

**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): March 22, 2021**



**NN, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**000-23486**  
(Commission  
File Number)

**62-1096725**  
(I.R.S. Employer  
Identification No.)

**6210 Ardrey Kell Road**  
**Charlotte, North Carolina**  
(Address of principal executive offices)

**28277**  
(Zip Code)

**(980) 264-4300**  
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- 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 \$0.01	NNBR	The Nasdaq Stock Market LLC

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.

## ITEM 1.01. ENTRY INTO A MATERIAL DEFINITIVE AGREEMENT.

### *Financing Transaction*

On March 22, 2021, NN, Inc., a Delaware corporation (the “Company”), completed a private placement of the Company’s newly designated Series D Perpetual Preferred Stock, par value \$0.01 per share (the “Series D Preferred Stock”) and warrants (the “Warrant”) to purchase shares of the Company’s common stock, par value \$0.01 per share (“Common Stock”) (collectively, the “Financing Transaction”), pursuant to the terms of that certain Securities Purchase Agreement, dated March 22, 2021 (the “Purchase Agreement”), by and between the Company and NHTV Nevada Holdings LP (the “Purchaser”).

In accordance with the terms and conditions of the Purchase Agreement, the Company sold to the Purchaser 65,000 shares of Series D Preferred Stock, with a liquidation preference of \$1,000 per share, together with a Warrant to purchase up to 1,900,000 shares of Common Stock.

In connection with the Financing Transaction, the Company received gross proceeds of \$65 million, before deducting transaction expenses. The Company used the proceeds from the Financing Transaction and the New Credit Facility (as defined below) to (i) redeem all of the outstanding shares of the Company’s Series B Convertible Preferred Stock, par value \$0.01 per share (the “Series B Preferred Stock”), (ii) repay all of the outstanding amounts under the Company’s senior secured revolving credit facility, (iii) prepay the Company’s term loans, (iv) pay any fees, costs and expenses incurred in connection with clauses (ii) and (iii) above, (v) pay any fees and expenses in connection with the transactions contemplated by the Purchase Agreement, and (vi) with respect to any remaining proceeds after giving effect to clauses (i) through (v), for the Company’s working capital and other general corporate purposes.

### *Purchase Agreement*

The Purchase Agreement contains representations and warranties by the Company and the Purchaser and covenants of the Company and the Purchaser (including indemnification from the Company in the event of breaches of its representations and warranties) and other rights, obligations and restrictions, which the Company believes are customary for transactions of this type.

*Additional Agreements:* The Purchase Agreement contains additional agreements and covenants between the Company and the Purchaser, including restrictions similar to those in the Certificate of Designation regarding dividends and voting rights.

The foregoing description of the Purchase Agreement has been included to provide investors with information regarding its terms. It is not intended to provide any factual information about the parties to the agreement or the Company’s business.

### *Certificate of Designation*

In connection with the closing of the Financing Transaction, on March 22, 2021, the Company filed a Certificate of Designation of Series D Perpetual Preferred Stock (the “Certificate of Designation”) with the Secretary of State of the State of Delaware, establishing the rights, preferences, privileges, qualifications, limitations and restrictions relating to the Series D Preferred Stock. The Certificate of Designation became effective with the Secretary of State of the State of Delaware upon filing.

A summary of the terms of the Series D Preferred Stock set forth in the Certificate of Designation is set forth below.

