revolving Exposure at such time.

"Available Tenor": as of any date of determination and with respect to the then-current Benchmark for any Agreed Currency, as applicable, any tenor for such Benchmark (or component thereof) or payment period for interest calculated with reference to such Benchmark (or component thereof), as applicable, that is or may be used for determining the length of an Interest Period for any term rate or otherwise, for determining any frequency of making payments of interest calculated pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to clause (f) of Section 2.8.

"Bail-In Action": 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": (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 Event": with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment; provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, so long as such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

"Baseline Conditions": as to any Wholly Owned Subsidiary, in connection with the incurrence by such Subsidiary of any obligations in respect of the Revolving Credit Facility, that such Subsidiary (a) at the time of the delivery by such Wholly Owned Subsidiary of its Adherence Agreement or Subsidiary Guarantee, as applicable, pursuant to Section 10.10, can truthfully and correctly make each of the Baseline Representations and Warranties in all material respects and (b) if such Subsidiary is not organized under the laws of any state of the United States, (i) shall be organized under the laws of an Acceptable Jurisdiction and (ii) shall have submitted for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, including for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of New York, the courts of the United States of America for the Southern District of New York, and appellate courts from any thereof.

"Baseline Representations and Warranties": as defined in the first paragraph of Article IV.

"Benchmark": initially, with respect to any (i) RFR Loan in any Agreed Currency, the applicable Relevant Rate for such Agreed Currency or (ii) Term Benchmark Loan, the Relevant Rate for such Agreed Currency; provided that if a Benchmark Transition Event, and the related Benchmark Replacement Date have occurred with respect to the applicable Relevant Rate or the then-current Benchmark for such Agreed Currency, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (c) of Section 2.8.

"Benchmark Replacement": for any Available Tenor the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for syndicated credit facilities denominated in the applicable Agreed Currency at such time in the United States and (b) the related Benchmark Replacement Adjustment. If the Benchmark Replacement as determined pursuant to the above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"Benchmark Replacement Adjustment": with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities denominated in the applicable Agreed Currency at such time.

"Benchmark Replacement Conforming Changes": with respect to any Benchmark Replacement and/or any Term Benchmark Loan denominated in Dollars, any technical, administrative or operational changes (including changes to the definition of "ABR," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "RFR Business Day," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent in its reasonable discretion, in consultation with Borrower, decides may be appropriate to reflect the adoption and implementation of such Benchmark and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent in its reasonable discretion, in consultation with Borrower, determines that no market practice for the administration of such Benchmark exists, in such other manner of administration as the Administrative Agent, in consultation with Borrower, decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"Benchmark Replacement Date": with respect to any Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Transition Event": with respect to any Benchmark, the occurrence of one or more of the following events with respect to such then-current Benchmark:

(1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the CME Term SOFR Administrator, the central bank for the Agreed Currency applicable to such Benchmark, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"Benchmark Unavailability Period": with respect to any Benchmark, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.8 and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.8.

"Benefit Plan": any of (a) an "employee benefit plan" (as defined in Section 3(3) of ERISA) that is subject to Title I of ERISA, (b) a "plan" as defined in Section 4975 of the Code to which Section 4975 of the Code applies, and (c) any Person whose assets include (for purposes of the Plan Asset Regulations or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) the assets of any such "employee benefit plan" or "plan".

"Board": the Board of Governors of the Federal Reserve System of the United States of America (or any successor).

"Borrowers": as defined in the introductory paragraph hereof.

"Borrowing": (a) Tranche A Loans of the same Type, made, converted or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect, (b) Tranche B Loans of the same Type, made, converted or continued on the same date and, in the case of Term Benchmark Loans, as to which a single Interest Period is in effect, and (c) a Competitive Loan or a group of Competitive Loans of the same Type made on the same date and as to which a single Interest Period is in effect.

"Borrowing Date": any Business Day specified in a notice pursuant to Section 2.2(d) as a date on which any Borrower requests the Lenders to make Revolving Credit Loans hereunder.

"Business Day": a day other than a Saturday, Sunday or other day on which commercial banks in New York City or Chicago are authorized or required by law to close; provided that, when used in connection with (a) a Term Benchmark Loan denominated in Canadian Dollars, the term "Business Day" shall also exclude any day on which commercial banks are not open for dealings in deposits of Canadian Dollars in Toronto, (b) any Loan denominated in EURO and in relation to the computation or calculation of EURIBOR, the term "Business Day" shall also exclude any day on which the TARGET payment system is not open for the settlement of payment in EURO, (c) any Loan denominated in Sterling, the term "Business Day" shall exclude any day on which banks are not open for business in London, (d) any Loan denominated in Yen and in relation to the calculation or computation of TIBOR, the term "Business Day" shall exclude any day on which banks are not open for business in Japan, and (e) in relation to RFR Loans and any interest rate settings, fundings, disbursements, settlements or payments of any such RFR Loan, or any other dealings in the applicable Agreed Currency of such RFR Loan, the term "Business Day" shall exclude any such day that is not an RFR Business Day.

"Calculation Date": (a) with respect to any Loan denominated in any Alternate Currency, each of the following: (i) the date of the Borrowing of such Loan and (ii) each date of a conversion into or continuation of such Loan pursuant to the terms of this Agreement; and (b) with respect to any Letter of Credit denominated in an Alternate Currency, each of the following: (i) the date on which such Letter of Credit is issued, (ii) the first Business Day of each calendar month and (iii) the date of any amendment of such Letter of Credit that has the effect of increasing the face amount thereof.

"Canadian Dollars" and "C$": lawful currency of Canada.

"Canadian Prime Rate": on any day, the rate determined by the Administrative Agent to be the higher of (i) the rate equal to the PRIMCAN Index rate that appears on the Bloomberg screen at 10:15 a.m. Toronto time on such day (or, in the event that the PRIMCAN Index is not published by Bloomberg, any other information services that publishes such index from time to time, as selected by the Administrative Agent in its reasonable discretion) and (ii) the average rate for 30 day Canadian Dollar bankers' acceptances that appears on the Reuters Screen CDOR Page (or, in the event such rate does not appear on such page or screen, on any successor or substitute page or screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time, as selected by the Administrative Agent in its reasonable discretion) at 10:15 a.m. Toronto time on such day, plus 1% per annum; provided, that if any the above rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement. Any change in the Canadian Prime Rate due to a change in the PRIMCAN Index or the CDOR Rate shall be effective from and including the effective date of such change in the PRIMCAN Index or CDOR Rate.

"Canadian Prime Rate Loan": Revolving Credit Loans denominated in Canadian Dollars the rate of interest applicable to which is based upon the Canadian Prime Rate.

"Capital Stock": any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation) and any and all warrants or options to purchase any of the foregoing.

"Cash Equivalents": (a) securities denominated in Dollars or any other currency of any Qualified Jurisdiction (any of the foregoing, "Currency"), in any event issued or directly and fully guaranteed or insured by the United States Government or any other Qualified Jurisdiction, as applicable, or any agency or instrumentality of any of them, having maturities of not more than one year from the date of acquisition, (b) time deposits and certificates of deposit denominated in Currency having maturities of not more than one year from the date of acquisition of any Lender or of any domestic commercial bank the senior long-term unsecured debt of which is rated at least A- or the equivalent thereof by S&P or A3 or the equivalent thereof by Moody's and having capital and surplus in excess of $500,000,000 (or the equivalent in the applicable Currency), (c) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (a) and (b) entered into with any bank meeting the qualifications specified in clause (b) above, (d) commercial paper denominated in Currency rated at least A-1 or the equivalent thereof by S&P or P-1 or the equivalent thereof by Moody's and in either case maturing within 90 days after the date of acquisition and (e) investments in money market funds that have assets in excess of $2,000,000,000 (or the equivalent in the applicable Currency), are managed by recognized and responsible institutions and invest all of their assets in any one or more of (i) obligations of the types referred to in clauses (a), (b), (c) and (d) above and (ii) commercial paper denominated in Currency having at least the rating described in clause (d) above and maturing within 270 days after the date of acquisition.

"CDOR Rate": for any Loans denominated in Canadian Dollars, (a) the CDOR Screen Rate multiplied by (b) the Statutory Reserve Rate.

"CDOR Screen Rate": with respect to any Interest Period, the Canadian deposit offered rate which, in turn means on any day the annual rate of interest determined with reference to the arithmetic average of the discount rate quotations of all institutions listed in respect of the relevant Interest Period for Canadian Dollar-denominated bankers' acceptances displayed and identified as such on the "Reuters Screen CDOR Page" as defined in the International Swap Dealer Association, Inc. definitions, as modified and amended from time to time (or, in the event such rate does not appear on such Reuters page, on any successor or substitute page on such screen or service that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as shall be selected by the Administrative Agent from time to time in its reasonable discretion), as of the Specified Time on the Quotation Day for such Interest Period and, if such day is not a business day, then on the immediately preceding business day (as adjusted by Administrative Agent after 10:00 a.m. Toronto local time to reflect any error in the posted rate of interest or in the posted average annual rate of interest). If the CDOR Screen Rate shall be less than zero, then such rate shall be deemed to be zero for purposes of this Agreement.

"Central Bank Rate": (A) the greater of (i) for any Loan denominated in (a) Sterling, the Bank of England (or any successor thereto)'s "Bank Rate" as published by the Bank of England (or any successor thereto) from time to time, (b) Euro, one of the following three rates as may be selected by the Administrative Agent in its reasonable discretion: (1) the fixed rate for the main refinancing operations of the European Central Bank (or any successor thereto), or, if that rate is not published, the minimum bid rate for the main refinancing operations of the European Central Bank (or any successor thereto), each as published by the European Central Bank (or any successor thereto) from time to time, (2) the rate for the marginal lending facility of the European Central Bank (or any successor thereto), as published by the European Central Bank (or any successor thereto) from time to time or (3) the rate for the deposit facility of the central banking system of the Participating Member States, as published by the European Central Bank (or any successor thereto) from time to time, (c) Yen, the "short-term prime rate" as publicly announced by the Bank of Japan (or any successor thereto) from time to time, and (d) any other Alternate Currency determined after the Effective Date, a central bank rate as determined by the Administrative Agent in its reasonable discretion and (ii) 0.00%; plus (B) the applicable Central Bank Rate Adjustment.

"Central Bank Rate Adjustment": for any day, for any Loan denominated in (a) Euro, a rate equal to the difference (which may be a positive or negative value or zero) of (i) the average of the EURIBOR Rate for the five most recent Business Days preceding such day for which the EURIBOR Screen Rate was available (excluding, from such averaging, the highest and the lowest EURIBOR Rate applicable during such period of five Business Days) minus (ii) the Central Bank Rate in respect of Euro in effect on the last Business Day in such period, (b) Sterling, a rate equal to the difference (which may be a positive or negative value or zero) of (i) the average of SONIA for the five most recent RFR Business Days preceding such day for which SONIA was available (excluding, from such averaging, the highest and the lowest SONIA applicable during such period of five RFR Business Days) minus (ii) the Central Bank Rate in respect of Sterling in effect on the last RFR Business Day in such period, (c) Yen, a rate equal to the difference (which may be a positive or negative value or zero) of (i) the average of the TIBOR Rate for the five most recent Business Days preceding such day for which the TIBOR Screen Rate was available (excluding, from such averaging, the highest and the lowest TIBOR Rate applicable during such period of five Business Days) minus (ii) the Central Bank Rate in respect of Yen in effect on the last Business Day in such period and (d) any other Alternate Currency determined after the Effective Date, a Central Bank Rate Adjustment as determined by the Administrative Agent in its reasonable discretion. For purposes of this definition, (x) the term Central Bank Rate shall be determined disregarding clause (B) of the definition of such term and (y) each of the EURIBOR Rate and the TIBOR Rate on any day shall be based on the EURIBOR Screen Rate or the TIBOR Screen Rate, as applicable, on such day at approximately the time referred to in the definition of such term for deposits in the applicable Agreed Currency for a maturity of one month; provided that if such rate shall be less than 0.00%, such rate shall be deemed to be 0.00%.

"Change in Control": (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934, as amended, and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof) of Capital Stock representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Capital Stock of ~~Kimco; or~~**Ultimate Parent;** (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of ~~Kimco~~**Ultimate Parent** by Persons who were neither (i) nominated or approved by the board of directors of ~~Kimco~~**Ultimate Parent** nor (ii) appointed by directors so nominated or approved **or (c**) the Ultimate Parent **ceases to** own and Control, beneficially and of record, at least 90% of the Capital Stock of Kimco (and its managing member or the equivalent).

"Change in Law": the occurrence, after the date of this Agreement (or with respect to any Lender, if later, the date on which such Lender becomes a Lender), of any of the following: (a) the adoption of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by any Lender or the Issuing Lender (or, for purposes of Section 2.11(b), by any lending office of such Lender or by such Lender's or the Issuing Lender's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any central bank or other Governmental Authority made or issued after the date of this Agreement; provided, however, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines or directives thereunder or issued in connection therewith or in implementation thereof and (ii) all requests, rules, guidelines, requirements and 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 referred to in clause (i) or (ii) be deemed to be a "Change in Law", regardless of the date enacted, adopted, implemented or issued.

"Class": when used in reference to any Loan, refers to whether such Loan is a Revolving Credit Loan or Competitive Loan.

"CME Term SOFR Administrator": CME Group Benchmark Administration Limited as administrator of the forward-looking term Secured Overnight Financing Rate (SOFR) (or a successor administrator).

"CO2e" as defined in the definition of Sustainability Metric.

"Code": the Internal Revenue Code of 1986, as amended from time to time.

"Commitment Period": the period from and including the date of this Agreement to but not including the Termination Date.

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

"Commonly Controlled Entity": an entity, whether or not incorporated, which is under common control with ~~Kimco~~**Ultimate Parent** within the meaning of Section 4001 of ERISA or is part of a group which includes ~~Kimco~~**Ultimate Parent** and which is treated as a single employer under Section 414 of the Code.

"Communications": as defined in Section 10.2(d)(iii).

"Competitive Bid": an offer by a Lender to make a Competitive Loan in accordance with Section 2.1.

"Competitive Bid Rate": with respect to any Competitive Bid, the Margin or Fixed Rate, as applicable, offered by the Lender making such Competitive Bid.

"Competitive Bid Request": a request by Kimco for Competitive Bids in accordance with 2.1.

"Competitive Loan Notes": as defined in Section 2.2(b).

"Competitive Loans": a Loan made pursuant to Section 2.1.

"Confidential Memorandum": the Confidential Information Memorandum, dated January 2020, with respect to Kimco and the Revolving Credit Facility herein.

"Consolidated Entities": as of any date of determination, any entities whose financial results are consolidated with those of ~~Kimco~~**Ultimate Parent** in accordance with GAAP.

"Consolidated Net Income": for any period, net income (or loss) of Kimco and the Consolidated Entities for such period determined on a consolidated basis in accordance with GAAP.

"Contractual Obligation": as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control": 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.

"Control Approach" as described in the GHG Protocol Corporate Reporting and Accounting Standard.

"Corresponding Tenor": with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

"Credit Parties": as defined in Section 10.17

"Currency": as defined in the definition of the term "Cash Equivalents".

"Daily Simple RFR": for any day (an "RFR Interest Day"), an interest rate per annum equal to, for any RFR Loan denominated in (i) Sterling, SONIA for the day that is 5 RFR Business Days prior to (A) if such RFR Interest Day is an RFR Business Day, such RFR Interest Day or (B) if such RFR Interest Day is not an RFR Business Day, the RFR Business Day immediately preceding such RFR Interest Day, and (ii) Dollars, Daily Simple SOFR.

"Daily Simple SOFR": for any day (a "SOFR Rate Day"), a rate per annum equal to SOFR for the day (such day "SOFR Determination Date") that is (i) if such SOFR Rate Day is an RFR Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not an RFR Business Day, the RFR Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator's Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

"Default": any of the events specified in Article VIII, whether or not any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

"Defaulting Lender": any Lender that (a) has failed, within two Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in Letters of Credit or (iii) pay over to any Lender Party any other amount so required to be funded or paid by it hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular facts or circumstances giving rise to such failure to satisfy a condition precedent) has not been satisfied, (b) has notified Kimco or any Lender Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a loan under this Agreement cannot be satisfied) or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by the Administrative Agent or the Issuing Lender, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations (and is financially able to meet such obligations) to fund prospective Loans and participations in then outstanding Letters of Credit under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon the receipt by the Administrative Agent and the Issuing Lender of such certification in form and substance reasonably satisfactory to the Administrative Agent and the Issuing Lender, (d) has become the subject of a Bankruptcy Event or (e) has, or has a direct or indirect parent company that has, become the subject of a Bail-In Action.

"Documentation Agents": as defined in the introductory paragraph hereof.

"Dollar Equivalent": on any date of determination, (a) with respect to any amount in dollars, such amount, and (b) with respect to any amount in an Alternate Currency, the equivalent in dollars of such amount, determined by the Administrative Agent pursuant to Section 1.4(b) using the Exchange Rate with respect to such Alternate Currency at the time in effect under the provisions of such Section.

"Dollars", "dollars" and "$": lawful currency of the United States of America.

"EEA Financial Institution": (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 of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority": 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.

"EBITDA": for any Person, the consolidated net income of such Person and its Subsidiaries before any provision or benefit for income taxes, interest, depreciation, amortization, gains or losses on sales of operating real estate and marketable securities, noncash impairment charges, and gains or losses on extraordinary items in accordance with GAAP and gains or losses on early extinguishment of debt.

"Effective Date": the date on which the conditions set forth in Section 5.1 shall be satisfied (or waived in accordance with Section 10.1).

"Electronic Signature": an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

"Electronic System": any electronic system, including e-mail, e-fax, Intralinks®, ClearPar®, Debt Domain, Syndtrak and any other Internet or extranet-based site chosen by the Administrative Agent to be its electronic transmission system, whether such electronic system is owned, operated or hosted by the Administrative Agent and the Issuing Lender and any of their respective Related Persons or any other Person, providing for access to data protected by passcodes or other security system.

"EMU Legislation": the legislative measures of the European Union for the introduction of, changeover to, or operation of the EURO in one or more member states, and for any member state resigning from or being removed from the European Union.

"Environmental Laws": any and all foreign, Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, requirements of any Governmental Authority or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of the environment or the manufacture, storage, remediation, disposal or clean-up of Hazardous Materials, as now or may at any time hereafter be in effect, in each case to the extent the foregoing are applicable to Kimco, any Entity or any of their respective assets or properties.

"Entity": as of any date of determination, any Consolidated Entity or Unconsolidated Entity.

"ERT": as defined in the definition of Sustainability Metric.

"ERISA": the Employee Retirement Income Security Act of 1974, as amended from time to time.

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

"EURIBOR Rate": with respect to any Term Benchmark Borrowing denominated in Euros and for any Interest Period, the EURIBOR Screen Rate, two TARGET Days prior to the commencement of such Interest Period.

"EURIBOR Screen Rate": the euro interbank offered rate administered by the European Money Markets Institute (or any other person which takes over the administration of that rate) for the relevant period displayed (before any correction, recalculation or republication by the administrator) on page EURIBOR01 of the Thomson Reuters screen (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters as published at approximately 11:00 a.m. Brussels time two TARGET Days prior to the commencement of such Interest Period. If such page or service ceases to be available, the Administrative Agent may specify another page or service displaying the relevant rate after consultation with the Borrower. If the EURIBOR Screen Rate shall be less than 0.00%, the EURIBOR Screen Rate shall be deemed to be 0.00% for purposes of this Agreement.

"EURO" and the sign "€": the single currency of the Participating Member States.

"Event of Default": any of the events specified in Article VIII, provided that any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

"Exchange Rate": on any day, with respect to any Alternate Currency the rate of exchange for the purchase of dollars with the Alternate Currency last provided (either by publication or otherwise provided to the Administrative Agent) by the applicable Thomson Reuters Corp., Refinitiv, or any successor thereto ("Reuters") source on the Business Day (New York City time) immediately preceding the date of determination or if such service ceases to be available or ceases to provide a rate of exchange for the purchase of dollars with the Alternate Currency, as provided by such other publicly available information service which provides that rate of exchange at such time in place of Reuters chosen by the Administrative Agent in its reasonable discretion (or if such service ceases to be available or ceases to provide such rate of exchange, the equivalent of such amount in dollars as determined by the Administrative Agent using any reasonable method of determination); provided that the Administrative Agent shall not make any such choices or determinations pursuant to this definition in any manner that is less favorable to the Borrowers than the determinations or choices that the Administrative Agent is generally making in respect of similar provisions in credit facilities to which JPMorgan Chase Bank, N.A. serves as administrative agent with borrowers similarly situated to and of similar creditworthiness to the Borrowers, but not necessarily all such credit facilities with respect to which JPMorgan Chase Bank, N.A. serves as administrative agent; provided, further, that nothing in this definition shall obligate the Administrative Agent to disclose any information regarding other borrowers or facilities.

"Excluded Borrowing": any Borrowing which is solely refinancing an existing Borrowing and is not increasing the aggregate outstanding principal amount of Loans hereunder (including, for the avoidance of doubt, a conversion of Loans from one Type to another Type or a continuation of a Term Benchmark Loan).

"Excluded Swap Obligation": with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (a) by virtue of such Guarantor'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 guarantee of such Guarantor or the grant of such security interest becomes or would become effective with respect to such Swap Obligation or (b) in the case of a Swap Obligation subject to a clearing requirement pursuant to Section 2(h) of the Commodity Exchange Act (or any successor provision thereto), because such Guarantor is a "financial entity," as defined in Section 2(h)(7)(C)(i) of the Commodity Exchange Act (or any successor provision thereto), at the time the guarantee of such Subsidiary Guarantor becomes or would become effective with respect to such related Swap Obligation. 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 security interest is or becomes illegal.

"Excluded Taxes": with respect to any payment made by any Loan Party under this Agreement or the other Loan Documents, any of the following Taxes imposed on or with respect to a Recipient, (a) income or franchise Taxes (i) imposed on (or measured by) net income by the United States of America, or by the jurisdiction under the laws of which such Recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located or (ii) that are Other Connection Taxes, (b) any branch profits Taxes imposed by the United States of America or any similar Tax imposed by any other jurisdiction in which the applicable Borrower is located, (c) withholding Taxes resulting from any law in effect on the date such Recipient becomes a party to this Agreement (or designates a new lending office) except to the extent that such Recipient (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from any Borrower with respect to such withholding Taxes pursuant to Section 2.12(a); provided that Excluded Taxes shall not include withholding Taxes required to be withheld and paid by a Foreign Subsidiary Borrower in connection with payments made under this Agreement, (d) any Tax that is imposed as a result of a Recipient's failure to comply with Section 2.12(d), and (e) any Taxes imposed under FATCA, including as a result of such Recipient's failure to comply with Section 2.12(d)(iii).

"Existing Guaranteed Obligations": the "Guaranteed Obligations" as defined in the Existing Revolving Credit Agreement.

"Existing Issuing Lender": an "Issuing Lender" under the Existing Revolving Credit Agreement immediately prior to the effectiveness of the amendment and restatement contemplated hereby.

"Existing L/C Obligations": the "L/C Obligations" as defined in the Existing Revolving Credit Agreement.

"Existing Loan Documents": the "Loan Documents" as defined in the Existing Revolving Credit Agreement.

"Existing Obligations": the "Obligations" as defined in the Existing Revolving Credit Agreement.

"Existing Revolving Credit Agreement": as defined in the recitals of this Agreement.

"Existing Revolving Lender": each lender under the Existing Revolving Credit Agreement immediately prior to the effectiveness of the amendment and restatement contemplated hereby.

"Existing Revolving Loans": the loans made by the Existing Revolving Lenders that are outstanding under the Existing Revolving Credit Agreement immediately prior to the effectiveness of the amendment and restatement contemplated hereby.

"Extension Conditions": (a) each of the representations and warranties made by Kimco in or pursuant to the Loan Documents shall be true and correct in all material respects (or, in the case of any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language, true and correct (after giving effect to any qualification therein) in all respects) on and as of the applicable extension date as if made on and as of such date except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date; (b)(i) no Default or Event of Default shall have occurred and be continuing as of the applicable extension date and (ii) Kimco would be in compliance with each financial covenant set forth in paragraphs (a) through (f) of Section 7.1 if the ratio or amount referred to therein were to be calculated as of the applicable extension date (provided that for the purposes of determining such compliance, Gross Asset Value and, for the avoidance of doubt, the ratios set forth in Section 7.1(e) and (f), shall be determined for the most recent Test Period as to which a compliance certificate has been delivered pursuant to Section 6.2(b)); and (c) on or prior to the applicable extension date, Kimco shall have paid to the Administrative Agent for the account of the Lenders (i) in connection with the extension of the Revolving Credit Facility to the First Extended Maturity Date, a nonrefundable extension fee in an amount equal to 0.05% of the aggregate amount of the Revolving Commitments in effect on the Original Maturity Date, whether used or unused, and (ii) in connection with the extension of the Revolving Credit Facility to the Second Extended Maturity Date, a nonrefundable extension fee in an amount equal to 0.075% of the aggregate amount of the Revolving Commitments in effect on the First Extended Maturity Date, whether used or unused. For purposes hereof and of Section 10.9, the term "applicable extension date" shall mean, in connection with any extension of the Maturity Date pursuant to Section 10.9, the first date upon which both of the following shall have occurred: (a) Kimco shall have delivered its Maturity Extension Notice with respect to such extension and (b) Kimco shall have made the applicable payment described in clause (c) of the previous sentence in respect of such extension.

"Facility Fee Rate": the applicable percentage per annum set forth below based upon the Status on the date of the relevant facility fee payment:

Level I Status	Level II Status	Level III Status	Level IV Status	Level V Status	Level VI Status
0.100%	0.125%	0.150%	0.200%	0.250%	0.300%

"FATCA": Section 1471 through 1474 of the Code, as of the date of this Agreement (or any amended and successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreements implementing any of the foregoing, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any of the foregoing.

"Federal Funds Effective Rate": for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions, as determined in such manner as shall be set forth on the Federal Reserve Bank of New York's Website from time to time, and published on the next succeeding Business Day by the NYFRB as the federal funds effective rate, provided that if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"Federal Reserve Bank of New York's Website": the website of the NYFRB at http://www.newyorkfed.org, or any successor source.

"Fee Letter": collectively, (a) the fee letter dated January 10, 2020 among Kimco, JPMCB, Wells Fargo and Wells Fargo Securities, LLC regarding certain fees payable in connection with the Revolving Credit Facility; (b) the fee letter dated January 17, 2020 between Kimco and Royal Bank of Canada regarding certain fees payable in connection with the Revolving Credit Facility, and (c) the Fee Letter dated January 17, 2020 among Kimco, PNC Bank, National Association and PNC Capital Markets LLC regarding certain fees payable in connection with the Revolving Credit Facility.

"Final Date": as defined in Section 2.11(d).

"Financing Lease": any lease of property, real or personal, the obligations of the lessee in respect of which are required in accordance with GAAP (subject, for the avoidance of doubt, to Section 1.3) to be capitalized on a balance sheet of such lessee.

"First Extended Maturity Date": as defined in Section 10.9.

"First Extension Option": as defined in Section 10.9.

"Fixed Rate": with respect to any Competitive Loan (other than a Competitive Loan which is a Term Benchmark Loan), the fixed rate of interest per annum specified by the Lender making such Competitive Loan in its related Competitive Bid.

"Fixed Rate Loan": a Competitive Loan bearing interest at a Fixed Rate.

"Floor": the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to the Adjusted Term SOFR Rate, Adjusted EURIBOR Rate, Adjusted TIBOR Rate, CDOR Rate, each Adjusted Daily Simple RFR or the Central Bank Rate, as applicable. For the avoidance of doubt the initial Floor for each of Adjusted Term SOFR Rate, Adjusted EURIBOR Rate, Adjusted TIBOR Rate, CDOR Rate, each Adjusted Daily Simple RFR or the Central Bank Rate shall be 0%.

"Foreign Subsidiary Borrower": as defined in Section 10.10(a).

"GAAP": generally accepted accounting principles in the United States of America.

"GHG Emissions": as defined in the definition of Sustainability Metric.

"GHG Protocol Corporate Reporting and Accounting Standard": a corporate accounting and reporting standard for greenhouse gas emissions published by World Business Council for Sustainable Development and the World Resources Institute, as amended from time to time.

"Governmental Authority": any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Gross Asset Value": as of any relevant date, an amount equal to (I) the sum, without duplication, of (a) Total Adjusted EBITDA, calculated with respect to the most recent Test Period ended on or before such date annualized and capitalized at (i) 6.0% for the multifamily component and (ii) 6.25% for all other components, plus (b) Unrestricted Cash and Cash Equivalents of Kimco and the Consolidated Entities as of such date, plus (c) the sum of the following items of Kimco and the Consolidated Entities: (i) land and development projects as of such date valued at the lower of "cost" or book value, and (ii) mezzanine and mortgage loan receivables valued at the lower of cost or market at such date and marketable securities at the value reflected in the consolidated financial statements of ~~Kimco~~**Ultimate Parent** as of such date, plus (d) ~~Kimco's~~**Ultimate Parent's** investments in and advances to the Unconsolidated Entities valued at the lower of cost or market as reflected in the consolidated financial statements of ~~Kimco~~**Ultimate Parent** as of such date, plus (e) 100% of the bona fide purchase price of Properties acquired within 24 months prior to such date, minus (II) as applicable, (a) the amount, if any, excluded from the amount of Total Indebtedness for purposes of calculating the ratio of Total Indebtedness to Gross Asset Value as set forth in the proviso of Section 7.1(a), or (b) the amount, if any, excluded from the amount of Total Priority Indebtedness for purposes of calculating the ratio of Total Priority Indebtedness to Gross Asset Value as set forth in the proviso of Section 7.1(b); provided that (1) the items described in clause (I)(d) shall not be taken into account to the extent that the amount thereof exceeds 30% of Gross Asset Value, (2) the items described in clauses (I)(c) and (I)(d) (other than mortgage loan receivables valued at the lower of cost or market at such date and marketable securities at the value reflected in the consolidated financial statements of ~~Kimco~~**Ultimate Parent** as of such date) shall not be taken into account to the extent that the amounts thereof exceed, in the aggregate, 40% of Gross Asset Value, and (3) not more than 30% in the aggregate of items comprising Gross Asset Value shall be attributable to assets located outside of the United States and Puerto Rico or to assets owned by Entities not organized in and not having principal offices in the United States or Puerto Rico.

"Guarantee Obligation": as to any Person (the "guaranteeing person"), any obligation (determined without duplication) of (a) the guaranteeing person or (b) another Person (including any bank under any letter of credit) to induce the creation of which the guaranteeing person has issued a reimbursement, counter-indemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (1) for the purchase or payment of any such primary obligation or (2) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the maximum stated amount of the primary obligation relating to such Guarantee Obligation (or, if less, the maximum stated liability set forth in the instrument embodying such Guarantee Obligation); provided that in all events (and regardless of the existence of a stated liability amount), the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by Kimco in good faith.

"Guarantor": at any particular time, (a) **Ultimate Parent (b)** Kimco and/or (~~b~~**c**) each Subsidiary that is a party to a Subsidiary Guarantee at such time.

"Hazardous Materials": all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"IBA": as defined in Section 1.5.

"Incremental Commitments": as defined in Section 10.8.

"Indebtedness": of any Person at any date, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (other than current trade liabilities incurred in the ordinary course of business and payable in accordance with customary practices), to the extent such obligations constitute indebtedness for the purposes of GAAP, (c) any other indebtedness of such Person which is evidenced by a note, bond, debenture or similar instrument, (d) all obligations of such Person under Financing Leases, (e) all obligations of such Person in respect of acceptances issued or created for the account of such Person, (f) all Guarantee Obligations of such Person, (g) all reimbursement obligations for letters of credit, (h) all liabilities secured by any Lien on any property owned by such Person even though such Person has not assumed or otherwise become liable for the payment thereof equal to an amount that would be the maximum reasonably anticipated liability in respect thereof as determined by Kimco in good faith (or, if lesser, the fair market value of the assets subject to such Lien, as determined by Kimco in good faith), and (i) the net obligations (contingent or otherwise) of such Person at such date under interest rate hedging agreements.

"Indemnified Taxes": Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by any Loan Party under this Agreement and the other Loan Documents.

"Ineligible Institution": (a) a natural person, (b) a Defaulting Lender or its Lender Parent, (c) any Loan Party or any Affiliate of any Loan Party, or (d) a company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof; provided that, such company, investment vehicle or trust shall not constitute an Ineligible Institution if it (x) has not been established for the primary purpose of acquiring any Loans or Revolving Commitments, (y) is managed by a professional advisor, who is not such natural person or a relative thereof, having significant experience in the business of making or purchasing commercial loans, and (z) has assets greater than $25,000,000 and a significant part of its activities consist of making or purchasing commercial loans and similar extensions of credit in the ordinary course of its business.

"Insolvency": with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

"Insolvent": pertaining to a condition of Insolvency.

"Intellectual Property": as defined in Section 4.9.

"Interest Payment Date": (a) as to any ABR Loan, the last day of each calendar month to occur while such ABR Loan is outstanding and the Termination Date, (b) as to any Canadian Prime Rate Loan, the last day of each calendar month to occur while such Canadian Prime Rate Loan is outstanding and the Termination Date, (c) as to any Term Benchmark Loan, the last day of the Interest Period with respect thereto and, in the case of a Term Benchmark Loan with an Interest Period of more than three (3) months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three (3) months' duration after the first day of such Interest Period and the Termination Date, (d) as to any RFR Loan denominated in Sterling, each date that is on the numerically corresponding day in each calendar month that is one month after the Borrowing of such Loan (or, if there is no such numerically corresponding day in such month, then the last day of such month) and the Termination Date, (e) as to any RFR Loan denominated in Dollars, the fifth (5th) Business Day of each calendar month and the Termination Date, (f) as to any Money Market Loan, the Money Market Loan Maturity Date applicable thereto, and (g) as to any Fixed Rate Loan, the last day of the Interest Period applicable to the Borrowing of which such Fixed Rate Loan is a part and, in the case of a Fixed Rate Loan with an Interest Period of more than 90 days' duration (unless otherwise specified in the applicable Competitive Bid Request), each day prior to the last day of such Interest Period that occurs at intervals of 90 days' duration after the first day of such Interest Period, and any other days that are specified in the applicable Competitive Bid Request as Interest Payment Dates with respect to such Fixed Rate Loan.

"Interest Period":

(a) with respect to any Term Benchmark Loan:

(i) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Term Benchmark Loan and ending one (1) week (only in the case of a Competitive Loan) or two (2) weeks (only in the case of a Competitive Loan) or one (1), three (3) or (except for Loans subject to the CDOR Screen Rate) six (6) months thereafter, as selected by the applicable Borrower in its notice of borrowing or notice of conversion, as the case may be, given with respect thereto (in each case, subject to the availability of the Benchmark applicable to such Loan for any Agreed Currency); and

(ii) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Term Benchmark Loan and ending one (1) week (only in the case of a Competitive Loan) or two (2) weeks (only in the case of a Competitive Loan) or one (1), three (3) or (except for Loans subject to the CDOR Screen Rate) six (6) months thereafter, as selected by the applicable Borrower by irrevocable notice to the Administrative Agent not less than three Business Days prior to the last day of the then current Interest Period with respect thereto (in each case, subject to the availability of the Benchmark applicable to such Loan for any Agreed Currency); and

(b) with respect to any Fixed Rate Loan: each period, which shall not be less than 7 days or more than 180 days, commencing on the date of such Borrowing and ending on the date specified in the applicable Competitive Bid Request; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

(1) if any Interest Period pertaining to a Term Benchmark Loan would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(2) any Interest Period (other than for a Competitive Loan having an Interest Period of one (1) or two (2) weeks' duration) pertaining to a Term Benchmark Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month at the end of such Interest Period) shall end on the last Business Day of such last calendar month;

(3) in no event shall any Interest Period end on a day subsequent to the Termination Date; and

(4) no tenor that has been removed from this definition pursuant to Section 2.8 shall be available for such Term Benchmark Loan.

"Investment Entity": as to any Person, a corporation, limited liability company, partnership or other entity in which ~~Kimco~~**Ultimate Parent** has a direct or indirect interest, but which is not a Subsidiary.

"IRS": the United States Internal Revenue Service.

"ISP": the International Standby Practices (1998), International Chamber of Commerce Publication No. 590, and, if acceptable to the Issuing Lender in its sole discretion, as the same may be amended or revised from time to time.

"Issuing Lender": any Lead Lender, in its capacity as issuer of any Letter of Credit, and any Alternate Issuing Lender appointed pursuant to Section 3.9(c); individually and collectively referred to herein as "Issuing Lender", and shall be interpreted throughout this Agreement as either one particular Issuing Lender or two or more Issuing Lenders, as the context may require. The Issuing Lender may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of the Issuing Lender (provided that such designation (a) does not result in any increased cost or liability to any Borrower in any underlying transaction supported by such Letter of Credit as opposed to the cost or liability to such Borrower of a Letter of Credit issued by such Issuing Lender or (b) is approved in writing by the applicable Borrower or Kimco), in which case the term "Issuing Lender" shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

"Issuing Lender Affiliate": as defined in Section 10.6.

"Issuing Lender Commitment": with respect to each Issuing Lender, the commitment of such Issuing Lender to issue Letters of Credit hereunder, as adjusted in accordance with this Agreement (including Section 3.11). As of the date hereof, each Issuing Lender Commitment of each Lead Lender in its capacity as Issuing Lender is $25,000,000. The Issuing Lender Commitment of any Alternate Issuing Lender shall be set forth in a written notice from such Alternate Issuing Lender to the Administrative Agent on or prior to the date that such Person becomes an Alternate Issuing Lender.

"Joint Lead Arrangers": collectively, JPMCB, Wells Fargo Securities, LLC, PNC Capital Markets LLC, RBC Capital Markets, The Bank of Nova Scotia, BofA Securities, Inc., Citigroup Global Markets Inc., Mizuho Bank, Ltd., Regions Capital Markets, U.S. Bank National Association, Barclays Bank PLC, TD Securities (USA) LLC, SunTrust Robinson Humphrey, Inc., BNP Paribas Securities Corp., and BMO Capital Markets Corp.

"JPMCB": JPMorgan Chase Bank, N.A.

"Kimco": as defined in the introductory paragraph hereof.

"L/C Commitment": $100,000,000, as such amount may be increased in accordance with Section 3.11.

"L/C Exposure": as to any Lender at any time, such Lender's Applicable Percentage of the L/C Obligations outstanding at such time.

"L/C Fee Payment Date": with respect to each Letter of Credit, the last Business Day of each March, June, September and December to occur while such Letter of Credit is outstanding.

"L/C Fee Rate": with respect to each Letter of Credit at any date, the applicable percentage per annum set forth below based upon the Status on such date:

Level I Status	Level II Status	Level III Status	Level IV Status	Level V Status	Level VI Status
0.700%	0.725%	0.775%	0.850%	1.050%	1.400%

Notwithstanding the foregoing, if the Sustainability Metric Grid is in effect pursuant to the definition of "Applicable Margin", then with respect to each Letter of Credit at any date, the L/C Fee Rate shall be the applicable percentage set forth below based upon the Status on such date:

Level I Status	Level II Status	Level III Status	Level IV Status	Level V Status	Level VI Status
0.690%	0.715%	0.765%	0.840%	1.040%	1.390%

In the event for any particular fiscal year the determination of the Sustainability Metric results in the Sustainability Metric Target being met by an additional 1% or more reduction of the Sustainability Baseline, the L/C Fee Rate in the grid immediately above shall be reduced by an additional one (1) basis point.

"L/C Obligations": at any time, an amount equal to the sum of (a) the Tranche A L/C Obligations and (b) the Tranche B L/C Obligations at such time.

"L/C Participants": the collective reference to all the Lenders other than the Issuing Lender.

"Lead Lenders": collectively, JPMCB, Wells Fargo, PNC Bank, National Association and Royal Bank of Canada.

"Lender Parent": with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

"Lender Party": each of the Administrative Agent, the Issuing Lender and the Lenders.

"Lenders": as defined in the introductory paragraph hereof.

"Letters of Credit": the Tranche A Letters of Credit and the Tranche B Letters of Credit.

"Level I Status": as defined in the definition of "Status" in this Section 1.1.

"Level II Status": as defined in the definition of "Status" in this Section 1.1.

"Level III Status": as defined in the definition of "Status" in this Section 1.1.

"Level IV Status": as defined in the definition of "Status" in this Section 1.1.

"Level V Status": as defined in the definition of "Status" in this Section 1.1.

"Level VI Status": as defined in the definition of "Status" in this Section 1.1.

"Leverage Ratio": as defined in Section 7.1(a).

"Lien": any mortgage, pledge, hypothecation, assignment (including any collateral assignment but excluding any assignment of an asset made in lieu of a sale thereof where the assignor is paid the fair market value of such asset by the assignee and the assignee assumes all of the rights and obligations attributable to ownership of such asset), deposit arrangement, encumbrance, lien (statutory or other), charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any Financing Lease having substantially the same economic effect as any of the foregoing).

"Loan": each loan made by the Lenders to any Borrower pursuant to this Agreement, including any Competitive Loans, any Tranche A Loans, any Tranche B Loans and any New Term Loans (whether such Loans are Fixed Rate Loans, Term Benchmark Loans, RFR Loans, ABR Loans, or Money Market Loans).

"Loan Documents": this Agreement, the Notes, the Applications, each Subsidiary Guarantee (if any)**, the guaranty made by Ultimate Parent,** and the Fee Letter, and any instrument or agreement waiving, amending, or supplementing any Loan Document.

"Loan Parties": as of any applicable date of determination, (a) ~~Kimco,~~**Ultimate Parent** (b) **Kimco, (c)** each other applicable Borrower and (~~e~~**d**) each applicable Guarantor other than Kimco **and** the Ultimate Parent.

"Major Acquisitions": with respect to any applicable period, one or more acquisitions by **Ultimate Parent,** Kimco or ~~one of its~~**any of their respective** Subsidiaries during such period of the Capital Stock and/or assets of another Person that (a) are otherwise permitted by this Agreement and the other Loan Documents and (b) involve the payment by **Ultimate Parent,** Kimco or ~~such Subsidiary~~**any of their respective Subsidiaries** of consideration (whether in the form of cash or non-cash consideration) in excess of $500,000,000 in the aggregate for all such acquisitions during such period.

"Managing Agents": as defined in the introductory paragraph hereof.

"Margin": with respect to any Competitive Loan bearing interest at a rate based on the Adjusted Term SOFR Rate, the marginal rate of interest, if any, to be added to or subtracted from the Adjusted Term SOFR Rate to determine the rate of interest applicable to such Loan, as specified by the Lender making such Loan in its related Competitive Bid.

"Material Adverse Effect": a material adverse effect on (a) the business, operations, property or financial condition of **Ultimate Parent,** Kimco and ~~its~~**their respective** Subsidiaries taken as a whole, (b) the ability of **Ultimate Parent or** Kimco to perform its obligations under the Loan Documents or (c) the validity or enforceability of this Agreement or any of the other Loan Documents or the rights or remedies of the Administrative Agent or the Lenders hereunder or thereunder.

"Materials of Environmental Concern": any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products or any hazardous or toxic substances, materials or wastes, defined or regulated as such in or under any Environmental Law, including asbestos, polychlorinated biphenyls and urea-formaldehyde insulation.

"Maturity Date": (i) March 17, 2024 or (ii) if the term of the Revolving Credit Facility is extended pursuant to Section 10.9, the First Extended Maturity Date or the Second Extended Maturity Date, as applicable; provided that references hereunder to the Maturity Date shall be to the Maturity Date specified in clause (i) unless and until extended in accordance with Section 10.9.

"Maturity Extension Notice": as defined in Section 10.9.

"Money Market Loan Maturity Date": with respect to any Money Market Loan, the maturity date requested by the applicable Borrower in connection therewith (which date shall in no event be later than the earlier of (a) 29 days after the Borrowing Date thereof and (b) the Termination Date).

"Money Market Loans": Revolving Credit Loans denominated in Dollars the rate of interest applicable to which is based upon the Money Market Rate.

"Money Market Rate": with respect to any proposed Money Market Loan, the quoted rate per annum determined by the Administrative Agent with respect thereto by interpolating between SOFR and the one month Term SOFR Rate for the term of such Money Market Loan, no later than 10:00 A.M., New York City time, on the requested Borrowing Date.

"Money Market Tranche": the collective reference to Money Market Loans having the same Borrowing Date and Money Market Loan Maturity Date.

"Moody's": Moody's Investors Service, Inc.

"Multiemployer Plan": a Plan which is a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"New Revolving Commitments": as defined in Section 10.8.

"New Revolving Lender": as defined in Section 10.8.

"New Revolving Loans": as defined in Section 10.8.

"New Term Commitments": as defined in Section 10.8.

"New Term Lender": as defined in Section 10.8.

"New Term Loans": as defined in Section 10.8.

"Non-Recourse Indebtedness": Indebtedness the documentation with respect to which expressly provides that (a) the lender(s) thereunder (and any agent for such lender(s)) may not seek a money judgment against the Person issuing such Indebtedness or (b) recourse for payment in respect of such Indebtedness is limited to those assets or Capital Stock of the Person issuing such Indebtedness which secure such Indebtedness (except in the case of customary indemnities or customary potential recourse carve-outs contained in such documentation, provided that if a claim is made in connection with such indemnities or potential recourse carve-outs, such claim shall not constitute Non-Recourse Indebtedness for the purposes of this Agreement); provided further that, notwithstanding the foregoing, any Indebtedness which would otherwise constitute Recourse Indebtedness (or which would not constitute Non-Recourse Indebtedness hereunder), shall be included as Non-Recourse Indebtedness for all purposes hereunder if and to the extent such Indebtedness is not recourse (either contractually or by operation of law) to Kimco (except in the case of customary indemnities or customary potential recourse carve-outs contained in the applicable documentation, provided that if a claim is made in connection with such indemnities or potential recourse carve-outs, such claim shall not constitute Non-Recourse Indebtedness for the purposes of this Agreement).

"Notes": the collective reference to the Revolving Credit Notes and any Competitive

Loan Notes.

"NYFRB": The Federal Reserve Bank of New York.

"NYFRB Rate": for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received to the Administrative Agent from a Federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Obligated Property Owner": as defined in the definition of the term "Unencumbered

Properties".

"Obligations": with respect to any Borrower, all obligations, liabilities and Indebtedness of every nature of such Borrower from time to time owing to any Lender, the Issuing Lender, or the Administrative Agent, under or in connection with this Agreement or any other Loan Document, in each case whether primary, secondary, direct, indirect, contingent, fixed or otherwise, including interest accruing at the rate provided in the applicable Loan Document on or after the commencement of any bankruptcy or insolvency proceeding, whether or not allowed or allowable; provided, however, that, for purposes of determining any obligations of any Guarantor, "Obligations" shall not include any Excluded Swap Obligations.

"Original Maturity Date": as defined in Section 10.9.

"Other Connection Taxes": with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Taxes (other than a connection 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, or engaged in any other transaction pursuant to, or enforced, this Agreement or the other Loan Documents, or sold or assigned an interest in any Loan, Letter of Credit or Loan Document).

"Other Taxes": any present or future stamp, court, documentary, intangible, recording, filing, or similar excise or property Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, or from the registration, receipt or perfection of a security interest under, or otherwise with respect to, this Agreement or any other Loan Documents, except any such Taxes that are Excluded Taxes imposed with respect to an assignment (other than an assignment under Section 2.15).

"Overnight Bank Funding Rate": for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the Federal Reserve Bank of New York's Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

"Overnight Rate": for any day, (a) with respect to any amount denominated in Dollars, the NYFRB Rate and (b) with respect to any amount denominated in an Alternate Currency, an overnight rate determined by the Administrative Agent or the Issuing Lender, as the case may be, in accordance with banking industry rules on interbank compensation.

"Ownership Percentage": (a) in respect of **Kimco or** a Wholly Owned Subsidiary, 100%, and (b) in respect of (i) any other Consolidated Entity (other than **Kimco or** a Wholly Owned Subsidiary) or (ii) an Unconsolidated Entity, **the greater of Ultimate Parent's and** Kimco's direct and indirect percentage interest in such entity determined in accordance with GAAP.

"Participant": as defined in Section 10.6.

"Participant Register": as defined in Section 10.6(c).

"Participating Member State": any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"Patriot Act": as defined in Section 10.21.

"Payment": has the meaning assigned to it in Section 9.5(a).

"Payment Notice": has the meaning assigned to it Section 9.5(b).

"PBGC": the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA.

"Permitted Encumbrances": (a) Liens imposed by law for taxes (i) that are not yet due and delinquent, or (ii) where (A) the validity or amount thereof is being contested in good faith by appropriate proceedings, (B) the Person responsible for such taxes is **Ultimate Parent,** Kimco or a Wholly Owned Subsidiary and such Person has set aside on its books adequate reserves with respect thereto in accordance with GAAP, and (C) the failure to make payment pending such contest could not reasonably be expected to have a Material Adverse Effect, (b) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days, except where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, (ii) the Person responsible for the charges so secured is **Ultimate Parent,** Kimco or a Wholly Owned Subsidiary and such Person has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (iii) the failure to make payment pending such contest could not reasonably be expected to have a Material Adverse Effect, (c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations, (d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business, and (e) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of **Ultimate Parent,** Kimco or of any Wholly Owned Subsidiary that has any direct or indirect interest in any Unencumbered Property; provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

"Person": an individual, partnership, limited liability company, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"Plan": at a particular time, any employee benefit plan which is covered by ERISA and in respect of which Kimco or a Commonly Controlled Entity is (or, if such plan were terminated at such time, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Plan Asset Regulations": 29 CFR § 2510.3-101 *et seq.*, as modified by Section 3(42) of ERISA, as amended from time to time.

"Prime Rate": the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"Property": real property owned by Kimco or any of the Entities, or in which Kimco or any of the Entities has a leasehold interest.

"Property Gross Revenues": with respect to any Property, for any period, all gross income, revenues and consideration, of whatever form or nature, received by or paid to or for the account or benefit of the Person owning such Property, in each instance during such period, in connection with the ownership, operation, leasing and occupancy of such Property, including the following: (a) amounts earned under leases, including base rent, escalation, overage, additional, participation, percentage and similar rentals, late charges and interest payments and amounts received on account of maintenance or service charges, real estate taxes, assessments, utilities, air conditioning and heating, insurance premiums and other administrative, management, operating, leasing and maintenance expenses for such property, but excluding until earned security deposits, prepaid rents and other refundable receipts, (b) rents and receipts from licenses, concessions, vending machines and similar items, (c) parking fees and rentals, (d) other fees, charges or payments not denominated as rental of office, retail, storage, parking or other space in such Property, and (e) payments received as consideration, in whole or in part, for the cancellation, modification, extension or renewal of leases; but in any event excluding the proceeds of any financing or asset sales in respect of all or any portion of such Property.

