

“Note” means a promissory note of the Borrower payable to any Term Lender and its registered assigns, delivered pursuant to a request made under Section 2.16 in substantially the form of Exhibit A hereto.

“Notice of Borrowing” has the meaning specified in Section 2.02(a).

“NYFRB” means the Federal Reserve Bank of New York.

“Obligations” means each of the (a) Loan Document Obligations, (b) Secured Cash Management Obligations and (c) Secured Hedging Obligations; provided that the Obligations, with respect to any Loan Party, shall not include any Excluded Swap Obligations; and provided, further, that (i) Secured Cash Management Obligations and Secured Hedging Obligations shall be secured and guaranteed pursuant to the Security and Guarantee Documents only to the extent that, and for so long as, the Loan Document Obligations are so secured and guaranteed and (ii) any release of collateral or Subsidiary Guarantors effected in the manner permitted by any of the Loan Documents shall not require the consent of any Cash Management Bank or Hedge Bank (in each case, in its capacity as such).

“One Month LIBOR” has the meaning assigned to such term in the definition of “Base Rate”.

“Ordinary Course of Business” means, in respect of any transaction involving any Person, the ordinary course of such Person’s business.

“Other Applicable Indebtedness” has the meaning specified in Section 2.10(b)(iv).

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

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.18(b)).

“Parent Company” means, with respect to a Lender, the bank holding company (as defined in Federal Reserve Board Regulation Y), if any, of such Lender, or if such Lender does not have a bank holding company, then any corporation, association, partnership or other business entity owning, beneficially or of record, directly or indirectly, a majority of the Voting Stock of such Lender.

“Pari Passu Indebtedness” means Indebtedness that is secured on a *pari passu* basis with the Loan Document Obligations.

“Participant” has the meaning specified in Section 9.07(d).

“Participant Register” has the meaning specified in Section 9.07(d).

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, signed into law October 26, 2001, as amended.

“Payment Office” means such office, branch, affiliate or correspondent bank of the Administrative Agent as shall be from time to time selected by the Administrative Agent and notified by the Administrative Agent to the Borrower and the Lenders.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Perfection Certificate” means the Perfection Certificate substantially in the form of Exhibit B to the Guarantee and Collateral Agreement.

“Permitted Acquisition” has the meaning specified in Section 6.07(i).

“Permitted Call Spread Hedge Agreement” means (a) any Hedge Agreement (including, but not limited to, any bond hedge transaction or capped call transaction) pursuant to which the Borrower acquires an option requiring the counterparty thereto to deliver to the Borrower shares of common stock of the Borrower (or other securities or property following a merger event or other change of the common stock of the Borrower), the cash value thereof or a combination thereof from time to time upon exercise of such option entered into by the Borrower in connection with the issuance of Permitted Convertible Notes (such transaction, a “Bond Hedge Transaction”) and (b) any Hedge Agreement pursuant to which the Borrower issues to the counterparty thereto warrants to acquire common stock of the Borrower (or other securities or property following a merger event or other change of the common stock of the Borrower) (whether such warrant is settled in shares, cash or a combination thereof) entered into by the Borrower in connection with the issuance of Permitted Convertible Notes (such transaction, a “Warrant Transaction”); provided that (i) the terms, conditions and covenants of each such Hedge Agreement shall be such as are customary for Hedge Agreements of such type (as determined by the Borrower in good faith), (ii) the purchase price for such Bond Hedge Transaction, less the proceeds received by the Borrower from the sale of any related Warrant Transaction, does not exceed the net proceeds received by the Borrower from the issuance of the related Permitted Convertible Notes and (iii) in the case of clause (b) above, such Hedge Agreement would be classified as an equity instrument in accordance with GAAP.

“Permitted Convertible Notes” means any unsecured notes issued by the Borrower that are convertible into a fixed number (subject to customary anti-dilution adjustments, “make-whole” increases and other customary changes thereto) of shares of common stock of the Borrower (or other securities or property following a merger event or other change of the common stock of the Borrower), cash or any combination thereof (with the amount of such cash or such combination determined by reference to the market price of such common stock or such other securities); provided that, the Indebtedness thereunder is permitted under Section 6.08 and satisfies the following requirements: (i) both immediately prior to and after giving effect (including pro forma effect) thereto, no Default or Event of Default shall exist or result therefrom, (ii) such Indebtedness matures after, and does not require any scheduled amortization or other mandatory redemptions or payments of principal prior to, the date that is 91 days after the Latest Maturity Date (it being understood that neither (x) any provision requiring an offer to purchase such Indebtedness as a result of change of control or asset sale or other fundamental change nor (y) any early conversion of any Permitted Convertible Notes in accordance with the terms thereof shall violate the foregoing restriction), (iii) the terms, conditions and covenants of such notes shall be such as are typical and customary for notes of such type (as determined by the Borrower in good faith),