<b>Security:</b>	Series D Perpetual Preferred Stock, par value \$0.01 per share.
<b>Series D Dividend:</b>	Cumulative quarterly dividends payable in cash in an amount equal to 10.00% per annum of the Initial Liquidation Preference (as described below) (the “Cash Dividend Rate”); provided that, if no such cash dividend payment is made, the Liquidation Preference (as described below) per share of Series D Preferred Stock shall be increased by an amount equal to 12.00% per annum (the “Preference Accrual Rate”) of the then current Liquidation Preference (the “Liquidation Preference Adjustment”). On March 22, 2026, if any shares of Series D Preferred Stock remain issued and outstanding, the Cash Dividend Rate and the Liquidation

Preference Adjustment, as expressed as a percentage, shall increase by an amount equal to 2.50%, and shall continue to increase by an amount equal to 2.50% on each anniversary date thereafter (such increase on March 22, 2026, and each anniversary thereafter, the “Specified Date Adjustment”). Additionally, each dividend payment beginning on September 30, 2027 and including every such dividend payment date thereafter shall be paid in cash, unless otherwise prohibited by Delaware law or any then effective credit agreement to which the Company is a party.

- Optional Redemption by the Company:** The Company may redeem all or a portion of the then outstanding shares of Series D Preferred Stock at a redemption price equal to the Liquidation Preference then in effect (the “Redemption Price”).
- Optional Redemption Upon a Change of Control:** If at any time a Change of Control (as defined in the Purchase Agreement) of the Company occurs, each holder may require the Company to redeem all or a portion of such holder’s shares of Series D Preferred Stock for cash at the Redemption Price. Additionally, in the event that a Change of Control of the Company occurs, the Company may redeem all or a portion of the then outstanding shares of Series D Preferred Stock for an amount per share equal to the Redemption Price.
- Non-Convertible:** The shares of Series D Preferred Stock shall not be convertible into or exchangeable for shares of Common Stock or any other security.
- Initial Liquidation Preference:** \$1,000 per share of Series D Preferred Stock.
- Liquidation Preference:** An amount in cash equal to the greater of (i) the Initial Liquidation Preference as such amount may have been increased for any Liquidation Preference Adjustment and any Specified Date Adjustment, plus, without duplication, all accrued and unpaid distributions, and (ii) an amount equal to 140.00% of the Initial Liquidation Preference.
- Liquidation Value:** In the event of a liquidation, holders of Series D Preferred Stock will be entitled to receive, out of assets of the Company available for distribution to stockholders of the Company or their assignees, and subject to the rights of any outstanding shares of Senior Securities (as defined in the Certificate of Designation) and before any amount shall be distributed to the holders of Junior Securities (as defined in the Certificate of Designation), a liquidating distribution in an amount equal to the Liquidation Preference.
- Voting Rights:** Holders of the Series D Preferred Stock shall not have any voting rights, other than a consent right with respect to: (i) any amendment or waiver (whether by merger, consolidation or otherwise) of the organizational documents of the Company or any of its subsidiaries, in either case, in a way that materially and adversely affects the rights, preferences and privileges or power of the Series D Preferred Stock; (ii) the authorization, creation or issuance of any additional shares of Series D Preferred Stock, Parity Securities (as defined in the Certificate of Designation) or Senior Securities or any other class or series of capital stock of the Company ranking senior to, or on a parity basis with, the Series D Preferred Stock as to dividend rights or rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company; (iii) the declaration or payment of any dividend or distribution on, or redemption or repurchase of, any issued and outstanding shares of Common Stock or other Junior Securities; provided that the Company may (a) acquire shares of Common Stock or Junior Securities in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of present or former employees or directors of the Company and its Subsidiaries for the purposes of satisfying applicable taxes or netting of applicable exercise price or otherwise as required by any such plan, agreement or arrangement; and (b) acquire Junior Securities as a result of an exchange or conversion of such shares of Junior Securities for any other shares of Junior Securities and purchase any fractional shares of Junior Securities in connection therewith; (iv) the incurrence of any additional Indebtedness (as defined in the Certificate of Designation) other than (a) any Indebtedness that would be