"Property NOI": with respect to any Property, for any period, an amount equal to the excess, if any, of (a) Property Gross Revenues in respect of such Property for such period over (b) Property Operating Expenses in respect of such Property for such period.

"Property Operating Expenses": with respect to any Property, for any period, the sum of all expenses incurred during such period with respect to the ownership, operation, leasing and occupancy of such Property, including the following: (a) real estate taxes; (b) special assessments or similar charges paid during such period; (c) personal property taxes; (d) costs of utilities, air conditioning and heating; (e) maintenance and repair costs of a non-capital nature; (f) operating expenses and fees; (g) wages and salaries of on-site employees engaged in the operation and management of such Property, including employer's social security taxes and other taxes, insurance benefits and the like, levied on or with respect to such wages or salaries; (h) premiums payable for insurance carried on or with respect to such Property; (i) advertising and promotion costs; (j) rental expense; and (k) in the case of any Property owned or operated by an Investment Entity, any obligation of ~~Kimco~~**Ultimate Parent** or any of its Subsidiaries (contingent or otherwise) to contribute funds to such Investment Entity. The following shall be excluded from Property Operating Expenses: (1) foreign, U.S., state and local income taxes, franchise taxes or other taxes based on income, (2) depreciation, amortization and any other non-cash deduction for income tax purposes, (3) interest expenses of the Person owning such Property, (4) property management fees payable to ~~Kimco~~**Ultimate Parent** or its Affiliates, and (5) any expenditures made for capital improvements and the cost of leasing commissions.

"Protesting Lender": as defined in Section 10.10(a).

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

"Qualified Jurisdiction": at any time of determination, any jurisdiction in which **Ultimate Parent,** Kimco or any of its Subsidiaries is doing business at such time the government of which jurisdiction is internationally recognized at such time, including by the United States Government.

"Quotation Day": with respect to any Term Benchmark Loan for any Interest Period, (a) if the currency is Canadian Dollars, the first day of such Interest Period and (b) if the currency is Dollars, two Business Days prior to the commencement of such Interest Period (unless, in each case, market practice differs in the relevant market where the Term Benchmark Rate for such currency is to be determined, in which case the Quotation Day will be determined by the Administrative Agent in accordance with market practice in such market (and if quotations would normally be given on more than one day, then the Quotation Day will be the last of those days)).

"Recipient": as applicable, (a) the Administrative Agent, (b) any Lender and (c) the Issuing Lender.

"Recourse Indebtedness": any Indebtedness of any Person, (A) to the extent that Kimco is liable for direct claims for payment of such debt, or (B) to the extent that the payment of such debt is guaranteed by Kimco or that Kimco otherwise stands as a surety or accommodation party for such debt (provided that the amount of any such obligation shall be deemed, for the purpose of this definition, to be Kimco's maximum reasonably anticipated liability in respect thereof as determined by Kimco in good faith), or (C) as to which a Lien securing such debt has been placed against any assets of Kimco (excluding from this clause (C) Non-Recourse Indebtedness of Kimco). (Any such Indebtedness shall not be treated as Recourse Indebtedness solely because of customary potential recourse carveouts contained in documentation, provided that if a claim is made in connection with such potential recourse carve-outs, such claim shall constitute Recourse Indebtedness for the purposes of this Agreement).

"Reference Time": with respect to any setting of the then-current Benchmark means (1) if such Benchmark is the Term SOFR Rate, 5:00 a.m. (Chicago time) on the day that is two Business Days preceding the date of such setting, (2) if such Benchmark is EURIBOR Rate, 11:00 a.m. Brussels time two TARGET Days preceding the date of such setting, (3) if the RFR for such Benchmark is SONIA, then four Business Days prior to such setting, (4) if the RFR for such Benchmark is Daily Simple SOFR, then the next Business Day after such setting, (5) if such Benchmark is the TIBOR Rate, 11:00 a.m. Japan time two Business Days preceding the date of such setting, or (6) if such Benchmark is none of the Term SOFR Rate, the EURIBOR Rate, SONIA, Daily Simple SOFR, or the TIBOR Rate, the time determined by the Administrative Agent in its reasonable discretion.

"Register": as defined in Section 10.6.

"Regulation U": Regulation U of the Board as in effect from time to time.

"Reimbursement Obligation": the obligation of any Borrower to reimburse the Issuing Lender pursuant to Section 3.5(a) for amounts drawn under Letters of Credit.

"Related Parties": as defined in Section 9.1.

"Relevant Governmental Body": (i) with respect to a Benchmark Replacement in respect of Loans denominated in Dollars, the Federal Reserve Board and/or the NYFRB, the CME Term SOFR Administrator, as applicable, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto, (ii) with respect to a Benchmark Replacement in respect of Loans denominated in Sterling, the Bank of England, or a committee officially endorsed or convened by the Bank of England or, in each case, any successor thereto, (iii) with respect to a Benchmark Replacement in respect of Loans denominated in Euros, the European Central Bank, or a committee officially endorsed or convened by the European Central Bank or, in each case, any successor thereto, (iv) with respect to a Benchmark Replacement in respect of Loans denominated in Yen, the Bank of Japan, or a committee officially endorsed or convened by the Bank of Japan, or, in each case, any successor thereto, and (v) with respect to a Benchmark Replacement in respect of Loans denominated in any other currency, (a) the central bank for the currency in which such Benchmark Replacement is denominated or any central bank or other supervisor which is responsible for supervising either (1) such Benchmark Replacement or (2) the administrator of such Benchmark Replacement or (b) any working group or committee officially endorsed or convened by (1) the central bank for the currency in which such Benchmark Replacement is denominated, (2) any central bank or other supervisor that is responsible for supervising either (A) such Benchmark Replacement or (B) the administrator of such Benchmark Replacement, (3) a group of those central banks or other supervisors or (4) the Financial Stability Board or any part thereof.

"Relevant Rate": (i) with respect to any Term Benchmark Borrowing denominated in Dollars, the Adjusted Term SOFR Rate, (ii) with respect to any Term Benchmark Borrowing denominated in Euros, the Adjusted EURIBOR Rate, (iii) with respect to any Term Benchmark Borrowing denominated in Canadian Dollars, the CDOR Rate, (iv) with respect to any Term Benchmark Borrowing denominated in Yen, the Adjusted TIBOR Rate or (v) with respect to any Borrowing denominated in Sterling or Dollars, the applicable Adjusted Daily Simple RFR, as applicable.

"Relevant Screen Rate": (i) with respect to any Term Benchmark Borrowing denominated in Dollars, the Term SOFR Reference Rate, (ii) with respect to any Term Benchmark Borrowing denominated in Euros, the EURIBOR Screen Rate, (iii) with respect to any Term Benchmark Borrowing denominated in Canadian Dollars, the CDOR Screen Rate or (iv) with respect to any Term Benchmark Borrowing denominated in Yen, the TIBOR Screen Rate, as applicable.

"Reorganization": with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

"Reportable Event": any of the events set forth in Section 4043(b) of ERISA, other than those events as to which the thirty day notice period is waived under Sections .13, .14, .16, .18, .19 or .20 of PBGC Reg. § 2615.

"Representation and Warranty Date": (a) the date of the making of any Loan (excluding the date of any Excluded Borrowing), (b) the date of issuance, renewal, extension or amendment of any Letter of Credit (including any Letter of Credit issued, renewed, extended or amended on the Effective Date), and (c) in connection with any extension of the Maturity Date pursuant to Section 10.9 hereof, each applicable extension date (as defined in the definition of Extension Conditions) .

"Required Lenders": at any time, the holders of at least 51% of the aggregate Revolving Commitments and outstanding New Term Loans (if any), or, if the Revolving Commitments have been terminated, the sum of the aggregate unpaid principal amount of the Competitive Loans, New Term Loans (if any) and the Revolving Exposure at such time.

"Requirement of Law": as to any Person, the Certificate of Incorporation and By-Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Resolution Authority": an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Responsible Officer": with respect to any Person, the chief executive officer and the president of such Person or, with respect to financial matters, the chief financial officer or the treasurer of such Person.

"Reuters": as applicable, Thomson Reuters Corp., Refinitiv, or any successor thereto.

"Revolving Commitment": as to any Lender, the sum of such Lender's Tranche A Commitment and Tranche B Commitment, as such amount may be changed from time to time in accordance with the provisions of this Agreement. The initial aggregate amount of the Lenders' Revolving Commitments is $2,000,000,000.

"Revolving Credit Facility": the revolving credit facility established pursuant to this Agreement.

"Revolving Credit Loans": as defined in Section 2.2(a)(i).

"Revolving Credit Note": as defined in Section 2.2(b).

"Revolving Exposure": as to any Lender at any time, an amount equal to the sum of such Lender's Tranche A Exposure and Tranche B Exposure at such time.

"RFR": for any RFR Loan denominated in (a) Sterling, SONIA and (b) Dollars, Daily Simple SOFR.

"RFR Administrator": the SONIA Administrator or the SOFR Administrator, as applicable.

"RFR Borrowing": as to any Borrowing, the RFR Loans comprising such Borrowing.

"RFR Business Day": for any Loan denominated in (a) Sterling, any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which banks are closed for general business in London and (b) Dollars, a U.S. Government Securities Business Day.

"RFR Interest Day": has the meaning specified in the definition of "Daily Simple RFR".

"RFR Loan": a Loan that bears interest at a rate based on the Adjusted Daily Simple RFR.

"S&P": S&P Global Ratings and any successor thereto.

"Sanctioned Country": a country or territory which is the subject or target of Sanctions.

"Sanctioned Person": at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or by the United Nations Security Council, the European Union or any European Union member state or Her Majesty's Treasury of the United Kingdom, (b) any Person operating, organized or resident in a Sanctioned Country or(c) any Person controlled by any Person described in (a) or (b) .

"Sanctions": economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom.

"Second Extended Maturity Date": as defined in Section 10.9.

"Second Extension Option": as defined in Section 10.9.

"Series": as defined in Section 10.8.

"Sharing Event": (a) the occurrence of an Event of Default described in paragraph (f) of Article VIII; (b) the acceleration of any Loans and L/C Obligations pursuant to Article VIII; or (c) the occurrence of an Event of Default described in paragraph (a) of Article VIII that continues after the Maturity Date.

"Single Employer Plan": any Plan which is covered by Title IV of ERISA, but which is not a Multiemployer Plan.

"SOFR": a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"SOFR Administrator": the NYFRB (or a successor administrator of the secured overnight financing rate).

"SOFR Administrator's Website": the NYFRB's website, currently at http://www.newyorkfed.org, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

"SOFR Determination Date": specified in the definition of "Daily Simple SOFR".

"SOFR Rate Day": specified in the definition of "Daily Simple SOFR".

"SONIA": with respect to any Business Day, a rate per annum equal to the Sterling Overnight Index Average for such Business Day published by the SONIA Administrator on the SONIA Administrator's Website on the immediately succeeding Business Day.

"SONIA Administrator": the Bank of England (or any successor administrator of the Sterling Overnight Index Average).

"SONIA Administrator's Website": the Bank of England's website, currently at http://www.bankofengland.co.uk, or any successor source for the Sterling Overnight Index Average identified as such by the SONIA Administrator from time to time.

"Solvent": as to any Person, that, as of any date of determination, (a) the amount of the present fair saleable value of the assets of such Person will, as of such date, exceed the amount of all liabilities of such Person, contingent or otherwise, as of such date, as determined in accordance with applicable U.S. federal and state laws (or analogous applicable foreign laws) governing determinations of the insolvency of debtors, (b) the present fair saleable value of the assets of such Person will, as of such date, be greater than the amount that will be required to pay the liability of such Person on its existing or anticipated debts as such debts become absolute and matured, and (c) such Person will not have as of such date, an unreasonably small amount of capital with which to conduct its business.

"Specified Time": (a) in relation to a Loan denominated in Canadian Dollars, 10:00 a.m. Toronto, Ontario time; and (b) in relation to a Loan denominated in Dollars, 11:00 a.m., London time.

"Status": as to ~~Kimco~~**Ultimate Parent**, the existence of Level I Status, Level II Status, Level III Status, Level IV Status, Level V Status or Level VI Status, as the case may be.

As used in this definition:

"Level I Status" exists at any date if, at such date, Kimco has a long-term senior unsecured debt rating of A or better by S&P and A2 or better by Moody's.

"Level II Status" exists at any date if, at such date, Level I Status does not exist and Kimco has a long-term senior unsecured debt rating of A- or better by S&P and A3 or better by Moody's;

"Level III Status" exists at any date if, at such date, neither Level I Status nor Level II Status exists and Kimco has a long-term senior unsecured debt rating of BBB+ or better by S&P and Baa1 or better by Moody's;

"Level IV Status" exists at any date if, at such date, none of Level I Status, Level II Status or Level III Status exists and Kimco has a long-term senior unsecured debt rating of BBB or better by S&P and Baa2 or better by Moody's;

"Level V Status" exists at any date if, at such date, none of Level I Status, Level II Status, Level III Status or Level IV Status exists and Kimco has a long-term senior unsecured debt rating of BBB- or better by S&P and Baa3 or better by Moody's; and

"Level VI Status" exists at any date if, at such date, none of Level I Status, Level II Status, Level III Status, Level IV Status or Level V Status exists;

provided that (i) in the event of a "split" rating, the Applicable Margin, Facility Fee Rate, and L/C Fee Rate shall be based upon the higher of the two ratings, (ii) if Kimco, at its option, (A) obtains a debt rating from a third nationally-recognized rating agency (it being understood that Fitch, Inc. is a nationally-recognized rating agency), and (B) delivers a written notice to the Administrative Agent that it would like to include such debt rating for purposes of determining Status, then the Applicable Margin, Facility Fee Rate, and L/C Fee Rate shall be based on (x) the highest rating, if the difference between the highest and second-highest ratings is one ratings category or (y) the average of the two highest ratings, if the difference between the highest and second-highest ratings is two or more ratings categories, and (iii) if S&P and/or Moody's shall cease to issue ratings of debt securities of real estate investment trusts generally, then the Administrative Agent and Kimco shall negotiate in good faith to agree upon a substitute rating agency or agencies (and to correlate the system of ratings of such substitute rating agency with that of the rating agency for which it is substituting) and (a) until such substitute rating agency or agencies are agreed upon, Status shall be determined on the basis of the rating assigned by the other rating agency (or, if both S&P and Moody's shall have so ceased to issue such ratings, on the basis of the Status in effect immediately prior thereto) and (b) after such substitute rating agency or agencies are agreed upon, Status shall be determined on the basis of the rating assigned by the other rating agency and such substitute rating agency or the two substitute rating agencies, as the case may be.

Notwithstanding the foregoing, if and for so long as (i) the Leverage Ratio as of the last day of the most recently ending fiscal quarter of Kimco as set forth in the corresponding compliance certificate delivered pursuant to Section 6.2 is equal to or less than 0.32 to 1.0 or, for only one fiscal quarter ending on or following September 30, 2022, greater than 0.32 to 1.0 but less than or equal to 0.35 to 1.0 and (ii) Kimco has a long-term senior unsecured debt rating of BBB+ or better by S&P and Baa1 or better by Moody's, then Level II Status shall apply.

Each change in the Applicable Margin, Facility Fee Rate and L/C Fee Rate shall be effective commencing on the next Business Day following the earlier to occur of (A) the Administrative Agent's receipt of notice from Kimco of an applicable change in ~~its~~**Kimco's** long-term senior unsecured debt rating and (B) the Administrative Agent's actual knowledge of an applicable change in Kimco's long-term senior unsecured debt rating (or, if the Leverage Ratio is applicable pursuant to the sentence above, one Business Day after the delivery by Kimco of the Administrative Agent pursuant to Section 6.2(b) of the compliance certificate for the relevant quarterly period). If Kimco fails to timely deliver a compliance certificate pursuant to Section 6.2(b), the Applicable Margin, Facility Fee Rate and L/C Fee Rate shall be determined without reference to the sentence above until the first Business Day of the calendar month immediately following the month that the required compliance certificate is delivered.

"Statutory Reserve Rate": a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Federal Reserve Board to which the Administrative Agent is subject with respect to the CDOR Rate, Adjusted EURIBOR Rate or Adjusted TIBOR Rate, as applicable, for eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D). Such reserve percentage shall include those imposed pursuant to Regulation D or any other reserve ratio or analogous requirement of any central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Loans denominated in Canadian Dollars, Euros or Yen. Term Benchmark Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Sterling" or "£": the lawful money of the United Kingdom.

"Subsidiary": as to any Person, a corporation, limited liability company, partnership or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, limited liability company, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a direct or indirect Subsidiary or Subsidiaries of Kimco.

"Subsidiary Borrower Representation and Warranty Date": the date of the making of any Loan (other than the date of an Excluded Borrowing) to, or the issuance, renewal, extension or amendment of any Letter of Credit for the account of, any Subsidiary Borrower.

"Subsidiary Borrowers": as defined in Section 10.10.

"Subsidiary Guarantee": each guarantee, substantially in the form of Exhibit C, executed and delivered by a Subsidiary Guarantor, in accordance with the terms of this Agreement.

"Subsidiary Guarantor": as defined in Section 10.10.

"Sustainability Baseline": as of any determination date shall mean the Sustainability Metric for the Sustainability Metric Base Year, as such amount shall be adjusted to reflect dispositions or acquisitions of properties or assets by Kimco, any of its Consolidated Entities or any of its Unconsolidated Entities since the Sustainability Metric Base Year, in accordance with GHG Protocol Corporate Reporting and Accounting Standard.

"Sustainability Metric Base Year" : the fiscal year ended on December 31, 2018.

"Sustainability Metric": for any fiscal year of ~~Kimco~~**Ultimate Parent**, (a) the total Direct (Scope 1) & Energy Direct (Scope 2) Greenhouse Gas Emissions ("GHG Emissions"), measured in metric tonnes CO2 (carbon dioxide) equivalent ("CO2e"), of Kimco together with the Consolidated Entities and the Unconsolidated Entities during such fiscal year (determined and calculated according to the GHG Protocol Corporate Reporting and Accounting Standard using the Control Approach for defining relevant emissions sources) minus (b) Qualified emissions offsets (such as renewable energy certificates (RECs)) of Kimco together with the Consolidated Entities and the Unconsolidated Entities during such fiscal year (including any such offsets in which Kimco, any of its Consolidated Entities or any of its Unconsolidated Entities has an interest including as a result of purchasing environmental attributes of projects other than those owned directly by Kimco, any of its Consolidated Entities or any of its Unconsolidated Entities). GHG Emissions will be quantified after the end of each fiscal year based on invoice data collected in **Ultimate Parent and** Kimco's utility management system. Such determination shall be verified by an independent third party in accordance with Tier II of the Emission Reduction Ton ("ERT") standard corporate greenhouse gas verification guideline as described in the GHG Protocol Corporate Reporting and Accounting Standard, or in accordance with another CDP-approved standard identified by **Ultimate Parent or** Kimco.

"Sustainability Metric Grid": as defined in the definition of "Applicable Margin".

"Sustainability Metric Target": with respect to any fiscal year of ~~Kimco~~**Ultimate Parent**, the Sustainability Metric, specified in the table below for the corresponding fiscal year specified below

Fiscal Year	Sustainability Metric Target
2019	99% of the Sustainability Baseline
2020	98% of the Sustainability Baseline
2021	97% of the Sustainability Baseline
2022	96% of the Sustainability Baseline
2023 and thereafter	95% of the Sustainability Baseline

"Swap Agreement": any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of Kimco or any Affiliate thereof shall be a Swap Agreement.

"Swap Obligation": 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.

"Syndication Agents": as defined in the introductory paragraph hereof.

"TARGET Day": any day on which TARGET2 is open for the settlement of payments in Euros.

"TARGET2": the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET2) payment system (or, if such payment system ceases to be operative, such other payment system reasonably determined by the Administrative Agent to be a suitable replacement) for the settlement of payments in Euros.

"Taxes": any present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term Benchmark": when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted Term SOFR Rate, the CDOR Rate, the Adjusted EURIBOR Rate or the Adjusted TIBOR Rate.

"Term Benchmark Loans": Revolving Credit Loans and Competitive Loans, the rate of interest applicable to which is based upon the Adjusted Term SOFR Rate, the CDOR Rate, the Adjusted EURIBOR Rate or the Adjusted TIBOR Rate.

"Term Benchmark Tranche": the collective reference to Term Benchmark Loans the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Loans shall originally have been made on the same day).

"Term SOFR Determination Day": assigned to it under the definition of Term SOFR Reference Rate.

"Term SOFR Rate": with respect to any Term Benchmark Borrowing denominated in Dollars and for any tenor comparable to the applicable Interest Period, the Term SOFR Reference Rate at approximately 5:00 a.m., Chicago time, two (2) U.S. Government Securities Business Days prior to the commencement of such tenor comparable to the applicable Interest Period, as such rate is published by the CME Term SOFR Administrator.

"Term SOFR Reference Rate": for any day and time (such day, the "Term SOFR Determination Day"), with respect to any Term Benchmark Borrowing denominated in Dollars and for any tenor comparable to the applicable Interest Period, the rate per annum determined by the Administrative Agent as the forward-looking term rate based on SOFR. If by 5:00 pm (New York City time) on such Term SOFR Determination Day, the "Term SOFR Reference Rate" for the applicable tenor has not been published by the CME Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Rate has not occurred, then the Term SOFR Reference Rate for such Term SOFR Determination Day will be the Term SOFR Reference Rate as published in respect of the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate was published by the CME Term SOFR Administrator, so long as such first preceding Business Day is not more than five (5) Business Days prior to such Term SOFR Determination Day.

"Termination Date": the date that is the earliest to occur of (a) the Maturity Date, (b) the date on which the Revolving Commitments hereunder shall be terminated or otherwise permanently reduced to zero pursuant to this Agreement, and (c) the date on which the Loans shall become due and payable hereunder by acceleration.

"Test Period": a period of four (4) consecutive fiscal quarters of ~~Kimco~~**Ultimate Parent**.

"TIBOR Rate": with respect to any Term Benchmark Borrowing denominated in Yen and for any Interest Period, the TIBOR Screen Rate two Business Days prior to the commencement of such Interest Period.

"TIBOR Screen Rate": the Tokyo interbank offered rate administered by the Ippan Shadan Hojin JBA TIBOR Administration (or any other person which takes over the administration of that rate) for the relevant currency and period displayed on page DTIBOR01 of the Reuters screen (or, in the event such rate does not appear on such Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate as selected by the Administrative Agent from time to time in its reasonable discretion) as published at approximately 1:00 p.m. Japan time two Business Days prior to the commencement of such Interest Period. If the TIBOR Screen Rate shall be less than 0.00%, the TIBOR Screen Rate shall be deemed to be 0.00% for purposes of this Agreement.

"Total Adjusted EBITDA": for any Test Period, Total EBITDA for such period minus (without duplication) (i) replacement reserves of $0.15 per square foot of gross leasable area per annum, pro-rated for the applicable period, (ii) non-cash revenue and expense for such period attributable to straight-lining of rents, (iii) EBITDA for such period attributable to Unconsolidated Entities, (iv) income for such period from mezzanine and mortgage loan receivables, (v) dividend and interest income from marketable securities, (vi) EBITDA for such period attributable to Properties acquired within 24 months prior to the last day of such Test Period, and (vii) ~~Kimco's~~**Ultimate Parent's** and its Affiliates' management fee income and other income (excluding all items referred to in any other clause of this definition) for such period not attributable to Properties to the extent that such items referred to in this clause (vii), in the aggregate, exceed 15% of Total EBITDA.

"Total Adjusted Interest Expense": actual interest expense (accrued, paid, capitalized, and reduced by forgiven accrued amounts) of Kimco and the Consolidated Entities but excluding (i) non-cash interest expense with respect to convertible debt, (ii) amortization of above/below-market debt amounts and of deferred financing costs, (iii) facility fees attributable to the unused portion of the Revolving Credit Facility, and (iv) prepayment penalties.

"Total Debt Service": in respect of any Test Period, Total Adjusted Interest Expense plus scheduled principal debt amortization for Kimco and the Consolidated Entities on the aggregate principal amount of their respective Indebtedness (provided that there shall be excluded optional prepayments and balloon payments due at maturity, and non-cash interest expense with respect to convertible debt, and provided, further, that the amount of any scheduled principal debt amortization payment paid during such Test Period with respect to Indebtedness related to a property acquired during such Test Period or otherwise assumed in connection with an acquisition consummated during such Test Period shall be limited, for purposes of calculating Total Debt Service, in proportion to the fraction of such Test Period during which Kimco or another Consolidated Entity owned such property or had assumed such Indebtedness, as applicable), plus preferred stock dividends paid during such Test Period.

"Total EBITDA": for any period, Adjusted Net Income of Kimco and the Consolidated Entities before any provision or benefit for income taxes, interest expense, depreciation, amortization, gains or losses on (i) sales of operating real estate and (ii) marketable securities, noncash impairment charges, acquisition costs, gains or losses on extraordinary items and gains or losses on early extinguishment of debt, plus, without duplication, EBITDA of Unconsolidated Entities.

"Total Indebtedness": as of any date of determination, the principal amount of all Indebtedness of Kimco, of ~~its~~**any** Wholly Owned Subsidiaries and of any other Consolidated Entities, outstanding at such date.

"Total Priority Indebtedness": as of any date of determination, the aggregate of (a) Indebtedness of Kimco or of any of the Consolidated Entities outstanding as of such date, secured by any asset of Kimco or the Consolidated Entities, and (b) all unsecured third party Indebtedness of the Consolidated Entities to Persons other than Kimco or any Consolidated Entity outstanding as of such date except to the extent that such unsecured third party Indebtedness is unconditionally and irrevocably guaranteed by **Ultimate Parent or** Kimco.

"Total Unsecured Interest Expense": actual interest expense (accrued, paid, or capitalized) on all Unsecured Debt of Kimco or any Consolidated Entity, but excluding (i) non-cash interest expense with respect to convertible debt, (ii) amortization of above/below-market debt amounts and of deferred financing costs, (iii) facility fees attributable to the unused portion of the Revolving Credit Facility and (iv) prepayment penalties.

"Tranche": any Term Benchmark Tranche or Money Market Tranche.

"Tranche A Commitment": as to any Lender, the obligation (if any) to make Tranche A Loans to and/or issue or participate in Tranche A Letters of Credit issued on behalf of Borrowers hereunder in an aggregate principal and/or face amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 1.1A under the heading "Tranche A Commitment (Dollars Only)," as such amount may be changed from time to time in accordance with the provisions of this Agreement. The initial aggregate amount of the Lenders' Tranche A Commitments is $1,750,000,000.

"Tranche A Exposure": as to any Lender at any time, an amount equal to the sum of (a) the outstanding aggregate amount of such Lender's Tranche A Loans at such time and (b) such Lender's Applicable Percentage of the Tranche A L/C Obligations then outstanding.

"Tranche A L/C Obligations": at any time, an amount equal to the sum of (a) the aggregate then undrawn and unexpired amount of the then outstanding Tranche A Letters of Credit and (b) the aggregate amount of drawings under Tranche A Letters of Credit that have not then been reimbursed pursuant to Section 3.5(a).

"Tranche A Letters of Credit": letters of credit issued by the Issuing Lender pursuant to this Agreement, to the extent such Letters of Credit are deemed, pursuant to the provisions of this Agreement, to be a use of the Tranche A Commitment, including the letters of credit referred to in Schedule 3.10.

"Tranche A Loans": Revolving Credit Loans made by the Lenders pursuant to this Agreement, to the extent such Loans are deemed, pursuant to the provisions of this Agreement, to be a use of the Tranche A Commitment.

"Tranche B Commitment": as to any Lender, the obligation (if any) to make Tranche B Loans to and/or issue or participate in Tranche B Letters of Credit issued on behalf of Borrowers hereunder in an aggregate principal and/or face amount at any one time outstanding not to exceed the amount set forth opposite such Lender's name on Schedule 1.1A under the heading "Tranche B Commitment (Dollars or Alternate Currency)," as such amount may be changed from time to time in accordance with the provisions of this Agreement, including any pre-approved increases pursuant to Section 2.18. The initial aggregate amount of the Lenders' Tranche B Commitments is $250,000,000.

"Tranche B Exposure": as to any Lender at any time, an amount equal to the sum of (a) the Dollar Equivalent of the outstanding aggregate amount of such Lender's Tranche B Loans at such time and (b) such Lender's Applicable Percentage of the Tranche B L/C Obligations then outstanding.

"Tranche B L/C Obligations": at any time, an amount equal to the sum of (a) the Dollar Equivalent of the aggregate then undrawn and unexpired amount of the then outstanding Tranche B Letters of Credit and (b) the Dollar Equivalent of the aggregate amount of drawings under Tranche B Letters of Credit that have not then been reimbursed pursuant to Section 3.5(a).

"Tranche B Letters of Credit": letters of credit issued by the Issuing Lender pursuant to this Agreement, to the extent such Letters of Credit are deemed, pursuant to the provisions of this Agreement, to be a use of the Tranche B Commitment, including the letters of credit referred to in Schedule 3.10.

"Tranche B Loans": Revolving Credit Loans made by the Lenders pursuant to this Agreement, to the extent such Loans are deemed, pursuant to the provisions of this Agreement, to be a use of the Tranche B Commitment.

"Transferee": as defined in Section 10.7.

"Type": as to any Revolving Credit Loan, its nature as an ABR Loan, a Term Benchmark Loan, RFR Loan, a Canadian Prime Rate Loan or a Money Market Loan; and as to any Competitive Loan, its nature as a Term Benchmark Loan or a Fixed Rate Loan.

"UK Financial Institution": 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": the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Ultimate Parent"**: Kimco Realty Corporation**, a Maryland corporation**.**

"Unadjusted Benchmark Replacement": the Benchmark Replacement excluding the Benchmark Replacement Adjustment; provided that, if the Unadjusted Benchmark Replacement as so determined would be less than zero, the Unadjusted Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

"Unconsolidated Entity": as of any date of determination, a corporation, partnership, limited liability company, trust, joint venture, or other business entity in which ~~Kimco~~**Ultimate Parent**, directly or indirectly through ownership of one or more intermediary entities, owns an equity interest but that is not required in accordance with GAAP to be consolidated with ~~Kimco~~**Ultimate Parent** for financial reporting purposes (including, for the avoidance of doubt, (i) any entity in which the only investment by ~~Kimco~~**Ultimate Parent** or any Affiliate thereof consists of preferred stock or securities of another entity having characteristics analogous to those of preferred stock, and (ii) any entity as to which ~~Kimco~~**Ultimate Parent** (together with its Affiliates) does not have the power to direct the acquisition, financing, disposition and other major decisions regarding property owned by such entity).

"unencumbered": with respect to any asset, as of any date of determination, the circumstance that such asset on such date (a) is not subject to any Liens or claims (including restrictions on transferability or assignability) of any kind (excluding Permitted Encumbrances), (b) is not subject to any agreement (including (i) any agreement governing Indebtedness incurred in order to finance or refinance the acquisition of such asset and (ii) if applicable, the organizational documents of any Entity) which prohibits or restricts in a material manner ~~Kimco~~**Ultimate Parent** or any of the Entities from creating, incurring, assuming or suffering to exist any Lien upon, or conveying, selling, leasing, transferring or otherwise disposing of, any assets or Capital Stock of ~~Kimco~~**Ultimate Parent** or any of the Entities (excluding any agreement which limits generally the amount of secured Indebtedness which may be incurred by ~~Kimco~~**Ultimate Parent** and the Entities) and (c) is not subject to any agreement (including any agreement governing Indebtedness incurred in order to finance or refinance the acquisition of such asset) which entitles any Person to the benefit of any Lien (other than Permitted Encumbrances) on any assets or Capital Stock of ~~Kimco~~**Ultimate Parent** or any of the Entities, or would entitle any Person to the benefit of any Lien (other than Permitted Encumbrances) on such assets or Capital Stock upon the occurrence of any contingency (other than pursuant to an "equal and ratable" clause contained in any agreement governing Indebtedness).

"Unencumbered Assets NOI": for any period, Unencumbered Property NOI, plus (a) 75% of management fee revenues earned by ~~Kimco~~**Ultimate Parent** and ~~its~~**the** Wholly Owned Subsidiaries in respect of properties owned by any Unconsolidated Entity, plus (b) the sum of dividend and interest income from unencumbered marketable securities and unencumbered mezzanine and mortgage loan receivables; provided that management fee revenues earned in respect of properties owned by any Unconsolidated Entity, dividend and interest income from unencumbered mezzanine loan receivables and Unencumbered Assets NOI attributable to assets located outside of the United States and Puerto Rico or to assets owned by Entities not organized in and not having principal offices in the United States or Puerto Rico shall not be taken into account to the extent the sum of all such items exceeds 30% of Unencumbered Assets NOI for the applicable period.

"Unencumbered Properties": (a) Properties wholly owned by **Ultimate Parent,** Kimco or by a Wholly Owned Subsidiary (or in which **Ultimate Parent,** Kimco or a Wholly Owned Subsidiary has a leasehold interest to the extent eligible pursuant to clause (b) of the second sentence of the definition of the term "Unencumbered Property NOI"), as to which **Ultimate Parent or** Kimco has control, which Properties are unencumbered (including freedom from restrictions, whether on the Property itself or the entity holding such Property, on pledging such Property or the stock, limited liability company interests, partnership interests, or other ownership interests of any Person having an ownership interest in such Property as collateral or selling such Property), and (b) other unencumbered Properties as to which **Ultimate Parent,** Kimco or a Wholly Owned Subsidiary owns (directly or through the ownership of an interest in a Consolidated Entity) a majority of the equity interests or has a leasehold interest, as above, and has the power to direct acquisition, disposition, financing, and other major property decisions (which shall not include Properties owned by or through Unconsolidated Entities); provided that no such Property shall be treated as an Unencumbered Property at any time during which any Person (other than **Ultimate Parent or** Kimco) having any direct or indirect ownership interest in such Property (a "Property Owner") has any Indebtedness or has any obligation or liability, whether primary, secondary, direct, indirect, fixed, contingent, or otherwise (including as a guarantor or other surety or accommodation party, as the general partner of a partnership that has Recourse Indebtedness, under applicable law, or otherwise) in respect of any Indebtedness (an "Obligated Property Owner"), unless at such time each such Obligated Property Owner is a Wholly Owned Subsidiary ~~of Kimco~~ and a Subsidiary Guarantor pursuant to an effective Subsidiary Guarantee.

"Unencumbered Property NOI": for any period, Property NOI for such period of Unencumbered Properties owned by **Ultimate Parent,** Kimco or a Wholly Owned Subsidiary and the percentage equal to ~~Kimco's~~**the** Ownership Percentage interest in the applicable Property of Property NOI for such period of other Unencumbered Properties, in each case net of (x) management fees of 3% of revenues and (y) replacement reserves of $0.15 per square foot per annum (pro-rated for the applicable Test Period) of gross leasable area, from Unencumbered Properties. For the purpose of determining Unencumbered Property NOI, (a) no property owned by any Unconsolidated Entity shall be included and (b) leasehold positions will be eligible if (i) with respect to the lease term, either (x) more than 25 years remains in such lease term or (y) such lease term is renewable in the sole discretion of **Ultimate Parent or** Kimco for one or more successive periods aggregating (together with the remaining current lease term) more than 25 years so long as, in the case of this clause (y), periodic rent increases shall be at levels comparable to those that are customarily applicable to leases having initial terms in excess of 25 years, and (ii) such leasehold position is mortgageable and the terms of the lease include customary secured lender protections (including that (A) the lessor shall notify any holder of a security interest in such leasehold interest of the occurrence of any default by the lessee under such lease and shall afford such holder the right to cure such default, and (B) in the event that such lease is terminated, such holder shall have the option to enter into a new lease having terms substantially identical to those contained in the terminated lease).

"Uniform Customs": the Uniform Customs and Practice for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600, and if acceptable to the Issuing Lender in its sole discretion, as the same may be amended or revised from time to time.

"United States": the United States of America, including the States and the District of Columbia, but excluding its territories and possessions.

"Unrestricted Cash and Cash Equivalents": as of any date of determination, the sum of (a) the Dollar Equivalent of the aggregate amount of Unrestricted cash then held by Kimco or any of the Consolidated Entities and (b) the Dollar Equivalent of the aggregate amount of Unrestricted Cash Equivalents (valued at the lower of cost and fair market value) then held by Kimco or any of the Consolidated Entities. As used in this definition, "Unrestricted" means, with respect to any asset, the circumstance that such asset is not subject to any Liens or claims of any kind in favor of any Person.

"Unsecured Debt": all Indebtedness which is not secured by a Lien on any income, Capital Stock, property or asset; provided that Unsecured Debt shall not include any Indebtedness included in the calculation of Total Priority Indebtedness.

"U.S. Government Securities Business Day": any day except for (i) a Saturday, (ii) a Sunday or (iii) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"U.S. Person": a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"U.S. Tax Certificate": as defined in Section 2.12(d)(ii)(D).

"Wells Fargo": Wells Fargo Bank, National Association.

"Wholly Owned Subsidiary": **as to any Person,** any entity all of the capital stock of which and any and all equivalent ownership interests of which (other than directors' qualifying shares required by law) are owned by ~~Kimco~~**such Person** directly or indirectly through one or more **of such Person's** Wholly Owned Subsidiaries. **Unless otherwise qualified, all references to a "Wholly Owned Subsidiary" or to "Wholly Owned Subsidiaries" in this Agreement shall be a collective reference to, without duplication, all (a) Wholly Owned Subsidiaries of Ultimate Parent** and (b) **Wholly Owned Subsidiaries of Kimco.**

"Withholding Agent": any Loan Party and the Administrative Agent.

"Write-Down and Conversion Powers": (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

"Yen" or "¥": the lawful money of Japan.

SECTION 1.2 Other Definitional Provisions; Interpretation.

(a) Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in any other Loan Document or any certificate or other document made or delivered pursuant hereto or thereto.

(b) Without limiting Section 1.3, as used herein and in any other Loan Document, and any certificate or other document made or delivered pursuant hereto or thereto, accounting terms relating to Kimco and its Subsidiaries not defined in Section 1.1 and accounting terms partly defined in Section 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP.

(c) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Article, Section, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(d) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

(e) Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms.

(f) The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

(g) The word "will" shall be construed to have the same meaning and effect as the word "shall".

(h) Unless the context requires otherwise (i) 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), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, and (iii) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.3 Accounting Terms; GAAP.

Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if Kimco notifies the Administrative Agent that Kimco requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies Kimco that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective (and the Administrative Agent, the Lenders and the Borrowers shall negotiate in good faith to amend such provision to preserve the original intent thereof in light of such change in GAAP) until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding the foregoing, leases shall continue to be classified and accounted for on a basis consistent with that reflected in the audited consolidated financial statements of Kimco for the fiscal year December 31, 2015 for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the requisite parties hereto shall enter into a mutually acceptable amendment addressing such changes.

SECTION 1.4 Exchange Rates.

(a) Not later than 12:00 noon, New York City time, three (3) Business Days prior to each Calculation Date beginning with the date that is the earlier of the date on which the initial Alternate Currency Borrowing is made or the initial Letter of Credit denominated in an Alternate Currency is issued, as the case may be, the Administrative Agent shall determine the Exchange Rate as of such Calculation Date with respect to each relevant Alternate Currency. The Exchange Rates so determined shall become effective on the relevant Calculation Date, shall remain effective until the next succeeding Calculation Date, and shall for all purposes of this Agreement (other than Section 2.2, Section 10.20, or any other provision expressly requiring the use of a current Exchange Rate) be the Exchange Rates employed in converting any amounts between dollars and any Alternate Currency.

(b) Not later than 5:00 p.m., New York City time, on each Calculation Date, the Administrative Agent shall determine the aggregate amount of the Dollar Equivalents of the principal amounts of Alternate Currency Loans or L/C Obligations then outstanding (after giving effect to any Alternate Currency Loans made or repaid on such date or any L/C Obligations incurred or repaid on such date). The Administrative Agent shall determine the aggregate amount of the Dollar Equivalent of all other amounts denominated in an Alternate Currency at the applicable time provided for its making such determination pursuant to this Agreement (and such determinations shall be conclusive and binding on the parties hereto in the absence of manifest error).

SECTION 1.5 Interest Rates; Benchmark Notification. The interest rate on a Loan denominated in Dollars or an Alternate Currency may be derived from an interest rate benchmark that may be discontinued or is, or may in the future become, the subject of regulatory reform. Upon the occurrence of a Benchmark Transition Event, Section 2.8(c) provides a mechanism for determining an alternative rate of interest. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission, performance or any other matter related to any interest rate used in this Agreement, or with respect to any alternative or successor rate thereto, or replacement rate thereof, including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the existing interest rate being replaced or have the same volume or liquidity as did any existing interest rate prior to its discontinuance or unavailability. The Administrative Agent and its affiliates and/or other related entities may engage in transactions that affect the calculation of any interest rate used in this Agreement or any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain any interest rate used in this Agreement, any component thereof, or rates referenced in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

SECTION 1.6 Letter of Credit Amounts.

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

SECTION 1.7 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 and acquired on the first date of its existence by the holders of its equity interests at such time.

ARTICLE II

THE LOANS

SECTION 2.1 Competitive Bid Procedure.

(a) Subject to the terms and conditions set forth herein, from time to time during the Commitment Period, Kimco may request Competitive Bids and may (but shall not have any obligation to) accept Competitive Bids and borrow Competitive Loans denominated in Dollars in an aggregate principal amount outstanding at any time not to exceed fifty percent (50%) of the aggregate Revolving Commitments; provided that after giving effect thereto the sum of the total Revolving Exposure of all the Lenders plus the aggregate principal amount of outstanding Competitive Loans shall not exceed the total Revolving Commitments. Competitive Loans shall not be available in any Alternate Currency. To request Competitive Bids, Kimco shall notify the Administrative Agent of such request by telephone (x)in the case of a borrowing of Competitive Loans based on an Adjusted Term SOFR Rate, not later than 10:30 a.m. (Central time) four (4) Business Days before the date of the proposed borrowing, and (y) in the case of a borrowing of Fixed Rate Loans, not later than 10:30 a.m. (Central time), one (1) Business Day before the date of the proposed borrowing; provided that Kimco may submit up to (but not more than) three (3) Competitive Bid Requests on the same day, but a Competitive Bid Request shall not be made within two (2) Business Days after the date of any previous Competitive Bid Request, unless any and all such previous Competitive Bid Requests shall have been withdrawn or all Competitive Bids received in response thereto rejected. Each such telephonic Competitive Bid Request shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Competitive Bid Request in a form approved by the Administrative Agent and signed by Kimco. Each such telephonic and written Competitive Bid Request shall specify the following information:

(i) the aggregate amount of the requested Borrowing, which shall be in Dollars;

(ii) the date of such Borrowing, which shall be a Business Day;

(iii) whether such Borrowing is to be based on an Adjusted Term SOFR Rate or at a Fixed Rate;

(iv) the Interest Period to be applicable to such Borrowing, which shall be a period contemplated by the definition of the term "Interest Period";

(v) the date of maturity of such Borrowing; and

(vi) the location and number of Kimco's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.2(d).

Promptly following receipt of a Competitive Bid Request in accordance with this Section, the Administrative Agent shall notify the Lenders of the details thereof by telecopy, inviting the Lenders to submit Competitive Bids.

(b) Each Lender may (but shall not have any obligation to) make one or more Competitive Bids to Kimco in response to a Competitive Bid Request. Each Competitive Bid by a Lender must be in a form approved by the Administrative Agent and must be received by the Administrative Agent by telecopy (x) in the case of a borrowing of a Competitive Loan at a rate based on the Adjusted Term SOFR Rate, not later than 10:30 a.m. (Central time) three (3) Business Days before the proposed date of such borrowing, and (y) in the case of a borrowing of a Fixed Rate Loan, not later than 10:30 a.m. (Central time) on the proposed date of such borrowing. Competitive Bids that do not conform substantially to the form approved by the Administrative Agent may be rejected by the Administrative Agent, and the Administrative Agent shall notify the applicable Lender as promptly as practicable. Each Competitive Bid shall specify (i) the principal amount (which shall be a minimum of $5,000,000 and an integral multiple of $1,000,000 and which may equal the entire principal amount of the borrowing of a Competitive Loan requested by Kimco) of the Competitive Loan or Loans that the applicable Lender is willing to make, (ii) the Competitive Bid Rate or Rates (including, in the case of a Competitive Loan based on the Adjusted Term SOFR Rate, the Adjusted Term SOFR Rate quoted by such Lender for the requested Interest Period) at which such Lender is prepared to make such Loan or Loans (expressed as a percentage rate per annum in the form of a decimal to no more than four decimal places) and (iii) the Interest Period applicable to each such Loan and the last day thereof.

(c) The Administrative Agent shall promptly notify Kimco by telecopy of the Competitive Bid Rate and the principal amount specified in each Competitive Bid and the identity of the Lender that shall have made such Competitive Bid.

(d) Subject only to the provisions of this paragraph, Kimco may accept or reject any Competitive Bid. Kimco shall notify the Administrative Agent by telephone, confirmed by telecopy in a form approved by the Administrative Agent, whether and to what extent it has decided to accept or reject each Competitive Bid (x) in the case of a Competitive Loan based on an Adjusted Term SOFR Rate, not later than 11:30 a.m. (Central time) three (3) Business Days before the date of the proposed borrowing, and (y) in the case of a Fixed Rate Loan, not later than 11:30 a.m. (Central time) on the proposed date of the borrowing; provided that (i) the failure of Kimco to give any such notice shall be deemed to be a rejection of each Competitive Bid, (ii) Kimco shall not accept a Competitive Bid made at a particular Competitive Bid Rate if Kimco rejects a Competitive Bid made at a lower Competitive Bid Rate, (iii) the aggregate amount of the Competitive Bids accepted by Kimco shall not exceed the aggregate amount of the requested borrowing for Competitive Loans specified in the related Competitive Bid Request, (iv) to the extent necessary to comply with clause (iii) above, Kimco may accept Competitive Bids at the same Competitive Bid Rate in part, which acceptance, in the case of multiple Competitive Bids at such Competitive Bid Rate, shall be made pro rata in accordance with the amount of each such Competitive Bid, and (v) except pursuant to clause (iv) above, no Competitive Bid shall be accepted for a Competitive Loan unless such Competitive Loan is in a minimum principal amount of $5,000,000 and an integral multiple of $1,000,000; provided, further, that if a Competitive Loan must be in an amount less than $5,000,000 because of the provisions of clause (iv) above, such Competitive Loan may be for a minimum of $1,000,000 or any integral multiple thereof, and in calculating the pro rata allocation of acceptances of portions of multiple Competitive Bids at a particular Competitive Bid Rate pursuant to clause (iv) the amounts shall be rounded to integral multiples of $1,000,000 in a manner determined by Kimco. A notice given by Kimco pursuant to this paragraph shall be irrevocable.

(e) The Administrative Agent shall promptly notify each bidding Lender by telecopy whether or not its Competitive Bid has been accepted (and, if so, the amount and Competitive Bid Rate so accepted), and each successful bidder will thereupon become bound, subject to the terms and conditions hereof, to make the Competitive Loan in respect of which its Competitive Bid has been accepted.

(f) If the entity which is the Administrative Agent shall elect to submit a Competitive Bid in its capacity as a Lender, it shall submit such Competitive Bid directly to Kimco at least one quarter of an hour earlier than the time by which the other Lenders are required to submit their Competitive Bids to the Administrative Agent pursuant to paragraph (b) of this Section.

SECTION 2.2 Loans; Etc.

(a) Revolving Commitments.

(i) Subject to the terms and conditions hereof, each Lender severally agrees to make revolving credit loans ("Revolving Credit Loans") to the Borrowers, without double-counting (i.e., amounts advanced by a Lender in respect of its Tranche A Commitment shall not be counted in reduction of its Tranche B Commitment, or vice versa) (x) in the case of Lenders with a Tranche A Commitment, in Dollars only, from time to time during the Commitment Period in an aggregate principal amount at any one time outstanding which, when added to such Lender's Applicable Percentage of the then outstanding Tranche A L/C Obligations, does not exceed the amount of such Lender's Tranche A Commitment, and (y) in the case of Lenders with a Tranche B Commitment, in Dollars or in an Alternate Currency, from time to time during the Commitment Period in an aggregate principal amount at any one time outstanding the Dollar Equivalent of which, when added to such Lender's Applicable Percentage of the then outstanding Tranche B L/C Obligations, does not exceed the amount of such Lender's Tranche B Commitment; provided that no Money Market Loan shall be available in an Alternate Currency. During the Commitment Period the Borrowers may use the Revolving Commitments by borrowing, prepaying the Revolving Credit Loans in whole or in part, and reborrowing, all in accordance with the terms and conditions hereof. Notwithstanding anything to the contrary contained in this Agreement, in no event shall, at any time, the sum of the Revolving Exposure of all of the Lenders plus the aggregate principal amount of outstanding Competitive Loans exceed the aggregate Revolving Commitments then in effect.

(ii) Each Revolving Credit Loan shall be made as part of a Borrowing consisting of Revolving Credit Loans made by the Lenders in accordance with their respective Applicable Percentages of the Tranche A Commitments or the Tranche B Commitments, as applicable, and to the extent such Revolving Credit Loan is made shall constitute a use of the Tranche A Commitment or the Tranche B Commitment, as applicable. Each Competitive Loan shall be made in accordance with the procedures set forth in Section 2.1. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Revolving Commitments and Competitive Bids of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(iii) Subject to Section 2.8 and Section 2.10, (x) Revolving Credit Loans denominated in Dollars may from time to time be Term Benchmark Loans, ABR Loans, RFR Loans, or Money Market Loans or a combination thereof, as determined by the applicable Borrower and notified to the Administrative Agent in accordance with Sections 2.2(d) and 2.4, and (y) Revolving Credit Loans denominated in Canadian Dollars may from time to time be Term Benchmark Loans or Canadian Prime Rate Loans, provided that no such Revolving Credit Loan described in this sentence shall be made as a Term Benchmark Loan after the day that is one (1) month prior to the Termination Date. Revolving Credit Loans denominated in an Alternate Currency (other than Canadian Dollars) shall be composed entirely of Term Benchmark Loans or RFR Loans, as applicable, and Revolving Credit Loans denominated in an Alternate Currency shall only be made using Tranche B Commitments. Each Lender at its option may make any Revolving Credit Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the applicable Borrower to repay such Loan in accordance with the terms of this Agreement; provided, further, that each applicable Lender shall at all times comply with the requirements of this Agreement in respect thereto, including Section 2.12, and no Lender shall make any such election if and to the extent the same would cause the applicable Borrower to increase its payment obligations hereunder. Subject to Section 2.8 and Section 2.10, any Competitive Loan may from time to time be a Term Benchmark Loans or a Fixed Rate Loan as the applicable Borrower may request in accordance with Section 2.1.