(iv) such Indebtedness is not guaranteed by any subsidiary of the Borrower other than the Subsidiary Guarantors and (v) any cross-default or cross-acceleration event of default (each howsoever defined) provision contained therein that relates to indebtedness or other payment obligations of Borrower (or any of its subsidiaries) (such indebtedness or other payment obligations, a “Cross-Default Reference Obligation”) contains a cure period of at least thirty (30) calendar days (after written notice to the Borrower by the trustee or to the Borrower and such trustee by holders of at least 25% in aggregate principal amount of such Indebtedness then outstanding) before a default, event of default, acceleration or other event or condition under such Cross-Default Reference Obligation results in an event of default under such cross-default or cross-acceleration provision.

“Permitted Liens” means each of the following:

(a) Liens for Taxes that are not overdue (i) for the longer of more than (x) 30 days and (y) any applicable grace period with respect thereto or (ii) that are being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained;

(b) Liens imposed by law, such as materialmen’s, mechanics’, carriers’, workmen’s, landlord’s and repairmen’s Liens and other similar Liens arising in the Ordinary Course of Business securing obligations that are not overdue for a period of more than 60 days or, if more than 60 days overdue, are (x) unfiled and no other action has been taken to enforce such Lien or (y) being contested in good faith and by appropriate proceedings diligently conducted and as to which appropriate reserves are being maintained;

(c) (i) Liens securing pension obligations that arise in the Ordinary Course of Business and (ii) pledges and deposits made in the Ordinary Course of Business (A) in connection with workers’ compensation, health, disability or other employee benefits, unemployment insurance and other social security laws or regulations, property, casualty or liability insurance or premiums related thereto or self-insurance obligations or (B) to secure letters of credit, bank guarantees or similar instruments posted to support payment of items set forth in the foregoing clause (A); provided that such letters of credit, bank guarantees or instruments are issued in compliance with Section 6.08;

(d) Liens securing the performance of, or granted in lieu of, contracts with trade creditors, other similar contracts (other than in respect of debt for borrowed money), leases, bids, statutory obligations, customs, surety, stay, appeal and performance bonds, performance and completion guarantees and other obligations of a like nature (including those to secure health, safety and environmental obligations), in each case incurred in the Ordinary Course of Business and deposits securing letters of credit, bank guarantees or similar instruments posted to support payment of the items set forth above in this clause (d); provided that such letters of credit, bank guarantees or similar instruments are issued in compliance with Section 6.08;

(e) easements, rights of way and other encumbrances on title to or imperfections in real property that do not, in the aggregate, materially interfere with the Ordinary Course of Business of the Borrower and the Restricted Subsidiaries with respect to the subject property and any exceptions on the policies of title insurance issued in connection with the Mortgage Properties;

(f) Liens securing reimbursement obligations with respect to trade letters of credit entered into in the Ordinary Course of Business of the Borrower and the Restricted Subsidiaries that encumber documents and other assets relating to such letters of credit and the products and proceeds thereof;

(g) Liens that are customary contractual rights of setoff (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the incurrence of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Borrower or any of the Restricted Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the Ordinary Course of Business of the Borrower or any of the Restricted Subsidiaries or (iii) relating to purchase orders and other agreements entered into with customers of the Borrower or any of the Restricted Subsidiaries in the Ordinary Course of Business of the Borrower and the Restricted Subsidiaries;

(h) Liens arising from filing UCC (or similar law of any jurisdiction) financing statements or similar precautionary public filings, registrations or agreements in foreign jurisdictions by lessors, consignors and bailors regarding leases and consignment or bailee arrangements permitted or not prohibited by any of the Loan Documents and Liens securing liabilities in respect of indemnification obligations thereunder as long as each such Lien only encumbers the assets that are the subject of the related lease (or contained in such leasehold) or consignment or bailee, and other similar precautionary statements, filings or agreements;