permitted to be incurred under the Term Loan Facility or the ABL Facility, (b) without duplication of the foregoing, any Indebtedness incurred to refinance or replace Indebtedness outstanding on the Issuance Date (as defined in the Certificate of Designation) (including successive refinancings or replacements), in an aggregate principal amount at maturity not to exceed the sum of (1) the principal amount at maturity of the Indebtedness being refinanced, (2) accrued and unpaid interest on the Indebtedness being refinanced, (3) premiums, fees and expenses payable in connection with the repayment of such and provided that after such incurrence the Company and its subsidiaries would not have a Consolidated Net Leverage Ratio (as defined in the Certificate of Designation) greater than 3.50:1.00, and (c) any Indebtedness, the net proceeds of which are contemporaneously used to redeem outstanding shares of Series D Preferred Stock; (v) the making of any Dispositions (as defined in the Certificate of Designation), unless (a) such Dispositions are otherwise permitted under the Term Loan Facility and the ABL Facility and (b) the Company uses the Net Cash Proceeds (as defined in the Certificate of Designation) from such Disposition to permanently repay Indebtedness and extinguish all commitments for the Indebtedness and, insofar as there are any remaining Net Cash Proceeds from Dispositions after repayment and extinguishment of all such Indebtedness in excess of \$25.0 million, such excess is applied to redeem shares of Series D Preferred Stock; (vi) any voluntary Liquidation (as defined in the Certificate of Designation) or bankruptcy filing; and (vii) any agreement to take any of the foregoing actions.

In the event of a breach of any consent rights described above: (a) the Company shall be required to give prompt notice of such breach to the holders of Series D Preferred Stock; (b) the then effective Cash Dividend Rate and Preference Accrual Rate shall each increase by an amount equal to 4.00% per annum above the amount otherwise applicable under the Certificate of Designation (and subject to additional increases pursuant to the terms thereof) from the date such breach first occurred until the date (if any) that the Company shall have remedied such breach; and (c) in the event that the Company shall not have cured such breach within thirty (30) days of the first occurrence of the breach, each holder of Series D Preferred Stock shall have the right to require the redemption of, and the Company shall be required to redeem, any or all of its shares of Series D Preferred Stock.

#### *Warrant*

The Warrant issued at the closing is exercisable, in full or in part, at any time prior to the sixth (6th) anniversary of its issuance, at an exercise price of \$0.01 per share, subject to customary anti-dilution adjustments in the event of certain future equity issuances, future subdivisions (by any stock split, recapitalization or otherwise), combinations or similar events, any capital reorganization, reclassification, consolidation or merger, sale of substantially all of the Company's assets, or other similar transaction of the Company as set forth in the Warrant. The Warrant may be exercised for cash in an amount equal to the aggregate exercise price, or in lieu of paying the aggregate exercise price, the holder of the Warrant may elect a cashless exercise in accordance with the terms of the Warrant.

Unless and until any necessary stockholder approval is obtained, the Purchaser shall not have the right to acquire shares of Common Stock in a manner that would violate Nasdaq Listing Rule 5635(b). In addition, certain other ownership limitations apply to the holder of a Warrant. In connection with a Change of Control transaction, any unexercised shares of Common Stock underlying the Warrant will be, under certain circumstances, deemed to have been exercised on a cashless basis. Prior to the issuance of shares of Common Stock upon exercise of the Warrant, the Warrant holder is not entitled to vote or receive dividends or be deemed the holder of shares of Common Stock.

#### *Board Observer Agreement*

In connection with the closing of the Financing Transaction, on March 22, 2021, the Company entered into that certain Board Observer Agreement (the "Board Observer Agreement") with the Purchaser. The Board Observer Agreement provides that the Purchaser will have the right to designate a representative to serve as an observer (the "Observer"). The Observer will have the right to attend and observe meetings of the Board, including any meetings of the committees of the Board, subject to certain exceptions. The Purchaser's rights under the Board Observer Agreement will terminate upon the date that the Purchaser no longer beneficially owns at least one third (1/3) of the outstanding shares of Series D Preferred Stock.