(b) Notes. The Revolving Credit Loans made by each Lender shall be evidenced by a promissory note executed and delivered by the applicable Borrower at the request of such Lender, substantially in the form of Exhibit B-1, with appropriate insertions as to payee and date (a "Revolving Credit Note"), payable to the order of such Lender in a principal amount equal to the aggregate unpaid principal amount of all Revolving Credit Loans made by such Lender. The Competitive Loans made by each Lender shall be evidenced by a promissory note executed and delivered by Kimco at the request of such Lender, substantially in the form of Exhibit B-2, with appropriate insertions as to payee and date (a "Competitive Loan Note"), payable to the order of such Lender. Each Lender is hereby authorized to record, as applicable, the date, Type and amount of each Revolving Credit Loan or Competitive Loan made by such Lender, each continuation thereof, each conversion of all or a portion thereof to another Type, the date and amount of each payment or prepayment of principal thereof and, in the case of Fixed Rate Loans and Term Benchmark Loans, the length of each Interest Period with respect thereto and, in the case of Money Market Loans, the Money Market Loan Maturity Date with respect thereto, on the schedule (including any continuation thereof) annexed to and constituting a part of its Revolving Credit Note or Competitive Loan Note, as the case may be, and any such recordation shall constitute prima facie evidence of the accuracy of the information so recorded; provided that the failure by any Lender to make any such recordation or any error in such recordation shall not affect the obligations of any Borrower under this Agreement or the Notes.

(c) Repayment of Loans. Kimco shall pay to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Competitive Loan on the last day of the Interest Period applicable to such Loan. Each Borrower shall repay all then outstanding Revolving Credit Loans and Competitive Loans made to such Borrower on the Termination Date (or, if earlier, the applicable Money Market Loan Maturity Date in respect of a Money Market Loan) to the Administrative Agent for the account of each Lender in the currency in which such Loan was made.

(d) Procedure for Borrowing Revolving Credit Loans. The Borrowers may borrow Revolving Credit Loans during the Commitment Period on any Business Day, provided that the applicable Borrower shall give the Administrative Agent irrevocable notice (which notice must be received by the Administrative Agent prior to 10:00 A.M., New York City time, (i) three (3) Business Days (or, in the case of any requested Borrowing in an Alternate Currency, four (4) Business Days) prior to the requested Borrowing Date, if all or any part of the requested Revolving Credit Loans are to be initially Term Benchmark Loans, (ii) five (5) Business Days prior to the requested Borrowing Date, if all or any part of the requested Revolving Credit Loans are to be initially RFR Loans denominated in Sterling, (iii) two (2) Business Days prior to the requested Borrowing Date, if all or any part of the requested Revolving Credit Loans are to be initially Money Market Loans, or (iv) on the Business Day which is the requested Borrowing Date, if the requested Revolving Credit Loans are to be initially ABR Loans, RFR Loans denominated in Dollars or Canadian Prime Rate Loans), specifying (A) the aggregate amount to be borrowed, (B) whether the amount to be borrowed will use the Tranche A Commitments or the Tranche B Commitments or, if a combination thereof, indicating the respective amounts thereof, (C) the requested Borrowing Date and, in the case of each Money Market Loan, the requested Money Market Loan Maturity Date, (D) whether the Borrowing is to be of Term Benchmark Loans, RFR Loans, ABR Loans, Money Market Loans, Canadian Prime Rate Loans or a combination thereof, (E) if a Term Benchmark Loan, the currency of such requested Revolving Credit Loan (which must be Dollars in the case of Revolving Credit Loans using the Tranche A Commitments), and (F) if the borrowing is to be entirely or partly of Term Benchmark Loans the respective amounts of each such Type of Revolving Credit Loan and the respective lengths of the initial Interest Periods therefor. Each borrowing under the Revolving Commitments shall be in an amount equal to (i) in the case of ABR Loans, RFR Loans denominated in Dollars or Canadian Prime Rate Loans, $5,000,000 or a whole multiple of $100,000 in excess thereof (or, if the then aggregate Available Commitments are less than $5,000,000, such lesser amount) and (ii) in the case of Term Benchmark Loans, RFR Loans denominated in Sterling or Money Market Loans, $5,000,000 or a whole multiple of $100,000 in excess thereof or the Dollar Equivalent in an Alternate Currency, in each case subject to Section 2.2(e). Upon receipt of any such notice from the applicable Borrower, the Administrative Agent shall promptly notify each Lender thereof. Each Lender will make the amount of its pro rata share of each such borrowing available to the Administrative Agent for the account of the applicable Borrower at the office of the Administrative Agent specified in Section 10.2 prior to 1:00 P.M., New York City time (or (i) in the case of Money Market Loans having a Money Market Loan Maturity Date of six (6) days or less from the relevant Borrowing Date, 3:00 P.M., New York City time and (ii) in the case of an Alternate Currency Borrowing, local time for the principal market of such currency), on the Borrowing Date requested by the applicable Borrower in funds immediately available to the Administrative Agent. Such borrowing will then be made available to the applicable Borrower by the Administrative Agent crediting the account of the applicable Borrower on the books of such office with the aggregate of the amounts made available to the Administrative Agent by the Lenders and in like funds as received by the Administrative Agent. In no event may the number of Money Market Loans requested in any calendar month exceed [six (6)]. In no event may the number of Money Market Loans requested in any calendar year exceed [thirty (30)].

(e) Tranches. Notwithstanding anything to the contrary in this Agreement, all Borrowings, prepayments, conversions and continuations of Revolving Credit Loans hereunder and all selections of Interest Periods hereunder shall be in such amounts and be made pursuant to such elections so that, after giving effect thereto, (i) the aggregate principal amount of the Revolving Credit Loans comprising each Tranche of Tranche A Loans and each Tranche of Tranche B Loans shall be equal to $5,000,000 or a whole multiple of $100,000 in excess thereof or the Dollar Equivalent in an Alternate Currency, and (ii) there shall be no more than fifteen (15) Term Benchmark Tranches and RFR Borrowings outstanding at any one time.

(f) Termination or Reduction of Revolving Commitments. Kimco shall have the right, upon not less than three (3) Business Days' notice to the Administrative Agent (which shall promptly notify each Lender thereof), to terminate the Revolving Commitments or, from time to time, to reduce the amount of the Tranche A Commitments and/or the Tranche B Commitments (as designated by Kimco); provided that no such termination or reduction shall be permitted if, after giving effect thereto and to any payments of the Revolving Credit Loans made on the effective date thereof, (i) the sum of the Tranche A Exposure of all the Lenders would exceed the Tranche A Commitments of all the Lenders, (ii) the sum of the Tranche B Exposure of all the Lenders would exceed the Tranche B Commitments of all the Lenders, (iii) the sum of the Revolving Exposure, plus the aggregate principal amount of the Competitive Loans then outstanding, would exceed the total Revolving Commitments then in effect or (x) the Available Commitment of any Lender would be less than zero. Any such notice may state that it is conditioned upon the occurrence or non-occurrence of any event specified therein, in which case such notice may be revoked by the applicable Borrower (by written notice to the Administrative Agent on or before the specified date of reduction or termination) if such condition is not satisfied. Any such reduction (other than, for the avoidance of doubt, pursuant to Section 10.10(a)) shall be in an amount equal to $50,000,000 or a whole multiple of $10,000,000 in excess thereof and shall reduce permanently the Revolving Commitments then in effect.

SECTION 2.3 Prepayments.

(a) Optional. Each Borrower may at any time and from time to time prepay the Revolving Credit Loans of such Borrower (subject, in the case of Term Benchmark Loans, RFR Loans and Money Market Loans to compliance with the terms of Section 2.2(e) and Section 2.13), in whole or in part, without premium or penalty, upon notice to the Administrative Agent, specifying the date and amount of prepayment and whether the prepayment is of Tranche A Loans, Tranche B Loans, Term Benchmark Loans, RFR Loans, ABR Loans, Money Market Loans, Canadian Prime Rate Loans or a combination thereof, and, if of a combination thereof, the amount allocable to each. Kimco may not prepay any Competitive Loan without the prior consent of the relevant Lender(s) thereof, except in connection with a prepayment pursuant to Section 10.10(a) hereof. Any such notice may state that it is conditioned upon the occurrence or non-occurrence of any event specified therein, in which case such notice may be revoked by the applicable Borrower (by written notice to the Administrative Agent on or before the specified date of prepayment) if such condition is not satisfied. Upon receipt of any notice of prepayment, the Administrative Agent shall promptly notify each Lender thereof. If any such notice is given, the amount specified in such notice shall be due and payable on the date specified therein, together with any amounts payable pursuant to Section 2.13. Subject to Section 2.2(e) and except in connection with a prepayment pursuant to Section 10.10(a), partial prepayments shall be in an aggregate principal amount of $5,000,000 (or, in the case of prepayments of any Alternate Currency Loans, the Dollar Equivalent of $5,000,000 at the time of such prepayment) or a whole multiple of $1,000,000 (or, in the case of prepayments of any Alternate Currency Loans, the Dollar Equivalent of $1,000,000 at the time of such prepayment) in excess thereof (or, if less, the aggregate outstanding principal amount of the Revolving Credit Loans).

(b) Mandatory. If, on any Calculation Date, for any reason, the sum of the Lenders' aggregate Tranche B Exposure exceeds one hundred five percent (105%) of the Lenders' aggregate Tranche B Commitments, then the applicable Borrower shall promptly prepay the Tranche B Loans (or if no Tranche B Loans are outstanding, cash collateralize Tranche B Letters of Credit (in the manner provided in Article VIII), if any, which shall then be treated solely for purposes of this paragraph as no longer outstanding to the extent so cash collateralized) in an aggregate amount sufficient such that, after giving effect thereto, the sum of the Lenders' aggregate Tranche B Exposure does not exceed one hundred percent (100%) of the Lenders' aggregate Tranche B Commitments.

SECTION 2.4 Conversion and Continuation Options.

(a) The applicable Borrower may elect from time to time to convert Term Benchmark Loans denominated in Dollars to ABR Loans or RFR Loans (or, with respect to Loans denominated in Canadian Dollars, Canadian Prime Rate Loans), by giving the Administrative Agent at least two (2) Business Days' prior irrevocable notice of such election; provided that any such conversion of Term Benchmark Loans may only be made on the last day of an Interest Period with respect thereto. The applicable Borrower may elect from time to time to convert ABR Loans, RFR Loans denominated in Dollars or Canadian Prime Rate Loans to Term Benchmark Loans by giving the Administrative Agent at least three (3) Business Days' prior irrevocable notice of such election. The applicable Borrower may elect from time to time to convert ABR Loans to RFR Loans denominated in Dollars or to convert RFR Loans denominated in Dollars to ABR Loans, in each case by giving the Administrative Agent at least one (1) Business Days' prior irrevocable notice of such election. Any such notice of conversion to Term Benchmark Loans shall specify the length of the initial Interest Period or Interest Periods therefor. Upon receipt of any such notice the Administrative Agent shall promptly notify each affected Lender thereof. All or any part of the outstanding Term Benchmark Loans, ABR Loans, RFR Loans denominated in Dollars and Canadian Prime Rate Loans may be converted as provided herein; provided that (i) no Loan may be converted into a Term Benchmark Loan when any Event of Default has occurred and is continuing and the Administrative Agent has or the Required Lenders have determined in its or their sole discretion that such a conversion is not appropriate, (ii) any such conversion may only be made if, after giving effect thereto, Section 2.2(e) would not be contravened, and (iii) no Revolving Credit Loan may be converted into a Term Benchmark Loan after the date that is one (1) month prior to the Termination Date.

(b) Any Term Benchmark Loans may be continued as such upon the expiration of the then current Interest Period with respect thereto by the applicable Borrower giving irrevocable notice to the Administrative Agent, in accordance with the applicable provisions of the term "Interest Period" set forth in Section 1.1, of the length of the next Interest Period to be applicable to such Loans, provided that no Term Benchmark Loan may be continued as such (i) when any Event of Default has occurred and is continuing and the Administrative Agent has or the Required Lenders have determined in its or their sole discretion that such a continuation is not appropriate, (ii) if, after giving effect thereto, Section 2.2(e) would be contravened, or (iii) after the date that is one month prior to the Termination Date, and provided, further, that if such Borrower shall fail to give any required notice as described above in this paragraph or if such continuation is not permitted pursuant to the preceding proviso such Loans shall be automatically converted to ABR Loans (or, in the case of Loans denominated in Canadian Dollars, Canadian Prime Rate Loans) on the last day of such then expiring Interest Period. Upon receipt of any notice pursuant to this Section 2.4(b), the Administrative Agent shall promptly notify each Lender thereof.

(c) Notwithstanding anything herein to the contrary, Sections 2.4(a) and (b) shall not apply to Competitive Loans, which may not be converted or continued.

SECTION 2.5 Fees.

(a) Kimco agrees to pay to the Administrative Agent, for the account of each Lender, a facility fee at a per annum rate for the period from and including the first day of the Commitment Period to but excluding the Termination Date, computed at the Facility Fee Rate on the daily amount of the Revolving Commitment of such Lender, whether used or unused; provided that if such Lender continues to have any Revolving Exposure or outstanding Competitive Loans after its Revolving Commitment terminates, then such facility fee shall continue to accrue at the Facility Fee Rate on the average daily amount of such Lender's Revolving Exposure and Competitive Loans from and including the date on which its Revolving Commitment terminates to but excluding the date on which such Lender ceases to have any Revolving Exposure or outstanding Competitive Loans. Accrued facility fees shall be payable in arrears on the last Business Day of each calendar quarter and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the date hereof; provided that any facility fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand.

(b) Kimco shall pay to the Lead Lenders, for their respective own accounts (as applicable), and, to the extent mutually agreed upon by the Lead Lenders and the other Lenders, for the account of the Lenders, the fees in the amounts and on the dates previously agreed to in writing by Kimco pursuant to the Fee Letter.

SECTION 2.6 Interest Rates and Payment Dates.

(a) Each Loan (other than Competitive Loans) denominated in Dollars shall bear interest (i) if a Term Benchmark Loan, for each day during each Interest Period with respect thereto at a rate per annum equal to the Adjusted Term SOFR Rate determined for such day plus the Applicable Margin, (ii) if an ABR Loan, at a rate per annum equal to the ABR plus the Applicable Margin and (iii) if a RFR Loan, at a rate per annum equal to the applicable Adjusted Daily Simple RFR Rate plus the Applicable Margin.

(b) Each Loan denominated in an Alternate Currency other than Canadian Dollars shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the (i) in the case of Loans denominated in Euros, the Adjusted EURIBOR Rate determined for such day plus the Applicable Margin, (ii) in the case of Loans denominated in Yen, the Adjusted TIBOR Rate determined for such day plus the Applicable Margin, and (iii) in the case of Loans denominated in Sterling, the Adjusted Daily Simple RFR plus the Applicable Margin.

(c) Each Loan denominated in Canadian Dollars shall bear interest (i) if a Term Benchmark Loan, for each day during each Interest Period with respect thereto at a rate per annum equal to the CDOR Rate determined for such day plus the Applicable Margin and (ii) if a Canadian Prime Rate Loan, at a rate per annum equal to the Canadian Prime Rate plus the Applicable Margin.

(d) Each Money Market Loan shall bear interest at a rate per annum equal to the Money Market Rate applicable thereto plus the Applicable Margin.

(e) Each Competitive Loan (other than a Fixed Rate Loan) shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Adjusted Term SOFR Rate determined for such day plus (or minus, as applicable) the Margin applicable thereto. Each Fixed Rate Loan shall bear interest at the Fixed Rate applicable thereto.

(f) If all or a portion of (i) the principal amount of any Revolving Credit Loan, Money Market Loan or Competitive Loan, (ii) any interest payable thereon or (iii) any fee or other amount payable hereunder shall not be paid when due (whether at the stated maturity, by acceleration or otherwise), such overdue amount shall bear interest at a rate per annum which is (x) in the case of overdue principal, the rate that would otherwise be applicable thereto pursuant to the foregoing provisions of this Section 2.6 plus 2% or (y) in the case of any overdue interest, fee or other amount, the rate described in Section 2.6(a)(ii) plus 2%, in each case from the date of such non-payment to the date on which such amount is paid in full (as well after as before judgment).

(g) Interest shall be payable in arrears on each Interest Payment Date, provided that interest accruing pursuant to Section 2.6(f) shall be payable from time to time on demand.

SECTION 2.7 Computation of Interest and Fees.

(a) Facility fees and interest (other than interest calculated on the basis of the Prime Rate, the Canadian Prime Rate, the TIBOR Rate, or with respect to RFR Loans denominated in Sterling) shall be calculated on the basis of a 360-day year for the actual days elapsed. Interest calculated on the basis of the Prime Rate, the Canadian Prime Rate, the CDOR Rate, the TIBOR Rate, or with respect to RFR Loans denominated in Sterling shall be calculated on the basis of a 365- (or 366-, as the case may be) day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the applicable Borrowers and the Lenders of each determination of a Adjusted Term SOFR Rate, CDOR Rate, TIBOR Rate, RFR Rate, EURIBOR Rate or Money Market Rate. Any change in the interest rate on a Revolving Credit Loan (or a Competitive Loan subject to Section 2.10) resulting from a change in the ABR shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the applicable Borrowers and the Lenders of the effective date and the amount of each such change in interest rate.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding on the Borrowers and the Lenders in the absence of manifest error. The Administrative Agent shall, at the request of the Borrowers, deliver to the Borrowers a statement showing the quotations used by the Administrative Agent in determining any interest rate with respect to any Term Benchmark Loan or RFR Loan.

SECTION 2.8 Market Disruption and Alternate Rate of Interest.

(a) If at the time that the Administrative Agent shall seek to determine the Relevant Screen Rate on the Quotation Day or other applicable date set forth in the Relevant Screen Rate for any Interest Period for a Borrowing of Term Benchmark Loans or RFR Loans the applicable Relevant Screen Rate shall not be available for such Interest Period and/or for the applicable currency with respect to such Borrowing of Term Benchmark Loans or RFR Loans for any reason (which conclusion shall be conclusive and binding absent manifest error), then (i) if such Borrowing shall be requested in Dollars, then such Borrowing shall be made as an ABR Loan at the ABR (without prejudicing the Borrower's right to thereafter request a Money Market Loan), (ii) if such Borrowing shall be requested in Canadian Dollars, then such Borrowing shall be made as a Canadian Prime Rate Loan at the Canadian Prime Rate and (iii) if such Borrowing shall be requested in any Alternate Currency (other than Canadian Dollars), the interest rate for such Borrowing shall be equal to the Central Bank Rate for such Alternate Currency (unless the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for such Alternate Currency cannot be determined, in which case such request shall be ineffective).

(b) Subject to clauses (c), (d), (e), (f) and (g) of this Section 2.8, if prior to the first day of any Interest Period for a Term Benchmark Borrowing or in connection with an existing or proposed RFR Loan:

(i) the Administrative Agent determines (which determination shall be conclusive and binding upon the Borrowers) that adequate and reasonable means do not exist (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, for ascertaining the Term SOFR, CDOR Rate, EURIBOR Rate or TIBOR Rate for a Loan in the applicable currency or for the applicable Interest Period or (B) for ascertaining the RFR Rate for a RFR Loan in the applicable currency (including in each case because the Relevant Screen Rate is not available or published on a current basis); or

(ii) the Administrative Agent is advised by the Required Lenders (or, in the case of a Competitive Loan, the Lender that is required to make such Competitive Loan) (A) prior to the commencement of any Interest Period for a Term Benchmark Borrowing, that the Term SOFR Rate, CDOR Rate, EURIBOR Rate or TIBOR Rate for a Loan in the applicable currency or for the applicable Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) (as conclusively certified by such Lenders or Lender, as the case may be) of making or maintaining their affected Revolving Credit Loans (or its Competitive Loan) during such Interest Period or (B) that the RFR Rate for a Loan in the applicable currency will not adequately and fairly reflect the cost to such Lenders (as conclusively certified by such Lenders) of making or maintaining their affected RFR Loans, then the Administrative Agent shall give telecopy or telephonic notice thereof to the Borrowers and the Lenders as soon as practicable thereafter and, until the Administrative Agent notifies the Borrowers and the Lenders that the circumstances giving rise to such notice no longer exist, (A) any interest election request pursuant to Section 2.4 that requests continuation of (or conversion to) any Term Benchmark Loan in the affected currencies or for such applicable Interest Period and/or conversion of any Loan to a RFR Loan shall be ineffective, (B) if Dollars are the applicable currency described in the foregoing clause (b)(i) and a Borrowing of a Term Benchmark Loan or RFR Loan is requested in Dollars, such Borrowing shall be made as (x) an RFR Borrowing denominated in Dollars so long as the Adjusted Daily Simple RFR for Dollar Borrowings is not also the subject of Section 2.8(b)(i) or (ii) above or (y) ABR if the Adjusted Daily Simple RFR for Dollar Borrowings also is the subject of Section 2.8(b)(i) or (ii) above (without prejudicing the Borrower's right to thereafter request a Money Market Loan), (C) if Canadian Dollars are the applicable currency described in the foregoing clause (b)(i) and a Term Benchmark Loan is requested in Canadian Dollars, such Borrowing shall be made as a Canadian Prime Rate Loan and (D) if any Alternate Currency (other than Canadian Dollars) is the applicable currency described in the foregoing clause (b)(i) and a Borrowing of a Term Benchmark Loan is requested in any such Alternate Currency, then such request shall be ineffective; provided, further that (A) if the circumstances giving rise to such notice do not affect all the Lenders, then requests by Kimco for Competitive Borrowings may be made to Lenders that are not affected thereby and (B) if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted. Furthermore, if any Term Benchmark Loan or RFR Loan in any Agreed Currency is outstanding on the date of the Borrower's receipt of the notice from the Administrative Agent referred to in this Section 2.8(b) with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) if such Term Benchmark Loan is denominated in Dollars, (A) any Term Benchmark Loan shall on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), be converted by the Administrative Agent to, and shall constitute, (x) an RFR Borrowing denominated in Dollars so long as the Adjusted Daily Simple RFR for Dollar Borrowings is not also the subject of Section 2.8(b)(i) or (ii) above or (y) an ABR Loan if the Adjusted Daily Simple RFR for Dollar Borrowings also is the subject of Section 2.8(b)(i) or (ii) above, on such day, and (B) any RFR Loan shall on and from such day be converted by the Administrative Agent to, and shall constitute an ABR Loan, (ii) if such Term Benchmark Loan is denominated in any Agreed Currency other than Dollars, then such Loan shall, on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day) bear interest at (x) if denominated in Canadian Dollars, the Canadian Prime Rate or (y) if denominated in any other Alternate Currency, the Central Bank Rate for the applicable Agreed Currency plus the Applicable Rate; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Currency cannot be determined, any outstanding affected Term Benchmark Loans denominated in any Agreed Currency other than Dollars shall, at the Borrower's election prior to such day: (A) be prepaid by the Borrower on such day or (B) solely for the purpose of calculating the interest rate applicable to such Term Benchmark Loan, such Term Benchmark Loan denominated in any Agreed Currency other than Dollars shall be deemed to be a Term Benchmark Loan denominated in Dollars and shall accrue interest at the same interest rate applicable to Term Benchmark Loans denominated in Dollars at such time or (iii) if such RFR Loan is denominated in any Agreed Currency other than Dollars, then such Loan shall bear interest at the Central Bank Rate for the applicable Agreed Currency plus the Applicable Rate; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Currency cannot be determined, any outstanding affected RFR Loans denominated in any Agreed Currency other than Dollars, at the Borrower's election, shall either (A) be converted into ABR Loans denominated in Dollars (in an amount equal to the Dollar Equivalent of such Alternate Currency) immediately or (B) be prepaid in full immediately. The Administrative Agent shall not make a determination described in Section 2.8(b)(i), and no Lender shall advise the Administrative Agent as described in Section 2.8(b)(ii) unless the Administrative Agent or such Lender, as applicable, is then generally making similar determinations or delivering similar advice, in each case, under other credit facilities to which it is a party with borrowers or account parties that are similarly situated to and of similar creditworthiness to the Borrowers.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(d) Notwithstanding anything to the contrary herein or in any other Loan Document, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(e) The Administrative Agent will promptly notify the Borrowers and the Lenders of (i) any occurrence of a Benchmark Transition Event Date, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes, (iv) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 2.8, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.8.

(f) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR Rate, EURIBOR Rate, TIBOR Rate or CDOR Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(g) Upon Kimco's receipt of notice of the commencement of a Benchmark Unavailability Period, (A) any interest election request pursuant to Section 2.4 that requests continuation of (or conversion to) any Term Benchmark Loan in the affected currencies or for such applicable Interest Period and/or conversion of any Loan to a RFR Loan shall be ineffective, (B) if Dollars are the affected currency and a Borrowing of a Term Benchmark Loan is requested in Dollars, such Borrowing shall be made as (1) an RFR Borrowing denominated in Dollars so long as the Adjusted Daily Simple RFR for Dollar Borrowings is not the subject of a Benchmark Transition Event or (2) an ABR Borrowing if the Adjusted Daily Simple RFR for Dollar Borrowings is the subject of a Benchmark Transition Event (without prejudicing the Borrower's right to thereafter request a Money Market Loan), (C) if Canadian Dollars are the affected currency and a Term Benchmark Loan is requested in Canadian Dollars, such Borrowing shall be made as a Canadian Prime Rate Loan, (D) if any Alternate Currency (other than Canadian Dollars) is the affected currency and a Borrowing of a Term Benchmark Loan or RFR Loan is requested in any such affected Alternate Currency, then such request shall be ineffective and (E) any request by Kimco for a Competitive Loan based on the Term Benchmark Rate shall be ineffective; provided, further that (A) if the circumstances giving rise to such notice do not affect all the Lenders, then requests by Kimco for Competitive Borrowings may be made to Lenders that are not affected thereby and (B) if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of ABR based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of ABR. Furthermore, if any Term Benchmark Loan or RFR Loan in any Agreed Currency is outstanding on the date of the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Relevant Rate applicable to such Term Benchmark Loan or RFR Loan, then until such time as a Benchmark Replacement for such Agreed Currency is implemented pursuant to this Section 2.8, (i) if such Term Benchmark Loan is denominated in Dollars, then on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be converted by the Administrative Agent to, and shall constitute, (x) an RFR Borrowing denominated in Dollars so long as the Adjusted Daily Simple RFR for Dollar Borrowings is not the subject of a Benchmark Transition Event or (y) an ABR Loan if the Adjusted Daily Simple RFR for Dollar Borrowings is the subject of a Benchmark Transition Event, on such day, (ii) any RFR Loan denominated in Dollars shall on and from such day be converted by the Administrative Agent to, and shall constitute an ABR Loan, (iii) if such Term Benchmark Loan is denominated in any Agreed Currency other than Dollars, then such Loan shall, on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day) bear interest at (x) if denominated in Canadian Dollars, the Canadian Prime Rate or (y) if denominated in any other Alternate Currency, the Central Bank Rate for the applicable Agreed Currency plus the Applicable Rate; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Currency cannot be determined, any outstanding affected Term Benchmark Loans denominated in any Agreed Currency other than Dollars shall, at the Borrower's election prior to such day: (A) be prepaid by the Borrower on such day or (B) solely for the purpose of calculating the interest rate applicable to such Term Benchmark Loan, such Term Benchmark Loan denominated in any Agreed Currency other than Dollars shall be deemed to be a Term Benchmark Loan denominated in Dollars and shall accrue interest at the same interest rate applicable to Term Benchmark Loans denominated in Dollars at such time or (iv) if such RFR Loan is denominated in any Agreed Currency other than Dollars, then such Loan shall bear interest at the Central Bank Rate for the applicable Agreed Currency plus the Applicable Rate; provided that, if the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that the Central Bank Rate for the applicable Agreed Currency cannot be determined, any outstanding affected RFR Loans denominated in any Agreed Currency, at the Borrower's election, shall either (A) be converted into ABR Loans denominated in Dollars (in an amount equal to the Dollar Equivalent of such Alternate Currency) immediately or (B) be prepaid in full immediately.

(h) Notwithstanding the foregoing provisions of this Section 2.8 or anything in any Loan Document to the contrary, any Benchmark Replacement and Benchmark Replacement Adjustment agreed upon by the Administrative Agent and the Borrowers and any Benchmark Replacement Conforming Changes shall be on terms no less favorable to the Borrowers than corresponding terms in credit facilities to which JPMorgan Chase Bank, N.A. serves as administrative agent with borrowers similarly situated to and of similar creditworthiness to the Borrowers, in general, but not necessarily all such credit facilities with respect to which JPMorgan Chase Bank, N.A. serves as administrative agent; provided, further, that nothing in this clause (g) shall obligate the Administrative Agent to disclose any information regarding other borrowers or facilities.

SECTION 2.9 Pro Rata Treatment and Payments.

(a) Each borrowing by any Borrower of Revolving Credit Loans using the Tranche A Commitments or the Tranche B Commitments, as applicable, each payment by any Borrower on account of any fees hereunder and any reduction of the Tranche A Commitments or Tranche B Commitments (other than pursuant to Section 10.10(a)), as applicable, shall be made pro rata according to the respective Applicable Percentages of the Lenders. Each payment (including each prepayment) by any Borrower on account of principal of and interest on the Tranche A Loans or Tranche B Loans, as applicable, shall be made pro rata according to the respective outstanding principal amounts of such Borrower's Tranche A Loans or Tranche B Loans, as applicable, then held by the Lenders in the currency in which such Revolving Credit Loan was made. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed Letter of Credit drawings, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed Letter of Credit drawings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed Letter of Credit drawings then due to such parties. All payments (including prepayments) to be made by the Borrowers hereunder and under the Notes, whether on account of principal, interest, fees or otherwise, shall be made without setoff or counterclaim and shall be made prior to 12:00 Noon, New York City time, or, if the payment is due in an Alternate Currency, local time for the principal market of such currency, on the due date thereof to the Administrative Agent, for the account of the applicable Lenders, at (x) in the case of payments due in Dollars the Administrative Agent's office specified in Section 10.2 in immediately available funds and (y) in the case of payments due in an Alternate Currency, to such office as the Administrative Agent may hereafter specify by notice to the Borrowers. It is understood that, if any payment of principal is made on any day in accordance with the preceding sentence, no interest shall accrue on such day in respect of such principal. The Administrative Agent shall distribute such payments to the applicable Lenders promptly upon receipt in like funds as received. If any payment hereunder (other than payments on Term Benchmark Loans) becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day, and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension. If any payment on a Term Benchmark Loan becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day (and, with respect to any such payments of principal, interest thereon shall be payable at the then applicable rate during such extension) unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day.

(b) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a borrowing that such Lender will not make the amount that would constitute its share of such borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent, and the Administrative Agent may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, such Lender shall pay to the Administrative Agent, on demand, such amount with interest thereon at a rate equal to the daily average Federal Funds Effective Rate for the period until such Lender makes such amount immediately available to the Administrative Agent. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.9(b) shall be conclusive in the absence of manifest error. If such Lender's share of such borrowing is not made available to the Administrative Agent by such Lender within three (3) Business Days of such Borrowing Date, the Administrative Agent shall also be entitled to recover such amount with interest thereon at the rate per annum applicable to the rate per annum applicable to such Borrowing, on demand, from the applicable Borrower.

SECTION 2.10 Illegality.

Notwithstanding any other provision herein, if the adoption of or any Change in Law or in the interpretation or application thereof shall make it unlawful for any Lender to make or maintain Term Benchmark Loans or RFR Loans as contemplated by this Agreement, (a) the commitment of such Lender hereunder to make Term Benchmark Loans or RFR Loans, to continue Term Benchmark Loans or RFR Loans as such, or to convert ABR Loans to Term Benchmark Loans or RFR Loans shall forthwith be cancelled, (b) such Lender's Revolving Credit Loans then outstanding as Term Benchmark Loans or RFR Loans, if any, shall be converted automatically to ABR Loans on the respective last days of the then current Interest Periods with respect to such Loans or within such earlier period as required by law and (c) such Lender's Competitive Loans then outstanding as Term Benchmark Loans, if any, shall, if required by law, be converted automatically to ABR Loans. If any such conversion of a Term Benchmark Loan occurs on a day which is not the last day of the then current Interest Period with respect thereto, the applicable Borrower shall pay to such Lender such amounts, if any, as may be required pursuant to Section 2.13.

SECTION 2.11 Requirements of Law.

(a) If any Change in Law:

(i) shall impose, modify or hold applicable any reserve (except to the extent that such reserve is specifically subject to Section 2.11(c)), special deposit, liquidity, compulsory loan, insurance charge, or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any relevant office of such Lender which is not otherwise included in the determination of the Adjusted Term SOFR Rate, CDOR Rate, the Adjusted EURIBOR Rate, the Adjusted TIBOR Rate, the Money Market Rate or the Fixed Rate;

(ii) shall impose on such Lender any other condition, cost or expense affecting this Agreement (other than Taxes); or

(iii) subject any Recipient to any Taxes on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto (other than (x) Indemnified Taxes and (y) Excluded Taxes); and the result of any of the foregoing is to increase the cost to such Lender, the Issuing Lender or such other Recipient, by an amount which such Lender, the Issuing Lender or such other Recipient, as the case may be, deems to be material, of making, converting into, continuing or maintaining Term Benchmark Loans, RFR Loans, Money Market Loans or Fixed Rate Loans or issuing or participating in Letters of Credit or to reduce any amount receivable hereunder in respect thereof, then, in any such case, (x) each Borrower shall promptly pay such Lender, the Issuing Lender or such other Recipient, upon its demand, any additional amounts necessary to compensate such Lender, the Issuing Lender or such other Recipient, as the case may be, for such increased cost or reduced amount receivable solely with respect to such Borrower's Loans and Letters of Credit and (y) the Borrowers agree, jointly and severally, to pay such Lender, the Issuing Lender or such other Recipient, upon its demand, any additional amounts necessary to compensate such Lender, the Issuing Lender or such other Recipient, as the case may be, for such increased cost or reduced amount receivable with respect to this Agreement or the Revolving Commitments generally and not solely with respect to any particular Borrower's Loans and Letters of Credit. If any Lender, the Issuing Lender or any other Recipient becomes entitled to claim any additional amounts pursuant to this Section 2.11(a), it shall promptly notify the Borrowers, through the Administrative Agent, of the event by reason of which it has become so entitled, provided that such amounts shall be no greater than amounts that such Lender, the Issuing Lender or such other Recipient is generally charging other borrowers or account parties similarly situated to and of similar creditworthiness to the Borrowers.

(b) If any Lender or the Issuing Lender shall have determined that the application of any Requirement of Law or any Change in Law regarding capital adequacy or liquidity or compliance by such Lender or the Issuing Lender or any corporation controlling such Lender or the Issuing Lender with any request or directive regarding capital adequacy or liquidity (whether or not having the force of law) from any Governmental Authority does or shall have the effect of reducing the rate of return on such Lender's or the Issuing Lender's or such corporation's capital or liquidity as a consequence of its obligations hereunder or under any Letter of Credit to a level below that which such Lender or the Issuing Lender or such corporation could have achieved but for such application or compliance (taking into consideration such Lender's or the Issuing Lender's or such corporation's policies with respect to capital adequacy and liquidity and such Lender's or the Issuing Lender's treatment of its Revolving Commitments and Letters of Credit for internal purposes as of the date on which it became a party hereto) by an amount deemed by such Lender to be material, then from time to time, after submission by such Lender or the Issuing Lender to the Borrowers (with a copy to the Administrative Agent) of a written request therefor (setting forth in reasonable detail the basis for such request), (i) each Borrower shall pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such corporation, as the case may be, for such reduction solely with respect to such Borrower's Loans and Letters of Credit and (ii) the Borrowers shall, jointly and severally, pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such corporation, as the case may be, for such reduction with respect to this Agreement or the Revolving Commitments generally and not solely with respect to any particular Borrower's Loans and Letters of Credit; provided that such amounts shall be no greater than amounts that such Lender or the Issuing Lender is generally charging other borrowers or account parties similarly situated to and of similar creditworthiness to the Borrowers.

(c) [Reserved.]

(d) A certificate as to any additional amounts payable pursuant to this Section 2.11 submitted by any Lender, through the Administrative Agent, to the Borrowers shall be conclusive in the absence of manifest error. The agreements in this Section 2.11 shall survive the termination of this Agreement, the expiration, cancellation, or other termination of the Letters of Credit, and the payment of the Revolving Credit Loans, the Competitive Loans and all other amounts payable hereunder (the date on which all of the foregoing shall have occurred, the "Final Date"), until the first anniversary of the Final Date. Notwithstanding anything contained in this Section 2.11, no Borrower shall be obligated to pay any greater amounts than such Lender(s) or Issuing Lender(s) is (are) generally charging other borrowers or account parties similarly situated to and of similar creditworthiness to the Borrowers.

(e) For the avoidance of doubt, this Section 2.11 (i) shall not entitle any Recipient to compensation in respect of any Excluded Taxes, (ii) shall not apply to (A) Indemnified Taxes imposed on payments by or on account of any obligations of the Borrowers hereunder or under any Loan Document or (B) Other Taxes, it being understood that such Indemnified Taxes and Other Taxes shall be governed exclusively by Section 2.12, and (iii) shall not relieve any Lender or Issuing Lender of any obligation pursuant to Section 2.12.

SECTION 2.12 Taxes.

(a) All payments made by any Loan Party under this Agreement and the Notes shall be made without withholding for any Taxes, unless such withholding is required by any law. If any Withholding Agent determines in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then such Withholding Agent may so withhold and shall timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable law. If such Taxes are Indemnified Taxes, then the amount payable by any Loan Party shall be increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section), the applicable Recipient receives the amount it would have received had no such withholding been made. Each Loan Party shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law. As soon as practicable after any payment of Indemnified Taxes by any Loan Party to a Governmental Authority, such 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.

(b) Indemnification by each Loan Party. Without duplication of any payments made pursuant to Section 2.12(a), each Loan Party shall jointly and severally indemnify each Recipient for any Indemnified Taxes that are directly paid or payable by such Recipient or required to be withheld or deducted from a payment to such Recipient in connection with this Agreement and the other Loan Documents (including amounts paid or payable under this Section 2.12(b)) and any reasonable expenses arising therefrom or with respect thereto. The indemnity under this Section 2.12(b) shall be paid within 10 days after the Recipient delivers to the applicable Loan Party a certificate stating the amount of any Indemnified Taxes so paid or payable by such Recipient and describing the basis for the indemnification claim. Such certificate shall be conclusive of the amount so paid or payable absent manifest error. Such Recipient shall deliver a copy of such certificate to the Administrative Agent.

(c) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent for any Taxes (but, in the case of any Indemnified Taxes, only to the extent that the applicable Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of such Loan Party to do so) attributable to such Lender that are paid or payable by the Administrative Agent in connection with this Agreement and the other Loan Documents 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. The indemnity under this Section 2.12(c) shall be paid within 10 days after the Administrative Agent delivers to the applicable Lender a certificate stating the amount of Taxes so paid or payable by the Administrative Agent. Such certificate shall be conclusive of the amount so paid or payable absent manifest error.

(d) Status of Lenders.

(i) Any Lender that is entitled to an exemption from, or reduction of, any applicable withholding Tax with respect to any payments under this Agreement and the other Loan Documents shall deliver to the Borrowers and the Administrative Agent, at the time or times reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Administrative Agent as will permit such payments to be made without, or at a reduced rate of, withholding. In addition, any Lender, if requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to any withholding (including backup withholding) or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.12(d)(ii)(A) through (E) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. Upon the reasonable request of the Borrowers or the Administrative Agent, any Lender shall update any form or certification previously delivered pursuant to this Section 2.12(d). If any form or certification previously delivered pursuant to this Section expires or becomes obsolete or inaccurate in any respect with respect to a Lender, such Lender shall promptly (and in any event within 10 days after such expiration, obsolescence or inaccuracy) notify the Borrowers and the Administrative Agent in writing of such expiration, obsolescence or inaccuracy and update the form or certification if it is legally eligible to do so.

(ii) Without limiting the generality of the foregoing, if the applicable Borrower or Loan Party (or, if such Borrower or Loan Party is disregarded as an entity separate from its owner for U.S. federal income tax purposes, its sole owner) is a U.S. Person, any Lender (or if such Lender is disregarded as an entity separate from its owner for U.S. Federal income tax purposes, its sole owner) with respect to such Borrower shall, if it is legally eligible to do so, deliver to such Borrower and the Administrative Agent (in such number of copies reasonably requested by such Borrower and the Administrative Agent) on or prior to the date on which such Lender becomes a party hereto, duly completed and executed copies of whichever of the following is applicable:

(A) IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) (1) with respect to payments of interest under this Agreement and the other Loan Documents, IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "interest" article of such tax treaty and (2) with respect to any other applicable payments under this Agreement and the other Loan Documents, IRS Form W-8BEN or IRS Form W-8BEN-E 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;

(C) IRS Form W-8ECI;

(D) (1) IRS Form W-8BEN or IRS Form W-8BEN-E and (2) a certificate substantially in the form of Exhibit H (a "U.S. Tax Certificate") to the effect that such Lender is not (a) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (b) a "10 percent shareholder" of the applicable Borrower within the meaning of Section 881(c)(3)(B) of the Code, (c) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (d) conducting a trade or business in the United States with which the relevant interest payments are effectively connected;

(E) (1) an IRS Form W-8IMY on behalf of itself and (2) the relevant forms prescribed in clauses (A), (B), (C), (D) and (F) of this subsection (d)(ii) that would be required of each such beneficial owner or partner of such partnership if such beneficial owner or partner were a Lender; provided, however, that if the Lender is a partnership and one or more of its partners are claiming the exemption for portfolio interest under Section 881(c) of the Code, such Lender may provide a U.S. Tax Certificate on behalf of such partners; or

(F) any other form prescribed by law as a basis for claiming exemption from, or a reduction of, U.S. Federal withholding Tax together with such supplementary documentation necessary to enable such Borrower or Loan Party or the Administrative Agent to determine the amount of Tax (if any) required by law to be withheld.

(iii) If a payment made to a Lender under this Agreement and the other Loan Documents would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Withholding Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Withholding Agent, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Withholding Agent as may be necessary for the Withholding Agent to comply with its obligations under FATCA, to determine that such Lender has or has not complied with such Lender's obligations under FATCA and, as necessary, to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.12(d)(iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(e) 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 or Other Taxes as to which it has been indemnified pursuant to this Section 2.12 (including by the payment of additional amounts pursuant to this Section 2.12), 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 2.12 with respect to the Taxes or Other 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 Section 2.12(e) (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 Section 2.12(e), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 2.12(e) 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 paragraph 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.

(f) Survival. Each party's obligation under this Section 2.12 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 this Agreement, the expiration, cancellation, or other termination of the Letters of Credit, and the payment of the Revolving Credit Loans, the Competitive Loans and all other amounts payable hereunder.

(g) Defined Terms. For purposes of this Section 2.12, the term "Lender" includes any Issuing Lender.

SECTION 2.13 Indemnity.

Each Borrower agrees to indemnify each Lender and to hold each Lender harmless from any loss or expense (including post-judgment expenses) which such Lender may sustain or incur as a consequence of (a) default by such Borrower in making a borrowing of Term Benchmark Loans, RFR Loans, Money Market Loans or Fixed Rate Loans or in the conversion into or continuation of Term Benchmark Loans after such Borrower has given a notice requesting or accepting the same in accordance with the provisions of this Agreement, (b) default by such Borrower in making any prepayment after such Borrower has given a notice thereof in accordance with the provisions of this Agreement, or (c) the making of a prepayment or conversion of Term Benchmark Loans, RFR Loans, Money Market Loans or Fixed Rate Loans on a day which is not the last day of an Interest Period (or the Interest Payment Date, in the case of RFR Loans) or the Money Market Loan Maturity Date, as the case may be, with respect thereto. Such indemnification may, at the option of any Lender, include an amount equal to the excess, if any, of (i) the amount of interest which would have accrued on the amount so prepaid or converted, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of the relevant Interest Period or the relevant Money Market Loan Maturity Date, as the case may be (or proposed Interest Period or proposed Money Market Loan Maturity Date, as the case may be), in each case at the applicable rate of interest for such Loans provided for herein (excluding, however, the Applicable Margin or Margin) over (ii) the amount of interest (as reasonably determined by such Lender) which would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank market or other relevant market. This covenant shall survive the termination of this Agreement, the expiration, cancellation, or other termination of the Letters of Credit, and the payment of the Revolving Credit Loans, the Competitive Loans and all other amounts payable hereunder, until the first anniversary of the Final Date.

SECTION 2.14 Change of Lending Office.

Each Lender and each Transferee agrees that, upon the occurrence of any event giving rise to the operation of Section 2.10, 2.11 or 2.12 with respect to such Lender or Transferee, it will, if requested by any Borrower, use reasonable efforts (subject to overall policy considerations of such Lender or Transferee) to designate another lending office for any Revolving Credit Loans or Competitive Loans affected by such event with the object of avoiding the consequences of such event; provided that such designation is made on terms that, in the sole judgment of such Lender or Transferee, cause such Lender or Transferee and its lending office(s) to suffer no economic, legal or regulatory disadvantage, and provided, further, that nothing in this Section 2.14 shall affect or postpone any of the obligations of any Borrower or the rights of any Lender or Transferee pursuant to Sections 2.10, 2.11 and 2.12.

SECTION 2.15 Replacement of Lenders under Certain Circumstances.

Kimco shall be permitted to replace any Lender which (a) requests reimbursement for amounts owing pursuant to Section 2.11 (other than Section 2.11(c)) or 2.12, (b) is affected in the manner described in Section 2.10 and as a result thereof any of the actions described in Section 2.10 is required to be taken, (c) becomes a Defaulting Lender, (d) does not consent to any amendment, waiver, supplement or modification to any Loan Document for which the consent of the Required Lenders has been obtained but that requires the consent of additional Lenders pursuant to any Loan Document, or (e) is a Protesting Lender, with a replacement bank or other financial institution; provided that (i) such replacement does not conflict with any Requirement of Law, (ii) no Event of Default shall have occurred and be continuing at the time of such replacement, (iii) the Borrowers shall repay (or the replacement bank or institution shall purchase, at par) all Revolving Credit Loans and other amounts (other than Competitive Loans) owing to such replaced Lender prior to the date of replacement, (iv) the applicable Borrowers shall be liable to such replaced Lender under Section 2.13 if any Term Benchmark Loan, Money Market Loan or Fixed Rate Loan owing to such replaced Lender shall be prepaid (or purchased) other than on the last day of the Interest Period or the Money Market Loan Maturity Date, as the case may be, relating thereto, (v) the replacement bank or institution, if not already a Lender, and the terms and conditions of such replacement, shall be satisfactory to the Administrative Agent and the Issuing Lender, (vi) the replaced Lender shall be obligated to make such replacement in accordance with the provisions of Section 10.6 (provided that Kimco shall be obligated to pay the registration and processing fee referred to therein), (vii) the replaced Lender shall (except as provided in the following clause (ix)) be released from its obligations under this Agreement, (viii) until such time as such replacement shall be consummated, the applicable Borrowers shall pay all additional amounts (if any) required pursuant to Section 2.11 or 2.12, as the case may be, and (ix) any such replacement shall not be deemed to be a waiver of any rights which any Borrower, the Administrative Agent or any other Lender shall have against the replaced Lender if it defaulted in its obligation to make Revolving Credit Loans hereunder.

SECTION 2.16 Additional Reserve Costs.

(a) If and so long as any Lender is required to comply with reserve assets, liquidity, cash margin or other requirements of any monetary or other authority (including any such requirement imposed by the European Central Bank or the European System of Central Banks, in respect of any of such Lender's Alternate Currency Loans, such Lender may require the applicable Borrower to pay, contemporaneously with each payment of interest on each of such Lender's Alternate Currency Loans (to the extent such Loans were made to such Borrower) subject to such requirements, additional interest on such Alternate Currency Loan at a rate per annum specified by such Lender to be the cost to such Lender of complying with such requirements in relation to such Alternate Currency Loan.

(b) Any additional interest owed pursuant to paragraph (a) above shall be determined by the relevant Lender, which determination shall be conclusive absent manifest error, and notified (which notice shall show the basis for the calculation of such additional interest) to the applicable Borrower (with a copy to the Administrative Agent) at least five Business Days before each date on which interest is payable for the relevant Alternate Currency Loan, and such additional interest so notified by such Lender shall be payable to the Administrative Agent for the account of such Lender on each date on which interest is payable for such Alternate Currency Loan. Notwithstanding anything contained in this Section 2.16, no Borrower shall be obligated to pay any greater amounts than such Lender(s) is (are) generally charging other borrowers similarly situated to and of similar creditworthiness to the Borrowers.

SECTION 2.17 Defaulting Lenders.

Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(a) fees shall cease to accrue on the Revolving Commitment of such Defaulting Lender pursuant to Section 2.5(a);

(b) the Revolving Commitment and Revolving Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 10.1); provided, that this clause (b) shall not apply to the vote of a Defaulting Lender in the case of an amendment, waiver or other modification requiring the consent of such Lender or each Lender affected thereby;

(c) if any L/C Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of the L/C Exposure of such Defaulting Lender shall be reallocated among the non-Defaulting Lenders in accordance with their respective Applicable Percentages but only to the extent (x) the conditions set forth in Section 5.2 are satisfied at the time of such reallocation (and, unless the Borrowers shall have otherwise notified the Administrative Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), (y) the sum of all non-Defaulting Lenders' Revolving Exposures plus such Defaulting Lender's L/C Exposure does not exceed the total of all non-Defaulting Lenders' Revolving Commitments, and (z) any non-Defaulting Lender's Revolving Exposure does not exceed such non-Defaulting Lender's Revolving Commitment;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, such Defaulting Lender's L/C Exposure shall be cash collateralized for the benefit of the Issuing Lender (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with clause (e) of this Section 2.17 for so long as such L/C Exposure is outstanding;

(iii) to the extent any portion of such Defaulting Lender's L/C Exposure is cash collateralized pursuant to clause (e) or (c)(v) of this Section 2.17, the Borrowers shall not be required to pay any fees to such Defaulting Lender pursuant to Section 3.3 with respect to such Defaulting Lender's L/C Exposure during the period such Defaulting Lender's L/C Exposure is cash collateralized;

(iv) to the extent the L/C Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Section 2.5 and Section 3.3 shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages as reallocated;

(v) if all or any portion of such Defaulting Lender's L/C Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then the applicable Borrower shall within one Business Day following notice by the Administrative Agent cash collateralize for the benefit of the Issuing Lender only such Borrower's obligations corresponding to such Defaulting Lender's L/C Exposure incapable of being reallocated pursuant to clause (i) or (ii) above; and

(vi) if all or any portion of such Defaulting Lender's L/C Exposure is neither reallocated nor cash collateralized pursuant to clause (i), (ii) or (v) above, then, without prejudice to any rights or remedies of the Issuing Lender or any other Lender hereunder, all facility fees that otherwise would have been payable to such Defaulting Lender pursuant to Section 2.5(a) (solely with respect to the portion of such Defaulting Lender's Commitment that was utilized by such L/C Exposure) and Letter of Credit Fees payable under Section 3.3 with respect to such Defaulting Lender's L/C Exposure shall be payable to the Issuing Lender until and to the extent that such L/C Exposure is reallocated and/or cash collateralized;

(d) so long as such Lender is a Defaulting Lender, the Issuing Lender shall not be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure and the Defaulting Lender's then outstanding L/C Exposure will be 100% covered by the Revolving Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrowers in accordance with Section 2.17(c), and participating interests in any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.17(c)(i) or cash collateralized in a manner consistent with Section 2.17(c)(ii) or (v) (and such Defaulting Lender shall not participate therein); and

(e) any amount payable by the Borrowers to a Defaulting Lender under this Agreement (whether on account of principal, interest, fees or otherwise) shall, in lieu of being distributed to such Defaulting Lender when paid by the Borrowers, and in satisfaction of any such payment obligation, be retained by the Administrative Agent in a segregated account and, subject to any requirements of applicable law, be applied at such time or times as may be determined by the Administrative Agent in its discretion (i) first, to the funding of any Loan or the funding or cash collateralization of any participating interest in any Letter of Credit 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, (ii) second, if so determined by the Administrative Agent and Kimco, held in such account as cash collateral for future funding obligations of the Defaulting Lender under this Agreement, (iii) third, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder, (iv) fourth, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Lender hereunder, (v) fifth, to the payment of any amounts owing to the Lenders or the Issuing Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the Issuing Lenders against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document, (vi) sixth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document, and (vii) seventh, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that, if such payment is a prepayment of the principal amount of any Loans or reimbursement obligations in respect of the Letters of Credit which a Defaulting Lender has not funded, such payment shall be applied solely to prepay the Loans of, and reimbursement obligations owed to, all non-Defaulting Lenders pro rata prior to being applied to the prepayment of any Loans, or reimbursement obligations owed to, any Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 2.17 shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

In the event that the Administrative Agent, the Borrowers and the Issuing Lender each agree that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender (provided that the consent of the Borrowers shall not be required if an Event of Default has occurred and is continuing at such time), then the Revolving Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders (other than Competitive Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage.

SECTION 2.18 Reallocation of Tranche A Commitments and Tranche B Commitments.

(a) Kimco may, from time to time during the Commitment Period, by written notice to the Administrative Agent (a "Reallocation Notice"), increase the aggregate Tranche B Commitments with a corresponding reduction in the aggregate Tranche A Commitments (and without any change in the aggregate Revolving Commitments), and each Tranche B Lender hereby agrees that its Tranche B Commitment will be automatically increased and its Tranche A Commitment will be automatically decreased in an amount equal to its Applicable Percentage of the amount specified in such Reallocation Notice, subject to satisfaction of the following conditions:

(i) in such Reallocation Notice, Kimco shall specify the amount of the increase in the aggregate Tranche B Commitments (and the corresponding decrease in the aggregate Tranche A Commitments), which shall be in a minimum amount of $25,000,000 and integral multiples of $5,000,000 in excess thereof and shall not exceed $250,000,000 in the aggregate for all such requested reallocations during the Commitment Period (resulting in aggregate Tranche B Commitments not to exceed $500,000,000);

(ii) Kimco may make a maximum of three (3) reallocation requests during the term of this Agreement;

(iii) no reallocation shall be permitted if, after giving effect thereto and to any concurrent prepayments hereunder, the aggregate Tranche A Exposure would exceed the aggregate Tranche A Commitments or the aggregate Tranche B Exposure would exceed the aggregate Tranche B Commitments;

(iv) no Default exists as of the applicable Reallocation Effective Date; and

(v) the Borrowers shall prepay any Revolving Credit Loans outstanding on the Reallocation Effective Date (as defined below) (and pay any additional amounts required by Section 2.13) to the extent necessary to keep the outstanding Tranche A Loans and Tranche B Loans ratable with the revised Tranche A Commitments and Tranche B Commitments.

(b) Kimco (in consultation with the Administrative Agent) shall determine the effective date (the "Reallocation Effective Date") of any reallocation requested in accordance with Section 2.18(a), and the Administrative Agent shall notify Kimco and the Lenders of the Reallocation Effective Date of such reallocation and shall provide Kimco and the Lenders with a revised Schedule 1.1A that sets forth the Tranche A Commitment and Tranche B Commitment of each Lender resulting from such reallocation.

ARTICLE III

LETTERS OF CREDIT

SECTION 3.1 L/C Commitment.

(a) Subject to the terms and conditions hereof, each Issuing Lender, in reliance on the agreements of the Lenders set forth in Section 3.4(a), agrees to issue Letters of Credit for the account of any Borrower on any Business Day during the Commitment Period other than the last ten (10) Business Days thereof in such form as may be acceptable from time to time to such Issuing Lender; provided that no Issuing Lender shall issue any Letter of Credit if, after giving effect to such issuance, (i) the sum of the L/C Exposure of all the Lenders would exceed the L/C Commitment, (ii) the sum of the Tranche A Exposure of all the Lenders would exceed the sum of the Tranche A Commitments of all the Lenders, (iii) the sum of the Tranche B Exposure of all the Lenders would exceed the sum of the Tranche B Commitments of all the Lenders, (iv) the Available Commitment of any Lender would be less than zero, (v) the sum of the Revolving Exposure of all the Lenders plus the aggregate principal amount of all outstanding Competitive Loans would exceed the aggregate Revolving Commitments or (vi) unless such Issuing Lender otherwise agrees, the L/C Obligations with respect to all Letters of Credit issued by such Issuing Lender would exceed its Issuing Lender Commitment. No Issuing Lender shall have any obligation to issue, amend or extend any Letter of Credit (A) the beneficiary of which is a Sanctioned Person, (B) to fund any prohibited activity or business with any Sanctioned Person, or in any country or territory, that at the time of such issuance is the subject of any Sanctions or (C) in any manner that would result in a violation of any Sanctions by any party to this Agreement.

(b) Each Letter of Credit (i) shall be denominated (x) in the case of Tranche A Letters of Credit, only in Dollars, or (y) in the case of Tranche B Letters of Credit, in Dollars or in an Alternate Currency, (ii) shall be available by sight payment (rather than by acceptance, by deferred payment or by negotiation), (iii) shall be a standby letter of credit issued to support obligations of Kimco and its Subsidiaries, contingent or otherwise, incurred in the ordinary course of business and (iv) shall expire no later than ten (10) Business Days prior to the Termination Date (such expiration date, the "Letter of Credit Expiration Date"); provided, that a Letter of Credit may expire after the Letter of Credit Expiration Date if (x) such Letter of Credit shall be cash collateralized (or backstopped by another letter of credit in a manner reasonably acceptable to the Issuing Lender and from a financial institution reasonably acceptable to the Issuing Lender) on or before the date that is ten (10) Business Days prior to the Termination Date in an amount equal to 103% of the face amount of such Letter of Credit and on customary terms reasonably satisfactory to the Administrative Agent and (y) such Letter of Credit shall expire no later than one year after the date of issuance of such Letter of Credit (or in the case of any renewal or extension thereof, one year after such renewal or extension).

(c) Each Letter of Credit shall be subject to the Uniform Customs or the ISP and, to the extent not inconsistent therewith, the laws of the State of New York or any other jurisdiction requested by the applicable Borrower and acceptable to the Administrative Agent and the Issuing Lender in their sole discretion.

(d) The Issuing Lender shall not at any time be obligated to issue any Letter of Credit hereunder if (i) such issuance would conflict with, or cause the Issuing Lender or any L/C Participant to exceed any limits imposed by, any applicable Requirement of Law or (ii) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Lender from issuing such Letter of Credit, or any law applicable to such Issuing Lender shall prohibit, or require that such Issuing Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Lender is not otherwise compensated hereunder) not in effect on the Effective Date and that is material to such Issuing Lender, or shall impose upon such Issuing Lender any unreimbursed loss, cost or expense that was not applicable on the Effective Date and that is material to such Issuing Lender.

SECTION 3.2 Procedure for Issuance of Letters of Credit.

Each Borrower may from time to time request that the Issuing Lender issue (or amend, renew or extend) a Letter of Credit by delivering to the Issuing Lender, with a copy to the Administrative Agent, in each case, at the applicable address for notices specified herein (i) an Application therefor, specifying whether such Letter of Credit is to be a Tranche A Letter of Credit (in which case such Letter of Credit when issued shall be deemed to use the Tranche A Commitments to the extent of the amount of such Letter of Credit) or a Tranche B Letter of Credit (in which case such Letter of Credit when issued shall be deemed to use the Tranche B Commitments to the extent of the amount of each Letter of Credit) and otherwise completed to the satisfaction of the Issuing Lender, and (ii) such other certificates, documents and other papers and information as the Issuing Lender may request. Upon receipt of any Application, the Issuing Lender will confirm with the Administrative Agent (by telephone or in writing) that the limitations contained in Section 3.1(a) shall not be violated and shall then process such Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall promptly issue (or amend, renew or extend) the Letter of Credit requested thereby (but in no event shall the Issuing Lender be required to issue (or amend, renew or extend) any Letter of Credit earlier than three (3) Business Days after its receipt of the Application therefor and all such other certificates, documents and other papers and information relating thereto) by issuing the original of such Letter of Credit (or amendment, renewal or extension) to the beneficiary thereof or as otherwise may be agreed by the Issuing Lender and the applicable Borrower. The Issuing Lender shall furnish a copy of such Letter of Credit (or amendment, renewal or extension) to the applicable Borrower and the Administrative Agent promptly following the issuance thereof, and the Administrative Agent shall promptly notify the Lenders thereof.

SECTION 3.3 Fees and Other Charges.

(a) The applicable Borrower shall pay to the Administrative Agent, for the account of the Issuing Lender and the L/C Participants (in the case of a Tranche A Letter of Credit, having Tranche A Commitments, and, in the case of a Tranche B Letter of Credit, having Tranche B Commitments), a letter of credit fee with respect to each Letter of Credit issued for its account at a per annum rate, for each day during the period from and including the date of issuance of such Letter of Credit to and including the first date thereafter on which such Letter of Credit shall expire or be cancelled or fully drawn, equal to the L/C Fee Rate in effect on such day, calculated on the basis of a 360-day year, of the Dollar Equivalent of the aggregate amount available to be drawn under such Letter of Credit on such day. In addition, the applicable Borrower shall pay to the Issuing Lender for its own account a fronting fee of 0.100% per annum on the Dollar Equivalent of the undrawn and unexpired amount of each Letter of Credit issued for its account. Letter of credit fees and fronting fees pursuant to this paragraph shall be payable in Dollars quarterly in arrears on each L/C Fee Payment Date to occur while the relevant Letter of Credit is outstanding and shall be nonrefundable.

(b) In addition to the foregoing fees, the applicable Borrower shall pay or reimburse the Issuing Lender in Dollars for such normal and customary costs and expenses as are incurred or charged by the Issuing Lender in issuing, effecting payment under, amending or otherwise administering any Letter of Credit issued for its account.

(c) The Administrative Agent shall, promptly following its receipt thereof, distribute to the Issuing Lender and the applicable L/C Participants all fees received by the Administrative Agent for their respective accounts pursuant to this Section 3.3.

SECTION 3.4 L/C Participations.

(a) The Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant (in the case of a Tranche A Letter of Credit, having Tranche A Commitments, and, in the case of a Tranche B Letter of Credit, having Tranche B Commitments), and, to induce the Issuing Lender to issue Letters of Credit hereunder, each applicable L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from the Issuing Lender, on the terms and conditions hereinafter stated, for such L/C Participant's own account and risk an undivided interest equal to such L/C Participant's Applicable Percentage of the Tranche A Commitments or Tranche B Commitments, as applicable, in the Issuing Lender's obligations and rights in respect of each Letter of Credit issued hereunder (and in respect of each amendment to a Letter of Credit increasing the amount thereof in accordance with the provisions of this Agreement) and the amount of each draft or other demand for payment paid by the Issuing Lender thereunder. Each applicable L/C Participant unconditionally and irrevocably agrees with the Issuing Lender that, if the Issuing Lender notifies it that a draft or other demand for payment has been paid under any Letter of Credit for which the Issuing Lender has not been reimbursed in full by the applicable Borrower in accordance with the terms of this Agreement, such L/C Participant shall pay to the Issuing Lender upon demand at the Issuing Lender's address for notices specified herein an amount equal to such L/C Participant's Applicable Percentage of the Tranche A Commitments or the Tranche B Commitments, as applicable, of the amount of such draft or other demand for payment, or any part thereof, which is not so reimbursed.

(b) If any amount required to be paid by any L/C Participant to the Issuing Lender pursuant to Section 3.4(a) in respect of any unreimbursed portion of any payment made by the Issuing Lender under any Letter of Credit is paid to the Issuing Lender within three (3) Business Days after the date such payment is due, such L/C Participant shall pay to the Issuing Lender on demand an amount equal to the product of (i) the Dollar Equivalent of such amount, times (ii) the daily average Federal Funds Effective Rate, as quoted by the Issuing Lender, during the period from and including the date such payment is required to the date on which such payment is immediately available to the Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. If any such amount required to be paid by any L/C Participant pursuant to Section 3.4(a) is not in fact made available to the Issuing Lender by such L/C Participant within three (3) Business Days after the date such payment is due, the Issuing Lender shall be entitled to recover from such L/C Participant, on demand, such amount with interest thereon calculated from such due date at the rate per annum applicable to ABR Loans hereunder (or, if such Letter of Credit is denominated in an Alternate Currency, the rate per annum applicable to Term Benchmark Loans for Interest Periods of one month). A certificate of the Issuing Lender submitted to any L/C Participant with respect to any amounts owing under this Section shall be conclusive in the absence of manifest error.

(c) Whenever, at any time after the Issuing Lender has made payment under any Letter of Credit and has received from any L/C Participant its pro rata share of such payment in accordance with this Section 3.4, the Issuing Lender receives any payment related to such Letter of Credit (whether directly from the applicable Borrower or otherwise, including proceeds of any collateral applied thereto by the Issuing Lender), or any payment of interest on account thereof, the Issuing Lender will promptly distribute to such L/C Participant its pro rata share thereof; provided that in the event that any such payment received by the Issuing Lender shall be required to be returned by the Issuing Lender, such L/C Participant shall return to the Issuing Lender the portion thereof previously distributed by the Issuing Lender to it.

SECTION 3.5 Reimbursement Obligation of the Borrowers.

(a) Each Borrower agrees to reimburse the Issuing Lender on each date on which the Issuing Lender notifies such Borrower of the date and amount of a draft or other demand for payment presented under any Letter of Credit issued for its account and paid by the Issuing Lender for the amount in the currency of such Letter of Credit of (i) such draft or other demand so paid (which reimbursement may be effected through the procedure described in Section 3.5(c)) and (ii) any taxes, fees, charges or other costs or expenses (including post-judgment taxes, fees, charges or other costs or expenses) incurred by the Issuing Lender in connection with such payment. Each such payment shall be made to the Issuing Lender at its address for notices specified herein in the currency of such Letter of Credit and in immediately available funds.

(b) Interest shall be payable on the Dollar Equivalent of any and all amounts remaining unpaid by the applicable Borrower under this Article III from the date such amounts become payable (whether at stated maturity, by acceleration or otherwise) until payment in full at the rate which would be payable on any outstanding ABR Loans which were then overdue.

(c) Each drawing under any Letter of Credit denominated in Dollars shall constitute a request by the applicable Borrower to the Administrative Agent for a borrowing pursuant to Section 2.2(d) of ABR Loans in the amount of such drawing. The Borrowing Date with respect to such borrowing shall be the date of such drawing.

SECTION 3.6 Obligations Absolute.

(a) Each Borrower's obligations under this Article III shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which such Borrower may have or have had against the Issuing Lender, any L/C Participant or any beneficiary of a Letter of Credit.

(b) Each Borrower also agrees that the Issuing Lender and the L/C Participants shall not be responsible for, and such Borrower's Reimbursement Obligations under Section 3.5(a) shall not be affected by, among other things, (i) the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or (ii) any dispute between or among such Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred, (iii) any claims whatsoever of such Borrower against any beneficiary of such Letter of Credit or any such transferee, (iv) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, or (v) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of a Borrower's obligations hereunder.

(c) The Issuing Lender shall not be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit, except for direct damages resulting from errors or omissions caused by the Issuing Lender's gross negligence, willful misconduct or material breach of its obligations under this Agreement (as determined by a final and non-appealable judgment of a court of competent jurisdiction).

(d) Each Borrower agrees that any action taken or omitted by the Issuing Lender under or in connection with any Letter of Credit issued for its account or the related drafts or documents, if done in the absence of gross negligence or willful misconduct and in accordance with any applicable standard of care specified in the Uniform Commercial Code of the State of New York (or other law applicable to such Letters of Credit), shall be binding on such Borrower and shall not result in any liability of the Issuing Lender or any L/C Participant to such Borrower. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that (i) with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Issuing Lender may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit, (ii) the Issuing Lender may, in its sole discretion, (x) assert or waive application of Article 17 and Article 45 of the Uniform Customs, or (y) accept as a draft any written demand or request for payment under a Letter of Credit even if non-negotiable or not in the form of a draft, and (iii) with respect to documents presented which the Issuing Lender determines do not appear on their face to comply with the terms of a Letter of Credit, the Issuing Lender may, in its sole discretion, approach the applicable Borrower for a waiver of the discrepancy(ies), but neither requesting such a waiver from such Borrower nor receiving such a waiver from such Borrower shall obligate the Issuing Lender to make payment against such documents. The applicable Borrower will notify the Issuing Lender in writing of any objection such Borrower may have to the Issuing Lender's issuance or amendment of any Letter of Credit, the Issuing Lender's honor or dishonor of any presentation under any Letter of Credit, or any other action or inaction taken or proposed to be taken by the Issuing Lender under or in connection with this Agreement or any Letter of Credit. The applicable Borrower's notice of objection must be delivered to the Issuing Lender within five (5) Business Days after such Borrower receives notice of the action or inaction it objects to. Any Borrower's failure to give such notice of objection within five (5) Business Days after such Borrower's actual receipt of notice of the action or inaction it objects to shall automatically waive such Borrower's objection, authorize or ratify the Issuing Lender's action or inaction, and preclude such Borrower from raising the objection as a defense or claim against the Issuing Lender.

SECTION 3.7 Letter of Credit Payments.

If any draft or other demand for payment shall be presented for payment under any Letter of Credit, the Issuing Lender shall, within the time allowed by applicable law or the terms of the Letter of Credit, examine all documents purporting to be a demand for payment and promptly after such examination notify the applicable Borrower of the date and amount thereof. The responsibility of the Issuing Lender to the applicable Borrower in connection with any draft or other demand for payment presented for payment under any Letter of Credit issued for such Borrower's account shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft or other demand for payment) delivered under such Letter of Credit in connection with such presentment appear on their face to be in conformity with the terms and conditions of such Letter of Credit.

SECTION 3.8 Applications.

To the extent that any provision of any Application related to any Letter of Credit is inconsistent with the provisions of this Article III, the provisions of this Article III shall apply.

SECTION 3.9 Replacement of the Issuing Lender; Alternate Issuing Lender.

(a) The Issuing Lender may be replaced at any time by written agreement among the Borrowers, the Administrative Agent, the replaced Issuing Lender and the successor Issuing Lender. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Lender. At the time any such replacement shall become effective, the Borrowers shall, jointly and severally, pay all unpaid fees accrued for the account of the replaced Issuing Lender. From and after the effective date of any such replacement, (i) the successor Issuing Lender shall have all the rights and obligations of the Issuing Lender under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Lender" shall be deemed to refer to such successor or to any previous Issuing Lender, or to such successor and all previous Issuing Lenders, as the context shall require. After the replacement of an Issuing Lender hereunder, the replaced Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(b) Subject to the appointment and acceptance of a successor Issuing Lender, any Issuing Lender may resign as an Issuing Lender at any time upon thirty days' prior written notice to the Administrative Agent, Kimco and the Lenders, in which case, such resigning Issuing Lender shall be replaced in accordance with Section 3.9(a) above.

(c) Kimco may request that a Lender other than one of the Lead Lenders (such Lender, an "Alternate Issuing Lender") be an Issuing Lender; provided that (i) no Lender shall have any obligation to serve as such Alternate Issuing Lender, (ii) any such Alternate Issuing Lender must agree to such customary record-keeping and reporting requirements relating to the applicable Letter(s) of Credit as the Administrative Agent shall reasonably require in connection with the Revolving Credit Facility and (iii) such Alternate Issuing Lender shall deliver a notice to the Administrative Agent on or prior to the date that such Lender becomes an Alternate Issuing Lender setting forth such Alternate Issuing Lender's Issuing Lender Commitment.

SECTION 3.10 Existing Letters of Credit.

Schedule 3.10 (existing Letters of Credit) contains a schedule of certain letters of credit issued by the applicable Existing Issuing Lender prior to the effectiveness of the amendment and restatement contemplated hereby for the account of the applicable account parties under the Existing Revolving Credit Agreement. Upon the effectiveness of the amendment and restatement contemplated hereby, such letters of credit, to the extent outstanding, shall be deemed, automatically and without further action by the parties thereto, to be Tranche A Letters of Credit or Tranche B Letters of Credit, as shown on such Schedule, issued by the applicable Issuing Lender pursuant to this Article III and subject to the provisions hereof.

SECTION 3.11 Increase of L/C Commitment. Kimco may from time to time request increases in the amount of the L/C Commitment, in minimum increments of $5,000,000 (or whole multiples of $1,000,000 in excess of $5,000,000), provided that the total amount by which the L/C Commitment may be increased under this Section 3.11 shall be limited to $150,000,000 in the aggregate (resulting in a total L/C Commitment not to exceed $250,000,000). Any Issuing Lender or, with the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) and Kimco, any additional bank, financial institution or other entity that is not then an Issuing Lender may elect to become an Issuing Lender hereunder and may increase its (or make an) Issuing Lender Commitment. No Issuing Lender or Lender shall have any obligation to increase its Issuing Lender Commitment. The form of documentation pursuant to which any such Issuing Lender Commitments and L/C Commitment are increased or obtained shall be customary and must be acceptable to Kimco and the Administrative Agent (each acting reasonably). Each increase of the Issuing Lender Commitments and L/C Commitment under this Section 3.11 is subject to the following conditions:

(a) Each of the representations and warranties made by Kimco in or pursuant to the Loan Documents shall be true and correct in all material respects (or, in the case of any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language, true and correct (after giving effect to any qualification therein) in all respects) on and as of the date of such increase as if made on and as of such date except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date; and

(b) No Default or Event of Default shall have occurred and be continuing on the date of such increase, after giving effect thereto.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent, the Issuing Lender, and the Lenders to enter into this Agreement, to make or maintain the Revolving Credit Loans and Competitive Loans, and to issue or participate in the Letters of Credit, Kimco hereby represents and warrants, on the Effective Date and (other than with respect to the representations and warranties contained in Sections 4.2, 4.6 and 4.22) on each Representation and Warranty Date, as to itself only, and not as to any other Loan Party (and, solely with respect to the representations and warranties contained in Sections 4.3(b) (only as to itself and not as to its Subsidiaries), 4.4, 4.5(b), 4.13, 4.14, 4.15, 4.16 and 4.22 (the "Baseline Representations and Warranties"), on any applicable Subsidiary Borrower Representation and Warranty Date in respect of a specific Subsidiary Borrower, such Subsidiary Borrower hereby represents and warrants as to itself) to the Administrative Agent, the Issuing Lender, and each Lender that:

SECTION 4.1 Financial Condition.

The consolidated balance sheet of Kimco and its subsidiaries as at December 31, 2018 and December 31, 2019 and the related consolidated statements of income and of cash flows for the respective fiscal years ended on such dates, reported on by PricewaterhouseCoopers, LLP, copies of which have heretofore been furnished to the Lenders, are complete and correct and present fairly the consolidated financial condition of Kimco and its subsidiaries as at such dates, as applicable and the consolidated results of their operations and their consolidated cash flows for the applicable fiscal year then ended. All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP applied consistently throughout the periods involved. Except as set forth on Schedule 4.1, neither Kimco nor any of the Consolidated Entities has, at the Effective Date, any material Indebtedness, Guarantee Obligation, contingent liability or liability for taxes, or any unusual forward or long-term commitment, including any interest rate or foreign currency swap or exchange transaction, which is not reflected in the foregoing statements or in the notes thereto. Except as set forth on Schedule 4.1, during the period from December 31, 2019 to and including the Effective Date there has been no sale, transfer or other disposition by Kimco or any of the Consolidated Entities of any material part of its business or property and no purchase or other acquisition of any business or property (including any capital stock of any other Person) material in relation to the consolidated financial condition of Kimco and the Consolidated Entities at December 31, 2019.

SECTION 4.2 No Change.

Since December 31, 2019, there has been no development or event nor any prospective development or event, which has had or could reasonably be expected to have a Material Adverse Effect.

SECTION 4.3 Corporate Existence; Compliance with Law.

(a) Kimco (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (ii) has the ~~corporate~~ power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (iii) is duly qualified ~~as a foreign corporation~~ and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, except to the extent the failure to be so qualified and in good standing could not, in the aggregate, reasonably be expected to have a Material Adverse Effect, and (iv) is in compliance with all Requirements of Law except to the extent that the failure to comply therewith could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Each Subsidiary (i) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (ii) has the corporate (or limited partnership or limited liability company or other form of organization, as applicable) power and authority, and the legal right, to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, (iii) is duly qualified as a foreign corporation (or limited partnership or limited liability company or other form of organization, as applicable) and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, and (iv) is in compliance with all Requirements of Law except, in the case of clauses (i), (ii), (iii) or (iv) above, as could not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 4.4 Corporate Power; Authorization; Enforceable Obligations.

Each applicable Loan Party has the corporate (or limited partnership or limited liability company or other form of organization, as applicable) power and authority, and the legal right, to make, deliver and perform each Loan Document to which it is a party and, in the case of each applicable Borrower, to borrow and request the issuance of Letters of Credit hereunder, and each applicable Loan Party has taken all necessary corporate (or limited partnership or limited liability company or other form of organization, as applicable) action to authorize the execution, delivery and performance of each Loan Document to which it is a party and, in the case of each applicable Borrower, the borrowings and requests for Letters of Credit on the terms and conditions of this Agreement. No consent or authorization of, filing with or other act by or in respect of, any Governmental Authority or any other Person is required in connection with the borrowings and requests for Letters of Credit hereunder or with the execution, delivery, performance, validity or enforceability of any Loan Document. Each Loan Document has been duly executed and delivered on behalf of each applicable Loan Party party thereto. Each Loan Document constitutes a legal, valid and binding obligation of each applicable Loan Party party thereto enforceable against each such Loan Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general equitable principles (whether sought by proceedings in equity or at law).

SECTION 4.5 No Legal Bar.

(a) The execution, delivery and performance of the Loan Documents and the Borrowings and requests for Letters of Credit hereunder and the use of the proceeds thereof will not violate any Requirement of Law or any Contractual Obligation of Kimco and will not result in, or require, the creation or imposition of any Lien on any of its properties or revenues pursuant to any such Requirement of Law or Contractual Obligation, except, in each case, where the same could not reasonably be expected to have a Material Adverse Effect.

(b) The execution, delivery and performance of the Loan Documents and the Borrowings and requests for Letters of Credit hereunder and the use of the proceeds thereof will not violate any Requirement of Law or any Contractual Obligation of the applicable Loan Party other than Kimco and will not result in, or require, the creation or imposition of any Lien on any of its properties or revenues pursuant to any such Requirement of Law or Contractual Obligation, except, in each of the foregoing cases, where the same could not reasonably be expected to have a Material Adverse Effect.

SECTION 4.6 No Material Litigation.

No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the actual knowledge of Kimco, threatened in writing by or against **Ultimate Parent,** Kimco or any of its Subsidiaries or against any of its or their respective properties or revenues which could reasonably be expected to have a Material Adverse Effect.

SECTION 4.7 No Default.

Neither Kimco nor any of its Subsidiaries is in default under or with respect to any of its Contractual Obligations in any respect which could reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

SECTION 4.8 Ownership of Property.

Each of Kimco and its Subsidiaries has good record title in fee simple to, or a valid leasehold interest in, all of its material real property, and good title to all of its other material property, except, in each case, where failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 4.9 Intellectual Property.

Kimco and each of its Subsidiaries owns, or is licensed to use, all trademarks, trade names, copyrights, technology, know-how and processes ("Intellectual Property") necessary for the conduct of its business as currently conducted except for those the failure to own or license which could not reasonably be expected to have a Material Adverse Effect. No claim has been asserted and is pending by any Person challenging or questioning the use of any Intellectual Property or the validity or effectiveness of any Intellectual Property, nor does Kimco know of any valid basis for any such claim, except, in each case, for any claim that could not reasonably be expected to have a Material Adverse Effect. The use of such Intellectual Property by Kimco and its Subsidiaries does not infringe on the rights of any Person, except for such claims and infringements that, in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

SECTION 4.10 No Burdensome Restrictions; Disclosure.

No Requirement of Law or Contractual Obligation of Kimco or any of its Subsidiaries could reasonably be expected to have a Material Adverse Effect. No written information, other than financial projections and information of a general economic or industry nature, furnished by Kimco or by any of its representatives on Kimco's behalf to the Administrative Agent, the Issuing Lender or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished), when furnished and when taken as a whole, contained any untrue statement of material fact or omitted to state any material fact necessary to make the statements therein, taken as a whole, not materially misleading in the light of the circumstances under which they were made; provided that, with respect to financial projections made available by Kimco or by any of its representatives on Kimco's behalf to the Administrative Agent, the Issuing Lender or any Lender in connection with the negotiation of this Agreement or delivered hereunder, Kimco represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time when made, it being understood and agreed that projections are by their nature inherently uncertain and are not a guarantee of financial performance, that actual results may differ from projections and that such differences may be material

SECTION 4.11 Taxes.

Each of Kimco and its Subsidiaries has filed or caused to be filed all tax returns which, to the actual knowledge of Kimco, are required to be filed and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority (other than (a) any taxes, fees, or other charges the amount or validity of which are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided on the books of Kimco or its Subsidiaries, as the case may be or (b) to the extent that the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect); no tax Lien has been filed, and, to the actual knowledge of Kimco, no claim is being asserted, with respect to any such tax, fee or other charge.

SECTION 4.12 Federal Regulations.

No part of the proceeds of any Revolving Credit Loan or Competitive Loan and no Letter of Credit will be used for "purchasing" or "carrying" any "margin stock" within the respective meanings of each of the quoted terms under Regulation U of the Board as now and from time to time hereafter in effect or for any purpose which violates the provisions of the Regulations of the Board. If requested by the Administrative Agent, each Borrower will furnish to the Administrative Agent a statement to the foregoing effect in conformity with the requirements of FR Form U-1 referred to in said Regulation U.

SECTION 4.13 ERISA.

No Reportable Event has occurred during the five-year period prior to the date on which this representation is made or deemed made with respect to any Plan, and each Plan has complied in all material respects with the applicable provisions of ERISA and the Code. The present value of all accrued benefits under each Single Employer Plan maintained by Kimco or any Commonly Controlled Entity (based on those assumptions used to fund the Plans) did not, as of the last annual valuation date prior to the date on which this representation is made or deemed made, exceed the value of the assets of such Plan allocable to such accrued benefits. Neither any Borrower nor any Commonly Controlled Entity has had a complete or partial withdrawal from any Multiemployer Plan, and neither any Borrower nor any Commonly Controlled Entity would become subject to any liability under ERISA if such Borrower or any such Commonly Controlled Entity were to withdraw completely from all Multiemployer Plans as of the valuation date most closely preceding the date on which this representation is made or deemed made. No such Multiemployer Plan is in Reorganization or Insolvent. The present value (determined using actuarial and other assumptions which are reasonable in respect of the benefits provided and the employees participating) of the liability of the Borrowers and each Commonly Controlled Entity for post-retirement benefits to be provided to their current and former employees under Plans which are welfare benefit plans (as defined in Section 3(1) of ERISA) equals or exceeds the assets under all such Plans allocable to such benefits.

SECTION 4.14 Investment Company Act.

No Borrower is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended.

SECTION 4.15 Anti-Corruption Laws and Sanctions.

Neither any Borrower nor any Wholly Owned Subsidiary **of Kimco**, nor any director or senior officer of a Borrower, nor, to the actual knowledge of Kimco, any director or senior officer of any Wholly Owned Subsidiary **of Kimco**, is the subject of Sanctions or a Sanctioned Person. No part of the proceeds of the Loans and no Letter of Credit shall be used by a Borrower in violation of Anti-Corruption Laws or applicable Sanctions. Each of the Borrowers and each Wholly Owned Subsidiary **of Kimco** is in compliance, in all material respects, with the Patriot Act, Anti-Corruption Laws, and applicable Sanctions.

SECTION 4.16 Purpose.

The proceeds of the Revolving Credit Loans and the Competitive Loans and the Letters of Credit on and after the Effective Date shall be used by the Borrowers for general corporate purposes.

SECTION 4.17 Environmental Matters.

Each of the following representations and warranties is true and correct on and as of the Effective Date except to the extent that the facts and circumstances giving rise to any such failure to be so true and correct, in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) To the best knowledge of Kimco, the Properties do not contain, and have not previously contained, any Materials of Environmental Concern in amounts or concentrations which constitute or constituted a violation of, or could reasonably give rise to liability under, Environmental Laws.

(b) To the best knowledge of Kimco, the Properties and all operations at the Properties are in compliance, and have in the last two years been in compliance, with all applicable Environmental Laws, and there is no contamination at, under or about the Properties, or violation of any Environmental Law with respect to the Properties.

(c) Neither Kimco nor any of its Subsidiaries has received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental Laws with regard to any of the Properties, nor does Kimco have knowledge or reason to believe that any such notice will be received .

(d) To the best knowledge of Kimco, Materials of Environmental Concern have not been transported or disposed of from the Properties in violation of, or in a manner or to a location which could reasonably give rise to liability under, Environmental Laws, nor have any Materials of Environmental Concern been generated, treated, stored or disposed of at, on or under any of the Properties in violation of, or in a manner that could give rise to liability under, any applicable Environmental Laws.

(e) No judicial proceeding or governmental or administrative action is pending, or, to the knowledge of Kimco, threatened in writing, under any Environmental Law to which Kimco or any of its Subsidiaries is or, to the actual knowledge of Kimco, will be named as a party with respect to the Properties, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative of judicial requirements outstanding under any Environmental Law with respect to the Properties.

(f) To the best knowledge of Kimco, there has been no release or threat of release of Materials of Environmental Concern at or from the Properties, or arising from or related to the operations of Kimco and its Subsidiaries in connection with the Properties in violation of or in amounts or in a manner that could give rise to liability under Environmental Laws.

SECTION 4.18 Insurance.

Kimco and each Subsidiary maintains with insurance companies rated at least A- by A.M. Best & Co., with premiums at all times currently paid, insurance upon fixed assets and inventories, including public liability insurance, fire and all other risks insured against by extended coverage, fidelity bond coverage, business interruption insurance, and all insurance required by law, all in form and amounts required by law and customary to the respective natures of their businesses and properties, except in cases where failure to maintain such insurance will not have a Material Adverse Effect.

SECTION 4.19 Condition of Properties.

Each of the following representations and warranties is true and correct except to the extent that the facts and circumstances giving rise to any such failure to be so true and correct, in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) All of the improvements located on the Properties and the use of said improvements comply and shall continue to comply in all material respects with all applicable zoning resolutions, building codes, subdivision and other similar applicable laws, rules and regulations and are covered by existing valid certificates of occupancy and all other certificates and permits required by applicable laws, rules, regulations and ordinances or in connection with the use, occupancy and operation thereof.

(b) No material portion of any of the Properties, nor any improvements located on said Properties that are material to the operation, use or value thereof, have been damaged in any respect as a result of any fire, explosion, accident, flood or other casualty.

(c) No condemnation or eminent domain proceeding has been commenced or to the knowledge of Kimco is about to be commenced against any portion of any of the Properties, or any improvements located thereon that are material to the operation, use or value of said Properties except as set forth and described in Schedule 4.19.

(d) No notices of violation of any federal, state or local law or ordinance or order or requirement have been issued with respect to any Properties.

SECTION 4.20 [Reserved].

SECTION 4.21 REIT Status.

~~Kimco~~**Ultimate Parent** is an equity-oriented real estate investment trust under Sections 856 through 860 of the Code, unless (i) the Board of Directors of ~~Kimco~~**Ultimate Parent** shall have determined in good faith that it is in the best interests of ~~Kimco~~**Ultimate Parent** to no longer maintain such status and (ii) ~~Kimco's no~~**Ultimate Parent's no** longer maintaining such status does not materially adversely affect the interests of the Lenders.

SECTION 4.22 Solvency.

On the Effective Date (after giving effect to the making of any Loan on the Effective Date and the issuance, renewal, extension or amendment of any Letter of Credit on the Effective Date), each of (a) Kimco and (b) each Subsidiary Borrower party hereto as of the Effective Date is Solvent.

SECTION 4.23 Affected Financial Institutions. No Loan Party is an Affected Financial Institution.

ARTICLE V

CONDITIONS

SECTION 5.1 Conditions to Effectiveness / Effective Date.

The amendment and restatement of the Existing Revolving Credit Agreement effected hereby and the effectiveness of this Agreement and the availability of the Revolving Credit Facility hereunder, is subject to the satisfaction of the following conditions (or the waiver of such conditions in accordance with Section 10.1):

(a) Credit Agreement. The Administrative Agent shall have received from each party hereto (which parties include each Existing Revolving Lender, the Administrative Agent and each Existing Issuing Lender) either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) No Material Adverse Effect. There shall not have occurred or become known to the Lead Lenders or the Joint Lead Arrangers any material adverse condition or material adverse change in the business, operations, property or financial condition of Kimco and its Subsidiaries, taken as a whole since December 31, 2019.

(c) Representations and Warranties. Each of the representations and warranties made by Kimco in or pursuant to the Loan Documents shall be true and correct in all material respects on and as of the Effective Date except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date; provided that any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects as of the Effective Date.

(d) Financial Statements. The Lenders shall have received (i) unqualified audited consolidated financial statements of Kimco for the fiscal years ended December 31, 2018 and December 31, 2019, and (ii) unaudited interim consolidated financial statements of Kimco for each quarterly period (other than the fourth quarter of any fiscal year) ended both (x) subsequent to the date of the latest financial statements delivered pursuant to clause (i) of this paragraph and (y) at least 45 days prior to the Closing Date, in each case prepared in accordance with GAAP.

(e) Existing Revolving Lenders. All loans and other amounts owing to the Existing Revolving Lenders under the Existing Revolving Credit Agreement shall have been paid in full in accordance with clause (f) below.

(f) Interest, Fees, Breakage Costs and Expenses. JPMorgan Chase Bank, N.A., as administrative agent under the Existing Revolving Credit Agreement or this Agreement, as applicable, shall have received payment (which may be from proceeds of the initial Loans under this Agreement) of (i) for the account of the Existing Revolving Lenders, (A) the aggregate outstanding principal amount of all of the Existing Revolving Loans, (B) all interest, fees and expenses accrued to but excluding the Effective Date owed to such Existing Revolving Lenders under the Existing Revolving Credit Agreement or any fee letter referred to therein or relating thereto, (C) any and all amounts payable pursuant to Section 2.13 of the Existing Revolving Credit Agreement (it being agreed that with respect to each Existing Revolving Lender such amount is zero), and (ii) for the account of the applicable payee, all fees and other amounts due and payable on or prior to the Effective Date under or in connection with the Existing Revolving Credit Agreement or this Agreement, including pursuant to the Fee Letter and, to the extent invoiced at least two (2) Business Days prior to the Effective Date, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrowers hereunder.

(g) Legal Opinion. The Administrative Agent shall have received, with a counterpart for the Administrative Agent, each Lender and the Issuing Lender, the executed legal opinions of Venable LLP and Wachtell, Lipton, Rosen & Katz, counsel to the Loan Parties, each in form and substance satisfactory to the Administrative Agent. The Borrowers hereby request such counsel to deliver such opinion.

(h) Notes. The Administrative Agent shall have received from each Borrower a signed Revolving Credit Note and from Kimco a signed Competitive Loan Note, in each case, for the account of each Lender that notified the Administrative Agent and Kimco of its request for Notes at least two (2) Business Days prior to the Closing Date.

(i) Closing Certificates. The Administrative Agent shall have received a certificate from a Responsible Officer of Kimco, dated the Effective Date, substantially in the form of Exhibit E , (i) in the case of Kimco, confirming compliance with the conditions specified in this Section 5.1 and in Section 5.2 and, (ii) in each case, certifying, among other things, as to the names and offices of the Persons authorized to sign the Loan Documents to be delivered pursuant to the terms hereof by each such Loan Party, together with the signatures of each such Person and a certificate of another Responsible Officer, certifying as to the name, office, and signature of such first Responsible Officer.

(j) Organizational Documents, Etc. The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of each Borrower, and the authorization of each Borrower in respect of the transactions contemplated by this Agreement or the other Loan Documents, all in form and substance reasonably satisfactory to the Administrative Agent, certified to be true, correct and complete by a Responsible Officer as of the Effective Date.

(k) Patriot Act. The Administrative Agent and the Lenders shall have received all documentation and other information regarding the Borrowers reasonably requested by them of the Borrowers in writing at least 10 Business Days prior to the Closing Date that is required in order to comply with their ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

The Administrative Agent shall notify Kimco, the Issuing Lender and the Lenders of the Effective Date, and such notice shall be conclusive and binding.

SECTION 5.2 Conditions to Each Extension of Credit.

The agreement of each Lender to make a Loan (other than a Loan to fund an Excluded Borrowing) and of the Issuing Lender to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions precedent:

(a) Representations and Warranties. On each applicable Representation and Warranty Date, each of the representations and warranties made by Kimco in or pursuant to the Loan Documents shall be true and correct in all material respects (or, in the case of any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language, true and correct (after giving effect to any qualification therein) in all respects as of the applicable Representation and Warranty Date) on and as of such date as if made on and as of such date except for (i) representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date and (ii) the representations and warranties set forth in Sections 4.2, 4.6 and 4.22.

(b) No Default. On each applicable Representation and Warranty Date, no Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the extension of credit requested to be made on such date.

(c) Baseline Representations and Warranties. In the case of the making of any Loan (other than a Loan to fund an Excluded Borrowing) to, or the issuance, renewal, extension or amendment of any Letter of Credit for the account of, any Subsidiary Borrower, then on each applicable Subsidiary Borrower Representation and Warranty Date, each of the Baseline Representations and Warranties made by the applicable Subsidiary Borrower in or pursuant to the Loan Documents shall be true and correct in all material respects (or, in the case of any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language, true and correct (after giving effect to any qualification therein) in all respects as of the applicable Subsidiary Borrower Representation and Warranty Date) on and as of such date as if made on and as of such date except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date.

Each Borrowing (other than an Excluded Borrowing) by, or issuance, renewal, extension or amendment of a Letter of Credit on behalf of, any Borrower hereunder shall constitute a representation and warranty, as of the date of such extension of credit (or renewal, extension or amendment of a Letter of Credit), (i) by Kimco in all cases that the conditions contained in Section 5.2 (a) and (b) have been satisfied, and (ii) if the applicable Borrower is a Subsidiary Borrower, by such Subsidiary Borrower that the conditions contained in Section 5.2(c) have been satisfied.

ARTICLE VI

AFFIRMATIVE COVENANTS

So long as the Revolving Commitments remain in effect, any Competitive Loan or any Revolving Credit Loan remains outstanding and unpaid, any Letter of Credit remains outstanding, any Reimbursement Obligation remains unpaid in respect of any Letter of Credit, or any other amount is owing to any Lender, the Issuing Lender or the Administrative Agent hereunder, Kimco hereby agrees as set forth in Sections 6.1 through 6.8, inclusive, and each applicable Subsidiary Borrower hereby agrees as set forth in Section 6.9, that:

SECTION 6.1 Financial Statements.

Kimco shall furnish to the Administrative Agent (with sufficient copies for each Lender and the Issuing Lender):

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of ~~Kimco~~**Ultimate Parent**, a copy of the consolidated balance sheet of ~~Kimco~~**Ultimate Parent** and its Subsidiaries as at the end of such year and the related consolidated statements of income and retained earnings and of cash flows of ~~Kimco~~**Ultimate Parent** and its Subsidiaries for such year, setting forth in each case in comparative form the figures as of the end of and for the previous year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, by PricewaterhouseCoopers, LLP or other independent certified public accountants of nationally recognized standing; and

(b) as soon as available, but in any event not later than 45 days after the end of each of the first three (3) quarterly periods of each fiscal year of ~~Kimco~~**Ultimate Parent**, the unaudited consolidated balance sheet of ~~Kimco~~**Ultimate Parent** and its Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of income and retained earnings and of cash flows of ~~Kimco~~**Ultimate Parent** and its Subsidiaries for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the corresponding date or period, as the case may be, in the previous year, certified by a Responsible Officer as being fairly stated in all material respects (subject to normal year-end audit adjustments);

all such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods (except as approved by such accountants or officer, as the case may be, and disclosed therein).

The Administrative Agent shall make available to the Lenders (which the Administrative Agent may effect by electronic posting) the materials furnished to it pursuant to this Section.

SECTION 6.2 Certificates; Other Information.

Kimco shall furnish to the Administrative Agent (with sufficient copies for each Lender and the Issuing Lender (in the case of clauses (b)-(c) below) or each relevant Lender or Issuing Lender (in the case of clause (e) below)):

(a) [reserved];

(b) concurrently with the delivery of the financial statements referred to in Sections 6.1(a) and 6.1(b), a compliance certificate of a Responsible Officer of Kimco substantially in the form of Exhibit F;

(c) within ten (10) days after the same are sent, copies of all financial statements and reports which ~~Kimco~~**Ultimate Parent** sends to its stockholders, and within ten (10) days after the same are filed, copies of all financial statements, reports or other documents which ~~Kimco~~**Ultimate Parent** may make to, or file with, the Securities and Exchange Commission or any successor or analogous Governmental Authority;

(d) [reserved]; and

(e) promptly, upon request of the Administrative Agent, a list of all Entities, and such additional financial information, information with respect to any Property and other information as any Lender or the Issuing Lender may from time to time reasonably request (through the Administrative Agent), including information and documentation needed for compliance with applicable know-your-customer rules and regulations.

The Administrative Agent shall make available to the Lenders (which the Administrative Agent may effect by electronic posting) the materials furnished to it pursuant to this Section.

SECTION 6.3 Payment of Obligations.

Kimco shall pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all its obligations of whatever nature, except (a) where the amount or validity thereof is currently being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of Kimco, (b) Non-Recourse Indebtedness to the extent that Kimco has determined in good faith that it is in its best interests to contest or not pay such Non-Recourse Indebtedness or (c) other obligations which aggregate not more than $50,000,000 to the extent that Kimco has determined in good faith that it is in its best interests to contest or not pay such other obligations.

SECTION 6.4 Maintenance of Existence, etc.

Kimco shall:

(a) Preserve, renew and keep in full force and effect its ~~corporate~~**organizational** existence and take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of its business except as otherwise permitted pursuant to Section 7.2.

(b) Comply with all Contractual Obligations and Requirements of Law except to the extent that failure to comply therewith could not, in the aggregate, be reasonably expected to have a Material Adverse Effect.

SECTION 6.5 Maintenance of Property; Insurance.

Kimco shall keep all property useful and necessary in its business in good working order and condition; maintain insurance with financially sound and reputable insurance companies rated at least A- by A.M. Best & Co. on all of its property in at least such amounts and against at least such risks (but including in any event public liability, product liability and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business; and furnish to each Lender and the Issuing Lender, upon written request, full information as to the insurance carried.

SECTION 6.6 Inspection of Property; Books and Records; Discussions.

Kimco shall keep proper books of records and account in which full, true and correct entries in conformity with GAAP and all Requirements of Law shall be made of all dealings and transactions in relation to its business and activities; and permit representatives of any Lender or the Issuing Lender to visit and inspect any of its properties and examine and make abstracts from any of its books and records at any reasonable time and as often as may reasonably be desired and to discuss the business, operations, properties and financial and other condition of Kimco and its Subsidiaries with officers and employees of Kimco and its Subsidiaries and with its independent certified public accountants.

SECTION 6.7 Notices.

Kimco shall promptly give notice to the Administrative Agent, the Issuing Lender and each Lender of:

(a) the occurrence of any Default or Event of Default;

(b) any (i) default or event of default under any Contractual Obligation of Kimco or any of its Subsidiaries or (ii) litigation, investigation or proceeding which may exist at any time between Kimco or any of its Subsidiaries and any Governmental Authority, which in either case, if not cured or if adversely determined, as the case may be, could reasonably be expected to have a Material Adverse Effect;

(c) any litigation or administrative or other proceeding affecting Kimco or any of its Subsidiaries in which the amount involved is $50,000,000 or more on an individual basis (or $100,000,000 or more in the aggregate together with all other such litigations or administrative or other proceedings affecting Kimco or any of its Subsidiaries) and not covered by insurance or in which material injunctive or similar relief is sought, or the occurrence in respect of any Guarantor of any case, proceeding, event, or circumstance of the nature set forth in paragraph (f) of Article VIII;

(d) the following events, as soon as possible and in any event within 30 days after Kimco knows or has reason to know thereof: (i) the occurrence or expected occurrence of any Reportable Event with respect to any Plan, a failure to make any required contribution to a Plan, the creation of any Lien in favor of the PBGC or a Plan or any withdrawal from, or the termination, Reorganization or Insolvency of, any Multiemployer Plan or (ii) the institution of proceedings or the taking of any other action by the PBGC or Kimco or any Commonly Controlled Entity or any Multiemployer Plan with respect to the withdrawal from, or the terminating, Reorganization or Insolvency of, any Plan; and

(e) any development or event which has had or could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to this Section 6.7 shall be accompanied by a statement of a Responsible Officer of Kimco setting forth details of the occurrence referred to therein and stating what action Kimco proposes to take with respect thereto.