(i) Liens (i) arising by virtue of the rendition, entry or issuance against the Borrower or any of the Restricted Subsidiaries, or any property of the Borrower or any of the Restricted Subsidiaries, of any judgment, writ, order, or decree to the extent the rendition, entry, issuance or continued existence of such judgment, writ, order or decree (or any event or circumstance relating thereto) has not resulted in the occurrence of an Event of Default hereunder; (ii) arising out of judgments or awards against the Borrower or any Restricted Subsidiary with respect to which an appeal or other proceeding for review is then being pursued and (iii) notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings for which adequate reserves have been made;

(j) any interest or title (and any encumbrances on such interest or title) of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under any lease or license agreement permitted or not prohibited by any of the Loan Documents and any leases, subleases, licenses or sublicenses granted in the Ordinary Course of Business;

(k) Liens (i) of a collection bank arising under Section 4-208 of the Uniform Commercial Code or other similar provisions of applicable laws on items in the course of collection, (ii) in favor of a banking institution arising as a matter of law encumbering deposits or other funds maintained with financial institutions (including the right of set-off), (iii) arising in connection with pooled deposit or sweep accounts, cash netting, deposit accounts or similar arrangements of the Borrower or any Restricted Subsidiary and consisting of the right to apply the funds held therein to satisfy overdraft or similar obligations incurred in the Ordinary Course of Business of such Person, (iv) encumbering reasonable customary initial deposits and margin deposits and (v) granted in the Ordinary Course of Business by the Borrower or any Restricted Subsidiary to any bank with whom it maintains accounts to the extent required by the relevant bank's (or custodian's or trustee's, as applicable) standard terms and conditions, in each case, which are within the general parameters customary in the banking industry;

(l) Liens in favor of a commodity, brokerage or security intermediary who holds a commodity, brokerage or, as applicable, a security account on behalf of the Borrower or a Restricted Subsidiary; provided that such Lien encumbers only the related account and the property held therein;

(m) Liens (i) in favor of customs and revenue authorities arising as a matter of law in the Ordinary Course of Business to secure payment of customs duties that are not overdue by more than thirty (30) days or, if more than thirty (30) days overdue, are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP and (ii) on specific items of inventory or other goods and proceeds thereof of any Person securing such Person's obligations in respect of bankers' acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or such other goods in the Ordinary Course of Business;

(n) Liens on any cash earnest money deposits made by the Borrower or any of the Restricted Subsidiaries in connection with any Permitted Acquisition or any other Investment permitted hereunder;

(o) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Borrower or any of its Restricted Subsidiaries in the Ordinary Course of Business permitted by this Agreement;

(p) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the Ordinary Conduct of the Business of the Borrower and its Restricted Subsidiaries, taken as a whole; and

(q) Liens on repurchase agreements constituting Cash Equivalents or deemed to exist in connection with Investments in repurchase agreements permitted by this Agreement.

"Permitted Receivables Facility" means any program for the transfer by the Borrower or any of the Subsidiaries (other than a Receivables Subsidiary), to any third-party buyer, purchaser or lender of interests in accounts receivable, so long as the aggregate outstanding principal amount of Indebtedness incurred pursuant to such program shall not exceed \$30.0 million at any one time; provided that (a) no portion of the Indebtedness or any other obligation (contingent or otherwise) under such Permitted Receivables Facility shall be guaranteed by the Borrower or any of the Restricted Subsidiaries (other than the Receivables Subsidiary), (b) there shall be no recourse or obligation to the Borrower or any of the Restricted Subsidiaries (other than the Receivables Subsidiary) whatsoever other than pursuant to representations, warranties, covenants and indemnities entered into in the Ordinary Course of Business in connection with such Permitted Receivables Facility that in the reasonable opinion of the Borrower are customary for securitization transactions and (c) neither the Borrower nor any of the Restricted Subsidiaries (other than the Receivables Subsidiary) shall have provided, either directly or indirectly, any other credit support of any kind in connection with such Permitted Receivables Facility, other than as set forth in clause (b) of this definition.

"Permitted Refinancing" means with respect to any Indebtedness of any Person, any modification, refinancing, refunding, renewal, replacement, exchange or extension (collectively, a "Refinancing") of such Indebtedness of such Person; provided that:

(a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Indebtedness so Refinanced except by an amount equal to accrued and unpaid interest and a premium thereon plus other amounts owing or paid related to such Indebtedness, and commissions, fees and expenses

incurred, in connection with such Refinancing plus an amount equal to any existing commitments unutilized thereunder;