## New Credit Facility

### Term Loan Facility

On March 22, 2021, the Company closed on a term loan facility (the “Term Loan Facility”). The Term Loan Facility is governed by a Term Loan Credit Agreement (the “Term Loan Credit Agreement”) by and among the Company, the lenders party thereto from time to time, and Oaktree Fund Administration, LLC, as administrative agent for the lenders. The Company intends to use the proceeds from the Term Loan Facility to repay all of its outstanding obligations under its Existing Credit Agreement (as defined below).

*Amount and Interest.* The Term Loan Credit Agreement provides for a senior secured term loan in the aggregate amount of \$150.00 million and generally bears interest at (at the Company’s election) either (a) 5.875% per annum plus the greatest of (i) the published prime commercial lending rate, (ii) the Federal Funds Rate, as in effect from time to time (which in no event shall be less than zero), plus 0.50% per annum, and (iii) the Eurodollar Rate (as defined in the Term Loan Credit Agreement) determined on a daily basis for an interest period of one (1) month, plus 1.00% per annum or (b) 6.875% per annum plus the greater of (i) the Eurodollar Rate for the applicable interest period multiplied by the statutory reserve rate and (ii) 1.00%. If the Eurodollar Rate for the applicable interest period is less than 1.00%, such rate shall be deemed to be 1.00% for purposes of calculating the foregoing interest rates in the Term Loan Credit Agreement. The Term Loan Credit Agreement also allows the Company to request the establishment of one or more additional term loan commitments subject to specified terms and conditions, so long as (A) for incremental term loans secured by a lien on the Collateral (as defined in the Term Loan Credit Agreement) the Consolidated Secured Net Leverage Ratio (as defined in the Term Loan Credit Agreement) is not greater than 3.75 to 1.00 and (B) for unsecured incremental term loans the Consolidated Net Leverage Ratio (as defined in the Term Loan Credit Agreement) is not greater than 3.75 to 1.00.

*Maturity.* The final maturity date of the Term Loan Credit Agreement is September 22, 2026.

*Prepayment.* The Company may voluntarily prepay outstanding loans under the Term Loan Facility, in whole or in part without premium or penalty at any time following the third anniversary of the Closing Date (as defined in the Term Loan Credit Agreement). Prior to the first anniversary of the Closing Date, the Company will be subject to a prepayment premium equal to the then-present value of (i) 2.00% of the outstanding principal amount of the term loans so prepaid, plus (ii) all remaining unaccrued scheduled interest payments due on such term loans through the first anniversary of the Closing Date, computed using a discount rate equal to the Treasury Rate (as defined in the Term Loan Credit Agreement) plus 50 basis points. The Company may be subject to a prepayment penalty of 2.00% of the amount of such loans that it prepays following the first anniversary of the Closing Date but prior to the second anniversary of the Closing Date. If the Company prepays any outstanding loans following the second anniversary of the Closing Date but prior to its third anniversary, the Company may be subject to a prepayment penalty of 1.00% of the amount prepaid. The Term Loan Credit Agreement requires the Company to prepay outstanding loans, subject to certain exceptions, with: (i) a variable percentage of excess cash flow; (ii) 100% of the net cash proceeds of non-ordinary course asset sales or other dispositions of property by the Company or any of its subsidiaries, and 100% of the net cash proceeds from certain insurance and condemnation events with respect to the Company’s or any of its subsidiaries’ assets, in each case subject to customary thresholds and reinvestment rights; and (iii) 100% of the net cash proceeds from the issuance or incurrence of debt obligations for borrowed money not permitted by the Term Loan Credit Agreement by the Company or any of its subsidiaries.

*Financial Covenant.* As of the Closing Date, the Term Loan Credit Agreement requires that the Company maintain a quarterly maximum Consolidated Net Leverage Ratio (as defined in the Term Loan Credit Agreement) of 3.75 to 1.00, which decreases in accordance with the terms of the Term Loan Credit Agreement to 2.50 to 1.00 for each fiscal quarter after the fiscal quarter ending December 31, 2023.