The Administrative Agent shall promptly forward to the Lenders (which the Administrative Agent may effect by electronic posting) any written notice hereunder furnished to it pursuant to this Section.

SECTION 6.8 Environmental Laws.

Kimco shall:

(a) Comply with, and use its best efforts to ensure compliance by all tenants and subtenants, if any, with, all applicable Environmental Laws and obtain and comply with and maintain, and use its best efforts to ensure that all tenants and subtenants obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws, except to the extent that failure to do so could not be reasonably expected to have a Material Adverse Effect.

(b) Conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws and promptly comply in all material respects with all lawful orders and directives of all Governmental Authorities regarding Environmental Laws, except to the extent that (i) the same are being contested in good faith by appropriate proceedings and the pendency of such proceedings could not be reasonably expected to have a Material Adverse Effect or (ii) Kimco has determined in good faith that contesting the same is not in the best interests of Kimco and its Subsidiaries and the failure to contest the same could not be reasonably expected to have a Material Adverse Effect.

(c) Defend, indemnify and hold harmless the Administrative Agent, the Issuing Lender and each Lender, and their respective employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs and expenses (whether arising pre-judgment or post-judgment) of whatever kind or nature known or unknown, contingent or otherwise, arising out of, or in any way relating to the violation of, noncompliance with or liability under any Environmental Laws applicable to the operations of Kimco, its Subsidiaries or the Properties, or any orders, requirements or demands of Governmental Authorities related thereto, including attorney's and consultant's fees, investigation and laboratory fees, response costs, court costs and litigation expenses, except to the extent that any of the foregoing arise out of the gross negligence or willful misconduct of the party seeking indemnification therefor. Notwithstanding anything to the contrary in this Agreement, this indemnity shall continue in full force and effect regardless of the termination of this Agreement.

ARTICLE VII

NEGATIVE COVENANTS

So long as the Revolving Commitments remain in effect, any Competitive Loan or any Revolving Credit Loan remains outstanding and unpaid, any Letter of Credit remains outstanding, any Reimbursement Obligation remains unpaid in respect of any Letter of Credit, or any other amount is owing to any Lender, the Issuing Lender or the Administrative Agent hereunder, Kimco hereby agrees that:

SECTION 7.1 Financial Covenants.

Kimco shall not directly or indirectly:

(a) Total Indebtedness Ratio. Permit, at the last day of any Test Period, the ratio of (i) Total Indebtedness as of such day to (ii) Gross Asset Value (the "Leverage Ratio") as of such day to exceed 0.60 to 1.00 (or 0.65 to 1.00 for a period not to exceed four (4) consecutive fiscal quarters in the event that during the applicable period Kimco or one of the Consolidated Entities has incurred Indebtedness in connection with Major Acquisitions); provided that for the purpose of determining the foregoing ratio, there shall be excluded from the amount of Total Indebtedness the amount of Total Indebtedness that matures by its terms within 24 months after such date of determination, such exclusion to be limited, however, to the excess of (i) the dollar equivalent of the aggregate amount of Unrestricted Cash and Cash Equivalents then held by Kimco and the Consolidated Entities over (ii) $35,000,000.

(b) Total Priority Indebtedness Ratio. Permit, at the last day of any Test Period, the ratio of (i) Total Priority Indebtedness as of such day to (ii) Gross Asset Value as of such day to exceed 0.35 to 1.00; provided that for the purpose of determining the foregoing ratio, there shall be excluded from the amount of Total Priority Indebtedness the amount of Total Priority Indebtedness that matures by its terms within 24 months after such date of determination, such exclusion to be limited, however, to the excess of (i) the dollar equivalent of the aggregate amount of Unrestricted Cash and Cash Equivalents then held by Kimco and the Consolidated Entities over (ii) $35,000,000.

(c) [reserved].

(d) [reserved].

(e) Unsecured Interest Expense Ratio. Permit, for any Test Period, the ratio of (i) Unencumbered Assets NOI for such period to (ii) Total Unsecured Interest Expense for such period to be less than 1.75 to 1.00.

(f) Fixed Charge Coverage Ratio. Permit, for any Test Period, the ratio of Total Adjusted EBITDA for such period to Total Debt Service for such period to be less than 1.50 to 1.00. Solely for the purpose of calculating the ratio in this clause (f), Total Adjusted EBITDA (i) shall include cash flow distributions (other than distributions in respect of capital transactions) from Unconsolidated Entities ("Unconsolidated Entity Operating Cash Flow"), and (ii) shall be increased by the amounts excluded pursuant to clauses (iv), (v) and (vi) of the definition of the term "Total Adjusted EBITDA".

Solely for the purposes of this Section 7.1: direct or indirect reference to EBITDA, NOI, Indebtedness and debt service (and items thereof, when applicable) with respect to the Entities, when included, shall be included only to the extent of the Ownership Percentage therein, except as otherwise specifically provided.

SECTION 7.2 Limitation on Certain Fundamental Changes.

~~Neither~~**None of Ultimate Parent,** Kimco ~~nor~~**or** any of ~~its~~**their** Subsidiaries shall, directly or indirectly: (a) enter into any merger (except as described in Schedule 7.2), consolidation or amalgamation, (b) liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or (c) convey, sell, lease, assign, transfer or otherwise dispose (whether effected pursuant to a division or otherwise) of, all or substantially all of its property, business or assets (each such transaction referred to in the preceding clauses (a), (b) and (c), a "Capital Transaction"), provided that a Capital Transaction may be made if (i) such Capital Transaction does not involve all or substantially all of the property, business or assets owned or leased by **Ultimate Parent,** Kimco and its Subsidiaries determined on a consolidated basis with respect to ~~Kimco~~**Ultimate Parent** and its Subsidiaries taken as a whole, (ii) there is no Default or Event of Default, immediately before and immediately after giving effect to such Capital Transaction (including any changes resulting from recharacterization of Unencumbered Property), and (iii) without limiting the foregoing, Kimco is in compliance with all covenants under Section 7.1 after giving effect to such Capital Transaction (including any changes resulting from recharacterization of Unencumbered Property), and would have been in compliance therewith for the most recent Test Period if such Capital Transaction had been given effect (including any changes resulting from recharacterization of Unencumbered Property) during such Test Period. Notwithstanding the foregoing, **neither Ultimate Parent nor** Kimco may ~~not~~ engage in a Capital Transaction other than (x) a merger as to which it is the surviving entity or (y) a Capital Transaction described in the immediately following sentence. In addition, notwithstanding the foregoing, (I)(A) any Subsidiary that is not a Loan Party may merge with any Subsidiary so long as the surviving entity is a Subsidiary, and (B) any Subsidiary that is a Loan Party may merge with any Subsidiary so long as the surviving entity is a Loan Party, (II)(A) any Subsidiary that is not a Loan Party may liquidate, wind up or dissolve itself so long as such Subsidiary's assets are transferred to a Borrower or a Subsidiary and (B) any Subsidiary that is a Loan Party may liquidate, wind up or dissolve itself so long as such Subsidiary's assets are transferred to a Loan Party and (III)(A) any Subsidiary that is not a Loan Party may convey, sell, lease, assign, transfer or otherwise dispose of any of its assets to a Borrower or any Subsidiary and (B) **Ultimate Parent,** Kimco or any Subsidiary that is a Loan Party may convey, sell, lease, assign, transfer or otherwise dispose of any of its assets to a Loan Party. No Subsidiary Borrower or Subsidiary Guarantor shall enter into any merger, consolidation, amalgamation or reorganization transaction if such transaction will result in such Subsidiary Borrower or Subsidiary Guarantor being organized under the laws of a jurisdiction other than the United States that is not an Acceptable Jurisdiction.

Notwithstanding anything to the contrary in this Agreement, a transaction or series of related transactions as a result of which Kimco becomes a direct or indirect Subsidiary of another Person (such other person, the "Ultimate Parent" and such transactions the "Upreit Transactions") shall not be prohibited, limited or restricted in any manner by this Agreement and shall, for the avoidance of doubt not constitute a Change in Control; provided, in each case, that immediately after the consummation of the Upreit Transactions (u) there is no Default or Event of Default, immediately before and (after giving effect to any amendments to the Agreement contemplated by this paragraph) immediately after giving effect to the Upreit Transactions, (v) Kimco shall remain a "Borrower" hereunder and shall remain fully liable for the Obligations hereunder, (w) no Person or group (within the meaning of the Securities Exchange Act of 1934, as amended, and the rules of the Securities Exchange Commission thereunder as in effect as of the date hereof) owns, beneficially or of record, Capital Stock of the Ultimate Parent representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Capital Stock of the Ultimate Parent, (x) the Ultimate Parent shall directly or indirectly own and Control (and shall thereafter own and Control), beneficially and of record, at least 90% of the Capital Stock of Kimco (and its general partner or managing member or the equivalent), (y) the Ultimate Parent is an equity-oriented real estate investment trust under Sections 856 through 860 of the Code, and (z) either, at Kimco's option (i) Kimco agrees to cause Ultimate Parent to comply with the covenant set forth on Exhibit I hereto at all times from and after the consummation of the Upreit Transactions and prior to Ultimate Parent agreeing to guarantee all Obligations of Kimco and the Subsidiary Borrowers (if any) or (ii) the Ultimate Parent agrees in writing to guarantee all Obligations of Kimco and the Subsidiary Borrowers (if any) on terms substantially similar to those set forth in Article XI. In addition and in furtherance of the foregoing (and notwithstanding anything to the contrary set forth in Section 10.1), the Lenders hereby authorise and direct the Administrative Agent to enter into an amendment agreement to this Agreement in order to implement the amendments and modifications (including any technical amendments not set forth in this paragraph) required by this paragraph and to permit the consummation of the Upreit Transactions. Without limiting the generality of the foregoing, upon the consummation of the Upreit Transactions, the definitions of "Consolidated Entities", "Gross Asset Value", "Major Acquisitions", "Sustainability Metric", "Sustainability Metric Target", "Test Period", "Unconsolidated Entities" and "Status", clauses (a) and (b) of the definition of "Change in Control", Sections 4.21. 6.1(a), 6.1(b), 6.2(b),6.2(c) and 8(j) shall automatically be amended by replacing each reference to "Kimco" in such sections with a reference to the "Ultimate Parent." Kimco shall give the Administrative Agent and the Lenders at least thirty (30) days prior written notice of its intent to consummate the Upreit Transactions and shall provide all customary information regarding the Upreit Transactions and the Ultimate Parent that is reasonably requested by the Administrative Agent or any Lender in order to comply with their obligations under applicable "know-your-customer" and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation (31 C.F.R. § 1010.230).

SECTION 7.3 Anti-Corruption Laws and Sanctions. The Borrowers shall not knowingly use the proceeds of any Loan or Letter of Credit or knowingly lend, contribute or otherwise make available such proceeds to any of their Subsidiaries or respective officers, directors, employees or agents (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any prohibited activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 7.4 [Reserved].

SECTION 7.5 Limitation on Transactions with Affiliates.

~~Neither~~**None of Ultimate Parent,** Kimco ~~nor~~**or** any of ~~its~~**their** Subsidiaries shall, directly or indirectly, enter into any transaction, including any purchase, sale, lease or exchange of property or the rendering of any service, with any Affiliate (other than **Ultimate Parent,** Kimco or any ~~of its~~ Wholly Owned Subsidiaries) unless (a) no Default or Event of Default would occur as a result thereof and (b) such transaction is upon fair and reasonable terms no less favorable to any Loan Party that is a party thereto or is affected thereby than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate.

SECTION 7.6 Limitation on Changes in Fiscal Year.

~~Kimco~~**Ultimate Parent** shall not cause or permit its fiscal year to end on a day other than December 31, unless otherwise required by any applicable law, rule or regulation.

SECTION 7.7 Limitation on Lines of Business; Creation of Subsidiaries; Negative Pledges; Swap Agreements.

Neither Kimco nor any of its Subsidiaries shall, directly or indirectly:

(a) Engage in activities other than real estate business and real estate related business activities, and in activities permitted for real estate investment trusts under the Code (including through taxable REIT subsidiaries).

(b) Enter into with any Person, or suffer to exist, any agreement which, in any such case, prohibits or limits the ability of any Borrower or any of its Subsidiaries to create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired (other than (i) this Agreement and the other Loan Documents, (ii) any agreements governing any purchase money Liens, Financing Leases or mortgage financings (in which case any such prohibition or limitation shall only be effective against the assets financed thereby), (iii) any agreement in effect as of the date hereof and identified on Schedule 7.7 hereto (and any extension or renewal of, or any amendment or modification thereto), or (iv) any agreement related to Indebtedness or Liens incurred, or asset sales or other transactions consummated or to be consummated, by Kimco or such Subsidiary containing customary restrictions on the ability of Kimco or any of its Subsidiaries to create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired).

(c) Enter into any Swap Agreement, except Swap Agreements entered into in the ordinary course of business (not for purposes of speculation) to hedge or mitigate risks, including those related to interest rates or currency exchange rates, to which Kimco or such Subsidiary is exposed in the conduct of its business or the management of its liabilities.

ARTICLE VIII

EVENTS OF DEFAULT

If any of the following events shall occur and be continuing:

(a) Any Borrower shall fail to pay any principal of any Revolving Credit Loan, any Competitive Loan or any Reimbursement Obligation when due in accordance with the terms thereof or hereof; or any Borrower shall fail to pay any interest on any Revolving Credit Loan, any Competitive Loan, any Reimbursement Obligation or any other amount payable hereunder, within five (5) Business Days after any such interest or other amount becomes due in accordance with the terms thereof or hereof; or

(b) Any representation or warranty made or deemed made by Kimco herein or in any other Loan Document or which is contained in any certificate, document or financial or other statement furnished by it at any time under or in connection with this Agreement or any other Loan Document shall prove to have been incorrect in any material respect on or as of the date made or deemed made or furnished; or

(c) There shall be any default in the observance or performance of any agreement contained in Section 6.7(a) or Article VII; or

(d) Kimco shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document (other than as provided in paragraphs (a) through (c) of this Article), and such default shall continue unremedied for a period of 30 days after notice from the Administrative Agent, the Issuing Lender or the Required Lenders; or

(e) Any Borrower or any Subsidiary of any Borrower shall (i) default in making any payment of any principal of any Indebtedness (including any Guarantee Obligation, but excluding (x) any Revolving Credit Loans, any Competitive Loans or Reimbursement Obligations (which shall be governed by clause (a) above) and (y) any Non-Recourse Indebtedness) on the scheduled or original due date with respect thereto; or (ii) default in making any payment of any interest on any such Indebtedness (including any Guarantee Obligation, but excluding (x) any Revolving Credit Loans, any Competitive Loans or Reimbursement Obligations (which shall be governed by clause (a) above) and (y) any Non-Recourse Indebtedness) beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was created; or (iii) default in the observance or performance of any other agreement or condition relating to any such Indebtedness (including any Guarantee Obligation, but excluding (x) any Revolving Credit Loans, any Competitive Loans or Reimbursement Obligations (which shall be governed by clause (a) above) and (y) any Non-Recourse Indebtedness) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or beneficiary of such Indebtedness (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such Indebtedness to become due prior to its stated maturity or (in the case of any such Indebtedness constituting a Guarantee Obligation) to become payable; provided that a default, event or condition described in clause (i), (ii) or (iii) of this paragraph (e) shall not at any time constitute an Event of Default under this Agreement unless, at such time, one or more defaults, events or conditions of the type described in clauses (i), (ii) and (iii) of this paragraph (e) shall have occurred and be continuing with respect to Indebtedness the outstanding principal amount of which exceeds in the aggregate $125,000,000 (calculated, in the case of Indebtedness of an Unconsolidated Entity, by multiplying the amount of such Indebtedness by the percentage of Kimco's direct or indirect equity interest in such Unconsolidated Entity); provided, further, that a default, event or condition described in clause (i), (ii) or (iii) of this paragraph (e) shall not at any time constitute an Event of Default under this Agreement if such default, event or condition relates solely to any Subsidiary Borrower and/or its observance or performance of its obligations under this Agreement or in any other Loan Document; or

(f) (i) **Ultimate Parent or** Kimco shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or a substantial part of its assets, or **Ultimate Parent or** Kimco shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against **Ultimate Parent or** Kimco any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of 60 days; or (iii) there shall be commenced against **Ultimate Parent or** Kimco any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or a substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) **Ultimate Parent or** Kimco shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) **Ultimate Parent or** Kimco shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; or

(g) (i) Any Person shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan shall arise on the assets of Kimco or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed (or a trustee shall be appointed) to administer, or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is, in the reasonable opinion of the Required Lenders, likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA, (v) Kimco or any Commonly Controlled Entity shall, or is, in the reasonable opinion of the Required Lenders, likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan or (vi) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could reasonably be expected to have a Material Adverse Effect; or

(h) One or more judgments or decrees shall be entered against Kimco or any Entity involving in the aggregate a liability (not paid or fully covered by insurance) of $125,000,000 or more (excluding Non-Recourse Indebtedness) (calculated, in the case of a judgment or decree against an Unconsolidated Entity, by multiplying the amount of such judgment or decree by the percentage of Kimco's direct or indirect equity interest in such Unconsolidated Entity), and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within 60 days from the entry thereof; or

(i) [reserved]; or

(j) ~~Kimco~~**Ultimate Parent** shall cease, for any reason, to maintain its status as an equity-oriented real estate investment trust under Sections 856 through 860 of the Code unless (i) the Board of Directors of ~~Kimco~~**Ultimate Parent** shall have determined in good faith that it is in the best interests of Kimco to no longer maintain such status and (ii) ~~Kimco's~~**Ultimate Parent's** no longer maintaining such status does not materially adversely affect the interests of the Lenders; or

(k) [reserved]; or

(l) the guarantee by Kimco pursuant to Article XI **or the guaranty by Ultimate Parent** shall cease for any reason to be valid or binding on, or enforceable against, Kimco **or Ultimate Parent, as applicable**, or Kimco **or** Ultimate Parent**, as applicable,** shall so assert in writing; or

(m) a Change in Control shall occur;

then, and in any such event, (A) if such event is an Event of Default specified in paragraph (f) above, automatically the Revolving Commitments shall immediately terminate and the Revolving Credit Loans and Competitive Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement (including all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) and the Notes shall immediately become due and payable, and (B) if such event is any other Event of Default, either or both of the following actions may be taken: (i) the Administrative Agent may, with the consent of the Required Lenders, or upon the request of the Required Lenders the Administrative Agent shall, by notice to Kimco, declare the Revolving Commitments to be terminated forthwith, whereupon the Revolving Commitments shall immediately terminate; and (ii) the Administrative Agent may, or upon the request of the Required Lenders the Administrative Agent shall, by notice to Kimco, declare the Revolving Credit Loans and Competitive Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement (including all amounts of L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented the documents required thereunder) and the Notes to be due and payable forthwith, whereupon the same shall immediately become due and payable.

With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to the preceding paragraph, Kimco or the applicable Borrower shall at such time deposit in a cash collateral account opened by and under the exclusive dominion and control of the Administrative Agent an amount equal to the aggregate then undrawn and unexpired amount of such Letters of Credit. Each such depositing Borrower hereby grants to the Administrative Agent, for the benefit of the Issuing Lender and the applicable L/C Participants, a security interest in such cash collateral to secure all obligations of such Borrower under this Agreement and the other Loan Documents. Amounts held in such cash collateral account shall be applied by the Administrative Agent to the payment of drafts or other demands for payment drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay other obligations of the Borrowers hereunder and under the other Loan Documents. After all such Letters of Credit shall have expired or been fully drawn upon, all Reimbursement Obligations shall have been satisfied and all other obligations of the Borrowers hereunder and under the other Loan Documents shall have been paid in full, the balance, if any, in such cash collateral account shall be returned to the applicable Borrower or to whomsoever may be lawfully entitled thereto. The Borrowers shall execute and deliver to the Administrative Agent, for the account of the Issuing Lender and the applicable L/C Participants, such further documents and instruments as the Administrative Agent may request to evidence the creation and perfection of the within security interest in such cash collateral account.

Except as expressly provided above in this Article, presentment, demand, protest and all other notices of any kind are hereby expressly waived.

ARTICLE IX

THE AGENTS

SECTION 9.1 The Agents.

For purposes of this Section 9.1 and Section 10.6, the term "Related Parties" shall mean, with respect to any specified Person, (i) any Person that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such specified Person, and (ii) the respective directors, officers, employees, agents and advisors of such specified Person and of any other Person referred to in the preceding clause (i).

(a) Each of the Lenders and the Issuing Lender hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such actions and powers as are reasonably incidental thereto. Without limiting the foregoing, each Lender and each Issuing Lender hereby authorizes the Administrative Agent to execute and deliver, and to perform its obligations under, each of the Loan Documents to which the Administrative Agent is a party, and to exercise all rights, powers and remedies that the Administrative Agent may have under such Loan Documents.

(b) The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and each Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with such bank (an "Administrative Agent Affiliate") may accept deposits from, lend money to and generally engage in any kind of business with any Loan Party or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

(c) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein, and its duties are entirely administrative in nature. Without limiting the generality of the foregoing,

(i) the Administrative Agent shall not be subject to any fiduciary or similar duties, regardless of whether a Default or Event of Default has occurred and is continuing (and it is understood and agreed that the use of the term "agent" (or any similar term) herein or in any other Loan Document with reference to the Administrative Agent is not intended to connote any fiduciary duty or implied (or express) obligations arising under agency doctrine of any applicable law, and that such term is used as a matter of market custom and is intended to create or reflect only an administrative relationship between contracting parties); additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and/or the transactions contemplated hereby,

(ii) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the Administrative Agent is required to exercise or refrain from exercising as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided herein), for which the Administrative Agent shall be fully protected in so acting or refraining from acting, and, unless and until revoked in writing, such directions shall be binding upon each Lender and each Issuing Lender; provided, however, that the Administrative Agent shall not be required to take any action that (A) the Administrative Agent in good faith believes exposes it to liability unless the Administrative Agent receives an indemnification and is exculpated in a manner satisfactory to it from the Lenders and the Issuing Lenders with respect to such action or (B) is contrary to this Agreement or any other Loan Document or applicable law, including any action that may be in violation of the automatic stay under any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any requirement of law relating to bankruptcy, insolvency or reorganization or relief of debtors; provided, further, that the Administrative Agent may seek clarification or direction from the Required Lenders prior to the exercise of any such instructed action and may refrain from acting until such clarification or direction has been provided, and

(iii) except as expressly set forth herein, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Kimco or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Administrative Agent Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith to be necessary, under the circumstances as provided herein) or in the absence of its own gross negligence or willful misconduct (which shall be deemed to exist only if determined by a court of competent jurisdiction by a final and non-appealable judgment). The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default other than nonpayment of principal or interest unless and until written notice thereof is given to the Administrative Agent by Kimco or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or under any other Loan Document or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or in any other Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document, or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, or satisfaction of any condition that expressly refers to the matters described therein being acceptable or satisfactory to the Administrative Agent. Neither the Administrative Agent nor any of its Related Parties shall be responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by the Borrowers or any officer thereof contained in this Agreement or any other Loan Document or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Agreement or any other Loan Document or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document or for any failure of the Borrowers to perform their obligations hereunder or thereunder.

(d) The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts. The Administrative Agent (i) may treat the payee of any promissory note as its holder until such promissory note has been assigned in accordance with Section 10.6, (ii) may rely on the Register to the extent set forth in Section 10.6, (iii) makes no warranty or representation to any Lender or Issuing Lender and shall not be responsible to any Lender or Issuing Lender for any statements, warranties or representations made by or on behalf of the Borrowers in connection with this Agreement or any other Loan Document, and (iv) in determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Lender, may presume that such condition is satisfactory to such Lender or Issuing Lender unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Lender sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit.

(e) The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

(f) Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by giving 30 days' prior written notice to the Lenders, the Issuing Lender and Kimco. If a Bankruptcy Event shall occur with respect to the Administrative Agent, then effective on the date that is thirty (30) Business Days after the date of such Bankruptcy Event, the Administrative Agent automatically and without any further action by any Person, shall be removed as Administrative Agent, and at the end of such thirty (30) Business Day period the Administrative Agent shall be deemed discharged from its duties and obligations as Administrative Agent hereunder and under any other Loan Document. By the Required Lenders' giving at least thirty (30) Business Days prior written notice to the Administrative Agent and Kimco, the Administrative Agent may be removed, by action of the Required Lenders (excluding the bank serving as Administrative Agent (the "Agent Bank")), (i) at any time for gross negligence or willful misconduct, as determined by the Required Lenders (excluding for such determination the Agent Bank), or (ii) in the event that the Agent Bank, in its capacity as a Lender, shall have assigned all of its outstanding Revolving Commitments, Loans, and its Applicable Percentage of the L/C Obligations to another bank, financial institution or other entity pursuant to Section 10.6, and at the end of such thirty (30) Business Day period the Agent Bank shall be deemed discharged from its duties and obligations as Administrative Agent hereunder and under any other Loan Documents, provided that it is a condition to the removal of the Administrative Agent under clause (ii) above in the circumstance in which the Agent Bank is the Issuing Lender hereunder, that all outstanding Letters of Credit issued by the Issuing Lender (including Letters of Credit issued by any Affiliate of the Agent Bank) hereunder shall be returned to the Issuing Lender for cancellation, that the Issuing Lender shall be reimbursed for all drafts or other demands for payment under the Letters of Credit that have not yet been reimbursed by the Borrowers or paid by the L/C Participants (except to the extent of the Applicable Percentage of L/C Obligations assigned by the Agent Bank), that all fees and expenses accrued and payable to the Issuing Lender be paid, and that the Issuing Lender shall be deemed to be replaced under Section 3.9(a) hereof. Upon any such resignation or removal, the Required Lenders shall have the right, in consultation with Kimco, to appoint a successor. In the case of resignation by the Administrative Agent, if no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Lender, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or a Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor to a retired Administrative Agent, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under any other Loan Documents. The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the Administrative Agent's resignation or removal hereunder, the provisions of this Article, including Section 9.2, shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

(g) Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent, the Joint Lead Arrangers, or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Joint Lead Arrangers, or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document, any related agreement or any document furnished hereunder or thereunder.

(h) The provisions of this Article (other than Section 9.1(f)) are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lenders, and, except solely to the extent of the Borrowers' rights to consent pursuant to and subject to the conditions set forth in this Section 9.1, none of the Borrowers, or any of their respective Affiliates, shall have any rights as a third party beneficiary under any such provisions. Other than as set forth in Section 9.1(f), nothing in this Article shall relate to, govern or limit the obligations of the Administrative Agent to the Borrower or the rights of the Borrower with respect to the Administrative Agent. The provisions of this Section 9.1 shall survive the repayment of the Loans, the expiration or termination of the Revolving Commitments and the termination of this Agreement.

SECTION 9.2 Indemnification.

Subject to the immediately following sentence, the Lenders agree to indemnify the Administrative Agent in its capacity as such (to the extent not reimbursed by the Borrowers and without limiting the obligation of the Borrowers to do so), ratably according to their respective Applicable Percentages of the Revolving Commitments in effect on the date on which indemnification is sought under this Section 9.2 (or, if indemnification is sought after the date upon which the Revolving Commitments shall have terminated and the Revolving Credit Loans and Competitive Loans shall have been paid in full, ratably in accordance with their Applicable Percentages immediately prior to such date), from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time (including at any time following the payment of the Revolving Credit Loans and Competitive Loans and regardless of whether pre-judgment or post-judgment) be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of this Agreement, any of the other Loan Documents or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or any action taken or omitted by the Administrative Agent under or in connection with any of the foregoing; provided that no Lender shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements to the extent resulting solely from the Administrative Agent's gross negligence or willful misconduct. Each Lender shall severally indemnify the Administrative Agent for the full amount of any Excluded Taxes attributable to such Lender that are paid or payable by the Administrative Agent in connection with this Agreement or any other Loan Document and any reasonable expenses arising therefrom or with respect thereto, whether or not such Excluded Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The agreements in this Section 9.2 shall survive the termination of this Agreement and the other Loan Documents and the payment of the Revolving Credit Loans and all other amounts payable hereunder and thereunder.

SECTION 9.3 The Syndication Agents, Documentation Agents, Managing Agents, Joint Lead Arrangers, and Bookrunners.

Each of the Syndication Agents, Documentation Agents, Managing Agents, Bookrunners and Joint Lead Arrangers referred to on the cover of this Agreement in its capacity as such shall have no rights, duties or responsibilities hereunder, nor any fiduciary relationship with any party hereto, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against the Syndication Agents, Documentation Agents, Managing Agents, Bookrunners or Joint Lead Arrangers in their respective capacities as such.

SECTION 9.4 Certain ERISA Matters.

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

(i) such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Revolving Commitments,

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

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

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

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and each Joint Lead Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that none of the Administrative Agent, or any Joint Lead Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

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

SECTION 9.5 Erroneous Payments.

(a) Each Lender hereby agrees that (x) if the Administrative Agent notifies such Lender that the Administrative Agent has determined in its sole discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, a "Payment") were erroneously transmitted to such Lender (whether or not known to such Lender), and demands the return of such Payment (or a portion thereof), such Lender shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect, and (y) to the extent permitted by applicable law, such Lender shall not assert, and hereby waives, as to the Administrative Agent, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Payments received, including without limitation any defense based on "discharge for value" or any similar doctrine. A notice of the Administrative Agent to any Lender under this Section 9.5 shall be conclusive, absent manifest error.

(b) Each Lender hereby further agrees that if it receives a Payment from the Administrative Agent or any of its Affiliates (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent (or any of its Affiliates) with respect to such Payment (a "Payment Notice") or (y) that was not preceded or accompanied by a Payment Notice, it shall be on notice, in each such case, that an error has been made with respect to such Payment. Each Lender agrees that, in each such case, or if it otherwise becomes aware a Payment (or portion thereof) may have been sent in error, such Lender shall promptly notify the Administrative Agent of such occurrence and, upon demand from the Administrative Agent, it shall promptly, but in no event later than one Business Day thereafter, return to the Administrative Agent the amount of any such Payment (or portion thereof) as to which such a demand was made in same day funds, together with interest thereon in respect of each day from and including the date such Payment (or portion thereof) was received by such Lender to the date such amount is repaid to the Administrative Agent at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(c) The parties hereto agree that (x) in the event an erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Payment (or portion thereof) for any reason, the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party except, in each case, solely to the extent such Payment is comprised of funds received by the Administrative Agent from the Borrower or another Loan Party for the purpose of making a payment on the Obligations.

(d) Each party's obligations under this Section 9.5 shall survive the resignation or replacement of the Administrative Agent or any transfer of rights or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations under any Loan Document.

ARTICLE X

MISCELLANEOUS

SECTION 10.1 Amendments and Waivers.

Neither this Agreement nor any other Loan Document, nor any terms hereof or thereof, may be amended, supplemented or modified except in accordance with the provisions of this Section 10.1. Subject to Section 2.8(c), Section 2.8(d) and Section 10.8, the Required Lenders may, or, with the written consent of the Required Lenders, the Administrative Agent may, from time to time, (a) enter into with the relevant Loan Parties written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or the other Loan Documents or changing in any manner the rights of the Lenders or of the Loan Parties hereunder or thereunder or (b) waive, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided that no such waiver and no such amendment, supplement or modification shall (i) reduce the amount or extend the scheduled date of maturity of any Revolving Credit Loan, Competitive Loan or Note (except as set forth in Section 10.9), or reduce the stated rate of any interest or fee payable hereunder or extend the scheduled date of any payment thereof or increase or reduce (except for reductions in accordance with Section 2.2(f) or reallocations in accordance with Section 2.18)) the amount or extend the expiration date of any Lender's Revolving Commitment, in each case without the consent of each Lender directly affected thereby, (ii) amend, modify or waive any provision of this Section 10.1, change Section 2.9(a), Section 10.11(a) or Section 10.22 in a manner that would alter the pro rata sharing of payments required thereby, reduce the percentage specified in the definition of Required Lenders, consent to the assignment or transfer by Kimco of any of its rights and obligations under this Agreement and the other Loan Documents, amend the proviso to the definition of the term "Unencumbered Properties", amend, modify or waive the requirement set forth in the definition of "Alternate Currency" that all Lenders who have then-outstanding Tranche B Commitments or Tranche B Loans approve a currency other than the EURO, Sterling, Yen or Canadian Dollar as an Alternate Currency, or amend, modify, or waive any provision of any Loan Document which, by its terms, requires the consent, approval or satisfaction of all Lenders, in each case without the written consent of all the Lenders, (iii) amend, modify or waive any provision of Article III or otherwise affect the rights or duties of the Issuing Lender without the written consent of the Issuing Lender, (iv) amend, modify or waive any provision of Article IX or otherwise affect the rights or duties of the Administrative Agent without the written consent of the then Administrative Agent, (v) amend, modify or waive any provision of Section 2.17 without the written consent of the Administrative Agent and the Issuing Lender, or (vi) release the guarantee by Kimco pursuant to Article XI with respect to any Subsidiary Borrower that has Loans outstanding at such time without the written consent of each Lender affected thereby. Any such waiver and any such amendment, supplement or modification shall apply equally to each of the Lenders and shall be binding upon the Borrowers, the other Loan Parties, the Lenders, the Issuing Lender, the Administrative Agent and all future holders of the Notes. In the case of any waiver, the Borrowers, the other Loan Parties, the Lenders, the Issuing Lender and the Administrative Agent shall be restored to their former position and rights hereunder and under any outstanding Notes and any other Loan Documents, and any Default

or Event of Default waived shall be deemed to be cured and not continuing to the extent therein specified; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

SECTION 10.2 Notices.

(a) All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing (including by telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, or three Business Days after being deposited in the mail, postage prepaid, or, in the case of telecopy notice, when received (notices delivered through Electronic Systems, to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b)), addressed as follows in the case of the Borrowers, the Issuing Lender and the Administrative Agent, and as notified to the Administrative Agent pursuant to an Administrative Questionnaire in the case of the other parties hereto, or to such other address as may be hereafter notified by the respective parties hereto and any future holders of the Notes:

The Borrowers:	Kimco Realty Corporation 500 North Broadway, Suite 201 Jericho, New York 11753 Attention: Glenn G. Cohen Telecopy: (516) 869-2572
JPMCB, as Administrative Agent	JPMorgan Chase Bank, N.A. Loan and Agency Services Group 10 S. Dearborn St., Floor 7 Chicago, Illinois 60603 Attention: Mary Hackett, Loan Servicer, CLS REB Chicago Telecopy: (312) 385-7101 Email: Cls.reb.chicago@jpmchase.com

with a copy for borrowing requests and interest elections in Dollars to:	JPMorgan Chase Bank, N.A. 10 S. Dearborn St. Floor L2 Chicago, IL 60603 Mailcode: IL1-0480 Telephone: 312-385-7025 Fax: 312-233-2257 Contact: Joyce King joyce.p.king@jpmorgan.com cls.reb.chicago@jpmorgan.com
with a copy for borrowing requests and interest elections in Canadian Dollars to:	JPMorgan Chase Bank, N.A. Toronto Branch 66 Wellington Street, West, TD BANK TOWER, SUITE 4500 Toronto, Ontario, M5K 1E7 Contact: Ashley Goad Telephone: 312-732-2467 Fax: 844-235-1788 E-Mail: ashley.m.goad@jpmorgan.com and cls.cad.chicago@jpmorgan.com
with a copy for borrowing requests and interest elections in Euros, Sterling, Yen or other Alternate Currencies to:	JPMorgan Chase Bank, N.A. 125 London Wall London EC2Y 5AJ, United Kingdom Contact: Jacob Sheehan Telephone:+442077426100 Email: jacob.t.sheehan@jpmorgan.com
with a copy (except for borrowing requests, interest elections, and requests pursuant to Sections 10.8 or 10.9) to:	JPMorgan Chase Bank, N.A. 277 Park Avenue. 36th Floor New York, New York 10017 Attention: Austin Lotito Telephone: (212) 648-0247

Wells Fargo, as Issuing Lender:	Wells Fargo Bank, National Association ~~301~~**550** S. ~~College~~**Tryon** Street~~, 4th Floor~~ Charlotte, North Carolina ~~28288~~**28210** Attention: ~~Matt Ricketts~~**Michael Pfaff** ~~Telecopy~~**Telephone**: (~~704~~**248**) ~~383-6205~~**224-1158**
PNC Bank, National Association, as Issuing Lender:	PNC Bank, National Association 340 Madison Avenue - 10th Floor New York, NY 10173 Attention: Brian P. Kelly Telecopy: (212) 421-1552
Royal Bank of Canada, as Issuing Lender:	RBC Capital Markets, LLC 200 Vesey Street, 12th Floor New York, New York 10281 Attention: Sheena Lee Telecopy: (212) 428-6460

provided that any notice, request or demand to or upon the Administrative Agent or the Lenders pursuant to Section 2.1, 2.2, 2.3 or 2.4 shall not be effective until received.

(b) Notices and other communications to the Lenders and the Issuing Lender hereunder may be delivered or furnished by using Electronic Systems pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrowers may, in their discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided, further, that (x) approval of such procedures may be limited to particular notices or communications, (y) for the avoidance of doubt, as and from the date hereof until the Borrowers provide written notice to the Administrative Agent otherwise, the Borrowers do not agree to accept notices or other communications hereunder by electronic communications, and (z) for the avoidance of doubt, as and from the date hereof until the Administrative Agent provides written notice to the Borrowers otherwise, the Administrative Agent does not agree to accept notices or other communications hereunder by electronic communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (i), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto.

(d) Electronic Systems.

(i) Each Loan Party agrees that the Administrative Agent may, but shall not be obligated to, make Communications (as defined below) available to the Issuing Lender and the other Lenders by posting the Communications (as defined below) on Debt Domain, Intralinks, Syndtrak, ClearPar or a substantially similar Electronic System.

(ii) Any Electronic System used by the Administrative Agent and the Communications are provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy or completeness of the Communications or the adequacy of such Electronic Systems and expressly disclaim liability for errors or omissions in the Communications or the Electronic System. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or any Electronic System. Each of the Lenders, each of the Issuing Lenders and the Borrowers acknowledges and agrees that the distribution of material through the Electronic System is not necessarily secure, that the Administrative Agent is not responsible for approving or vetting the representatives or contacts of any Lender that are added to the Electronic System, and that there may be confidentiality and other risks associated with such distribution. Other than (solely with respect to direct damages arising therefrom) in the case of gross negligence or willful misconduct of, or material breach of this Agreement by, an Agent Party (as defined below) to the extent determined in a final non-appealable judgment by a court of competent jurisdiction, in no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrowers or the other Loan Parties, any Lender, the Issuing Lender or any other Person or entity for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrowers', any Loan Party's or the Administrative Agent's transmission of Communications through an Electronic System. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Loan Document or the transactions contemplated therein which is distributed by the Administrative Agent, any Lender or any Issuing Lender by means of electronic communications pursuant to this Section, including through an Electronic System.

(iii) Each Lender and each Issuing Lender agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Electronic System shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and Issuing Lender agrees (i) to notify the Administrative Agent in writing (which could be in the form of electronic communication) from time to time of such Lender's or Issuing Lender's (as applicable) email address to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such email address.

(iv) Nothing herein shall prejudice the right of the Administrative Agent, any Lender, any Issuing Lender or any Borrower to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

SECTION 10.3 No Waiver; Cumulative Remedies.

No failure to exercise and no delay in exercising, on the part of the Administrative Agent, the Issuing Lender or any Lender, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

SECTION 10.4 Survival of Representations and Warranties.

All representations and warranties made hereunder, in the other Loan Documents and in any document, certificate or statement delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery of this Agreement and the other Loan Documents and the making of the extensions of credit hereunder.

SECTION 10.5 Payment of Expenses and Taxes.

Kimco agrees (a) to pay or reimburse the Administrative Agent for all its reasonable out-of-pocket costs and expenses incurred in connection with the development, preparation and execution of, and any amendment, supplement or modification to, this Agreement and the other Loan Documents, any Letters of Credit, and any other documents prepared in connection herewith or therewith, and the consummation and administration of the transactions contemplated hereby and thereby, including the reasonable fees and disbursements of counsel to the Administrative Agent; (b) to pay or reimburse each Lender, the Issuing Lender and the Administrative Agent for all its reasonable costs and expenses (including post-judgment costs and expenses) incurred in connection with the enforcement or preservation of any rights under this Agreement, the other Loan Documents, any Letters of Credit, and any such other documents, including the fees and disbursements of counsel to the Administrative Agent, the Issuing Lender and the several Lenders; (c) to pay, and indemnify and hold harmless each Lender, the Issuing Lender and the Administrative Agent and their affiliates (and their respective officers, directors, employees, advisors and agents) from and against, any and all recording and filing fees and any and all liabilities with respect to, or resulting from any 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, or consummation or administration of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents, any Letters of Credit, and any such other documents; and (d) to pay, and indemnify and hold harmless each Lender, the Issuing Lender and the Administrative Agent and their affiliates (and their respective officers, directors, employees, advisors and agents) from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (and regardless of whether pre-judgment or post-judgment) with respect to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents, the Letters of Credit, and any such other documents, including any of the foregoing relating to the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of Kimco, any of its Subsidiaries or any of the Properties (all the foregoing in this clause (d), collectively, the "indemnified liabilities"), provided that (x) Kimco shall have no obligation hereunder to any indemnitee with respect to indemnified liabilities arising from the gross negligence or willful misconduct of such indemnitee to the extent determined in a final non-appealable judgment by a court of competent jurisdiction, and (y) this clause (d) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim. The agreements in this Section 10.5 shall survive the termination of this Agreement, the expiration, cancellation, or other termination of the Letters of Credit, and the payment of the Revolving Credit Loans, the Competitive Loans and all other amounts payable hereunder.

SECTION 10.6 Successors and Assigns.

For purposes of this Section 10.6 the term "Related Parties" shall have the meaning given thereto in Section 9.1 hereof.

(a) 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 (including any Affiliate of the Issuing Lender that issues any Letter of Credit (an "Issuing Lender Affiliate")), except that (i) none of the Loan Parties may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by any Loan Party without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. 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 (including any Issuing Lender Affiliate), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Lender and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement or any other Loan Document.

(b) ~~(i)~~ Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement and under the other Loan Documents (including all or a portion of its Revolving Commitment, participations in Letters of Credit and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) Kimco, provided that (I) no consent of Kimco shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund (as defined below), or, if an Event of Default has occurred and is continuing, any other assignee and (II) Kimco shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) Business Days after having received notice thereof;

(B) the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of any Revolving Commitment or Loan to an assignee that is a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the Issuing Lender.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Revolving Commitment or Loans of any Class, the amount of the Tranche A Commitment or Tranche B Commitment or Tranche A Loans or Tranche B Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption (as defined below) with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 unless Kimco and the Administrative Agent otherwise consent, provided that no such consent of Kimco shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of its Tranche A Commitment or its Tranche B Commitment, as applicable, under this Agreement and the other Loan Documents;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption substantially in the form of Exhibit A or in any other form (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent (an "Assignment and Assumption") (or to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Electronic System as to which the Administrative Agent and the parties to the Assignment and Assumption are participants), together with a processing and recordation fee of $4,000 (which, except as provided in Section 2.15, shall not be payable by the Borrowers);

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in the form approved by the Administrative Agent (an "Administrative Questionnaire"); and

(E) assignments shall not be permitted to be made to any Ineligible Institution.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto 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 2.11, 2.12, 2.13 and 10.5). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 10.6 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 paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrowers, shall maintain at one of its offices 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 Tranche A Commitment and Tranche B Commitment of, and principal amount of the Loans and payments made by the Issuing Lender pursuant to the Letters of Credit, 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 Borrowers, the Administrative Agent, the Issuing Lender and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers, the Issuing Lender and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in this paragraph (b) and any written consent to such assignment required by this paragraph (b), the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.9(b), 3.4, 3.5 or 9.2, the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) Any Lender may, without the consent of any Borrower, the Administrative Agent, or the Issuing Lender, sell participations to one or more banks or other entities (other than any Ineligible Institution) (a "Participant") in all or a portion of such Lender's rights and obligations in respect of its Tranche A Commitment or its Tranche B Commitment, as applicable, under this Agreement and under the other Loan Documents (including all or a portion of its Revolving Commitment, participations in Letters of Credit and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (C) the Borrowers, the other Loan Parties, the Administrative Agent, the Issuing Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and the other Loan Documents. 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 the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the proviso to Section 10.1 that affects such Participant. Each Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.11, 2.12 and 2.13 (subject to the requirements and limitations therein, including the requirements under Section 2.12 (d) (it being understood that the documentation requirement under Section 2.12(d) 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 paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 2.9 and 2.15 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.11 or 2.12, with respect to any participation, than its participating Lender would have been entitled to receive. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.11(b) as though it were a Lender, provided such Participant agrees to be subject to Section 10.11(a) 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 Borrowers, 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 this Agreement (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Revolving Commitments, Loans, Letters of Credit, or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Revolving 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.

(d) Any Lender may at any time pledge or assign a security interest in, all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank having jurisdiction over such Lender, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 10.7 Disclosure.

Subject to Section 10.19, each Borrower authorizes each Lender to disclose to any Participant or assignee (each, a "Transferee") and any prospective Transferee any and all financial information in such Lender's possession concerning such Borrower and its Affiliates which has been delivered to such Lender by or on behalf of such Borrower pursuant to this Agreement or which has been delivered to such Lender by or on behalf of such Borrower in connection with such Lender's credit evaluation of such Borrower and its Affiliates prior to becoming a party to this Agreement.

SECTION 10.8 Increases of Loan Commitments.

Kimco may from time to time request (i) increases in the aggregate amount of the Tranche A Commitments or the Tranche B Commitments ("New Revolving Commitments") and/or (ii) new term loan commitments to be established ("New Term Commitments", and together with the New Revolving Commitments, the "Incremental Commitments"), in minimum increments of $50,000,000 (or whole multiples of $5,000,000 in excess of $50,000,000), provided that the total combined amount of the Incremental Commitments under this Section 10.8 shall be limited to $750,000,000 in the aggregate. Any Lender or, with the consent of the Administrative Agent and, in the case of a New Revolving Commitment, each Issuing Lender (such consent not to be unreasonably withheld or delayed) and Kimco, any additional bank, financial institution or other entity that is not then a Lender may elect to become a Lender hereunder and make an Incremental Commitment. No Lender shall have any obligation to make any Incremental Commitment, nor shall the Administrative Agent, the Joint Lead Arrangers or the Syndication Agents have any obligation to locate banks, financial institutions or other entities willing to make any Incremental Commitment. If (x) existing or new Lenders are willing to provide such New Revolving Commitments, the Revolving Commitments may be increased from time to time by the addition of a new Lender or the increase of the Revolving Commitment of an existing Lender (each, a "New Revolving Lender", and the loans made pursuant to any New Revolving Commitment being referred to herein as "New Revolving Loans") or (y) Lenders are willing to provide such New Term Commitments, term loans may be made hereunder (the "New Term Loans") by such Lenders (each, a "New Term Lender"). Each Incremental Commitment under this Section 10.8 is subject to the following conditions:

(a) Each of the representations and warranties made by Kimco in or pursuant to the Loan Documents shall be true and correct in all material respects (or, in the case of any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language, true and correct (after giving effect to any qualification therein) in all respects) on and as of the effective date of such Incremental Commitment as if made on and as of such date except for representations and warranties expressly stated to relate to a specific earlier date, in which case such representations and warranties were true and correct in all material respects as of such earlier date; and

(b) (i) No Default or Event of Default shall have occurred and be continuing on the effective date of such Incremental Commitment or after giving effect thereto and (ii) Kimco would be in compliance with each financial covenant set forth in paragraphs (a) through (f) of Section 7.1 if the ratio or amount referred to therein were to be calculated as of the most recent Test Period as to which a compliance certificate has been delivered pursuant to Section 6.2(b) after giving pro forma effect to the incurrence of Indebtedness, if any, under such Incremental Commitments, on the effective date of such Incremental Commitments, and the use of proceeds thereof).

Each request for an Incremental Commitment under this Section 10.8 shall constitute a representation and warranty by Kimco as of the date of such Incremental Commitment that the conditions contained in this Section 10.8 have been satisfied, and shall be accompanied by a certificate of a Responsible Officer of Kimco to such effect.

Any Incremental Commitments hereunder shall be evidenced by the execution and delivery of an amendment to this Agreement by the Borrowers, the Administrative Agent, the Issuing Lenders (in the case of New Revolving Commitments) and the New Revolving Lenders or New Term Lenders, as applicable, providing such Incremental Commitments, a copy of which shall be forwarded to each Lender by the Administrative Agent promptly after execution thereof. Each such amendment executed in connection with an Incremental Commitment hereunder may, without the consent of any other Lenders or (except in the case of New Revolving Commitments) Issuing Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the good faith judgment of Administrative Agent, to effect the provisions of this Section 10.8 and the Incremental Commitments, subject to approval by the Borrowers and the New Revolving Lenders or New Term Lenders, as applicable, including without limitation to (x) include the New Revolving Lenders and/or New Term Lenders as "Lenders" hereunder, (y) to include the New Revolving Loans and New Term Loans as "Loans" hereunder, and (z) to include the New Revolving Lenders and their Applicable Percentages and/or the New Term Lenders and their New Term Loans for purposes of the definition of "Required Lenders". All such amendments and joinder agreements entered into with the Borrowers by the Administrative Agent, the Issuing Lenders (in the case of New Revolving Commitments) and the New Revolving Lenders or New Term Lenders, as applicable, shall be binding and conclusive on all Lenders.