(b) other than in respect to a Permitted Refinancing in respect of Indebtedness permitted pursuant to Section 6.08(c) or (d), such Refinancing has a final maturity date equal to or later than the final maturity date of, and has a Weighted Average Life to Maturity equal to or greater than the Weighted Average Life to Maturity of, the Indebtedness being Refinanced; provided that this clause (b) shall not apply to any Refinancing consisting of a customary bridge facility, so long as the long-term Indebtedness into which any such customary bridge facility is to be converted or exchanged satisfies this clause (b);

(c) if the Indebtedness being Refinanced is subordinated in right of payment or security, as applicable, to the Obligations, such Refinancing is subordinated in right of payment or security, as applicable, to the Obligations on terms, (i) not materially less favorable, taken as a whole (as determined by the Borrower in good faith) to the Lenders as those contained in the documentation governing the Indebtedness being Refinanced or (ii) as otherwise reasonably acceptable to the Administrative Agent;

(d) if the Indebtedness being Refinanced is (or would have been required to be) secured by any Collateral of a Loan Party (whether equally and ratably with, or junior to, the Liens in favor of the Secured Parties or otherwise), such Refinancing may be secured by such Collateral; provided that such Refinancing may not have security in any case more extensive than that which applied to the Indebtedness being Refinanced;

(e) if the Indebtedness being Refinanced is Indebtedness permitted pursuant to Section 6.08(a), (g) and (l), the terms and conditions of such Refinancing (other than items covered in clause (c) above) shall be either (x) (taken as a whole) not materially less favorable to the lenders providing such Refinancing than, those applicable to the Indebtedness being Refinanced (except for covenants or other provisions applicable only to periods after the Latest Maturity Date) or (y) customary for similar types of Indebtedness in light of then-prevailing market conditions (it being understood and agreed that such Indebtedness shall not include any financial maintenance covenants (unless such Indebtedness being Refinanced had the benefit of financial maintenance covenants) and that any negative covenants shall be incurrence-based) (except for covenants or other provisions applicable only to periods after the Latest Maturity Date); provided that a certificate of a Responsible Officer of the Borrower delivered to the Agent at least five (5) Business Days prior to the incurrence of such Refinancing, together with a reasonably detailed description of material terms and conditions of such Refinancing, or drafts of the documentation related thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the foregoing requirement in this clause (e) shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Agent notifies the Borrower within such five (5) Business Day period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees); and

(f) no such Refinancing shall have obligors or contingent obligors that were not obligors or contingent obligors in respect of such Indebtedness being Refinanced.

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

“Phase Is” has the meaning assigned to such term in the definition of “Real Estate Collateral Requirements”.

“Plan” means a Single Employer Plan and a Multiple Employer Plan.

“Platform” has the meaning specified in Section 9.02(d)(i).

“Prepayment Amount” has the meaning specified in Section 2.10(b)(vi).

“Prepayment Date” has the meaning specified in Section 2.10(b)(vi).

“Prime Rate” means the rate of interest per annum announced from time to time by the Administrative Agent to be its prime rate in effect at its principal office in New York, New York. Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

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

“Public-Sider” means a Lender whose representatives may trade in securities of the Borrower or any of its Subsidiaries while in possession of the financial statements provided by the Borrower under the terms of this Agreement.

“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).

“QFC Credit Support” has the meaning assigned to such term in Section 9.21.

“Qualified Equity Issuance” means any issuance of Equity Interests (other than any Disqualified Equity Interests) by the Borrower (but excluding any issuances of Equity Interests to any Subsidiary).

“Quarterly Compliance Certificate” has the meaning specified in Section 5.07(a).

“Quotation Day” means, with respect to any Eurocurrency Rate Borrowing, for any Interest Period, two (2) Business Days prior to the commencement of such Interest Period.

“Ratio-Based Amounts” has the meaning assigned to such term in Section 1.06.

“Real Estate Collateral Requirements” means the requirement that, with respect to the Mortgaged Properties, as required by Section 5.10, the Collateral Agent shall have received a Mortgage suitable for recording or filing, together with the following documents:

(a) a fully paid policy of title insurance (or “pro forma” or marked up commitment having the same effect of a title insurance policy) (i) in a form reasonably acceptable to the Collateral Agent insuring the Lien of the Mortgage encumbering such property as a valid first priority Lien, (ii) in an amount reasonably satisfactory to the Collateral Agent and otherwise reflective of the fair market value of the real property subject to the Mortgage, (iii) issued by a nationally recognized title insurance company reasonably satisfactory to the Collateral Agent (the “Title Company”) and (iv) that includes such endorsements or affirmative insurance required by the Collateral Agent and available in the applicable jurisdiction (including endorsements on