### ABL Facility

Additionally, on March 22, 2021, the Company closed on a new asset backed credit facility (the “ABL Facility”; together with the Term Loan Facility, the “New Credit Facility”). The ABL Facility is governed by a Credit Agreement (the “ABL Credit Agreement”) by and among the Company, certain Company subsidiaries, the lenders party thereto, and JPMorgan Chase Bank, N.A., as administrative agent for the lenders.

*Amount.* The ABL Credit Agreement provides for a senior secured revolving credit facility in the amount of \$50 million, of which \$30 million will be available in the form of letters of credit and \$5.0 million will be available

for the issuance of short-term swingline loans. The ABL Credit Agreement also allows the Borrower to request the establishment of one or more additional revolving commitments in an aggregate amount subject to specified terms and conditions. The availability of credit under the ABL Facility is limited by a borrowing base, which is 85% of the eligible accounts receivable of the Borrowers, plus the lesser of 60% of the cost and 85% of the net orderly liquidation value of eligible inventory, plus the lesser of 60% of the cost and 85% of the net orderly liquidation value of eligible in-transit inventory (subject to a \$5 million cap), less any reserves established by the administrative agent, all as defined in the ABL Credit Agreement.

*Interest.* When the average quarterly Availability (as defined in the ABL Credit Agreement) is equal to or less than 50% of the aggregate revolving commitment, advances will generally bear interest at (at the Company's election) either (a) 1.00% per annum plus the greatest of (i) the published prime commercial lending rate, (ii) the Federal Funds Rate, as in effect from time to time (which in no event shall be less than zero), plus 0.50% per annum, and (iii) the Adjusted LIBO Rate (as defined in the ABL Credit Agreement) determined on a daily basis for an interest period of one (1) month, plus 1.00% per annum or (b) 2.00% per annum plus the Adjusted LIBO Rate for the applicable interest period multiplied by the statutory reserve rate. If the LIBO Rate (as defined in the ABL Credit Agreement) that is used to determine the Adjusted LIBO Rate for the applicable interest period is less than 0.50%, such rate shall be deemed to be 0.50% for purposes of calculating the foregoing interest rates in the Term Loan Credit Agreement. When the average quarterly Availability (as defined in the ABL Credit Agreement) is greater than 50% of the aggregate revolving commitment, advances will generally bear interest at (at the Company's election) either (a) 0.75% per annum plus the greatest of (i) the published prime commercial lending rate, (ii) the Federal Funds Rate, as in effect from time to time (which in no event shall be less than zero), plus 0.50% per annum, and (iii) the Adjusted LIBO Rate determined on a daily basis for an interest period of one (1) month, plus 1.00% per annum or (b) 1.75% per annum plus the Adjusted LIBO Rate for the applicable interest period multiplied by the statutory reserve rate. If the LIBO Rate that is used to determine the Adjusted LIBO Rate for the applicable interest period is less than 0.50%, such rate shall be deemed to be 0.50% for purposes of calculating the foregoing interest rates in the Term Loan Credit Agreement.

*Maturity.* The final maturity date of the ABL Credit Agreement is March 22, 2026.

*Financial Covenant.* The ABL Credit Agreement requires the Company to have a Fixed Charge Coverage Ratio (as defined in the ABL Credit Agreement) of not less than 1.0 to 1.0 at any time when the Availability (as defined in the ABL Credit Agreement) of the Borrower is less than 12.50% of the revolving commitments.

#### *General New Facility Terms*

*Guarantee and Security.* The Company's obligations under the Term Loan Facility and the ABL Facility are guaranteed by each of the Company's direct and indirect, existing and future material, domestic subsidiaries, subject to customary exceptions and limitations. The Term Loan Facility and the ABL Facility are each secured by a perfected lien over substantially all of the Company's and each guarantor's assets, including certain real property owned by the Company and the guarantors, subject to certain customary exceptions.