On the effective date of any New Revolving Commitments, the aggregate Revolving Commitments and the Revolving Commitments of the New Revolving Lenders shall be increased, the Applicable Percentages shall be adjusted and the Borrowers and the Administrative Agent shall cause the New Revolving Lenders to hold their Applicable Percentages of all Revolving Credit Loans outstanding at the close of business on such day, by either funding more than its or their Applicable Percentage of New Revolving Loans made on such date or purchasing shares of outstanding Revolving Credit Loans held by the other Lenders or a combination thereof. The Lenders agree to cooperate in any required sale and purchase of outstanding Revolving Credit Loans to achieve such result. The Borrowers agree to pay all fees associated with the New Revolving Commitments including any amounts due under Section 2.13 in connection with any reallocation of Term Benchmark Loans and RFR Loans.

On the effective date of any New Term Commitments of any Series, (a) each New Term Lender of such Series shall make a New Term Loan to the Borrowers in an amount equal to its New Term Commitment of such Series, and (b) each New Term Lender of such Series shall become a Lender hereunder with respect to the New Term Commitments of such Series and the New Term Loans of such Series made pursuant thereto. Any New Term Loans made on such effective date shall be designated a separate series (a "Series") of New Term Loans for all purposes of this Agreement.

The terms and provisions of the New Revolving Loans and New Revolving Commitments shall be identical to the then existing Revolving Credit Loans and Revolving Commitments. The terms of any New Term Loans of any Series made hereunder (a) shall not provide for any amortization payments on or prior to the Maturity Date, but may permit voluntary prepayments, (b) shall provide that the applicable New Term Loan maturity date of each Series shall be no earlier than the Maturity Date, (c) shall rank pari passu to the other Loans hereunder and (d) subject to the above provisions of this Section 10.8, shall include such other terms and pricing as may be agreed by the Borrowers, the Administrative Agent and the New Term Lenders.

SECTION 10.9 Extension of Maturity Date.

By written notice to the Administrative Agent (a "Maturity Extension Notice") not earlier than twelve (12) months nor later than one (1) month before the Maturity Date for the Revolving Credit Facility specified in clause (i) of the definition of the term "Maturity Date" (the "Original Maturity Date"), Kimco may extend the Maturity Date for the Revolving Credit Facility (the "First Extension Option") to the date six (6) months after the Original Maturity Date (the "First Extended Maturity Date") subject to the satisfaction on the applicable extension date of each of the applicable Extension Conditions. In addition, Kimco, at its option, may elect to extend the First Extended Maturity Date (the "Second Extension Option") to the date six (6) months after the First Extended Maturity Date (the "Second Extended Maturity Date"), subject to the satisfaction on the applicable extension date of each of the applicable Extension Conditions, by providing a Maturity Extension Notice to the Administrative Agent not earlier than the date, if any, on which Kimco elects to extend the Original Maturity Date to the First Extended Maturity Date nor later than one (1) month before the First Extended Maturity Date. Each Maturity Extension Notice shall constitute a representation and warranty by Kimco as of the applicable extension date that the Extension Conditions required to be satisfied as of such date (as set forth in the definition of "Extension Conditions") have been satisfied, and shall be accompanied by a certificate of a Responsible Officer of Kimco to such effect. The Administrative Agent shall promptly notify the Lenders of any such extension.

SECTION 10.10 Subsidiary Borrowers and Subsidiary Guarantors.

(a) At the election of Kimco at any time and from time to time, upon not less than seven (7) Business Days' notice (or 15 days' notice in the event the Subsidiary is organized under the laws of a jurisdiction other than the United States (a "Foreign Subsidiary Borrower")) to the Administrative Agent, at the time of such election, one or more Wholly Owned Subsidiaries shall become a Borrower hereunder (each, a "Subsidiary Borrower") by Kimco and such Subsidiary Borrower's executing and delivering to the Administrative Agent, as applicable, (i) an Adherence Agreement, (ii) an incumbency certificate as to the names, titles and specimen signatures of such Wholly Owned Subsidiary's officers or other representatives authorized to act on its behalf in connection with the Revolving Credit Facility, and (iii) if and to the extent generally issued by the applicable jurisdiction, a current good standing certificate as to such Wholly Owned Subsidiary from its jurisdiction of organization and a certified copy of its organizational or constituent documents (such as a certificate or articles of incorporation or formation and by-laws, limited liability company agreement or limited partnership agreement, as applicable); provided that (x) each such Wholly Owned Subsidiary shall satisfy the Baseline Conditions on and as of the date such Wholly Owned Subsidiary delivers its Adherence Agreement, (y) Kimco shall be deemed to represent and warrant as of such date that such proposed Subsidiary Borrower is a Wholly Owned Subsidiary, and (z) no Subsidiary Borrower shall cease to be a Subsidiary Borrower solely because it ceases to be a Wholly-Owned Subsidiary. Following the giving of any notice pursuant to this Section 10.10(a) and prior to the effectiveness of any such Subsidiary becoming a Subsidiary Borrower, if the designation of such Subsidiary Borrower obligates the Administrative Agent or any Lender to comply with "know your customer" or similar identification procedures in accordance with applicable laws and regulations in circumstances where the necessary information is not already available to it, the applicable Subsidiary Borrower shall, promptly upon the request of the Administrative Agent or such Lender (but only if the Administrative Agent or such Lender shall have made such a request by a date that is no later than five (5) Business Days after the giving of notice pursuant to Section 10.10(a) designating such Subsidiary Borrower), supply such documentation and other evidence as is reasonably and customarily requested by the Administrative Agent or such Lender in order for the Administrative Agent or such Lender to be satisfied (in good faith) it has complied with all necessary "know your customer" or other similar verifications under all applicable laws and regulations. Notwithstanding the foregoing, (x) with respect to any Foreign Subsidiary Borrower, any Lender may, with notice to the Administrative Agent and Kimco, fulfill its Revolving Commitment by causing an Affiliate of such Lender to act as the Lender in respect of such Foreign Subsidiary Borrower (and such Lender shall, to the extent of Loans made to and participations in Letters of Credit issued for the account of such Foreign Subsidiary Borrower, be deemed for all purposes hereof to have pro tanto assigned such Loans and participations to such Affiliate in compliance with the provisions of Section 10.6; and (y) as soon as practicable and in any event within seven (7) Business Days after notice of the designation under this Section of a Foreign Subsidiary Borrower, any Lender that (I) may not legally lend to such Foreign Subsidiary Borrower, or (II) would incur or suffer materially adverse regulatory or legal consequences by lending to such Foreign Subsidiary Borrower and, in either case (I) or (II), is generally not lending to other borrowers similarly situated to such Foreign Subsidiary Borrower (a "Protesting Lender") shall so notify Kimco and the Administrative Agent in writing. With respect to each Protesting Lender, Kimco shall, effective on or before the date that such Foreign Subsidiary Borrower shall have the right to borrow hereunder, either (I) (A) replace such Protesting Lender in accordance with Section 2.15 or (B) notify the Administrative Agent and such Protesting Lender that the Revolving Commitments of such Protesting Lender shall be terminated (whereupon such Revolving Commitments shall be terminated); provided that, in the case of this clause (B), (1) Kimco shall have received the prior written consent of the Administrative Agent and each Issuing Lender, which consents shall not unreasonably be withheld, and (2) such Protesting Lender shall have received payment of an amount equal to the outstanding principal of its Loans (other than Competitive Loans), accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the relevant Borrower (in the case of all other amounts), or (II) cancel its request to designate such Subsidiary as a "Subsidiary Borrower" hereunder.

(b) At the election of Kimco at any time and from time to time, at the time of such election, one or more Wholly Owned Subsidiaries shall become a guarantor of the Revolving Credit Facility (each, a "Subsidiary Guarantor") by executing and delivering to the Administrative Agent, as applicable, a Subsidiary Guarantee; provided that (x) each such Wholly Owned Subsidiary shall satisfy the Baseline Conditions on and as of the date such Wholly Owned Subsidiary delivers its Subsidiary Guarantee and (y) Kimco shall be deemed to represent and warrant as of such date that such proposed Subsidiary Guarantor is a Wholly Owned Subsidiary. If the designation of such Subsidiary Guarantor obligates the Administrative Agent or any Lender to comply with "know your customer" or similar identification procedures in accordance with applicable laws and regulations in circumstances where the necessary information is not already available to it, the applicable Subsidiary Guarantor shall, promptly upon the request of the Administrative Agent or such Lender, supply such documentation and other evidence as is reasonably and customarily requested by the Administrative Agent or such Lender in order for the Administrative Agent or such Lender to be satisfied (in good faith) it has complied with all necessary "know your customer" or other similar verifications under all applicable laws and regulations. For the avoidance of doubt, no Wholly Owned Subsidiary that is not a U.S. Person (or, if such Wholly Owned Subsidiary is disregarded as an entity separate from its owner for U.S. federal income tax purposes, has an owner that is not a U.S. Person) shall guarantee any obligation of any Borrower that is a U.S. Person (or, if such Borrower is disregarded as an entity separate from its owner for U.S. federal income tax purposes, of its owner).

(c) A Subsidiary Borrower shall be released as a Borrower hereunder upon written request by Kimco; provided that (i) any Loans to and/or other obligations of such Subsidiary Borrower proposed to be released shall have been either (A) repaid (and any outstanding Letters of Credit issued for its account shall have been fully cash collateralized unless Kimco is a co-applicant thereof) or (B) assumed (pursuant to a written agreement reasonably satisfactory in form and substance to the Administrative Agent), concurrently with or prior to such release, by Kimco or by another Subsidiary Borrower (which other Subsidiary Borrower satisfies the Baseline Conditions at the time of such assumption), (ii) there is no Event of Default after giving effect to such release, (iii) Kimco is in compliance with each of the financial covenants set forth in paragraphs (a) through (f) of Section 7.1 if the ratio or amount referred to therein were to be calculated as of such date, but after giving effect to such release (provided that for the purposes of determining such compliance, Gross Asset Value shall be determined for the most recent Test Period as to which a compliance certificate has been delivered pursuant to Section 6.2(b), after giving effect to such release), and (iv) Kimco has furnished to the Administrative Agent a certificate of its chief financial officer or other authorized officer as to the matters referred in the preceding sub-clauses (ii) and (iii)

(d) A Subsidiary Guarantor shall be released from any Subsidiary Guarantee upon written request by Kimco; provided that (i) there is no Event of Default after giving effect to such release (including any changes resulting from any Property's ceasing to be an Unencumbered Property if such released guarantor immediately prior to giving effect to such release was an Obligated Property Owner in respect thereof), (ii) Kimco is in compliance with each of the financial covenants set forth in paragraphs (a) through (f) of Section 7.1 if the ratio or amount referred to therein were to be calculated as of such date, but after giving effect to such release (including any changes resulting from any Property's ceasing to be an Unencumbered Property if such released guarantor was an Obligated Property Owner in respect thereof immediately prior to giving effect to such release and provided that for the purposes of determining such compliance, Gross Asset Value shall be determined for the most recent Test Period as to which a compliance certificate has been delivered pursuant to Section 6.2(b)), and (iii) Kimco has furnished to the Administrative Agent a certificate of its chief financial officer or other authorized financial officer as to the matters referred to in the preceding clauses (i) and (ii).

SECTION 10.11 Adjustments; Set-off.

(a) If any Lender (a "Benefited Lender") shall at any time receive any payment of all or part of its Tranche A Exposure or Tranche B Exposure, as applicable, or interest thereon, or receive any collateral in respect thereof (whether voluntarily or involuntarily, by set-off, pursuant to events or proceedings of the nature referred to in Article VIII(f), or otherwise), in a greater proportion than any such payment to or collateral received by any other Lender, if any, in respect of such other Lender's Tranche A Exposure or Tranche B Exposure, as applicable, or interest thereon, such Benefited Lender shall purchase for cash from the other Lenders a participating interest in such portion of each such other Lender's Tranche A Exposure or Tranche B Exposure, as applicable, or shall provide such other Lenders with the benefits of any such collateral, or the proceeds thereof, as shall be necessary to cause such Benefited Lender to share the excess payment or benefits of such collateral or proceeds ratably with each of the Lenders; provided that (i) if all or any portion of such excess payment or benefits is thereafter recovered from such Benefited Lender, such purchase shall be rescinded, and the purchase price and benefits returned, to the extent of such recovery, but without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by any Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Credit Loans or Competitive Loans or participations in respect of Letters of Credit to any assignee or participant, other than to any Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply, except, for the avoidance of doubt, for payments made pursuant to Section 2.15 or Section 10.10(a) hereof).

(b) In addition to any rights and remedies of the Lenders provided by law, each Lender and each of its Affiliates shall have the right, without prior notice to the Borrowers any such notice being expressly waived by the Borrowers to the extent permitted by applicable law, upon and during the continuance of any Event of Default, to set off and appropriate and apply against any amounts due hereunder or under any Notes at such time, any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, obligations, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any of its Affiliates or any branch or agency thereof to or for the credit or the account of such Borrower. Each Lender agrees promptly to notify the applicable Borrower, the Issuing Lender and the Administrative Agent after any such setoff and application made by such Lender, provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 10.12 Counterparts; Electronic Execution.

This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts each of which shall constitute an original, but all of which when taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by all the parties shall be lodged with Kimco, the Issuing Lender and the Administrative Agent. Delivery of an executed counterpart of a signature page of this Agreement by any electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 10.13 Severability.

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

SECTION 10.14 Integration.

This Agreement and the other Loan Documents represent the entire agreement of the Borrowers, the Guarantors, the Administrative Agent, the Issuing Lender and the Lenders with respect to the subject matter hereof and thereof, and there are no promises, undertakings, representations or warranties by the Administrative Agent, the Issuing Lender or any Lender relative to subject matter hereof or thereof not expressly set forth or referred to herein or in the other Loan Documents.

SECTION 10.15 GOVERNING LAW.

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 10.16 Submission to Jurisdiction; Waivers.

Each of the parties hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in the Borough of Manhattan (or if such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in the Borough of Manhattan), and any appellate court from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and 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 court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to its address set forth in Section 10.2 or at such other address of which it shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding in connection with this Agreement or any other Loan Document any special, exemplary, punitive or consequential damages; provided that, nothing in this clause (e) shall relieve a Borrower of any obligation it may have to indemnify a Person who is entitled to indemnification pursuant to Section 10.5(c) against special, indirect, consequential or punitive damages asserted against such Person by a third party.

SECTION 10.17 Acknowledgments.

Each Borrower hereby acknowledges that:

(a) it has been advised by counsel in the negotiation, execution and delivery of this Agreement and the other Loan Documents;

(b) none of the Administrative Agent, the Lenders or the Issuing Lenders (the "Credit Parties") will have any obligations except those obligations expressly set forth herein and in the other Loan Documents and each Credit Party is acting solely in the capacity of an arm's length contractual counterparty to the Borrowers with respect to the Loan Documents and the transactions contemplated herein and therein and not as a financial advisor or a fiduciary to, or an agent of, the Borrowers or any other Person. Each Borrower agrees that it will not assert any claim against any Credit Party based on an alleged breach of fiduciary duty by such Credit Party in connection with this Agreement and the transactions contemplated hereby;

(c) no Credit Party is advising the Borrowers as to any legal, tax, investment, accounting, regulatory or any other matters in any jurisdiction, and the Borrowers shall consult with their own advisors concerning such matters and shall be responsible for making their own independent investigation and appraisal of the transactions contemplated herein or in the other Loan Documents, and the Credit Parties shall have no responsibility or liability to the Borrowers with respect thereto;

(d) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby among the Credit Parties or among the Borrowers and the Credit Parties;

(e) each Credit Party, together with its Affiliates, is a full service securities or banking firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, any Credit Party may provide investment banking and other financial services to, and/or acquire, hold or sell, for its own accounts and the accounts of customers, equity, debt and other securities and financial instruments (including bank loans and other obligations) of, the Borrowers and other companies with which the Borrowers may have commercial or other relationships. With respect to any securities and/or financial instruments so held by any Credit Party or any of its customers, all rights in respect of such securities and financial instruments, including any voting rights, will be exercised by the holder of the rights, in its sole discretion; and

(f) each Credit Party and its Affiliates may be providing debt financing, equity capital or other services (including financial advisory services) to other companies in respect of which the Borrowers may have conflicting interests regarding the transactions described herein and otherwise.

SECTION 10.18 WAIVERS OF JURY TRIAL.

THE BORROWERS, THE ADMINISTRATIVE AGENT, THE ISSUING LENDER AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

SECTION 10.19 Confidentiality.

Each of the Administrative Agent, the Issuing Lender and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel, consultants, service providers and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to any regulatory authority or self-regulatory body, to the extent requested thereby, (c) to the extent required by applicable laws or regulations or by any subpoena or similar compulsory legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, (i) to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Borrower and its obligations, (g) with the prior written consent of any Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, the Issuing Lender or any Lender on a nonconfidential basis from a source other than the Borrowers that is not, to the knowledge of the Administrative Agent, Issuing Lender or such Lender, as applicable, subject to confidentiality obligations to Kimco or any of its Subsidiaries. In addition, the Lead Lenders may disclose the existence of this Agreement and information about this Agreement to data service providers, including league table providers, that serve the lending industry, to the extent such Information is customarily provided by arrangers to such service providers. For the purposes of this Section, "Information" means all information received from the Borrowers or their Subsidiaries relating to any Borrower or any Subsidiary of any Borrower or their respective businesses; provided that in the case of information received from or on behalf of the Borrowers after the date hereof, such information is clearly identified at the time of delivery as confidential. Notwithstanding anything herein to the contrary, "Information" shall not include, and each party hereto may disclose to any and all Persons, without limitation of any kind, any information with respect to the U.S. federal income tax treatment and U.S. federal income tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to such party relating to such tax treatment and tax structure.

SECTION 10.20 Judgment Currency.

(a) The obligations hereunder and under the other Loan Documents of the Borrowers to make payments in Dollars or in an Alternate Currency, as the case may be (the "Obligation Currency"), shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than the Obligation Currency, except to the extent that such tender or recovery results in the effective receipt by the Administrative Agent, the Issuing Lender or a Lender of the full amount of the Obligation Currency expressed to be payable to the Administrative Agent, the Issuing Lender or such Lender under this Agreement or the other Loan Documents. If, for the purpose of obtaining or enforcing judgment against any Borrower in any court or in any jurisdiction, it becomes necessary to convert into or from any currency other than the Obligation Currency (such other currency being hereinafter referred to as the "Judgment Currency") an amount due in the Obligation Currency, the conversion shall be made, at the Dollar Equivalent of such amount, in each case, as of the date immediately preceding the day on which the judgment is given (such Business Day being hereinafter referred to as the "Judgment Currency Conversion Date").

(b) If there is a change in the rate of exchange prevailing between the Judgment Currency Conversion Date and the date of actual payment of the amount due, the applicable Borrower obligated in respect thereof covenants and agrees to pay, or cause to be paid, such additional amounts, if any (but in any event not a lesser amount), as may be necessary to ensure that the amount paid in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of Judgment Currency stipulated in the judgment or judicial award at the rate of exchange prevailing on the Judgment Currency Conversion Date.

(c) For purposes of determining the Dollar Equivalent under this Section, such amounts shall include any premium and costs payable in connection with the purchase of the Obligation Currency.

SECTION 10.21 USA Patriot Act.

Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of the Loan Parties and other information that will allow such Lender to identify the Loan Parties in accordance with the Patriot Act.

SECTION 10.22 Sharing Event.

(a) Upon the occurrence of a Sharing Event, automatically (and without the taking of any action) (x) all then outstanding Term Benchmark Loans and RFR Loans denominated in an Alternate Currency shall be automatically converted into Loans denominated in Dollars (in an amount equal to the Dollar Equivalent, as determined by the Administrative Agent in accordance with this Agreement, of the aggregate principal amount of such Term Benchmark Loans and RFR Loans on the date such Sharing Event first occurred, which Loans denominated in Dollars (i) shall thereafter be deemed to be ABR Loans and (ii) shall be immediately due and payable on the date such Sharing Event occurred) and (y) all accrued and unpaid interest and other amounts owing with respect to such Term Benchmark Loans and RFR Loans shall be immediately due and payable in Dollars, in an amount equal to the Dollar Equivalent of such accrued and unpaid interest and other amounts.

(b) Upon the occurrence of a Sharing Event, and after giving effect to any automatic conversion pursuant to Section 10.22(a), each Lender shall (and hereby unconditionally and irrevocably agrees to) purchase and sell (in each case in Dollars) undivided participating interests in all Loans (other than Competitive Rate Loans) outstanding to, and any unpaid amounts the Issuing Lender has disbursed under a Letter of Credit owing by, any Borrower in amounts such that each Lender shall have a share of the outstanding Loans (other than Competitive Loans) and unpaid amounts the Issuing Lender has disbursed under a Letter of Credit then owing by any Borrower equal to its Applicable Percentage of the Revolving Commitments (although if because of fluctuations in currency exchange rates any Lender would be required to purchase such participations after giving effect to which such Lender's Loans and Letter of Credit participations (including participations therein purchased pursuant to this Section) would exceed such Lender's Revolving Commitment, then such participations shall be in an amount after giving effect to which such Lender's Loans and Letter of Credit participations (including participations therein purchased pursuant to this Section) would equal such Lender's Revolving Commitment). Upon any such occurrence, the Administrative Agent shall notify each Lender and shall specify the amount of Dollars required from such Lender in order to effect the purchases and sales by the various Lenders of participating interests in the amounts required above (together with accrued interest with respect to the period for the last Interest Payment Date through the date of the Sharing Event); provided that, in the event that a Sharing Event shall have occurred, each Lender shall be deemed to have purchased, automatically and without request, such participating interests. Promptly upon receipt of such request, each Lender shall deliver to the Administrative Agent (in immediately available funds in Dollars) the net amounts as specified by the Administrative Agent. The Administrative Agent shall promptly deliver the amounts so received to the various Lenders in such amounts as are needed to effect the purchases and sales of participations as provided above. Promptly following receipt thereof, each Lender which has sold participations in any of its Loans and Letter of Credit participations (through the Administrative Agent) will deliver to each Lender (through the Administrative Agent) which has so purchased a participating interest a participation certificate dated the date of receipt of such funds and in such amount. It is understood that the amount of funds delivered by each Lender shall be calculated on a net basis, giving effect to both the sales and purchases of participations by the various Lenders as required above.

(c) Upon the occurrence of a Sharing Event, (i) no further Loans shall be made, (ii) all amounts from time to time accruing with respect to, and all amounts from time to time payable on account of, any outstanding Term Benchmark Loans and RFR Loans denominated in any Alternate Currency (including any interest and other amounts which were accrued but unpaid on the date of such purchase) shall be converted to Loans denominated in Dollars in accordance with Section 10.22(a) and be payable immediately in Dollars as if such Term Benchmark Loans and RFR Loans had originally been made in Dollars and shall be distributed by the relevant Lenders (or their affiliates) to the Administrative Agent for the account of the Lenders which made such Loans or are participating therein and (iii) the Revolving Commitments of the Lenders shall be automatically terminated. Notwithstanding anything to the contrary contained above, the failure of any Lender to purchase its participating interest in any Loans upon the occurrence of a Sharing Event shall not relieve any other Lender of its obligation hereunder to purchase its participating interests in a timely manner, but no Lender shall be responsible for the failure of any other Lender to purchase the participating interest to be purchased by such other Lender on any date.

(d) If any amount required to be paid by any Lender pursuant to Section 10.22(b) is not paid to the Administrative Agent within one (1) Business Day following the date upon which such Lender receives notice from the Administrative Agent of the amount of its participations required to be purchased pursuant to said Section, such Lender shall also pay to the Administrative Agent on demand an amount equal to the product of (i) the amount so required to be paid by such Lender for the purchase of its participations times (ii) the daily average Federal Funds Effective Rate during the period from and including the date of request for payment to the date on which such payment is immediately available to the Administrative Agent times (iii) a fraction the numerator of which is the number of days that elapsed during such period and the denominator of which is 360. If any such amount required to be paid by any Lender pursuant to Section 10.22(b) is not in fact made available to the Administrative Agent within three (3) Business Days following the date upon which such Lender receives notice from the Administrative Agent as to the amount of participations required to be purchased by it, the Administrative Agent shall be entitled to recover from such Lender on demand, such amount with interest thereon calculated from such request date at the rate per annum applicable to ABR Loans hereunder. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts payable by any Lender pursuant to this Section shall be deemed conclusive absent manifest error. Amounts payable under this Section shall be paid to the Administrative Agent for the account of the relevant Lenders; provided that, if the Administrative Agent (in its sole discretion) has elected to fund on behalf of such Lender the amounts owing to such Lenders, then the amounts shall be paid to the Administrative Agent for its own account.

(e) Whenever, at any time after the relevant Lenders have received from any Lenders purchases of participations in any Loans pursuant to this Section, the Lenders receive any payment on account thereof, such Lenders will distribute to the Administrative Agent, for the account of the various Lenders participating therein, such Lenders' participating interests in such amounts (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such participations were outstanding) in like funds as received; provided, that in the event that such payment received by any Lenders are required to be returned, the Lenders who received previous distributions in respect of their participating interests therein will return to the respective Lenders any portion thereof previously so distributed to them in like funds as such payment is required to be returned by the respective Lenders.

(f) Each Lender's obligation to purchase participating interests pursuant to this Section shall be absolute and unconditional and shall not be affected by any circumstances including (i) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against any other Lender, any Borrower or any other Person for any reason whatsoever, (ii) the occurrence or continuance of an Event of Default, (iii) any adverse change in the condition (financial or otherwise) of Kimco or any other Person, (iv) any breach of this Agreement by Kimco, any of its Subsidiaries or any Lender or any other Person, or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(g) Notwithstanding anything to the contrary contained elsewhere in this Agreement, upon any purchase of participations as required above, each Lender which has purchased such participations shall be entitled to receive from the applicable Borrower any increased costs and indemnities directly from the applicable Borrower to the same extent as if it were the direct Lender as opposed to a participant therein. Each Borrower acknowledges and agrees that, upon the occurrence of a Sharing Event and after giving effect to the requirements of this Section, increased taxes may be owing by such Borrower pursuant to Section 2.12, which taxes shall be paid (to the extent provided in Section 2.12) by such Borrower, without any claim that the increased taxes are not payable because same resulted from the participations effected as otherwise required by this Section.

SECTION 10.23 Amendment and Restatement; Transitional Agreements.

This Agreement shall, upon the effectiveness of the amendment and restatement contemplated hereby, replace and supersede the Existing Revolving Credit Agreement in its entirety, except as expressly provided in this Section 10.23. For the avoidance of doubt, each of the parties hereto (including JPMorgan Chase Bank, N.A., in its capacities as administrative agent under the Existing Revolving Credit Agreement and under this Agreement) understands and agrees that, upon the effectiveness of the amendment and restatement contemplated hereby, without any further action, (a) the commitments of the Existing Revolving Lenders and the Existing Issuing Lender to make any loans or advance any credit, including letters of credit, as applicable, under the Existing Revolving Credit Agreement or under any other Existing Loan Document shall be terminated, (b) any reimbursement obligations of the Existing Revolving Lenders to the Existing Issuing Lender and any obligations of the Existing Revolving Lenders to purchase participations in the Existing Issuing Lender's obligations and rights in respect of each existing Letter of Credit shall be terminated (subject to Section 3.10), (c) excluding those obligations that are specified in the Existing Revolving Credit Agreement or in any of the other Existing Loan Documents as surviving that respective agreement's termination (which, as so specified, shall survive without prejudice and remain in full force and effect), all Existing Obligations and all Existing Guaranteed Obligations shall be deemed paid in full, released and discharged, (d) the Lenders party hereto shall have Revolving Commitments in the amounts set forth in Schedule 1.1A, (e) the "Revolving Credit Loans" outstanding under the Existing Revolving Credit Agreement shall become Revolving Credit Loans under this Agreement, and (f) the Lenders' interests in the Revolving Credit Loans and participations in the Letters of Credit shall be reallocated and continued in a cashless roll transaction on the Effective Date ratably in accordance with each Lender's applicable Revolving Commitments, and the Lenders shall make such purchases of Revolving Credit Loans from each other as necessary to effect such reallocation. As soon as reasonably practicable after its receipt of any Note requested by a Lender hereunder on the Effective Date, to the extent such Lender was a party to the Existing Revolving Credit Agreement and had a promissory note issued to such Lender under the terms of the Existing Revolving Credit Agreement, such Lender will promptly return to the Borrowers, marked "Substituted" or "Cancelled", as the case may be, any promissory notes of the Borrowers held by such Lender pursuant to the Existing Revolving Credit Agreement. Each Lender party to this Agreement that was a party to the Existing Revolving Credit Agreement hereby waives its rights to indemnification pursuant to Section 2.13 in connection with prepayment or conversion of any Eurocurrency Loans (including any "Eurocurrency Loans" under the Existing Revolving Credit Agreement) as a result of any prepayment or conversion of Revolving Credit Loans on the Effective Date or the reallocation of the Revolving Credit Loans on the Effective Date described above.

SECTION 10.24 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the applicable Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 10.25 Acknowledgement and Consent to Bail-In of Affected 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, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any 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

(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 10.26 Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

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.

As used in this Section 10.26, the following terms have the following meanings:

"***BHC Act Affiliate***" of a party means an "affiliate' (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"***Covered Entity***" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"***Default Right***" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"***QFC***" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

ARTICLE XI

GUARANTEE BY KIMCO

SECTION 11.1 Guarantee.

In order to induce the Lenders to extend credit hereunder, Kimco hereby irrevocably and unconditionally guarantees to the Administrative Agent for the benefit of the Lender Parties and the Administrative Agent, as a primary obligor and not merely as a surety, the due and punctual payment of all Obligations of all the Subsidiary Borrowers (collectively, the "Guaranteed Obligations"). Kimco agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee notwithstanding any extension or renewal of any Guaranteed Obligations. Each and every default in payment or performance on any Guaranteed Obligation shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

SECTION 11.2 Guaranteed Obligations Not Waived.

To the fullest extent permitted by applicable law, Kimco waives presentment to, demand of payment from and protest to any Subsidiary Borrower or to any other guarantor of any of the Guaranteed Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment. To the fullest extent permitted by applicable law, the obligations of Kimco hereunder shall not be affected by (a) the failure of any Lender Party to assert any claim or demand or to enforce or exercise any right or remedy against the applicable Borrower or any other Loan Party under the provisions of the Loan Documents or otherwise; (b) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of any Loan Document or any other agreement; (c) the failure or delay of any Lender Party for any reason whatsoever to exercise any right or remedy against any other guarantor of the Obligations; (d) the failure of any Lender Party to assert any claim or demand or to enforce any remedy under any Loan Document, any guarantee or any other agreement or instrument; (e) any default, failure or delay, willful or otherwise, in the performance of any Guaranteed Obligations; (f) any change in the corporate existence or structure of any Borrower; (g) the existence of any claims or set-off rights that Kimco may have; (h) any law, regulation, decree or order of any jurisdiction or any event affecting any term of a guaranteed obligation; or (i) any other act, omission or delay to do any other act which may or might in any manner or to any extent vary the risk of Kimco or otherwise operate as a discharge or exoneration of Kimco as a matter of law or equity or which would impair or eliminate any right of Kimco to subrogation.

SECTION 11.3 Guarantee of Payment.

Kimco agrees that its guarantee hereunder constitutes a guarantee of payment when due and not of collection, that such guarantee may be enforced at any time and from time to time, on one or more occasions, during the continuance of any Event of Default, without any prior demand or enforcement in respect of any Guaranteed Obligations, and that Kimco waives any right to require that any resort be had by any Lender Party to any other Guarantor or other guarantee, or to any security held for payment of any Guaranteed Obligations. The solicitation of, or the delivery by Kimco of, any confirmation or reaffirmation of this Agreement under any circumstance shall not give rise to any inference as to the continued effectiveness of this Agreement in any other circumstance in which the confirmation or reaffirmation hereof has not been solicited or has not been delivered (whether or not solicited), and the obligations of Kimco hereunder shall continue in effect as herein provided notwithstanding any solicitation or delivery of any confirmation or reaffirmation hereof, or any failure to solicit or to deliver any such confirmation or reaffirmation, under any circumstances. This is a continuing guaranty of the payment of all Guaranteed Obligations.

SECTION 11.4 No Discharge or Diminishment of Guarantee.

The obligations of Kimco under this guarantee shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the payment in full in cash of the Guaranteed Obligations), including any claim of waiver, release, surrender, amendment, modification, alteration or compromise of any of the Guaranteed Obligations or of any collateral security or guarantee or other accommodation in respect thereof, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or any Loan Document or any provision thereof (or of this Agreement or any provision hereof) or otherwise. Without limiting the generality of the foregoing, the obligations of Kimco under this guarantee shall not be discharged or impaired or otherwise affected by any change of location, form or jurisdiction of any Subsidiary Borrower or any other Person, any merger, consolidation or amalgamation of any Subsidiary Borrower or any other Person into or with any other Person, any sale, lease or transfer of any of the assets of any Subsidiary Borrower or any other Person to any other Person, any other change of form, structure, or status under any law in respect of any Subsidiary Borrower or any other Person, or any other occurrence, circumstance, happening or event whatsoever, whether similar or dissimilar to the foregoing, whether foreseen or unforeseen, that might otherwise constitute a legal or equitable defense, release, exoneration, or discharge or that might otherwise limit recourse against any Subsidiary Borrower or Kimco or any other Person. The obligations of Kimco under this guarantee shall extend to all Guaranteed Obligations without limitation of amount, and Kimco agrees that it shall be obligated to honor its guarantee hereunder whether or not any other Guarantor (i) has been called to honor its guarantee, (ii) has failed to honor its guarantee in whole or in part, or (iii) has been released for any reason whatsoever from its obligations under its guarantee.

SECTION 11.5 Defenses Waived; Maturity of Guaranteed Obligations.

To the fullest extent permitted by applicable law, Kimco waives any defense based on or arising out of any defense of any Subsidiary Borrower or any other guarantor or the unenforceability of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Subsidiary Borrower, other than the final payment in full in cash of the Guaranteed Obligations. The Lender Parties may, at their election, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Subsidiary Borrower or any other Person (including any other Guarantor) or exercise any other right or remedy available to them against such Subsidiary Borrower or any other Person (including any other Guarantor), without affecting or impairing in any way the liability of any Guarantor hereunder except to the extent the Guaranteed Obligations have been fully and finally paid in cash. To the fullest extent permitted by applicable law, Kimco waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of Kimco against any Subsidiary Borrower or any other Person, as the case may be, or any security. Kimco agrees that, as between Kimco, on the one hand, and the Lender Parties, on the other hand, (i) the maturity of the Guaranteed Obligations guaranteed hereby may be accelerated for the purposes of Kimco's guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration as to any Subsidiary Borrower in respect of the Guaranteed Obligations guaranteed hereby (other than any notices and cure periods expressly granted to any Subsidiary Borrower in this Agreement or any other Loan Document evidencing or securing the Guaranteed Obligations) and (ii) in the event of any such acceleration of such Guaranteed Obligations, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable in full by Kimco for purposes of this Agreement.

SECTION 11.6 Agreement to Pay; Subordination.

In furtherance of the foregoing and not in limitation of any other right that any Lender Party has at law or in equity against Kimco by virtue hereof, upon the failure of any Subsidiary Borrower to pay (after the giving of any required notice and the expiration of any cure period expressly granted to such Subsidiary Borrower in this Agreement or any other Loan Document evidencing any Guaranteed Obligation) any Guaranteed Obligation when and as the same shall become due, whether at maturity, upon mandatory prepayment, by acceleration, after notice of prepayment or otherwise, Kimco hereby promises to and will forthwith pay, or cause to be paid, to the Administrative Agent for the benefit of the Lender Parties, in cash the amount of such unpaid Guaranteed Obligation. Upon payment by Kimco of any sums as provided above, all rights of Kimco against the applicable Subsidiary Borrower or any other Person arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior payment in full in cash of all the Guaranteed Obligations. In addition, any indebtedness of any Subsidiary Borrower now or hereafter held by Kimco is hereby subordinated in right of payment to the prior payment in full in cash of the Guaranteed Obligations. If any amount shall erroneously be paid to Kimco on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of any Subsidiary Borrower, such amount shall be held in trust for the benefit of the Lender Parties and shall forthwith be paid to the Administrative Agent to be credited against the payment of the Guaranteed Obligations, whether matured or unmatured.

SECTION 11.7 Reinstatement.

Kimco further agrees that its obligations hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Guaranteed Obligation is rescinded or must otherwise be restored by any Lender Party upon the bankruptcy or reorganization of any Subsidiary Borrower or otherwise. Nothing shall discharge or satisfy the liability of Kimco hereunder except the full performance and payment in full in cash of the Guaranteed Obligations.

SECTION 11.8 Information.

Kimco assumes all responsibility for being and keeping itself informed of the Subsidiary Borrowers' financial condition and assets, and of all other circumstances bearing upon the nature, scope and extent of the risks that Kimco assumes and incurs hereunder, and agrees that neither the Administrative Agent nor any other Lender Party will have any duty to advise Kimco of information now or hereafter known to it or any of them regarding any of the foregoing.

[SIGNATURE PAGES TO FOLLOW]

Exhibit I

Ultimate Parent Covenant

So long as the Ultimate Parent is not a guarantor of the Obligations of Kimco and the Subsidiary Borrowers (if any), the Ultimate Parent shall not (i) incur, create, assume or suffer to exist any Indebtedness or other liabilities that appear as liabilities on the balance sheet of the Ultimate Parent, except (t) liabilities incidental to its status as a publicly traded REIT, including liabilities associated with common and preferred equity, employment contracts, employee benefit matters, indemnification obligations pursuant to purchase and sale agreements, banker engagement letters in connection with transactions permitted by this Agreement, tax liabilities and legacy liabilities (if any) arising pursuant to contracts entered into in the ordinary course of business (u) liabilities arising pursuant to any merger, purchase, acquisition, sale or other similar agreements, in each case other than liabilities constituting indebtedness for borrowed money, (v) Indebtedness incurred with respect to Guarantee Obligations in respect of Indebtedness of Kimco and its Subsidiaries that is permitted by Section 7.1 in an aggregate amount not exceeding $100,000,000, (w) nonconsensual obligations imposed by operation of law, (x) obligations pursuant to the Loan Documents to which it is a party and (y) obligations with respect to its Capital Stock and (z) other obligations not exceeding $100,000,000 individually or in the aggregate, or (ii) own any properties or tangible assets other than (A) the ownership of shares of Capital Stock in Kimco or any wholly owned Subsidiaries of Kimco and ownership of other assets not to exceed $100,000,000 in book value and (B) assets maintained on a temporary or pass through basis that are held for subsequent payment of dividends or other payments not prohibited by this Agreement for contribution to the Borrower. If at any time any of the requirements set forth in this covenant are not satisfied, the Ultimate Parent shall promptly and in any event within ten (10) Business Days of the earlier of (A) the first date a Responsible Officer obtains knowledge that such requirements were not satisfied or (B) the date upon which Kimco has received written notice that such requirements were not satisfied by the Administrative Agent, either (i) satisfy such requirements or (ii) deliver to the Administrative Agent a Guarantee and other required items in accordance with the second paragraph of Section 7.2, and, for the avoidance of doubt, any such failure to satisfy any requirements set forth in this covenant shall not constitute a default by Kimco in the observance or performance of its obligations in respect of this covenant unless Kimco and the Ultimate Parent's obligations pursuant to this sentence shall fail to be satisfied as and when required pursuant to the terms of this sentence.

Exhibit 10.2

EXECUTION VERSION

PARENT GUARANTEE

PARENT GUARANTEE, dated as of January 1, 2023 (as amended, supplemented or otherwise modified from time to time, this "Parent Guarantee"), made by KIMCO REALTY CORPORATION ("Ultimate Parent"), in favor of JPMORGAN CHASE BANK, N.A., as Administrative Agent (in such capacity, the "Administrative Agent") for the Lenders party to the Amended and Restated Credit Agreement (the "Lenders"), dated as of February 27, 2020 (as the same has been and may be amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among KRC Interim Corp. (formerly known as Kimco Realty Corporation, "Kimco"), the Subsidiaries of Kimco from time to time party thereto (collectively, the "Subsidiary Borrowers"; together with Kimco, the "Borrowers"), the Lenders, the Issuing Lenders party thereto, the Administrative Agent, and the other agents party thereto.

W I T N E S S E T H:

WHEREAS, pursuant to the Credit Agreement, the Lenders and the Issuing Lenders, as the case may be, have severally agreed to make Revolving Credit Loans to, and to issue or participate in Letters of Credit for the account of, the Borrowers, and may make Competitive Loans to Kimco, upon the terms and subject to the conditions set forth therein (the "Extensions of Credit");

WHEREAS, Ultimate Parent owns directly or indirectly all or a portion of the issued and outstanding Capital Stock of Kimco;

WHEREAS, the Borrowers and the Ultimate Parent are engaged in related businesses, and the Ultimate Parent will derive substantial direct and indirect benefit from the making of and/or the availability of the Extensions of Credit;

NOW, THEREFORE, in consideration of the premises and to induce the Administrative Agent, the Issuing Lenders and the Lenders to enter into the Credit Agreement and to induce the Lenders and the Issuing Lenders, as the case may be, to make their respective Revolving Credit Loans and Competitive Loans to, and to issue or participate in Letters of Credit for the account of, the Borrowers under the Credit Agreement, the Ultimate Parent hereby agrees with the Administrative Agent, for the ratable benefit of the Lender Parties, as follows:

1. Defined Terms. (a) Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

(b) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Parent Guarantee shall refer to this Parent Guarantee as a whole and not to any particular provision of this Parent Guarantee, and section references are to this Parent Guarantee unless otherwise specified.

(c) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

2. Guarantee. In order to induce the Lenders to make Extensions of Credit, Ultimate Parent hereby irrevocably and unconditionally guarantees to the Administrative Agent for the benefit of the Lender Parties and the Administrative Agent, as a primary obligor and not merely as a surety, the due and punctual payment of all Obligations of Kimco and each of the Subsidiary Borrowers (collectively, the "Guaranteed Obligations"). Ultimate Parent agrees that the Guaranteed Obligations may be extended or renewed, in whole or in part, without notice to or further assent from it, and that it will remain bound upon its guarantee notwithstanding any extension or renewal of any Guaranteed Obligations. Each and every default in payment or performance on any Guaranteed Obligation shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises.

3. Guaranteed Obligations Not Waived. To the fullest extent permitted by applicable law, Ultimate Parent waives presentment to, demand of payment from and protest to Kimco or any Subsidiary Borrower or to any other guarantor of any of the Guaranteed Obligations, and also waives notice of acceptance of its guarantee and notice of protest for nonpayment. To the fullest extent permitted by applicable law, the obligations of Ultimate Parent hereunder shall not be affected by (a) the failure of any Lender Party to assert any claim or demand or to enforce or exercise any right or remedy against the applicable Borrower or any other Loan Party under the provisions of the Loan Documents or otherwise; (b) any rescission, waiver, amendment or modification of, or any release from any of the terms or provisions of any Loan Document or any other agreement; (c) the failure or delay of any Lender Party for any reason whatsoever to exercise any right or remedy against any other guarantor of the Obligations; (d) the failure of any Lender Party to assert any claim or demand or to enforce any remedy under any Loan Document, any guarantee or any other agreement or instrument; (e) any default, failure or delay, willful or otherwise, in the performance of any Guaranteed Obligations; (f) any change in the corporate existence or structure of any Borrower; (g) the existence of any claims or set-off rights that Ultimate Parent may have; (h) any law, regulation, decree or order of any jurisdiction or any event affecting any term of a guaranteed obligation; or (i) any other act, omission or delay to do any other act which may or might in any manner or to any extent vary the risk of Ultimate Parent or otherwise operate as a discharge or exoneration of Ultimate Parent as a matter of law or equity or which would impair or eliminate any right of Ultimate Parent to subrogation.

4. Guarantee of Payment. Ultimate Parent agrees that its guarantee hereunder constitutes a guarantee of payment when due and not of collection, that such guarantee may be enforced at any time and from time to time, on one or more occasions, during the continuance of any Event of Default, without any prior demand or enforcement in respect of any Guaranteed Obligations, and that Ultimate Parent waives any right to require that any resort be had by any Lender Party to any other Guarantor or other guarantee, or to any security held for payment of any Guaranteed Obligations. The solicitation of, or the delivery by Ultimate Parent of, any confirmation or reaffirmation of this Parent Guarantee under any circumstance shall not give rise to any inference as to the continued effectiveness of this Parent Guarantee in any other circumstance in which the confirmation or reaffirmation hereof has not been solicited or has not been delivered (whether or not solicited), and the obligations of Ultimate Parent hereunder shall continue in effect as herein provided notwithstanding any solicitation or delivery of any confirmation or reaffirmation hereof, or any failure to solicit or to deliver any such confirmation or reaffirmation, under any circumstances. This is a continuing guaranty of the payment of all Guaranteed Obligations.

5. No Discharge or Diminishment of Guarantee. The obligations of Ultimate Parent under this Parent Guarantee shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the payment in full in cash of the Guaranteed Obligations), including any claim of waiver, release, surrender, amendment, modification, alteration or compromise of any of the Guaranteed Obligations or of any collateral security or guarantee or other accommodation in respect thereof, and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of the Guaranteed Obligations or any Loan Document or any provision thereof (or of this Parent Guarantee or any provision hereof) or otherwise. Without limiting the generality of the foregoing, the obligations of Ultimate Parent under this Parent Guarantee shall not be discharged or impaired or otherwise affected by any change of location, form or jurisdiction of Kimco, any Subsidiary Borrower or any other Person, any merger, consolidation or amalgamation of Kimco, any Subsidiary Borrower or any other Person into or with any other Person, any sale, lease or transfer of any of the assets of Kimco, any Subsidiary Borrower or any other Person to any other Person, any other change of form, structure, or status under any law in respect of Kimco or any Subsidiary Borrower or any other Person, or any other occurrence, circumstance, happening or event whatsoever, whether similar or dissimilar to the foregoing, whether foreseen or unforeseen, that might otherwise constitute a legal or equitable defense, release, exoneration, or discharge or that might otherwise limit recourse against Kimco or any Subsidiary Borrower or Ultimate Parent or any other Person. The obligations of Ultimate Parent under this Parent Guarantee shall extend to all Guaranteed Obligations without limitation of amount, and Ultimate Parent agrees that it shall be obligated to honor its guarantee hereunder whether or not any other Guarantor (i) has been called to honor its guarantee, (ii) has failed to honor its guarantee in whole or in part, or (iii) has been released for any reason whatsoever from its obligations under its guarantee.

6. Defenses Waived; Maturity of Guaranteed Obligations. To the fullest extent permitted by applicable law, Ultimate Parent waives any defense based on or arising out of any defense of Kimco, any Subsidiary Borrower or any other guarantor or the unenforceability of the Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of Kimco or any Subsidiary Borrower, other than the final payment in full in cash of the Guaranteed Obligations. The Lender Parties may, at their election, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with Kimco or any Subsidiary Borrower or any other Person (including any other Guarantor) or exercise any other right or remedy available to them against Kimco, such Subsidiary Borrower or any other Person (including any other Guarantor), without affecting or impairing in any way the liability of the Ultimate Parent hereunder except to the extent the Guaranteed Obligations have been fully and finally paid in cash. To the fullest extent permitted by applicable law, Ultimate Parent waives any defense arising out of any such election even though such election operates, pursuant to applicable law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of Ultimate Parent against Kimco or any Subsidiary Borrower or any other Person, as the case may be, or any security. Ultimate Parent agrees that, as between Ultimate Parent, on the one hand, and the Lender Parties, on the other hand, (i) the maturity of the Guaranteed Obligations guaranteed hereby may be accelerated for the purposes of Ultimate Parent's guarantee herein, notwithstanding any stay, injunction or other prohibition preventing such acceleration as to Kimco or any Subsidiary Borrower in respect of the Guaranteed Obligations guaranteed hereby (other than any notices and cure periods expressly granted to Kimco or any Subsidiary Borrower in the Credit Agreement or any other Loan Document evidencing or securing the Guaranteed Obligations) and (ii) in the event of any such acceleration of such Guaranteed Obligations, such Guaranteed Obligations (whether or not due and payable) shall forthwith become due and payable in full by Ultimate Parent for purposes of this Parent Guarantee.

7. Agreement to Pay; Subordination. In furtherance of the foregoing and not in limitation of any other right that any Lender Party has at law or in equity against Ultimate Parent by virtue hereof, upon the failure of Kimco or any Subsidiary Borrower to pay (after the giving of any required notice and the expiration of any cure period expressly granted to Kimco or such Subsidiary Borrower in the Credit Agreement or any other Loan Document evidencing any Guaranteed Obligation) any Guaranteed Obligation when and as the same shall become due, whether at maturity, upon mandatory prepayment, by acceleration, after notice of prepayment or otherwise, Ultimate Parent hereby promises to and will forthwith pay, or cause to be paid, to the Administrative Agent for the benefit of the Lender Parties, in cash the amount of such unpaid Guaranteed Obligation. Upon payment by Ultimate Parent of any sums as provided above, all rights of Ultimate Parent against Kimco or the applicable Subsidiary Borrower or any other Person arising as a result thereof by way of right of subrogation, contribution, reimbursement, indemnity or otherwise shall in all respects be subordinate and junior in right of payment to the prior payment in full in cash of all the Guaranteed Obligations. In addition, any indebtedness of Kimco or any Subsidiary Borrower now or hereafter held by Ultimate Parent is hereby subordinated in right of payment to the prior payment in full in cash of the Guaranteed Obligations. If any amount shall erroneously be paid to Ultimate Parent on account of (i) such subrogation, contribution, reimbursement, indemnity or similar right or (ii) any such indebtedness of Kimco or any Subsidiary Borrower, such amount shall be held in trust for the benefit of the Lender Parties and shall forthwith be paid to the Administrative Agent to be credited against the payment of the Guaranteed Obligations, whether matured or unmatured.

8. Reinstatement. Ultimate Parent further agrees that its obligations hereunder shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Guaranteed Obligation is rescinded or must otherwise be restored by any Lender Party upon the bankruptcy or reorganization of Kimco, any Subsidiary Borrower or otherwise. Nothing shall discharge or satisfy the liability of Ultimate Parent hereunder except the full performance and payment in full in cash of the Guaranteed Obligations.

9. Information. Ultimate Parent assumes all responsibility for being and keeping itself informed of Kimco's and the Subsidiary Borrowers' financial condition and assets, and of all other circumstances bearing upon the nature, scope and extent of the risks that Ultimate Parent assumes and incurs hereunder, and agrees that neither the Administrative Agent nor any other Lender Party will have any duty to advise Ultimate Parent of information now or hereafter known to it or any of them regarding any of the foregoing.