*General Terms and Covenants.* The ABL Credit Agreement and the Term Loan Credit Agreement include customary representations, warranties and negative and affirmative covenants, as well as customary events of default and certain cross default provisions that could result in acceleration of the ABL Credit Agreement or the Term Loan Credit Agreement.

The foregoing description of the Purchase Agreement, the Certificate of Designation, the Warrants, Board Observer Agreement, the Term Loan Credit Agreement and the ABL Credit Agreement is only a summary and is qualified in its entirety by the full text of the Purchase Agreement, the Certificate of Designation, the Warrant, the Board Observer Agreement, the Term Loan Credit Agreement and the ABL Credit Agreement, which are filed as Exhibits 10.1, 3.1, 4.1, 10.2, 10.3 and 10.4, respectively, to this Current Report on Form 8-K and are incorporated by reference herein.

#### **ITEM 1.02. TERMINATION OF A MATERIAL DEFINITIVE AGREEMENT.**

On March 22, 2021, the Company used the proceeds from the Financing Transaction and the New Credit Facility to prepay all outstanding obligations under its existing credit facility made available to the Company under the Second Amended and Restated Credit Agreement, dated as of December 19, 2019, by and among the Company, the guarantors party thereto from time to time, the lenders party thereto from time to time, and Truist Bank, as successor by merger to SunTrust Bank, as administrative agent and collateral agent (the "Existing Credit Agreement").

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

The information contained in Item 1.01 of this Current Report on Form 8-K regarding the New Credit Facility is incorporated herein by reference.

**ITEM 3.02. UNREGISTERED SALE OF EQUITY SECURITIES.**

The information contained in Item 1.01 of this Current Report on Form 8-K regarding the offer and sale of the Series D Preferred Stock and Warrants, the Purchase Agreement and the terms of the Series D Preferred Stock is incorporated herein by reference.

The securities in the Financing Transaction were issued and sold in reliance upon the exemption from the registration requirements of the Securities Act, set forth under Section 4(a)(2) of the Securities Act relating to sales by an issuer not involving any public offering and in reliance on similar exemptions under applicable state laws. The Purchaser represented that it is an accredited investor and that it is acquiring the Series D Preferred Stock and Warrants for investment purposes and not with a view to any distribution of such securities in violation of the United States federal securities laws. Neither this Current Report on Form 8-K, nor the exhibit attached hereto is an offer to sell or the solicitation of an offer to buy the securities described herein.

**ITEM 3.03. MATERIAL MODIFICATION TO RIGHTS OF SECURITY HOLDERS.**

The information contained in Item 1.01 of this Current Report on Form 8-K regarding the Certificate of Designation and the terms of the Series D Preferred Stock is incorporated herein by reference.

**ITEM 5.03. AMENDMENTS TO ARTICLES OF INCORPORATION OR BYLAWS; CHANGES IN FISCAL YEAR.**

The information contained in Item 1.01 of this Current Report on Form 8-K regarding the Certificate of Designation and the terms of the Series D Preferred Stock is incorporated herein by reference.

**ITEM 7.01. REGULATION FD DISCLOSURE.**

On March 22, 2021, the Company issued a press release announcing the closing of the Financing Transaction and the New Credit Facility. A copy of this press release is included as Exhibit 99.1 to this Current Report on Form 8-K.

The information, including the press release, furnished under this Item 7.01 shall not be deemed “filed” for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, and shall not be deemed incorporated by reference into any other filing by the Company under the Exchange Act or the Securities Act, except as otherwise expressly stated in such filing.

**ITEM 8.01. OTHER EVENTS.**

The Company confirmed that, effective as of March 22, 2021, pursuant to the Certificate of Designation establishing and fixing the rights and preferences of the Series B Preferred Stock, it voluntarily redeemed all 100,000 outstanding shares of its Series B Preferred Stock at an aggregate redemption price of approximately \$118.2 million.

**ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.**

*(d) Exhibits.*

<u>Exhibit No.</u>	<u>Description</u>
3.1	<a href="#">Certificate of Designation of Series D Preferred Stock</a>
4.1	<a href="#">Common Stock Purchase Warrant</a>
10.1	<a href="#">Securities Purchase Agreement, dated March 22, 2021, by and between the Company and the Purchaser</a>
10.2	<a href="#">Board Observer Agreement, dated March 22, 2021, by and between the Company and the Purchaser</a>

- 10.3\* [Term Loan Credit Agreement, dated March 22, 2021, by and among the Company, as borrower, and Oaktree Fund Administration, LLC, as administrative agent](#)
- 10.4\* [Credit Agreement, dated March 22, 2021, by and among the Company, as borrower, and JPMorgan Chase Bank, N.A., as administrative agent](#)
- 99.1 [Press Release issued by NN, Inc. dated March 22, 2021](#)
- 104 Cover Page Interactive Data File (embedded within the Inline XBRL document)

\* Portions of this exhibit have been omitted pursuant to Rule 601(b)(10) of Regulation S-K.

**SIGNATURES**

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

Date: March 22, 2021

**NN, INC.**

By: /s/ Matthew S. Heiter

Name: Matthew S. Heiter

Title: Senior Vice President, General Counsel

**CERTIFICATE OF DESIGNATION**  
*of*  
**SERIES D PERPETUAL PREFERRED STOCK**  
*of*  
**NN, INC.**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware:

NN, Inc., a Delaware corporation (the "Corporation"), hereby certifies that, in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware ("DGCL"), the Board of Directors of the Corporation has duly adopted the following resolutions:

RESOLVED, that, pursuant to Article IV of the Corporation's Restated Certificate of Incorporation, as amended (which authorizes 5,000,000 shares of preferred stock, par value \$0.01 per share of the Corporation (the "Preferred Stock")), the Board of Directors of the Corporation hereby fixes the powers, designations, preferences and relative, participating, optional and other special rights, and the qualifications, limitations and restrictions, of a series of Preferred Stock as follows:

Section 1. Designation. There is hereby created out of the authorized and unissued shares of Preferred Stock of the Corporation a new series of Preferred Stock designated as the "Series D Preferred Stock". The number of shares constituting the Series D Preferred Stock will be 65,000.

Section 2. Ranking. The Series D Preferred Stock shall rank, with respect to the payment of dividends and other distributions, including the distribution of assets upon liquidation, dissolution or winding up of the Corporation, (i) senior to the Common Stock and to any other class or series of the Preferred Stock, and (ii) junior to any existing or future secured or unsecured indebtedness of the Corporation.

Section 3. Dividends.

3.1 Holders of Series D Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, and the Corporation shall pay, out of funds lawfully available therefor, cumulative quarterly dividends payable in cash (a "Series D Dividend") on March 31, June 30, September 30, and December 31 in each year (each such date being referred to as a "Dividend Payment Date"), commencing on the first Dividend Payment Date after the Issuance Date, in an amount equal to 10.0% per annum of the Initial Liquidation Preference per share of Series D Preferred Stock (the "Cash Dividend Rate"). The period from the Issuance Date to and including March 31, 2021 and each period from but excluding a Dividend Payment Date to and including the following Dividend Payment Date is herein referred to as a "Dividend Period". On any such Dividend Payment Date, if the Series D Dividend is not so paid in cash, the Liquidation Preference per share of Series D Preferred Stock shall be increased by an amount equal to 12.0% per annum (the "Preference Accrual Rate") on the then current Liquidation Preference per share of Series D Preferred Stock (the "Liquidation Preference Adjustment"). On the Specified Date, the Cash Dividend Rate and the Preference Accrual Rate, expressed as a percentage, shall each increase by an amount equal to 2.5%, and shall continue to increase by an amount equal to 2.5% on each anniversary date following the Specified Date (such increase on the Specified Date and each anniversary thereafter, the "Specified Date Adjustment"). In addition to the foregoing, beginning on the Dividend Payment Date on September 30, 2027 and continuing on every Dividend Payment Date thereafter, the Board of Directors shall declare and the Company shall pay in cash a Series D Dividend unless otherwise prohibited by Delaware law or any then effective credit agreement to which the Corporation is then a party. For so long as any shares of Series D Preferred Stock remain issued and outstanding, the Liquidation Preference per share of Series D Preferred Stock shall continue to be adjusted pursuant to this Section 3.1 on each Dividend Payment Date.