10. Payments. Ultimate Parent hereby agrees that payments hereunder will be paid to the Administrative Agent without set-off or counterclaim, in the currency of the applicable Obligation, at the office of the Administrative Agent located at 10 South Dearborn St., 7th Floor, Chicago, Illinois 60603 or to such other office as the Administrative Agent may hereafter specify by notice to the Ultimate Parent.

11. Authority of Agent. Ultimate Parent acknowledges that the rights and responsibilities of the Administrative Agent under this Parent Guarantee with respect to any action taken by the Administrative Agent or the exercise or non-exercise by the Administrative Agent of any option, right, request, judgment or other right or remedy provided for herein or resulting or arising out of this Parent Guarantee shall, as between the Administrative Agent, the Issuing Lenders and the Lenders, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Administrative Agent and Ultimate Parent, the Administrative Agent shall be conclusively presumed to be acting as agent for the Issuing Lenders and the Lenders with full and valid authority so to act or refrain from acting, and Ultimate Parent shall be under no obligation, or entitlement, to make any inquiry respecting such authority.

12. Notices. All notices, requests and demands pursuant hereto shall be made in accordance with Section 10.2 of the Credit Agreement; provided that any such notice, request or demand to or upon Ultimate Parent shall be addressed to Ultimate Parent at the notice address set forth under its signature below.

13. Counterparts. This Parent Guarantee may be executed by Ultimate Parent on any number of separate counterparts, each of which shall constitute an original, but all of which when taken together shall be deemed to constitute one and the same instrument. A set of the counterparts of this Parent Guarantee signed by Ultimate Parent shall be lodged with the Administrative Agent. Delivery of an executed counterpart of a signature page of this Parent Guarantee by any electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Parent Guarantee. The words "execution," "signed," "signature," "delivery," and words of like import in this Parent Guarantee shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

14. Severability. Any provision of this Parent Guarantee which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

15. Integration. This Parent Guarantee represents the entire agreement of Ultimate Parent with respect to the subject matter hereof and there are no promises, undertakings, representations or warranties by the Administrative Agent, the Issuing Lenders or any Lender relative to subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents.

16. Amendments in Writing; No Novation; No Waiver; Cumulative Remedies. (a) None of the terms or provisions of this Parent Guarantee may be waived, amended, supplemented or otherwise modified except by a written instrument executed by Ultimate Parent and the Administrative Agent in accordance with Section 10.1 of the Credit Agreement.

(b) Neither the Administrative Agent, nor the Issuing Lenders, nor any Lender shall by any act (except by a written instrument pursuant to Section 16(a) hereof), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of the Administrative Agent, the Issuing Lenders or any Lender, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Administrative Agent, the Issuing Lenders or any Lender of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Administrative Agent, the Issuing Lenders or such Lender would otherwise have on any future occasion.

(c) The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any other rights or remedies provided by law.

17. Section Headings. The section headings used in this Parent Guarantee are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

18. Successors and Assigns. This Parent Guarantee shall be binding upon the respective successors and assigns of Ultimate Parent and shall inure to the benefit of the Administrative Agent, the Issuing Lenders and the Lenders and their respective successors and assigns.

19. Governing Law. This Parent Guarantee shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York.

20. Submission To Jurisdiction; Waivers. Ultimate Parent (and by its acceptance of the benefits hereof, each Lender Party) hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Parent Guarantee and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in the Borough of Manhattan (or if such court lacks subject matter jurisdiction, the Supreme Court of the State of New York sitting in the Borough of Manhattan), and any appellate court from any thereof;

(b) consents that any such action or proceeding may be brought in such courts and 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 court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to its address set forth under its signature below;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding in connection with this Parent Guarantee any special, exemplary, punitive or consequential damages.

21. WAIVERS OF JURY TRIAL. ULTIMATE PARENT (AND BY ITS ACCEPTANCE OF THE BENEFITS HEREOF, EACH LENDER PARTY) HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN.

[Execution Pages Follow]

IN WITNESS WHEREOF, each of the undersigned has caused this Parent Guarantee to be duly executed and delivered by its duly authorized officer as of the day and year first above written.

Kimco Realty Corporation

By: /s/ Glenn G. Cohen

Name: Glenn G. Cohen
Title: Executive Vice President, Chief Financial Officer and Treasurer

Address for Notices for Ultimate Parent:

Kimco Realty Corporation
500 North Broadway, Suite 201
Jericho, New York 11753
Attn: Glenn G. Cohen
Tel: [ ]
Fax: [ ]

[Signature Page to Parent Guarantee]

Exhibit 10.7

AMENDMENT TO
RESTATED KIMCO REALTY CORPORATION
2010 EQUITY PARTICIPATION PLAN

Kimco Realty Corporation, a Maryland corporation (the "Company"), has previously adopted the Restated Kimco Realty Corporation 2010 Equity Participation Plan (as amended and/or restated from time to time, the "Plan"). This Amendment to the Plan (this "Amendment") has been approved by a resolution of the Board of Directors of the Company on December 14, 2022 .

1. *Amendment to Article 13*. A new Section 13.16 of the Plan is hereby added to read as follows:

13.16 Awards to Certain Eligible Individuals; REIT Status.

(a) The Company may provide through the establishment of a formal written policy (which shall be deemed a part of this Plan) or otherwise for the method by which Common Stock or other securities of the Company may be issued and by which such Common Stock or other securities and/or payment therefor may be exchanged or contributed among such entities, or may be returned upon any forfeiture of Common Stock or other securities by the Eligible Individual.

(b) The Plan shall be interpreted and construed in a manner consistent with the Company's status as a real estate investment trust within the meaning of Sections 856 through 860 of the Code ("REIT"). With respect to any Award that has been granted under the Plan, such Award shall not vest, be exercisable or be settled:

(1) to the extent that the vesting, exercise or settlement of such Award could cause the Participant or any other person to be in violation of any provision of the Company's charter; or

(2) if, in the discretion of the Administrator, the vesting, exercise or settlement of such award could impair the Company's status as a REIT.

Exhibit 10.8

KIMCO REALTY CORPORATION
AMENDED AND RESTATED 2020 EQUITY PARTICIPATION PLAN
(Amended and Restated Effective: December 14, 2022)

Article 1.
PURPOSE

The purpose of the Amended and Restated Kimco Realty Corporation 2020 Equity Participation Plan (the "Plan") is to promote the success and enhance the value of Kimco Realty Corporation (the "Company") and the Partnership by linking the individual interests of the Eligible Individuals to those of Company stockholders and by providing such Eligible Individuals with an incentive for outstanding performance to generate superior returns to Company stockholders. The Plan is further intended to provide flexibility to the Company, the Partnership and their respective subsidiaries in its ability to motivate, attract, and retain the services of Eligible Individuals upon whose judgment, interest, and special effort the successful conduct of the Company's and the Partnership's operation is largely dependent. Effective as of December 14, 2022 (the "Effective Date"), this Plan amends and restates, in its entirety, the Kimco Realty Corporation 2020 Equity Incentive Plan.

Article 2.
DEFINITIONS AND CONSTRUCTION

Wherever the following terms are used in the Plan they shall have the meanings specified below, unless the context clearly indicates otherwise. The singular pronoun shall include the plural where the context so indicates.

2.1 "Administrator" shall mean the entity that conducts the general administration of the Plan as provided in Article 11. With reference to the duties of the Committee under the Plan which have been delegated to one or more persons pursuant to Section 11.6, or as to which the Board has assumed, the term "Administrator" shall refer to such person(s) unless the Committee or the Board has revoked such delegation or the Board has terminated the assumption of such duties.

2.2 "Affiliate" shall mean (a) the Partnership, (b) any Subsidiary; and (c) any domestic eligible entity that is disregarded, under Treasury Regulation Section 301.7701-3, as an entity separate from either (i) the Company, (ii) the Partnership or (ii) any Subsidiary.

2.3 "Applicable Accounting Standards" shall mean Generally Accepted Accounting Principles in the United States, International Financial Reporting Standards or such other accounting principles or standards as may apply to the Company's financial statements under United States federal securities laws from time to time.

2.4 "Award" shall mean an Option, a Restricted Stock award, a Restricted Stock Unit award, a Performance Award, a Dividend Equivalents award, a Deferred Stock award, a Stock Payment award, a Stock Appreciation Right or a LTIP Unit, which may be awarded or granted under the Plan (collectively, "Awards").

2.5 "Award Agreement" shall mean any written notice, agreement, terms and conditions, contract or other instrument or document evidencing an Award, including through electronic medium, which shall contain such terms and conditions with respect to an Award as the Administrator shall determine consistent with the Plan.

2.6 "Award Limit" shall mean with respect to Awards that shall be payable in Shares or in cash, as the case may be, the respective limits set forth in Section 3.3 and Section 3.4.

2.7 "Board" shall mean the Board of Directors of the Company.

2.8 "Change in Control" shall mean (a) a transaction or series of transactions resulting in more than 50% of the voting stock of the Company being held by a Person or Group (as defined in Rule 13d-5 under the Exchange Act) that does not include the Company or the Partnership; (b) the date on which a majority of the members of the Board is replaced during any twelve-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board before the date of the appointment or election; (c) the consummation by the Company of a sale or other disposition of all or substantially all of the assets of the Company, in any single transaction or series of related transactions, to a Person (as defined in Rule 13d-5 under the Exchange Act) who is not an affiliate of the Company or an entity in which the shareholders of the Company immediately prior to such transaction do not control more than 50% of the voting power immediately following the transaction; (d) a merger, consolidation, reorganization or business combination of the Company into another entity which is not an affiliate of the Company or an entity in which the shareholders of the Company immediately prior to such transaction do not control more than 50% of the voting power immediately following the transaction; or (e) the approval by the Company's stockholders of a liquidation or dissolution of the Company; *provided*, that the transaction or event described in (a), (b), (c), (d) or (e) constitutes a "change in control event" as defined in Section 1.409A-3(i)(5) of the Department of Treasury Regulations.

2.9 "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, together with the regulations and official guidance promulgated thereunder.

2.10 "Committee" shall mean the Compensation Committee of the Board, or another committee or subcommittee of the Board, appointed as provided in Section 11.1.

2.11 "Common Stock" shall mean the common stock of the Company, par value $0.01 per share.

2.12 "Company" shall mean Kimco Realty Corporation, a Maryland corporation.

2.13 "Consultant" shall mean any consultant or adviser that is not an Employee, in each case, that can be granted an Award that is eligible to be registered on a Form S-8 Registration Statement.

2.14 "Deferred Stock" shall mean a right to receive Shares, pursuant to a deferred compensation arrangement or otherwise, awarded under Section 8.4.

2.15 "Director" shall mean a member of the Board, as constituted from time to time.

2.16 "Dividend Equivalent" shall mean a right to receive the equivalent value (in cash or Shares) of dividends paid on Shares, awarded under Section 8.2.

2.17 "DRO" shall mean a domestic relations order as defined by the Code or Title I of the Employee Retirement Income Security Act of 1974, as amended from time to time, or the rules thereunder.

2.18 "Eligible Individual" shall mean any person who is an Employee, a Consultant or a Non-Employee Director, as determined by the Committee.

2.19 "Employee" shall mean any officer or other employee (as determined in accordance with Section 3401(c) of the Code and the Treasury Regulations thereunder) of the Company, of the Partnership, of Kimco Realty Services, Inc., or of any Subsidiary.

2.20 "Equity Restructuring" shall mean a nonreciprocal transaction between the Company and its stockholders, such as a stock dividend, stock split, spin-off, rights offering or recapitalization through a large, nonrecurring cash dividend, that affects the number or kind of shares of Common Stock (or other securities of the Company) or the share price of Common Stock (or other securities) and causes a change in the per share value of the Common Stock underlying outstanding Awards.

2.21 "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time.

2.22 "Fair Market Value" shall mean, as of any given date, the value of a Share determined as follows:

(a) If the Common Stock is listed on any (i) established securities exchange (such as the New York Stock Exchange, the NASDAQ Global Market and the NASDAQ Global Select Market), (ii) national market system or (iii) automated quotation system on which the Shares are listed, quoted or traded, its Fair Market Value shall be the closing sales price for a share of Common Stock as quoted on such exchange or system for such date or, if there is no closing sales price for a share of Common Stock on the date in question, the closing sales price for a share of Common Stock on the last preceding date for which such quotation exists, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(b) If the Common Stock is not listed on an established securities exchange, national market system or automated quotation system, but the Common Stock is regularly quoted by a recognized securities dealer, its Fair Market Value shall be the mean of the high bid and low asked prices for such date or, if there are no high bid and low asked prices for a share of Common Stock on such date, the high bid and low asked prices for a share of Common Stock on the last preceding date for which such information exists, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or

(c) If the Common Stock is neither listed on an established securities exchange, national market system or automated quotation system nor regularly quoted by a recognized securities dealer, its Fair Market Value shall be established by the Administrator in good faith.

2.23 "Full Value Award" shall mean any Award other than (i) an Option, (ii) a Stock Appreciation Right or (iii) any other Award for which the Holder pays the intrinsic value existing as of the date of grant (whether directly or by foregoing a right to receive a payment from the Company or any Affiliate).

2.24 "Greater Than 10% Stockholder" shall mean an individual then owning (within the meaning of Section 424(d) of the Code) more than 10% of the total combined voting power of all classes of stock of the Company or any Affiliate corporation (as defined in Section 424(f) of the Code) or parent corporation thereof (as defined in Section 424(e) of the Code).

2.25 "Holder" shall mean an Eligible Individual who has been granted an Award.

2.26 "Incentive Stock Option" shall mean an Option that is intended to qualify as an incentive stock option and conforms to the applicable provisions of Section 422 of the Code.

2.27 "LTIP Unit" shall mean, to the extent authorized by the Operating Agreement, a unit of the Partnership that is granted pursuant to Section 8.6 hereof and is intended to constitute a "profits interest" within the meaning of the Code.

2.28 "Non-Employee Director" shall mean a Director of the Company who is not an Employee.

2.29 "Non-Qualified Stock Option" shall mean an Option that is not an Incentive Stock Option."Option" shall mean a right to purchase Shares at a specified exercise price, granted under Article 5. An Option shall be either a Non-Qualified Stock Option or an Incentive Stock Option; provided, however, that Options granted to Non-Employee Directors and Consultants shall only be Non-Qualified Stock Options.

2.31 "Operating Agreement" shall mean the Limited Liability Company Agreement of the Partnership, as it may be amended, modified and/or restated from time to time.

2.32 "Parent" shall mean any entity (other than the Company), whether domestic or foreign, in an unbroken chain of entities ending with the Company if each of the entities other than the Company beneficially owns, at the time of the determination, securities or interests representing more than fifty percent (50%) of the total combined voting power of all classes of securities or interests in one of the other entities in such chain.

2.33 "Participant" shall mean an Eligible Individual who has been granted an Award pursuant to the Plan.

2.34 "Partnership" shall mean Kimco Realty OP, LLC.

2.35 "Performance Award" shall mean a Performance Share award or a cash bonus award, stock bonus award, performance award or incentive award that is paid in cash, Shares or a combination of both, awarded under Section 8.1.

2.36 "Performance Criteria" shall mean the criteria (and adjustments) that the Committee selects for an Award for purposes of establishing the Performance Goal or Performance Goals for a Performance Period, determined as follows:

(a) The Performance Criteria that shall be used to establish Performance Goals may include, but are not limited to, the following: (i) net earnings (either before or after one or more of the following: (A) interest, (B) taxes, (C) depreciation and (D) amortization); (ii) gross or net sales or revenue; (iii) net income (either before or after taxes); (iv) adjusted net income; (v) operating earnings, income or profit; (vi) cash flow (including, but not limited to, operating cash flow and free cash flow); (vii) return on assets; (viii) return on capital or invested capital; (ix) return on stockholders' equity; (x) total stockholder return; (xi) return on sales; (xii) gross or net profit or operating margin; (xiii) costs, cost reduction or savings; (xiv) funds from operations; (xv) expenses; (xvi) working capital; (xvii) earnings per share; (xviii) adjusted earnings per share; (xix) price per share of Common Stock or appreciation in the fair market value of Common Stock; (xx) regulatory body approval for commercialization of a product; (xxi) implementation or completion of critical projects; (xxii) market share; and (xxiii) economic value, any of which may be measured either in absolute terms or as compared to any incremental increase or decrease or as compared to results of a peer group or to market performance indicators or indices; provided, that, to the extent applicable, each of the business criteria described in this subsection (a) shall be determined in accordance with Applicable Accounting Standards.

(b) The Administrator may, in its sole discretion, provide that one or more adjustments shall be made to one or more of the Performance Goals. Such adjustments may include one or more of the following: (i) items related to a change in accounting principle; (ii) items relating to financing activities; (iii) expenses for restructuring or productivity initiatives; (iv) other non-operating items; (v) items related to acquisitions; (vi) items attributable to the business operations of any entity acquired by the Company or the Partnership during the Performance Period; (vii) items related to the disposal of a business or segment of a business; (viii) items related to discontinued operations that do not qualify as a segment of a business under Applicable Accounting Standards; (ix) items attributable to any stock dividend, stock split, combination or exchange of stock occurring during the Performance Period; (x) any other items of significant income or expense which are determined to be appropriate adjustments; (xi) items relating to unusual or extraordinary corporate transactions, events or developments, (xii) items related to amortization of acquired intangible assets; (xiii) items that are outside the scope of the Company's or the Partnership's core, on-going business activities; (xiv) items related to acquired in-process research and development; (xv) items relating to changes in tax laws; (xvi) items relating to major licensing or partnership arrangements; (xvii) items relating to asset impairment charges; (xviii) items relating to gains or losses for litigation, arbitration and contractual settlements; (xix) items relating to any other unusual or nonrecurring events or changes in applicable laws, accounting principles or business conditions; (xx) items related to changes in Applicable Accounting Standards; or (xxi) items reflecting adjustments to funds from operations with respect to straight-line rental income as reported in the Company's Exchange Act reports.

2.37 "Performance Goals" shall mean, for a Performance Period, one or more goals established by the Administrator for the Performance Period based upon one or more Performance Criteria. Depending on the Performance Criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance or the performance of the Partnership, a Subsidiary, division, business unit, or an individual. The achievement of each Performance Goal may be determined in accordance with Applicable Accounting Standards.

2.38 "Performance Period" shall mean one or more periods of time, which may be of varying and overlapping durations, as the Administrator may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Holder's right to, and the payment of, a Performance Award.

2.39 "Performance Shares" shall mean the right to receive shares of Common Stock and/or Restricted Stock awarded under Section 8.1(c).

2.40 "Permitted Transferee" shall mean, with respect to a Holder, any "family member" of the Holder, as defined under the instructions to use of the Form S-8 Registration Statement under the Securities Act, after taking into account any state, federal, local or foreign tax and securities laws applicable to transferable Awards.

2.41 "Plan" shall mean this Amended and Restated Kimco Realty Corporation 2020 Equity Participation Plan, as it may be amended or restated from time to time.

2.42 "Program" shall mean any program adopted by the Administrator pursuant to the Plan containing the terms and conditions intended to govern a specified type of Award granted under the Plan and pursuant to which such type of Award may be granted under the Plan.

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

2.44 "Restricted Stock" shall mean Common Stock awarded under Article 7 that is subject to certain restrictions and may be subject to risk of forfeiture or repurchase.

2.45 "Restricted Stock Units" shall mean the right to receive Shares awarded under Section 8.5.

2.46 "Retirement" of a Holder shall mean his Termination of Service on or after his sixty-fifth (65th) birthday or his completion of thirty (30) full (not necessarily consecutive) years of employment, consultancy or directorship, as the case may be, with the Company or any Affiliate.

2.47 "Securities Act" shall mean the Securities Act of 1933, as amended.

2.48 "Shares" shall mean shares of Common Stock.

2.49 "Stock Appreciation Right" shall mean a stock appreciation right granted under Article 9.

2.50 "Stock Payment" shall mean (a) a payment in the form of Shares, or (b) an option or other right to purchase Shares, as part of a bonus, deferred compensation or other arrangement, awarded under Section 8.3.

2.51 "Subsidiary" shall mean any entity (other than the Company or Partnership, as applicable), whether domestic or foreign, in an unbroken chain of entities beginning with the Company or the Partnership (as applicable) if each of the entities other than the last entity in the unbroken chain beneficially owns, at the time of the determination, securities or interests representing more than fifty percent (50%) of the total combined voting power of all classes of securities or interests in one of the other entities in such chain.

2.52 "Substitute Award" shall mean an Award granted under the Plan upon the assumption of, or in substitution for, outstanding equity awards previously granted by a company or other entity in connection with a corporate transaction, such as a merger, combination, consolidation or acquisition of property or stock; provided, however, that in no event shall the term "Substitute Award" be construed to refer to an award made in connection with the cancellation and repricing of an Option or Stock Appreciation Right.

2.53 "Termination of Service" shall mean,

(a) As to a Consultant, the time when the engagement of a Holder as a Consultant to the Company or an Affiliate is terminated for any reason, with or without cause, including, without limitation, by resignation, discharge, death or Retirement, but excluding terminations where the Consultant simultaneously commences or remains in employment or service with the Company or any Affiliate.

(b) As to a Non-Employee Director, the time when a Holder who is a Non-Employee Director ceases to be a Director for any reason, including, without limitation, a termination by resignation, failure to be elected, death or Retirement, but excluding terminations where the Holder simultaneously commences or remains in employment or service with the Company or any Affiliate.

(c) As to an Employee, the time when the employee-employer relationship between a Holder and the Company or any Affiliate is terminated for any reason, including, without limitation, a termination by resignation, discharge, death, disability or Retirement; but excluding terminations where the Holder simultaneously commences or remains in employment or service with the Company or any Affiliate.

The Administrator, in its sole discretion, shall determine the effect of all matters and questions relating to Terminations of Service, including, without limitation, the question of whether a Termination of Service resulted from a discharge for cause and all questions of whether particular leaves of absence constitute a Termination of Service; provided, however, that, with respect to Incentive Stock Options, unless the Administrator otherwise provides in the terms of the Program, the Award Agreement or otherwise, a leave of absence, change in status from an employee to an independent contractor or other change in the employee-employer relationship shall constitute a Termination of Service only if, and to the extent that, such leave of absence, change in status or other change interrupts employment for the purposes of Section 422(a)(2) of the Code and the then applicable regulations and revenue rulings under said Section. For purposes of the Plan, a Holder's employee-employer relationship or consultancy relations shall be deemed to be terminated in the event that the Affiliate employing or contracting with such Holder ceases to remain an Affiliate following any merger, sale of stock or other corporate transaction or event (including, without limitation, a spin-off).

Article 3.
SHARES SUBJECT TO THE PLAN

3.1 Number of Shares.

(a) Subject to Section 12.2 and Section 3.1(b), the aggregate number of Shares which may be issued or transferred pursuant to Awards under the Plan shall be 10,000,000 Shares. Subject to Section 12.2 hereof, each LTIP Unit issued pursuant to an Award shall count as one Share for purposes of calculating the aggregate number of Shares available for issuance under the Plan as set forth in this Section 3.1(a) and for purposes of calculating the Individual Award Limit set forth in Section 3.3 hereof.

(b) If any Shares subject to an Award are forfeited or expire or such Award is settled for cash (in whole or in part), the Shares subject to such Award shall, to the extent of such forfeiture, expiration or cash settlement, again be available for future grants of Awards under the Plan. Notwithstanding anything to the contrary contained herein, the following Shares shall not be added to the Shares authorized for grant under Section 3.1(a) and will not be available for future grants of Awards: (i) Shares tendered by a Holder or withheld by the Company in payment of the exercise price of an Option; (ii) Shares tendered by the Holder or withheld by the Company to satisfy any tax withholding obligation with respect to an Award; (iii) Shares subject to a Stock Appreciation Right that are not issued in connection with the stock settlement of the Stock Appreciation Right on exercise thereof; and (iv) Shares purchased on the open market with the cash proceeds from the exercise of Options. Any Shares repurchased by the Company under Section 7.4 at the same price paid by the Holder, or a lower price (as adjusted for corporate events), so that such shares are returned to the Company will again be available for Awards. The payment of Dividend Equivalents in cash in conjunction with any outstanding Awards shall not be counted against the shares available for issuance under the Plan. Notwithstanding the provisions of this Section 3.1(b), no Shares may again be optioned, granted or awarded if such action would cause an Incentive Stock Option to fail to qualify as an incentive stock option under Section 422 of the Code.

(c) Substitute Awards shall not reduce the Shares authorized for grant under the Plan. Additionally, in the event that a company acquired by the Company or any Affiliate or with which the Company or any Affiliate combines has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the Shares authorized for grant under the Plan; provided that Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not employed by or providing services to the Company or its Affiliates immediately prior to such acquisition or combination.

3.2 Stock Distributed. Any Shares distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Common Stock, treasury Common Stock or Common Stock purchased on the open market.

3.3 Limitation on Number of Shares Subject to Awards. Notwithstanding any provision in the Plan to the contrary, and subject to Section 12.2, the maximum aggregate number of Shares with respect to one or more Awards that may be granted to any one person during any calendar year shall be 750,000 and the maximum amount payable in cash during any calendar year to any one person with respect to one or more Awards that do not relate to Shares and are payable in cash shall be $2,000,000.

3.4 Non-Employee Director Compensation. Notwithstanding any provision to the contrary in the Plan, the Committee may establish compensation for Non-Employee Directors from time to time, subject to the limitations in the Plan. The Committee will from time to time determine the terms, conditions and amounts of all such Non-Employee Director compensation in its discretion and pursuant to the exercise of its business judgment, taking into account such factors, circumstances and considerations as it shall deem relevant from time to time, provided that the sum of any cash compensation, or other compensation, and the value (determined as of the grant date in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718, or any successor thereto) of Awards granted to a Non-Employee Director as compensation for services as a Non-Employee Director during any fiscal year of the Company may not exceed $500,000. The Committee may make exceptions to this limit for individual Non-Employee Directors in extraordinary circumstances, as the Committee may determine in its discretion, provided that the Non-Employee Director receiving such additional compensation may not participate in the decision to award such compensation or in other contemporaneous compensation decisions involving Non-Employee Directors.

Article 4.
GRANTING OF AWARDS

4.1 Participation. The Administrator may, from time to time, select from among all Eligible Individuals, those to whom an Award shall be granted and shall determine the nature and amount of each Award, which shall not be inconsistent with the requirements of the Plan. No Eligible Individual shall have any right to be granted an Award pursuant to the Plan.

4.2 Award Agreement. Each Award shall be evidenced by an Award Agreement. Award Agreements evidencing Incentive Stock Options shall contain such terms and conditions as may be necessary to meet the applicable provisions of Section 422 of the Code.

4.3 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan, the Plan, and any Award granted or awarded to any individual who is then subject to Section 16 of the Exchange Act, shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including Rule 16b-3 of the Exchange Act and any amendments thereto) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

4.4 At-Will Employment. Nothing in the Plan or in any Program or Award Agreement hereunder shall confer upon any Holder any right to continue in the employ of, or as a Director or Consultant for, the Company or any Affiliate, or shall interfere with or restrict in any way the rights of the Company and any Affiliate, which rights are hereby expressly reserved, to discharge any Holder at any time for any reason whatsoever, with or without cause, and with or without notice, or to terminate or change all other terms and conditions of employment or engagement, except to the extent expressly provided otherwise in a written agreement between the Holder and the Company or any Affiliate.

4.5 Foreign Holders. Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in other countries in which the Company and its Affiliates operate or have Employees, Non-Employee Directors or Consultants, or in order to comply with the requirements of any foreign securities exchange, the Administrator, in its sole discretion, shall have the power and authority to (a) determine which Subsidiaries shall be covered by the Plan; (b) determine which Eligible Individuals outside the United States are eligible to participate in the Plan; (c) modify the terms and conditions of any Award granted to Eligible Individuals outside the United States to comply with applicable foreign laws or listing requirements of any such foreign securities exchange; (d) establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable (any such subplans and/or modifications shall be attached to the Plan as appendices); provided, however, that no such subplans and/or modifications shall increase the share limitations contained in Sections 3.1, 3.3 and 3.4; and (e) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local governmental regulatory exemptions or approvals or listing requirements of any such foreign securities exchange. Notwithstanding the foregoing, the Administrator may not take any actions hereunder, and no Awards shall be granted, that would violate the Code, the Exchange Act, the Securities Act, any other securities law or governing statute, the rules of the securities exchange or automated quotation system on which the Shares are listed, quoted or traded or any other applicable law.

4.6 Stand-Alone and Tandem Awards. Awards granted pursuant to the Plan may, in the sole discretion of the Administrator, be granted either alone, in addition to, or in tandem with, any other Award granted pursuant to the Plan. Awards granted in addition to or in tandem with other Awards may be granted either at the same time as or at a different time from the grant of such other Awards.

Article 5.
GRANTING OF OPTIONS

5.1 Granting of Options to Eligible Individuals. The Administrator is authorized to grant Options to Eligible Individuals from time to time, in its sole discretion, on such terms and conditions as it may determine which shall not be inconsistent with the Plan.

5.2 Qualification of Incentive Stock Options. No Incentive Stock Option shall be granted to any person who is not an Employee of the Company or any "subsidiary corporation" of the Company (as defined in Section 424(f) of the Code). No person who qualifies as a Greater Than 10% Stockholder may be granted an Incentive Stock Option unless such Incentive Stock Option conforms to the applicable provisions of Section 422 of the Code. Any Incentive Stock Option granted under the Plan may be modified by the Administrator, with the consent of the Holder, to disqualify such Option from treatment as an "incentive stock option" under Section 422 of the Code. To the extent that the aggregate fair market value of stock with respect to which "incentive stock options" (within the meaning of Section 422 of the Code, but without regard to Section 422(d) of the Code) are exercisable for the first time by a Holder during any calendar year under the Plan, and all other plans of the Company and any Affiliate or parent corporation thereof (each as defined in Section 424(f) and (e) of the Code, respectively), exceeds $100,000, the Options shall be treated as Non-Qualified Stock Options to the extent required by Section 422 of the Code. The rule set forth in the preceding sentence shall be applied by taking Options and other "incentive stock options" into account in the order in which they were granted and the Fair Market Value of stock shall be determined as of the time the respective options were granted.

5.3 Option Exercise Price. The exercise price per Share subject to each Option shall be set by the Administrator, but shall not be less than 100% of the Fair Market Value of a Share on the date the Option is granted (or, as to Incentive Stock Options, on the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code). In addition, in the case of Incentive Stock Options granted to a Greater Than 10% Stockholder, such price shall not be less than 110% of the Fair Market Value of a Share on the date the Option is granted (or the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code).

5.4 Option Term. The term of each Option shall be set by the Administrator in its sole discretion; provided, however, that no Option may be exercised to any extent by anyone after the first to occur of the following events:

(a) In the case of an Incentive Stock Option, (i) the expiration of ten years from the date the Option was granted, or (ii) in the case of a Greater Than 10% Stockholder, the expiration of five years from the date the Incentive Stock Option was granted;

(b) In the case of a Non-Qualified Stock Option, the expiration of ten years and one day from the date the Non-Qualified Stock Option was granted;

(c) Except (i) in the case of any Holder who is disabled (within the meaning of Section 22(e)(3) of the Code) or (ii) as otherwise determined by the Administrator in its discretion either pursuant to the terms of an applicable Award Agreement or by action of the Administrator taken at the time of the Holder's Termination of Services, the expiration of three months from the date of the Holder's Termination of Services for any reason other than such Holder's death (unless the Holder dies within said three-month period) or Retirement;

(d) In the case of a Holder who is disabled (within the meaning of Section 22(e)(3) of the Code), the expiration of one year from the date of the Holder's Termination of Services for any reason other than such Holder's death (unless the Holder dies within said one-year period) or Retirement;

(e) The expiration of one year from the date of the Holder's death; or

(f) In the case of the Holder's Retirement, the earlier of (i) the date the Holder engages in any activity in competition with the Company or Affiliate, or which is inimical, contrary or harmful to the interests of the Company or Affiliate, or (ii) the expiration of the term of the Option in accordance with clause (a) or (b) above.

Except as limited by the requirements of Section 409A or Section 422 of the Code and regulations and rulings thereunder, the Administrator may extend the term of any outstanding Option, and may extend the time period during which vested Options may be exercised, in connection with any Termination of Service of the Holder, in each case, to the extent that such extension does not constitute a repricing or a cash buyout under Section 10.6, and may amend any other term or condition of such Option relating to such a Termination of Service.

5.5 Option Vesting.

(a) The period during which the right to exercise, in whole or in part, an Option vests in the Holder shall be set by the Administrator and the Administrator may determine that an Option may not be exercised in whole or in part for a specified period after it is granted. Such vesting may be based on service with the Company or any Affiliate, any of the Performance Criteria, or any other criteria selected by the Administrator. After grant of an Option, in connection with or following a Holder's Termination of Service, the Administrator may, in its sole discretion and subject to whatever terms and conditions it selects, accelerate the period during which an Option vests.

(b) No portion of an Option which is unexercisable at a Holder's Termination of Service shall thereafter become exercisable, except as may be otherwise provided by the Administrator either in the Program, the Award Agreement or by action of the Administrator following the grant of the Option.

5.6 Substitute Awards. Notwithstanding the foregoing provisions of this Article 5 to the contrary, in the case of an Option that is a Substitute Award, the price per share of the shares subject to such Option may be less than the Fair Market Value per share on the date of grant; provided, that the excess of (a) the aggregate Fair Market Value (as of the date such Substitute Award is granted) of the shares subject to the Substitute Award, over (b) the aggregate exercise price thereof does not exceed the excess of (x) the aggregate fair market value (as of the time immediately preceding the transaction giving rise to the Substitute Award, such fair market value to be determined by the Administrator) of the shares of the predecessor entity that were subject to the grant assumed or substituted for by the Company, over (y) the aggregate exercise price of such shares.

5.7 Substitution of Stock Appreciation Rights. The Administrator may provide in the applicable Program or the Award Agreement evidencing the grant of an Option that the Administrator, in its sole discretion, shall have the right to substitute a Stock Appreciation Right for such Option at any time prior to or upon exercise of such Option; provided, that such Stock Appreciation Right shall be exercisable with respect to the same number of Shares for which such substituted Option would have been exercisable, and shall also have the same exercise price and remaining term as the substituted Option.

Article 6.
EXERCISE OF OPTIONS

6.1 Partial Exercise. An exercisable Option may be exercised in whole or in part. An Option may be exercisable with respect to fractional shares, provided that the Administrator may require that, by the terms of the Option, a partial exercise must be with respect to a minimum number of shares.

6.2 Manner of Exercise. All or a portion of an exercisable Option shall be deemed exercised upon delivery of all of the following to the Secretary of the Company, or such other person or entity designated by the Administrator, or his, her or its office, as applicable:

(a) A written or electronic notice complying with the applicable rules established by the Administrator stating that the Option, or a portion thereof, is exercised. The notice shall be signed by the Holder or other person then entitled to exercise the Option or such portion of the Option;

(b) Such representations and documents as the Administrator, in its sole discretion, deems necessary or advisable to effect compliance with all applicable provisions of the Securities Act and any other federal, state or foreign securities laws or regulations, the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded or any other applicable law. The Administrator may, in its sole discretion, also take whatever additional actions it deems appropriate to effect such compliance including, without limitation, placing legends on share certificates and issuing stop-transfer notices to agents and registrars;

(c) In the event that the Option shall be exercised pursuant to Section 10.3 by any person or persons other than the Holder, appropriate proof of the right of such person or persons to exercise the Option, as determined in the sole discretion of the Administrator; and

(d) Full payment of the exercise price and applicable withholding taxes to the stock administrator of the Company for the shares with respect to which the Option, or portion thereof, is exercised, in a manner permitted by Section 10.1 and 10.2.

6.3 Notification Regarding Disposition. The Holder shall give the Company prompt written or electronic notice of any disposition of shares of Common Stock acquired by exercise of an Incentive Stock Option which occurs within (a) two years from the date of granting (including the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code) such Option to such Holder, or (b) one year after the transfer of such shares to such Holder.

Article 7.
AWARD OF RESTRICTED STOCK

7.1 Award of Restricted Stock.

(a) The Administrator is authorized to grant Restricted Stock to Eligible Individuals, and shall determine the terms and conditions, including the restrictions applicable to each award of Restricted Stock, which terms and conditions shall not be inconsistent with the Plan, and may impose such conditions on the issuance of such Restricted Stock as it deems appropriate.

(b) The Administrator shall establish the purchase price, if any, and form of payment for Restricted Stock; provided, however, that if a purchase price is charged, such purchase price shall be no less than the par value of the Shares to be purchased, unless otherwise permitted by applicable state law. In all cases, legal consideration shall be required for each issuance of Restricted Stock.

7.2 Rights as Stockholders. Subject to Section 7.4, upon issuance of Restricted Stock, the Holder shall have, unless otherwise provided by the Administrator, all the rights of a stockholder with respect to said shares, subject to the restrictions in the applicable Program or in each individual Award Agreement, including the right to receive all dividends and other distributions paid or made with respect to the shares; provided, however, that, in the sole discretion of the Administrator, any extraordinary distributions with respect to the Shares shall be subject to the restrictions set forth in Section 7.3.

7.3 Restrictions. All shares of Restricted Stock (including any shares received by Holders thereof with respect to shares of Restricted Stock as a result of stock dividends, stock splits or any other form of recapitalization) shall, in the terms of the applicable Program or in each individual Award Agreement, be subject to such restrictions and vesting requirements as the Administrator shall provide. Such restrictions may include, without limitation, restrictions concerning voting rights and transferability and such restrictions may lapse separately or in combination at such times and pursuant to such circumstances or based on such criteria as selected by the Administrator, including, without limitation, criteria based on the Holder's duration of employment, directorship or consultancy with the Company or Affiliate, the Performance Criteria, Company performance, individual performance or other criteria selected by the Administrator. By action taken after the Restricted Stock is issued, the Administrator may, on such terms and conditions as it may determine to be appropriate, accelerate the vesting of such Restricted Stock by removing any or all of the restrictions imposed by the terms of the Program or the Award Agreement in the event of a Change in Control or the applicable Holder's Retirement, death or disability. Restricted Stock may not be sold or encumbered until all restrictions are terminated or expire. Except as otherwise provided by any written agreement between the Company and any applicable Holder, a Holder's rights in unvested Restricted Stock shall lapse, and such Restricted Stock shall be surrendered to the Company without consideration, upon the Holder's Termination of Services with the Company.

7.4 Repurchase or Forfeiture of Restricted Stock. If no price was paid by the Holder for the Restricted Stock, upon a Termination of Service the Holder's rights in unvested Restricted Stock then subject to restrictions shall lapse, and such Restricted Stock shall be surrendered to the Company and cancelled without consideration. If a price was paid by the Holder for the Restricted Stock, upon a Termination of Service the Company shall have the right to repurchase from the Holder the unvested Restricted Stock then subject to restrictions at a cash price per share equal to the price paid by the Holder for such Restricted Stock or such other amount as may be specified in the Program or the Award Agreement. The Administrator in its sole discretion may provide that in the event of certain events, including a Change in Control, the Holder's death, Retirement or disability or any other specified Termination of Service or any other event, the Holder's rights in unvested Restricted Stock shall not lapse, such Restricted Stock shall vest and, if applicable, the Company shall not have a right of repurchase.

7.5 Certificates for Restricted Stock. Restricted Stock granted pursuant to the Plan may be evidenced in such manner as the Administrator shall determine. Certificates or book entries evidencing shares of Restricted Stock must include an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock, and the Company may, in its sole discretion, retain physical possession of any stock certificate until such time as all applicable restrictions lapse.

7.6 Section 83(b) Election. If a Holder makes an election under Section 83(b) of the Code to be taxed with respect to the Restricted Stock as of the date of transfer of the Restricted Stock rather than as of the date or dates upon which the Holder would otherwise be taxable under Section 83(a) of the Code, the Holder shall be required to deliver a copy of such election to the Company promptly after filing such election with the Internal Revenue Service.

Article 8.
AWARD OF PERFORMANCE AWARDS, DIVIDEND EQUIVALENTS, DEFERRED STOCK, STOCK PAYMENTS, RESTRICTED STOCK UNITS, LTIP UNITS

8.1 Performance Awards.

(a) The Administrator is authorized to grant Performance Awards (including Performance Share Awards) to any Eligible Individual. The value of Performance Awards may be linked to any one or more of the Performance Criteria or other specific criteria determined by the Administrator, in each case on a specified date or dates or over any period or periods determined by the Administrator. Performance Awards may be paid in cash, Shares (including shares of Restricted Stock), or both, as determined by the Administrator.

(b) Without limiting Section 8.1(a), the Administrator may grant Performance Awards to any Eligible Individual in the form of a cash bonus payable upon the attainment of objective Performance Goals, or such other criteria, whether or not objective, which are established by the Administrator, in each case on a specified date or dates or over any period or periods determined by the Administrator.

(c) The Administrator is authorized to grant Performance Share Awards to any Eligible Individual. The number and terms and conditions of Performance Shares shall be determined by the Administrator. The Administrator shall specify the date or dates on which the Performance Shares shall become vested and shall determine to what extent such Performance Shares have vested, based upon such conditions to vesting as it deems appropriate, including conditions based on one or more Performance Criteria or other specific criteria, including total stockholder return of the Company relative to the range of total return to stockholders of the constituent companies in a specific peer group of the Company, in each case on a specified date or dates or over any period or periods, as determined by the Administrator. The Performance Shares shall be payable in shares of Common Stock and/or Restricted Stock. To the extent Performance Shares are payable in shares of Restricted Stock, the Administrator shall, subject to the terms and provisions with respect to Restricted Stock set forth in Article 7, specify the conditions and dates upon which the shares of Restricted Stock underlying the Performance Shares shall be issued and the conditions and dates upon which such shares of Restricted Stock shall become vested and nonforfeitable, which dates shall not be earlier than the date as of which the Performance Shares vest.

8.2 Dividend Equivalents.

(a) Dividend Equivalents may be granted by the Administrator based on dividends declared on the Common Stock, to be credited as of dividend payment dates during the period between the date an Award is granted to a Holder and the date such Award vests, is exercised, is distributed or expires, as determined by the Administrator. Such Dividend Equivalents shall be converted to cash or additional shares of Common Stock by such formula and at such time and subject to such limitations as may be determined by the Administrator. In addition, Dividend Equivalents with respect to an Award with performance-based vesting that are based on dividends paid prior to the vesting of such Award shall only be paid out to the Holder to the extent that the performance-based vesting conditions are subsequently satisfied and the Award vests.

(b) Notwithstanding the foregoing, no Dividend Equivalents shall be payable with respect to Options or Stock Appreciation Rights.

8.3 Stock Payments. The Administrator is authorized to make Stock Payments to any Eligible Individual. The number or value of shares of any Stock Payment shall be determined by the Administrator and may be based upon one or more Performance Criteria or any other specific criteria, including service to the Company or any Affiliate, determined by the Administrator. Unless otherwise provided by the Administrator, shares underlying a Stock Payment which is subject to a vesting schedule or other conditions or criteria set by the Administrator will not be issued until those conditions have been satisfied. Unless otherwise provided by the Administrator, a Holder of a Stock Payment shall have no rights as a Company stockholder with respect to such Stock Payment until such time as the Stock Payment has vested and the Shares underlying the Award have been issued to the Holder. Stock Payments may, but are not required to, be made in lieu of base salary, bonus, fees or other cash compensation otherwise payable to such Eligible Individual, pursuant to such policies and procedures as may be established by the Administrator.

8.4 Deferred Stock. The Administrator is authorized to grant Deferred Stock to any Eligible Individual. The number of shares of Deferred Stock shall be determined by the Administrator and may be based upon one or more Performance Criteria or any other specific criteria, including service to the Company or any Affiliate, as the Administrator determines, in each case on a specified date or dates or over any period or periods determined by the Administrator. Unless otherwise provided by the Administrator, shares underlying a Deferred Stock award which is subject to a vesting schedule or other conditions or criteria set by the Administrator will not be issued until those conditions have been satisfied. Unless otherwise provided by the Administrator, a Holder of Deferred Stock shall have no rights as a Company stockholder with respect to such Deferred Stock until such time as the Award has vested and the Shares underlying the Award have been issued to the Holder. Awards of Deferred Stock may, but are not required to, be made in lieu of base salary, bonus, fees or other cash compensation otherwise payable to such Eligible Individual, pursuant to such policies and procedures as may be established by the Administrator.

8.5 Restricted Stock Units. The Administrator is authorized to grant Restricted Stock Units to any Eligible Individual. The number and terms and conditions of Restricted Stock Units shall be determined by the Administrator. The Administrator shall specify the date or dates on which the Restricted Stock Units shall become fully vested and nonforfeitable, and may specify such conditions to vesting as it deems appropriate, including conditions based on one or more Performance Criteria or other specific criteria, including service to the Company or any Affiliate, in each case on a specified date or dates or over any period or periods, as determined by the Administrator. The Administrator shall specify, or permit the Holder to elect, the conditions and dates upon which the Shares underlying the Restricted Stock Units which shall be issued, which dates shall not be earlier than the date as of which the Restricted Stock Units vest and become nonforfeitable and which conditions and dates shall be subject to compliance with Section 409A of the Code. Restricted Stock Units may be paid in cash, Shares, or both, as determined by the Administrator. On the distribution dates, the Company shall issue to the Holder one unrestricted, fully transferable Share (or the Fair Market Value of one such Share in cash) for each vested and nonforfeitable Restricted Stock Unit.

8.6 LTIP Units. The Administrator is authorized to grant LTIP Units in such amount and subject to such terms and conditions as may be determined by the Administrator; provided, however, that LTIP Units may only be issued to a Participant for the performance of services to or for the benefit of the Partnership (a) in the Participant's capacity as a partner of the Partnership, (b) in anticipation of the Participant becoming a partner of the Partnership, or (c) as otherwise determined by the Administrator, provided that the LTIP Units are intended to constitute "profits interests" within the meaning of the Code, including, to the extent applicable, Revenue Procedure 93-27, 1993-2 C.B. 343 and Revenue Procedure 2001-43, 2001-2 C.B. 191. The Administrator shall specify the conditions and dates upon which the LTIP Units shall vest and become nonforfeitable. LTIP Units shall be subject to the terms and conditions of the Operating Agreement and such other restrictions, including restrictions on transferability, as the Administrator may impose. These restrictions may lapse separately or in combination at such times, pursuant to such circumstances, in such installments, or otherwise, as the Administrator determines at the time of the grant of the Award or thereafter.

8.7 Term. To the extent applicable, the term of an Award described in this Article 8 shall be set by the Administrator in its sole discretion.

8.8 Exercise or Purchase Price. The Administrator may establish the exercise or purchase price of an Award described in this Article 8; provided, however, that value of the consideration shall not be less than the par value of a Share, unless otherwise permitted by applicable law.

8.9 Exercise upon Termination of Service. An Award described in this Article 8 is exercisable or distributable only while the Holder is an Employee, Director or Consultant, as applicable. The Administrator, however, in its sole discretion may provide that an Award described in this Article 8 may be exercised or distributed subsequent to a Termination of Service in certain events, including a Change in Control, the Holder's death, Retirement or disability or any other specified Termination of Service.

Article 9.
AWARD OF STOCK APPRECIATION RIGHTS

9.1 Grant of Stock Appreciation Rights.

(a) The Administrator is authorized to grant Stock Appreciation Rights to Eligible Individuals from time to time, in its sole discretion, on such terms and conditions as it may determine consistent with the Plan.

(b) A Stock Appreciation Right shall entitle the Holder (or other person entitled to exercise the Stock Appreciation Right pursuant to the Plan) to exercise all or a specified portion of the Stock Appreciation Right (to the extent then exercisable pursuant to its terms) and to receive from the Company an amount determined by multiplying the difference obtained by subtracting the exercise price per share of the Stock Appreciation Right from the Fair Market Value on the date of exercise of the Stock Appreciation Right by the number of Shares with respect to which the Stock Appreciation Right shall have been exercised, subject to any limitations the Administrator may impose. Except as described in (c) below, the exercise price per Share subject to each Stock Appreciation Right shall be set by the Administrator, but shall not be less than 100% of the Fair Market Value on the date the Stock Appreciation Right is granted.

(c) Notwithstanding the foregoing provisions of Section 9.1(b) to the contrary, in the case of a Stock Appreciation Right that is a Substitute Award, the price per share of the shares subject to such Stock Appreciation Right may be less than 100% of the Fair Market Value per share on the date of grant; provided, that the excess of (a) the aggregate Fair Market Value (as of the date such Substitute Award is granted) of the shares subject to the Substitute Award, over (b) the aggregate exercise price thereof does not exceed the excess of (x) the aggregate fair market value (as of the time immediately preceding the transaction giving rise to the Substitute Award, such fair market value to be determined by the Administrator) of the shares of the predecessor entity that were subject to the grant assumed or substituted for by the Company, over (y) the aggregate exercise price of such shares.

9.2 Stock Appreciation Right Vesting.

(a) The period during which the right to exercise, in whole or in part, a Stock Appreciation Right vests in the Holder shall be set by the Administrator and the Administrator may determine that a Stock Appreciation Right may not be exercised in whole or in part for a specified period after it is granted. Such vesting may be based on service with the Company or any Affiliate, or any other criteria selected by the Administrator. After grant of a Stock Appreciation Right, in connection with or following a Holder's Termination of Service, the Administrator may, in its sole discretion and subject to whatever terms and conditions it selects, accelerate the period during which a Stock Appreciation Right vests.

(b) No portion of a Stock Appreciation Right which is unexercisable at Termination of Service shall thereafter become exercisable, except as may be otherwise provided by the Administrator either in the applicable Program or Award Agreement or by action of the Administrator following the grant of the Stock Appreciation Right.

9.3 Manner of Exercise. All or a portion of an exercisable Stock Appreciation Right shall be deemed exercised upon delivery of all of the following to the stock administrator of the Company, or such other person or entity designated by the Administrator, or his, her or its office, as applicable:

(a) A written or electronic notice complying with the applicable rules established by the Administrator stating that the Stock Appreciation Right, or a portion thereof, is exercised. The notice shall be signed by the Holder or other person then entitled to exercise the Stock Appreciation Right or such portion of the Stock Appreciation Right;

(b) Such representations and documents as the Administrator, in its sole discretion, deems necessary or advisable to effect compliance with all applicable provisions of the Securities Act and any other federal, state or foreign securities laws or regulations. The Administrator may, in its sole discretion, also take whatever additional actions it deems appropriate to effect such compliance; and

(c) In the event that the Stock Appreciation Right shall be exercised pursuant to this Section 9.3 by any person or persons other than the Holder, appropriate proof of the right of such person or persons to exercise the Stock Appreciation Right.

9.4 Stock Appreciation Right Term. The term of each Stock Appreciation Right shall be set by the Administrator in its sole discretion; provided, however, that the term shall not be more than ten (10) years from the date the Stock Appreciation Right is granted. The Administrator shall determine the time period, including the time period following a Termination of Service, during which the Holder has the right to exercise the vested Stock Appreciation Rights, which time period may not extend beyond the expiration date of the Stock Appreciation Right term. Except as limited by the requirements of Section 409A of the Code and regulations and rulings thereunder, the Administrator may extend the term of any outstanding Stock Appreciation Right, and may extend the time period during which vested Stock Appreciation Rights may be exercised, in connection with any Termination of Service of the Holder, in each case, to the extent that

such extension does not constitute a repricing or cash buyout under Section 10.6, and may amend any other term or condition of such Stock Appreciation Right relating to such a Termination of Service.

9.5 Payment. Payment of the amounts payable with respect to Stock Appreciation Rights pursuant to this Article 9 shall be in cash, Shares (based on its Fair Market Value as of the date the Stock Appreciation Right is exercised), or a combination of both, as determined by the Administrator.

Article 10.
ADDITIONAL TERMS OF AWARDS

10.1 Payment. The Administrator shall determine the methods by which payments by any Holder with respect to any Awards granted under the Plan shall be made, including, without limitation, (a) cash or check, (b) Shares (including, in the case of payment of the exercise price of an Award, Shares issuable pursuant to the exercise of the Award) or Shares held for such period of time as may be required by the Administrator in order to avoid adverse accounting consequences, in each case, having a Fair Market Value on the date of delivery equal to the aggregate payments required, (c) delivery of a written or electronic notice that the Holder has placed a market sell order with a broker with respect to Shares then issuable upon exercise or vesting of an Award, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the aggregate payments required; provided, that payment of such proceeds is then made to the Company upon settlement of such sale, or (d) other form of legal consideration acceptable to the Administrator. The Administrator shall also determine the methods by which Shares shall be delivered or deemed to be delivered to Holders. Notwithstanding any other provision of the Plan to the contrary, no Holder who is a Director or an "executive officer" of the Company within the meaning of Section 13(k) of the Exchange Act shall be permitted to make payment with respect to any Awards granted under the Plan, or continue any extension of credit with respect to such payment with a loan from the Company or a loan arranged by the Company in violation of Section 13(k) of the Exchange Act.

10.2 Tax Withholding. The Company or any Affiliate shall have the authority and the right to deduct or withhold, or require a Holder to remit to the Company or any Affiliate, an amount sufficient to satisfy federal, state, local and foreign taxes (including the Holder's FICA or employment tax obligation) required by law to be withheld with respect to any taxable event concerning a Holder arising as a result of the Plan. The Administrator may in its sole discretion and in satisfaction of the foregoing requirement allow a Holder to elect to have the Company or Affiliate withhold Shares otherwise issuable under an Award (or allow the surrender of Shares). The number of Shares which may be so withheld or surrendered shall be limited to the number of shares which have a fair market value on the date of withholding or repurchase equal to the aggregate amount of such liabilities based on the maximum statutory withholding rates (or such lower rate as may be determined by the Company or, with respect to any person who is subject to the reporting requirements of Section 16(a) of the Exchange Act, the Committee, after considering any accounting consequences or costs) for federal, state, local and foreign income tax and payroll tax purposes that are applicable to such supplemental taxable income. The Administrator shall determine the fair market value of the Shares, consistent with applicable provisions of the Code, for tax withholding obligations due in connection with a broker-assisted cashless Option or Stock Appreciation Right exercise involving the sale of shares to pay the Option or Stock Appreciation Right exercise price or any tax withholding obligation.

10.3 Transferability of Awards.

(a) Except as otherwise provided in Section 10.3(b):

(i) No Award under the Plan may be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution or, subject to the consent of the Administrator, pursuant to a DRO, unless and until such Award has been exercised, or the shares underlying such Award have been issued, and all restrictions applicable to such shares have lapsed;

(ii) No Award or interest or right therein shall be liable for the debts, contracts or engagements of the Holder or the Holder's successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, hypothecation, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence; and

(iii) During the lifetime of the Holder, only the Holder may exercise an Award (or any portion thereof) granted to the Holder under the Plan, unless it has been disposed of pursuant to a DRO; after the death of the Holder, any exercisable portion of an Award may, prior to the time when such portion becomes unexercisable under the Plan or the applicable Program or Award Agreement, be exercised by the Holder's personal representative or by any person empowered to do so under the deceased Holder's will or under the then applicable laws of descent and distribution.

(b) Notwithstanding Section 10.3(a), the Administrator, in its sole discretion, may determine to permit a Holder to transfer an Award other than an Incentive Stock Option to any one or more Permitted Transferees, subject to the following terms and conditions:

(i) An Award transferred to a Permitted Transferee shall not be assignable or transferable by the Permitted Transferee other than by will or the laws of descent and distribution;

(ii) An Award transferred to a Permitted Transferee shall continue to be subject to all the terms and conditions of the Award as applicable to the original Holder (other than the ability to further transfer the Award); and

(iii) The Holder and the Permitted Transferee shall execute any and all documents requested by the Administrator, including, without limitation documents to (A) confirm the status of the transferee as a Permitted Transferee, (B) satisfy any requirements for an exemption for the transfer under applicable federal, state and foreign securities laws and (C) evidence the transfer.

(c) Notwithstanding Section 10.3(a), a Holder may, in the manner determined by the Administrator, designate a beneficiary to exercise the rights of the Holder and to receive any distribution with respect to any Award upon the Holder's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights pursuant to the Plan is subject to all terms and conditions of the Plan and any Program or Award Agreement applicable to the Holder, except to the extent the Plan, the Program and the Award Agreement otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Administrator. If the Holder is married and resides in a community property state, a designation of a person other than the Holder's spouse as his or her beneficiary with respect to more than 50% of the Holder's interest in the Award shall not be effective without the prior written or electronic consent of the Holder's spouse. If no beneficiary has been designated or survives the Holder, payment shall be made to the person entitled thereto pursuant to the Holder's will or the laws of descent and distribution. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Holder at any time; provided, that such change or revocation is filed with the Administrator prior to the Holder's death.

10.4 Conditions to Issuance of Shares.

(a) Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates or make any book entries evidencing Shares pursuant to the exercise of any Award, unless and until the Board or the Committee has determined, with advice of counsel, that the issuance of such shares is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any exchange on which the Shares are listed or traded, and the Shares are covered by an effective registration statement or applicable exemption from registration. In addition to the terms and conditions provided herein, the Board or the Committee may require that a Holder make such reasonable covenants, agreements, and representations as the Board or the Committee, in its discretion, deems advisable in order to comply with any such laws, regulations, or requirements.

(b) All Share certificates delivered pursuant to the Plan and all shares issued pursuant to book entry procedures are subject to any stop-transfer orders and other restrictions as the Administrator deems necessary or advisable to comply with federal, state, or foreign securities or other laws, rules and regulations and the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted, or traded. The Administrator may place legends on any Share certificate or book entry to reference restrictions applicable to the Shares.

(c) The Administrator shall have the right to require any Holder to comply with any timing or other restrictions with respect to the settlement, distribution or exercise of any Award, including a window-period limitation, as may be imposed in the sole discretion of the Administrator.

(d) Fractional Shares may be issued, provided that the Administrator may determine, in its sole discretion, whether cash shall be given in lieu of fractional shares or whether such fractional shares shall be eliminated by rounding down.

(e) Notwithstanding any other provision of the Plan, unless otherwise determined by the Administrator or required by any applicable law, rule or regulation, the Company shall not deliver to any Holder certificates evidencing Shares issued in connection with any Award and instead such Shares shall be recorded in the books of the Company (or, as applicable, its transfer agent or stock plan administrator).

10.5 Forfeiture Provisions. Pursuant to its general authority to determine the terms and conditions applicable to Awards under the Plan, the Administrator shall have the right to provide, in the terms of Awards made under the Plan, or to require a Holder to agree by separate written or electronic instrument, that (a) (i) any proceeds, gains or other economic benefit actually or constructively received by the Holder upon any receipt or exercise of the Award, or upon the receipt or resale of any Shares underlying the Award, must be paid to the Company, and (ii) the Award shall terminate and any unexercised portion of the Award (whether or not vested) shall be forfeited, if (b) (i) a Termination of Service occurs prior to a specified date, or within a specified time period following receipt or exercise of the Award, or (ii) the Holder at any time, or during a specified time period, engages in any activity in competition with the Company or any Affiliate, or which is inimical, contrary or harmful to the interests of the Company or any Affiliate, as further defined by the Administrator or (iii) the Holder incurs a Termination of Service for "cause" (as such term is defined in the sole discretion of the Administrator, or as set forth in a written agreement relating to such Award between the Company and the Holder).

10.6 Prohibition on Repricing. Subject to Section 12.2, the Administrator shall not, without the approval of the stockholders of the Company, (a) authorize the amendment of any outstanding Option or Stock Appreciation Right to reduce its price per share, or (b) cancel any Option or Stock Appreciation Right in exchange for cash or another Award when the Option or Stock Appreciation Right price per share exceeds the Fair Market Value of the underlying Shares. Subject to Section 12.2, the Administrator shall have the authority, without the approval of the stockholders of the Company, to amend any outstanding award to increase the price per share or to cancel and replace an Award with the grant of an Award having a price per share that is greater than or equal to the price per share of the original Award.

10.7 Award Vesting Limitations. Awards (including Options and Full Value Awards) made to Eligible Individuals shall become vested over a period of not less than three years (which shall be measured from the commencement of the applicable performance period), and no portion of any Award shall become vested prior to the first anniversary of the date of grant; provided, however, that, notwithstanding the foregoing, (a) the Administrator may lapse or waive such vesting restrictions upon the Holder's death, disability, Retirement, or Termination of Service without "cause" (as such term is defined in the sole discretion of the Administrator, or as set forth in a written agreement relating to such Award between the Company and the Holder) and (b) Awards (including Options and Full Value Awards) that result in the issuance of an aggregate of up to 5% of the shares of Stock available pursuant to Section 3.1(a) may be granted to any one or more Holders without respect to such minimum vesting provisions.

Article 11.
ADMINISTRATION

11.1 Administrator. The Compensation Committee (or another committee or a subcommittee of the Board assuming the functions of the Committee under the Plan) shall administer the Plan (except as otherwise permitted herein) and, unless otherwise determined by the Board, shall consist solely of two or more Non-Employee Directors appointed by and holding office at the pleasure of the Board, each of whom is intended to qualify as both a "non-employee director" as defined by Rule 16b-3 of the Exchange Act or any successor rule and an "independent director" under the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded; provided, that any action taken by the Committee shall be valid and effective, whether or not members of the Committee at the time of such action are later determined not to have satisfied the requirements for membership set forth in this Section 11.1 or otherwise provided in any charter of the Committee. Except as may otherwise be provided in any charter of the Committee, appointment of Committee members shall be effective upon acceptance of appointment. Committee members may resign at any time by delivering written or electronic notice to the Board. Vacancies in the Committee may only be filled by the Board. Notwithstanding the foregoing, (a) the full Board, acting by a majority of its members in office, shall conduct the general administration of the Plan with respect to Awards granted to Non-Employee Directors and (b) the Board or Committee may delegate its authority hereunder to the extent permitted by Section 11.6.

11.2 Duties and Powers of Committee. It shall be the duty of the Committee to conduct the general administration of the Plan in accordance with its provisions. The Committee shall have the power to interpret the Plan, the Program and the Award Agreement, and to adopt such rules for the administration, interpretation and application of the Plan as are not inconsistent therewith, to interpret, amend or revoke any such rules and to amend any Program or Award Agreement; provided, that the rights or obligations of the Holder of the Award that is the subject of any such Program or Award Agreement are not affected adversely by such amendment, unless the consent of the Holder is obtained or such amendment is otherwise permitted under Section 12.10. Any such grant or award under the Plan need not be the same with respect to each Holder. Any such interpretations and rules with respect to Incentive Stock Options shall be consistent with the provisions of Section 422 of the Code. In its sole discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee under the Plan except with respect to matters which under Rule 16b-3 under the Exchange Act or any successor rule, or any regulations or rules issued thereunder, or the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded are required to be determined in the sole discretion of the Committee.

11.3 Action by the Committee. Unless otherwise established by the Board or in any charter of the Committee, a majority of the Committee shall constitute a quorum and the acts of a majority of the members present at any meeting at which a quorum is present, and acts approved in writing by all members of the Committee in lieu of a meeting, shall be deemed the acts of the Committee. Each member of the Committee is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Affiliate, the Company's independent certified public accountants, or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

11.4 Authority of Administrator. Subject to any specific designation in the Plan, the Administrator has the exclusive power, authority and sole discretion to:

(a) Designate Eligible Individuals to receive Awards;

(b) Determine the type or types of Awards to be granted to each Eligible Individual;

(c) Determine the number of Awards to be granted and the number of Shares to which an Award will relate;

(d) Determine the terms and conditions of any Award granted pursuant to the Plan, including, but not limited to, the exercise price, grant price, or purchase price, any performance criteria, any restrictions or limitations on the Award, any schedule for vesting, lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, and any provisions related to non-competition and recapture of gain on an Award, based in each case on such considerations as the Administrator in its sole discretion determines;

(e) Determine whether, to what extent, and pursuant to what circumstances an Award may be settled in, or the exercise price of an Award may be paid in cash, Shares, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;

(f) Prescribe the form of each Award Agreement, which need not be identical for each Holder;

(g) Determine as between the Company, the Partnership and any other Subsidiary which entity will make payments with respect to an Award, consistent with applicable securities laws and other Applicable Law;

(h) Decide all other matters that must be determined in connection with an Award;

(i) Establish, adopt, or revise any rules and regulations as it may deem necessary or advisable to administer the Plan;

(j) Interpret the terms of, and any matter arising pursuant to, the Plan, any Program or any Award Agreement; and

(k) Make all other decisions and determinations that may be required pursuant to the Plan or as the Administrator deems necessary or advisable to administer the Plan.

11.5 Decisions Binding. The Administrator's interpretation of the Plan, any Awards granted pursuant to the Plan, any Program, any Award Agreement and all decisions and determinations by the Administrator with respect to the Plan are final, binding, and conclusive on all parties.

11.6 Delegation of Authority. To the extent permitted by applicable law or the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded, the Board or Committee may from time to time delegate to a committee of one or more members of the Board or one or more officers of the Company or any of its Affiliates the authority to grant or amend Awards or to take other administrative actions pursuant to Article 11; provided, however, that in no event shall an officer of the Company (or an Affiliate) be delegated the authority to grant awards to, or amend awards held by, (a) individuals who are subject to Section 16 of the Exchange Act, or (b) officers of the Company or any of its Affiliates (or Directors) to whom authority to grant or amend Awards has been delegated hereunder; provided further, that any delegation of administrative authority shall only be permitted to the extent it is permissible under applicable securities laws or the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded. Any delegation hereunder shall be subject to the restrictions and limits that the Board or Committee specifies at the time of such delegation, and the Board may at any time rescind the authority so delegated or appoint a new delegatee. At all times, the delegatee appointed under this Section 11.6 shall serve in such capacity at the pleasure of the Board and the Committee.

Article 12.
MISCELLANEOUS PROVISIONS

12.1 Term; Amendment, Suspension or Termination of the Plan.

(a) The Plan shall become effective as of the Effective Date.

(b) Except as otherwise provided in this Section 12.1, the Plan may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Board or the Committee. However, without approval of the Company's stockholders given within twelve (12) months before or after the action by the Administrator, no action of the Administrator may, except as provided in Section 12.2, (i) increase the limits imposed in Section 3.1 on the maximum number of shares which may be issued under the Plan, or (ii) reduce the price per share of any outstanding Option or Stock Appreciation Right granted under the Plan, or (iii) cancel any Option or Stock Appreciation Right in exchange for cash or another Award when the Option or Stock Appreciation Right price per share exceeds the Fair Market Value of the underlying Shares. Except as provided in Section 12.10, no amendment, suspension or termination of the Plan shall, without the consent of the Holder, impair any rights or obligations under any Award theretofore granted or awarded, unless the Award itself otherwise expressly so provides. No Awards may be granted or awarded during any period of suspension

or after termination of the Plan, and in no event may any Award be granted under the Plan after the tenth (10th) anniversary of April 28, 2020.

12.2 Changes in Common Stock or Assets of the Company, Acquisition or Liquidation of the Company and Other Corporate Events.

(a) In the event of any stock dividend, stock split, combination or exchange of shares, consummation of a merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the Common Stock or other securities of the Company or the share price of the Common Stock or other securities of the Company other than an Equity Restructuring, the Administrator shall make equitable adjustments, if any, to reflect such change with respect to (i) the aggregate number and kind of shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Section 3.1 on the maximum number and kind of shares which may be issued under the Plan, and adjustments of the Award Limit, and adjustments of the manner in which shares subject to Full Value Awards will be counted); (ii) the number and kind of shares of Common Stock (or other securities or property) subject to outstanding Awards; (iii) the terms and conditions of any outstanding Awards (including, without limitation, any applicable performance targets or criteria with respect thereto); and (iv) the grant or exercise price per share for any outstanding Awards under the Plan.

(b) In the event of any transaction or event described in Section 12.2(a) or any unusual or nonrecurring transactions or events affecting the Company, any Affiliate of the Company, or the financial statements of the Company or any Affiliate, or of changes in applicable laws, regulations or accounting principles, the Administrator, in its sole discretion, and on such terms and conditions as it deems appropriate, either by the terms of the Award or by action taken prior to the occurrence of such transaction or event and either automatically or upon the Holder's request, is hereby authorized to take any one or more of the following actions whenever the Administrator determines that such action is appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any Award under the Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles:

(i) To provide for either (A) termination of any such Award in exchange for an amount of cash, if any, equal to the amount that would have been attained upon the exercise of such Award or realization of the Holder's rights (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction or event described in this Section 12.2 the Administrator determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Holder's rights, then such Award may be terminated by the Company without payment) or (B) the replacement of such Award with other rights or property selected by the Administrator in its sole discretion having an aggregate value not exceeding the amount that could have been attained upon the exercise of such Award or realization of the Holder's rights had such Award been currently exercisable or payable or fully vested;

(ii) To provide that such Award be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by similar options, rights or awards covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;

(iii) To make adjustments in the number and type of shares of the Company's stock (or other securities or property) subject to outstanding Awards, and in the number and kind of outstanding Restricted Stock or Deferred Stock and/or in the terms and conditions of (including the grant or exercise price), and the criteria included in, outstanding Awards and Awards which may be granted in the future;

(iv) To provide that such Award shall be exercisable or payable or fully vested with respect to all shares covered thereby, notwithstanding anything to the contrary in the Plan or the applicable Program or Award Agreement; and

(v) To provide that the Award cannot vest, be exercised or become payable after such event.

(c) In connection with the occurrence of any Equity Restructuring, and notwithstanding anything to the contrary in Sections 12.2(a) and 12.2(b):

(i) The number and type of securities subject to each outstanding Award and the exercise price or grant price thereof, if applicable, shall be equitably adjusted; and/or

(ii) The Administrator shall make such equitable adjustments, if any, as the Administrator in its discretion may deem appropriate to reflect such Equity Restructuring with respect to the aggregate number and kind of shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Section 3.1 on the maximum number and kind of shares which may be issued under the Plan, and adjustments of the Award Limit, and adjustments of the manner in which shares subject to Full Value Awards will be counted). The adjustments provided under this Section 12.2(c) shall be nondiscretionary and shall be final and binding on the affected Holder and the Company.

(d) In the event an Award is assumed or an equivalent Award substituted in connection with a Change in Control, and a Holder has a Termination of Service by the Company without "cause" (as such term is defined in the sole discretion of the Administrator, or as set forth in a written agreement relating to such Award between the Company (or an Affiliate) and the Holder) upon or within twelve (12) months following the Change in Control, then such Holder shall be fully vested in such assumed or substituted Award.

(e) In the event that the successor corporation in a Change in Control refuses to assume or substitute for the Award, the Administrator shall cause any or all of such Awards to become fully exercisable immediately prior to the consummation of such transaction and all forfeiture restrictions on any or all of such Awards to lapse, provided that, to the extent that the vesting of any such Award is subject to the satisfaction of specified performance goals, such Award shall vest at either (as the Administrator may determine) (i) the target level of performance, pro-rated based on the period elapsed between the beginning of the applicable performance period and the date of the Change in Control, or (ii) the actual performance level as of the date of the Change in Control (as determined by the Administrator) with respect to all open performance period. If an Award is exercisable in lieu of assumption or substitution in the event of a Change in Control, the Administrator shall notify the Holder that the Award shall be fully exercisable for a period of fifteen (15) days from the date of such notice, contingent upon the occurrence of the Change in Control, and the Award shall terminate upon the expiration of such period.

(f) For purposes of this Section 12.2, an Award shall be considered assumed if, following the Change in Control, the Award confers the right to purchase or receive, for each share of Common Stock subject to the Award immediately prior to the Change in Control, the consideration (whether stock, cash, or other securities or property) received in the Change in Control by holders of Common Stock for each share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares); provided, however, that if such consideration received in the Change in Control was not solely common stock of the successor corporation or its parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the Award, for each share of Common Stock subject to an Award, to be solely common stock of the successor corporation or its parent equal in fair market value to the per share consideration received by holders of Common Stock in the Change in Control.

(g) The Administrator may, in its sole discretion, include such further provisions and limitations in any Award, agreement or certificate, as it may deem equitable and in the best interests of the Company that are not inconsistent with the provisions of the Plan.

(h) No adjustment or action described in this Section 12.2 or in any other provision of the Plan shall be authorized to the extent that such adjustment or action would cause the Plan or an Award to violate Section 422(b)(1) of the Code or other applicable law. Furthermore, no such adjustment or action shall be authorized to the extent such adjustment or action would result in short-swing profits liability under Section 16 or violate the exemptive conditions of Rule 16b-3 unless the Administrator determines that the Award is not to comply with such exemptive conditions.

(i) The existence of the Plan, the Program, the Award Agreement and the Awards granted hereunder shall not affect or restrict in any way the right or power of the Company, its Affiliates or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company's or such Affiliate's capital structure or its business, any merger or consolidation of the Company or any Affiliate, any issue of stock or of options, warrants or rights to purchase stock or of bonds, debentures, preferred or prior preference stocks whose rights are superior to or affect the Common Stock or the rights thereof or which are convertible into or exchangeable for Common Stock, or the dissolution or liquidation of the Company or any Affiliate, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

(j) In the event of any pending stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the shares of Common Stock or the share price of the Common Stock including any Equity Restructuring, for reasons of administrative convenience, the Company in its sole discretion may refuse to permit the exercise of any Award during a period of thirty (30) days prior to the consummation of any such transaction.

12.3 Approval of Plan by Stockholders. The Plan will be submitted for the approval of the Company's stockholders within twelve (12) months after the date this Plan is approved by the Board.

12.4 No Stockholders Rights. Except as otherwise provided herein, a Holder shall have none of the rights of a stockholder with respect to shares of Common Stock covered by any Award until the Holder becomes the record owner of such shares of Common Stock.

12.5 Paperless Administration. In the event that the Company establishes, for itself or using the services of a third party, an automated system for the documentation, granting or exercise of Awards, such as a system using an internet website or interactive voice response, then the paperless documentation, granting or exercise of Awards by a Holder may be permitted through the use of such an automated system.

12.6 Effect of Plan upon Other Compensation Plans. The adoption of the Plan shall not affect any other compensation or incentive plans in effect for the Company or any Affiliate. Nothing in the Plan shall be construed to limit the right of the Company or any Affiliate to (a) establish any other forms of incentives or compensation for Employees, Directors or Consultants of the Company or any Affiliate or (b) grant or assume options or other rights or awards otherwise than under the Plan in connection with any proper corporate purpose including without limitation, the grant or assumption of options in connection with the acquisition by purchase, lease, merger, consolidation or otherwise, of the business, stock or assets of any corporation, partnership, limited liability company, firm or association.

12.7 Compliance with Laws. The Plan, the granting and vesting of Awards under the Plan and the issuance and delivery of Shares and LTIP Units and the payment of money under the Plan or under Awards granted or awarded hereunder are subject to compliance with all applicable federal, state, local and foreign laws, rules and regulations (including but not limited to state, federal and foreign securities law and margin requirements), the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded, and to such approvals by any listing, regulatory or governmental authority as may, in the opinion of counsel for the Company, be necessary or advisable in connection therewith. Any securities delivered under the Plan shall be subject to such restrictions, and the person acquiring such securities shall, if requested by the Company, provide such assurances and representations to the Company as the Company may deem necessary or desirable to assure compliance with all applicable legal requirements. To the extent permitted by applicable law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

12.8 Titles and Headings, References to Sections of the Code or Exchange Act. The titles and headings of the Sections in the Plan are for convenience of reference only and, in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control. References to sections of the Code or the Exchange Act shall include any amendment or successor thereto.

12.9 Governing Law. The Plan and any agreements hereunder shall be administered, interpreted and enforced under the internal laws of the State of Maryland without regard to conflicts of laws thereof.

12.10 Section 409A. To the extent that the Administrator determines that any Award granted under the Plan is subject to Section 409A of the Code, the Program pursuant to which such Award is granted and the Award Agreement evidencing such Award shall incorporate the terms and conditions required by Section 409A of the Code. To the extent applicable, the Plan, the Program and any Award Agreements shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder. Notwithstanding any provision of the Plan to the contrary, in the event that the Administrator determines that any Award may be subject to Section 409A of the Code and related Department of Treasury guidance, the Administrator may adopt such amendments to the Plan and the applicable Program and Award Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Administrator determines are necessary or appropriate to (a) exempt the Award from Section 409A of the Code and/or preserve the intended tax treatment of the benefits provided with respect to the Award, or (b) comply with the requirements of Section 409A of the Code and related Department of Treasury guidance and thereby avoid the application of any penalty taxes under such Section.

12.11 No Rights to Awards. No Eligible Individual or other person shall have any claim to be granted any Award pursuant to the Plan, and none of the Company, any Affiliate or the Administrator is obligated to treat Eligible Individuals, Holders or any other persons uniformly.

12.12 Unfunded Status of Awards. The Plan is intended to be an "unfunded" plan for incentive compensation. With respect to any payments not yet made to a Holder pursuant to an Award, nothing contained in the Plan or any Program or Award Agreement shall give the Holder any rights that are greater than those of a general creditor of the Company or any Affiliate.

12.13 Indemnification. To the extent allowable pursuant to applicable law, each member of the Committee or of the Board shall be indemnified and held harmless by the Company from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such member in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action or failure to act pursuant to the Plan and against and from any and all amounts paid by him or her in satisfaction of judgment in such action, suit, or proceeding against him or her; provided, that he or she gives the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled pursuant to the Company's Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

12.14 Relationship to Other Benefits. No payment pursuant to the Plan shall be taken into account in determining any benefits under any pension, retirement, savings, profit sharing, group insurance, welfare or other benefit plan of the Company or any Affiliate except to the extent otherwise expressly provided in writing in such other plan or an agreement thereunder.

12.15 Expenses. The expenses of administering the Plan shall be borne by the Company and its Subsidiaries.

12.16 Claw-Back Provisions. All Awards (including any proceeds, gains or other economic benefit the Holder actually or constructively receives upon receipt or exercise of any Award or the receipt or resale of any shares of Common Stock underlying the Award) will be subject to any Company claw-back policy, including any claw-back policy adopted to comply with applicable laws (including the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules or regulations promulgated thereunder) as set forth in such claw-back policy or the Award Agreement.

12.17 Grant of Awards to Certain Eligible Individuals. The Company may provide through the establishment of a formal written policy (which shall be deemed a part of this Plan) or otherwise for the method by which Common Stock or other securities of the Company may be issued and by which such Common Stock or other securities and/or payment therefor may be exchanged or contributed among such entities, or may be returned upon any forfeiture of Common Stock or other securities by the Eligible Individual.

12.18 REIT Status. The Plan shall be interpreted and construed in a manner consistent with the Company's status as a REIT. No Award shall be granted or awarded, and with respect to any Award granted under the Plan, such Award shall not vest, be exercisable or be settled:

(a) to the extent that the grant, vesting, exercise or settlement of such Award could cause the Participant or any other person to be in violation of any provision of Section 4(b) of the Company's charter; or

(b) if, in the discretion of the Administrator, the grant, vesting, exercise or settlement of such award could impair the Company's status as a REIT.

I hereby certify that the foregoing Plan was duly adopted by the Board of Directors of Kimco Realty Corporation on December 14, 2022.

Executed as of this __ day of _____, 2022.

KIMCO REALTY CORPORATION

By: _____

Name: _____

Title: _____

Document and Entity Information	Jan. 01, 2023
Entity Listings [Line Items]	
Document Type	8-K12B
Amendment Flag	false
Document Period End Date	Jan. 01, 2023
Current Fiscal Year End Date	--12-31
Entity File Number	1-10899
Entity Registrant Name	KIMCO REALTY CORPORATION
Entity Central Index Key	0000879101
Entity Incorporation, State or Country Code	MD
Entity Tax Identification Number	13-2744380
Entity Address, Address Line One	500 N. Broadway
Entity Address, Address Line Two	Suite 201
Entity Address, City or Town	Jericho
Entity Address, State or Province	NY
Entity Address, Postal Zip Code	11753
City Area Code	516
Local Phone Number	869-9000
Entity Emerging Growth Company	false
Written Communications	false
Soliciting Material	false
Pre-commencement Tender Offer	false
Pre-commencement Issuer Tender Offer	false
Common Stock [Member]	
Entity Listings [Line Items]	
Title of 12(b) Security	Common Stock, par value $.01 per share.
Trading Symbol	KIM
Security Exchange Name	NYSE
Depositary Shares, each representing one-thousandth of a share of 5.125% Class L Cumulative Redeemable, Preferred Stock, $1.00 par value per share. [Member]	
Entity Listings [Line Items]	
Title of 12(b) Security	Depositary Shares, each representing one-thousandth of a share of 5.125% Class L Cumulative Redeemable, Preferred Stock, $1.00 par value per share.
Trading Symbol	KIMprL
Security Exchange Name	NYSE
Depositary Shares, each representing one-thousandth of a share of 5.250% Class M Cumulative Redeemable, Preferred Stock, $1.00 par value per share. [Member]	
Entity Listings [Line Items]	

Title of 12(b) Security	Depositary Shares, each representing one-thousandth of a share of 5.250% Class M Cumulative Redeemable, Preferred Stock, $1.00 par value per share.
Trading Symbol	KIMprM
Security Exchange Name	NYSE

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      "kim-20230101_lab.xml"
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    "presentationLink": {
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      "http://www.xbrl.org/2003/xbrl-linkbase-2003-12-31.xsd",
      "http://www.xbrl.org/2003/xl-2003-12-31.xsd",
      "http://www.xbrl.org/2003/xlink-2003-12-31.xsd",
      "http://www.xbrl.org/2004/ref-2004-08-10.xsd",
      "http://www.xbrl.org/2005/xbrldt-2005.xsd",
      "http://www.xbrl.org/2006/ref-2006-02-27.xsd",
      "http://www.xbrl.org/lrr/arcrole/factExplanatory-2009-12-16.xsd",
      "http://www.xbrl.org/lrr/role/negated-2009-12-16.xsd",
      "http://www.xbrl.org/lrr/role/net-2009-12-16.xsd",
      "https://www.xbrl.org/2020/extensible-enumerations-2.0.xsd",
      "https://www.xbrl.org/dtr/type/2020-01-21/types.xsd",
      "https://xbrl.fasb.org/srt/2022/elts/srt-2022.xsd",
      "https://xbrl.fasb.org/srt/2022/elts/srt-roles-2022.xsd",
      "https://xbrl.fasb.org/srt/2022/elts/srt-types-2022.xsd",
      "https://xbrl.fasb.org/us-gaap/2022/elts/us-gaap-2022.xsd",
      "https://xbrl.fasb.org/us-gaap/2022/elts/us-roles-2022.xsd",
      "https://xbrl.fasb.org/us-gaap/2022/elts/us-types-2022.xsd",
      "https://xbrl.sec.gov/country/2022/country-2022.xsd",
      "https://xbrl.sec.gov/currency/2022/currency-2022.xsd",
      "https://xbrl.sec.gov/dei/2022/dei-2022.xsd",
      "https://xbrl.sec.gov/exch/2022/exch-2022.xsd",
      "https://xbrl.sec.gov/naics/2022/naics-2022.xsd",
      "https://xbrl.sec.gov/sic/2022/sic-2022.xsd",
      "https://xbrl.sec.gov/stpr/2022/stpr-2022.xsd"
     ]
    }
   },
   "elementCount": 37,
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   "memberStandard": 1,
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       "body",
       "html"
      ],
      "baseRef": "ny20006479x6_8k12b.htm",
      "contextRef": "c20230101to20230101",
      "decimals": null,
      "first": true,
      "lang": "en-US",
      "name": "dei:DocumentPeriodEndDate",
      "reportCount": 1,
      "unique": true,
      "unitRef": null,
      "xsiNil": "false"
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     "groupType": "document",
     "isDefault": "true",
     "longName": "000100 - Document - Document and Entity Information",
     "menuCat": "Cover",
     "order": "1",
     "role": "http://kimcorealty.com/role/DocumentAndEntityInformation",
     "shortName": "Document and Entity Information",
     "subGroupType": "",
     "uniqueAnchor": {
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       "div",
       "body",
       "html"
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      "contextRef": "c20230101to20230101",
      "decimals": null,
      "first": true,
      "lang": "en-US",
      "name": "dei:DocumentPeriodEndDate",
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      "unitRef": null,
      "xsiNil": "false"
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   "tag": {
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       "role": {
        "documentation": "Boolean flag that is true when the XBRL content amends previously-filed or accepted submission.",
        "label": "Amendment Flag"
       }
      }
     },
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     ],
     "xbrltype": "booleanItemType"
    },
    "dei_CityAreaCode": {
     "auth_ref": [],
     "lang": {
      "en-us": {
       "role": {
        "documentation": "Area code of city",
        "label": "City Area Code"
       }
      }
     },
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     "nsuri": "http://xbrl.sec.gov/dei/2022",
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     ],
     "xbrltype": "normalizedStringItemType"
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    "dei_CoverAbstract": {
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     "lang": {
      "en-us": {
       "role": {
        "documentation": "Cover page.",
        "label": "Cover [Abstract]"
       }
      }
     },
     "localname": "CoverAbstract",
     "nsuri": "http://xbrl.sec.gov/dei/2022",
     "xbrltype": "stringItemType"
    },
    "dei_CurrentFiscalYearEndDate": {
     "auth_ref": [],
     "lang": {
      "en-us": {
       "role": {
        "documentation": "End date of current fiscal year in the format --MM-DD.",
        "label": "Current Fiscal Year End Date"
       }
      }
     },
     "localname": "CurrentFiscalYearEndDate",
     "nsuri": "http://xbrl.sec.gov/dei/2022",
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      "http://kimcorealty.com/role/DocumentAndEntityInformation"
     ],
     "xbrltype": "gMonthDayItemType"
    },
    "dei_DocumentFiscalPeriodFocus": {
     "auth_ref": [],
     "lang": {
      "en-us": {
       "role": {
        "documentation": "Fiscal period values are FY, Q1, Q2, and Q3.  1st, 2nd and 3rd quarter 10-Q or 10-QT statements have value Q1, Q2, and Q3 respectively, with 10-K, 10-KT or other fiscal year statements having FY.",
        "label": "Document Fiscal Period Focus"
       }
      }
     },
     "localname": "DocumentFiscalPeriodFocus",
     "nsuri": "http://xbrl.sec.gov/dei/2022",
     "presentation": [
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    "http://kimcorealty.com/role/DocumentAndEntityInformation"
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  "dei_DocumentFiscalYearFocus": {
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   "lang": {
    "en-us": {
     "role": {
      "documentation": "This is focus fiscal year of the document report in YYYY format. For a 2006 annual report, which may also provide financial information from prior periods, fiscal 2006 should be given as the fiscal year focus. Example: 2006.",
      "label": "Document Fiscal Year Focus"
     }
    }
   },
   "localname": "DocumentFiscalYearFocus",
   "nsuri": "http://xbrl.sec.gov/dei/2022",
   "presentation": [
    "http://kimcorealty.com/role/DocumentAndEntityInformation"
   ],
   "xbrltype": "gYearItemType"
  },
  "dei_DocumentPeriodEndDate": {
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   "lang": {
    "en-us": {
     "role": {
      "documentation": "For the EDGAR submission types of Form 8-K: the date of the report, the date of the earliest event reported; for the EDGAR submission types of Form N-1A: the filing date; for all other submission types: the end of the reporting or transition period.  The format of the date is YYYY-MM-DD.",
      "label": "Document Period End Date"
     }
    }
   },
   "localname": "DocumentPeriodEndDate",
   "nsuri": "http://xbrl.sec.gov/dei/2022",
   "presentation": [
    "http://kimcorealty.com/role/DocumentAndEntityInformation"
   ],
   "xbrltype": "dateItemType"
  },
  "dei_DocumentType": {
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   "lang": {
    "en-us": {
     "role": {
      "documentation": "The type of document being provided (such as 10-K, 10-Q, 485BPOS, etc). The document type is limited to the same value as the supporting SEC submission type, or the word 'Other'.",
      "label": "Document Type"
     }
    }
   },
   "localname": "DocumentType",
   "nsuri": "http://xbrl.sec.gov/dei/2022",
   "presentation": [
    "http://kimcorealty.com/role/DocumentAndEntityInformation"
   ],
   "xbrltype": "submissionTypeItemType"
  },
  "dei_EntityAddressAddressLine1": {
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   "lang": {
    "en-us": {
     "role": {
      "documentation": "Address Line 1 such as Attn, Building Name, Street Name",
      "label": "Entity Address, Address Line One"
     }
    }
   },
   "localname": "EntityAddressAddressLine1",
   "nsuri": "http://xbrl.sec.gov/dei/2022",
   "presentation": [
    "http://kimcorealty.com/role/DocumentAndEntityInformation"
   ],
   "xbrltype": "normalizedStringItemType"
  },
  "dei_EntityAddressAddressLine2": {
   "auth_ref": [],
   "lang": {
    "en-us": {
     "role": {
      "documentation": "Address Line 2 such as Street or Suite number",
      "label": "Entity Address, Address Line Two"
     }
    }
   },
   "localname": "EntityAddressAddressLine2",
   "nsuri": "http://xbrl.sec.gov/dei/2022",
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    "http://kimcorealty.com/role/DocumentAndEntityInformation"
   ],
   "xbrltype": "normalizedStringItemType"
  },
  "dei_EntityAddressAddressLine3": {
   "auth_ref": [],
   "lang": {
    "en-us": {
     "role": {
      "documentation": "Address Line 3 such as an Office Park",
      "label": "Entity Address, Address Line Three"
     }
    }
   },
   "localname": "EntityAddressAddressLine3",
   "nsuri": "http://xbrl.sec.gov/dei/2022",
   "presentation": [
    "http://kimcorealty.com/role/DocumentAndEntityInformation"
   ],
   "xbrltype": "normalizedStringItemType"
  },
  "dei_EntityAddressCityOrTown": {
   "auth_ref": [],
   "lang": {
    "en-us": {
     "role": {
      "documentation": "Name of the City or Town",
      "label": "Entity Address, City or Town"
     }
    }
   },
   "localname": "EntityAddressCityOrTown",
   "nsuri": "http://xbrl.sec.gov/dei/2022",
   "presentation": [
    "http://kimcorealty.com/role/DocumentAndEntityInformation"
   ],
   "xbrltype": "normalizedStringItemType"
  },
  "dei_EntityAddressCountry": {
   "auth_ref": [],
   "lang": {
    "en-us": {
     "role": {
      "documentation": "ISO 3166-1 alpha-2 country code.",
      "label": "Entity Address, Country"
     }
    }
   },
   "localname": "EntityAddressCountry",
   "nsuri": "http://xbrl.sec.gov/dei/2022",
   "presentation": [
    "http://kimcorealty.com/role/DocumentAndEntityInformation"
   ],
   "xbrltype": "countryCodeItemType"
  },
  "dei_EntityAddressPostalZipCode": {
   "auth_ref": [],
   "lang": {
    "en-us": {
     "role": {
      "documentation": "Code for the postal or zip code",
      "label": "Entity Address, Postal Zip Code"
     }
    }
   },
   "localname": "EntityAddressPostalZipCode",
   "nsuri": "http://xbrl.sec.gov/dei/2022",
   "presentation": [
    "http://kimcorealty.com/role/DocumentAndEntityInformation"
   ],
   "xbrltype": "normalizedStringItemType"
  },
  "dei_EntityAddressStateOrProvince": {
   "auth_ref": [],
   "lang": {
    "en-us": {
     "role": {
      "documentation": "Name of the state or province.",
      "label": "Entity Address, State or Province"
     }
    }
   },
   "localname": "EntityAddressStateOrProvince",
   "nsuri": "http://xbrl.sec.gov/dei/2022",
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    "http://kimcorealty.com/role/DocumentAndEntityInformation"
   ],
   "xbrltype": "stateOrProvinceItemType"
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  "dei_EntityCentralIndexKey": {
   "auth_ref": [
    "r1"
   ],
   "lang": {
    "en-us": {
     "role": {
      "documentation": "A unique 10-digit SEC-issued value to identify entities that have filed disclosures with the SEC. It is commonly abbreviated as CIK.",
      "label": "Entity Central Index Key"
     }
    }
   },
   "localname": "EntityCentralIndexKey",
   "nsuri": "http://xbrl.sec.gov/dei/2022",
   "presentation": [
    "http://kimcorealty.com/role/DocumentAndEntityInformation"
   ],
   "xbrltype": "centralIndexKeyItemType"
  },
  "dei_EntityEmergingGrowthCompany": {
   "auth_ref": [
    "r1"
   ],
   "lang": {
    "en-us": {
     "role": {
      "documentation": "Indicate if registrant meets the emerging growth company criteria.",
      "label": "Entity Emerging Growth Company"
     }
    }
   },
  },
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},
"dei_EntityFileNumber": {
 "auth_ref": [],
 "lang": {
  "en-us": {
   "role": {
    "documentation": "Commission file number. The field allows up to 17 characters. The prefix may contain 1-3 digits, the sequence number may contain 1-8 digits, the optional suffix may contain 1-4 characters, and the fields are separated with a hyphen.",
    "label": "Entity File Number"
   }
  }
 },
 "localname": "EntityFileNumber",
 "nsuri": "http://xbrl.sec.gov/dei/2022",
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 ],
 "xbrltype": "fileNumberItemType"
},
"dei_EntityIncorporationStateCountryCode": {
 "auth_ref": [],
 "lang": {
  "en-us": {
   "role": {
    "documentation": "Two-character EDGAR code representing the state or country of incorporation.",
    "label": "Entity Incorporation, State or Country Code"
   }
  }
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 "localname": "EntityIncorporationStateCountryCode",
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 "presentation": [
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 ],
 "xbrltype": "edgarStateCountryItemType"
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"dei_EntityListingsLineItems": {
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 "lang": {
  "en-us": {
   "role": {
    "documentation": "Line items represent financial concepts included in a table. These concepts are used to disclose reportable information associated with domain members defined in one or many axes to the table.",
    "label": "Entity Listings [Line Items]"
   }
  }
 },
 "localname": "EntityListingsLineItems",
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 "presentation": [
  "http://kimcorealty.com/role/DocumentAndEntityInformation"
 ],
 "xbrltype": "stringItemType"
},
"dei_EntityListingsTable": {
 "auth_ref": [],
 "lang": {
  "en-us": {
   "role": {
    "documentation": "Container for exchange listing information for an entity",
    "label": "Entity Listings [Table]"
   }
  }
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 "localname": "EntityListingsTable",
 "nsuri": "http://xbrl.sec.gov/dei/2022",
 "presentation": [
  "http://kimcorealty.com/role/DocumentAndEntityInformation"
 ],
 "xbrltype": "stringItemType"
},
"dei_EntityRegistrantName": {
 "auth_ref": [
  "r1"
 ],
 "lang": {
  "en-us": {
   "role": {
    "documentation": "The exact name of the entity filing the report as specified in its charter, which is required by forms filed with the SEC.",
    "label": "Entity Registrant Name"
   }
  }
 },
 "localname": "EntityRegistrantName",
 "nsuri": "http://xbrl.sec.gov/dei/2022",
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 ],
 "xbrltype": "normalizedStringItemType"
},
"dei_EntityTaxIdentificationNumber": {
 "auth_ref": [
  "r1"
 ],
 "lang": {
  "en-us": {
   "role": {
    "documentation": "The Tax Identification Number (TIN), also known as an Employer Identification Number (EIN), is a unique 9-digit value assigned by the IRS.",
    "label": "Entity Tax Identification Number"
   }
  }
 },
 "localname": "EntityTaxIdentificationNumber",
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 ],
 "xbrltype": "employerIdItemType"
},
"dei_LocalPhoneNumber": {
 "auth_ref": [],
 "lang": {
  "en-us": {
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    "documentation": "Local phone number for entity.",
    "label": "Local Phone Number"
   }
  }
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 "nsuri": "http://xbrl.sec.gov/dei/2022",
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  "http://kimcorealty.com/role/DocumentAndEntityInformation"
 ],
 "xbrltype": "normalizedStringItemType"
},
"dei_NoTradingSymbolFlag": {
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 "lang": {
  "en-us": {
   "role": {
    "documentation": "Boolean flag that is true only for a security having no trading symbol.",
    "label": "No Trading Symbol Flag"
   }
  }
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 "nsuri": "http://xbrl.sec.gov/dei/2022",
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 "xbrltype": "trueItemType"
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"dei_PreCommencementIssuerTenderOffer": {
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  "r3"
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 "lang": {
  "en-us": {
   "role": {
    "documentation": "Boolean flag that is true when the Form 8-K filing is intended to satisfy the filing obligation of the registrant as pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act.",
    "label": "Pre-commencement Issuer Tender Offer"
   }
  }
 },
 "localname": "PreCommencementIssuerTenderOffer",
 "nsuri": "http://xbrl.sec.gov/dei/2022",
 "presentation": [
  "http://kimcorealty.com/role/DocumentAndEntityInformation"
 ],
 "xbrltype": "booleanItemType"
},
"dei_PreCommencementTenderOffer": {
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  "r4"
 ],
 "lang": {
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    "label": "Pre-commencement Tender Offer"
   }
  }
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 "localname": "PreCommencementTenderOffer",
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 ],
 "xbrltype": "booleanItemType"
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"dei_Security12bTitle": {
 "auth_ref": [
  "r0"
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 "lang": {
  "en-us": {
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    "documentation": "Title of a 12(b) registered security.",
    "label": "Title of 12(b) Security"
   }
  }
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 "localname": "Security12bTitle",
 "nsuri": "http://xbrl.sec.gov/dei/2022",
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 ],
 "xbrltype": "securityTitleItemType"
},
"dei_SecurityExchangeName": {
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    "lang": {
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       "label": "Security Exchange Name"
      }
     }
    },
    "localname": "SecurityExchangeName",
    "nsuri": "http://xbrl.sec.gov/dei/2022",
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    ],
    "xbrltype": "edgarExchangeCodeItemType"
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     "r5"
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    "lang": {
     "en-us": {
      "role": {
       "documentation": "Boolean flag that is true when the Form 8-K filing is intended to satisfy the filing obligation of the registrant as soliciting material pursuant to Rule 14a-12 under the Exchange Act.",
       "label": "Soliciting Material"
      }
     }
    },
    "localname": "SolicitingMaterial",
    "nsuri": "http://xbrl.sec.gov/dei/2022",
    "presentation": [
     "http://kimcorealty.com/role/DocumentAndEntityInformation"
    ],
    "xbrltype": "booleanItemType"
   },
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    "lang": {
     "en-us": {
      "role": {
       "documentation": "Trading symbol of an instrument as listed on an exchange.",
       "label": "Trading Symbol"
      }
     }
    },
    "localname": "TradingSymbol",
    "nsuri": "http://xbrl.sec.gov/dei/2022",
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    ],
    "xbrltype": "tradingSymbolItemType"
   },
   "dei_WrittenCommunications": {
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    ],
    "lang": {
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      "role": {
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       "label": "Written Communications"
      }
     }
    },
    "localname": "WrittenCommunications",
    "nsuri": "http://xbrl.sec.gov/dei/2022",
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     "http://kimcorealty.com/role/DocumentAndEntityInformation"
    ],
    "xbrltype": "booleanItemType"
   },
   "kim_DepositarySharesEachRepresentingOneThousandthOfAShareOf5125ClassLCumulativeRedeemablePreferredStock100ParValuePerShareMember": {
    "auth_ref": [],
    "lang": {
     "en-us": {
      "role": {
       "label": "Depositary Shares, each representing one-thousandth of a share of 5.125% Class L Cumulative Redeemable, Preferred Stock, $1.00 par value per share. [Member]"
      }
     }
    },
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    "nsuri": "http://kimcorealty.com/20230101",
    "presentation": [
     "http://kimcorealty.com/role/DocumentAndEntityInformation"
    ],
    "xbrltype": "domainItemType"
   },
   "kim_DepositarySharesEachRepresentingOneThousandthOfAShareOf5250ClassMCumulativeRedeemablePreferredStock100ParValuePerShareMember": {
    "auth_ref": [],
    "lang": {
     "en-us": {
      "role": {
       "label": "Depositary Shares, each representing one-thousandth of a share of 5.250% Class M Cumulative Redeemable, Preferred Stock, $1.00 par value per share. [Member]"
      }
     }
    },
    "localname": "DepositarySharesEachRepresentingOneThousandthOfAShareOf5250ClassMCumulativeRedeemablePreferredStock100ParValuePerShareMember",
    "nsuri": "http://kimcorealty.com/20230101",
    "presentation": [
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    ],
    "xbrltype": "domainItemType"
   },
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    "auth_ref": [],
    "lang": {
     "en-us": {
      "role": {
       "label": "Class of Stock [Domain]"
      }
     }
    },
    "localname": "ClassOfStockDomain",
    "nsuri": "http://fasb.org/us-gaap/2022",
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