3.2 Series D Dividends shall be payable in arrears on each Dividend Payment Date and shall accrue, whether or not earned or declared, from the most recent Dividend Payment Date, or, in the case of the first Dividend Payment Date, from the Issuance Date. Series D Dividends shall accrue on each outstanding share of Series D Preferred Stock on the basis of twelve 30-day months and a 360-day year, at the Cash Dividend Rate on the basis of the Liquidation Preference with respect to such share, as adjusted by the Liquidation Preference Adjustments that occurred on each Dividend Payment Date for which the Series D Dividend was not paid with respect to such share.

#### Section 4. Liquidation, Dissolution or Winding Up.

4.1 Upon any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation (a "Liquidation"), after payment or provision for payment of the debts and other liabilities of the Corporation, the holders of Series D Preferred Stock shall be entitled to receive, in respect of any shares of Series D Preferred Stock held by them, out of assets of the Corporation available for distribution to stockholders of the Corporation or their assignees, and subject to the rights of any outstanding shares of Senior Securities and before any amount shall be distributed to the holders of Junior Securities, a liquidating distribution (the "Liquidation Distribution") in an amount equal to the Liquidation Preference. If, upon a Liquidation, the assets of the Corporation, or proceeds thereof, distributable among the holders of the then outstanding shares of Series D Preferred Stock and the holders of any shares of Parity Securities ranking on a parity with the Series D Preferred Stock with respect to any distribution of assets upon Liquidation are insufficient to pay in full the amount such Liquidation Distribution and all liquidation preference payable with respect to any such Parity Securities, then the holders of Series D Preferred Stock and such Parity Securities shall share ratably in any distribution of assets in proportion to the full respective preferential amounts to which they are entitled.

4.2 The Corporation shall provide the holders of Series D Preferred Stock appearing on the stock books of the Corporation as of the date of such notice at the address of said holder shown therein with written notice of any Liquidation not less than thirty (30) days prior to the payment date stated therein, which notice shall set forth the payment date, the amount of proceeds to be paid with respect to each share of Series D Preferred Stock and each share of Senior Securities, Parity Securities and Junior Securities in connection therewith; provided that in the case of any involuntary Liquidation, the Corporation shall provide notice within ten (10) Business Days upon the Corporation becoming aware of any instituted proceeding in respect thereof.

4.3 After the payment in cash or proceeds to the holders of shares of the Series D Preferred Stock of the full amount of the Liquidation Distribution with respect to outstanding shares of Series D Preferred Stock, the holders of outstanding shares of Series D Preferred Stock shall have no right or claim, based on their ownership of shares of Series D Preferred Stock, to the remaining assets of the Corporation, if any. Whenever any such distribution shall be paid in property other than cash, the value of such distribution shall be the fair market value of such property, as determined in the good faith reasonable discretion of the Board of Directors or liquidating trustee, as the case may be, and each holder of shares of the Series D Preferred Stock shall be notified in writing of such distribution and of the value of such other securities or property at least thirty (30) days prior to the scheduled distribution. If, however, holders of a majority of the outstanding shares of Series D Preferred Stock shall give the Board of Directors written notice at least twenty (20) days prior to the scheduled distribution that such holders disagree with the value placed upon such property (other than cash) by the Board of Directors, then such holders and the Board of Directors shall attempt to agree upon a fair market value. Should such holders and the Board of Directors be unable to agree during the five-day period immediately following the

giving of the written notice of such disagreement as to the fair market value without the employment of appraisers, then the Corporation, on the one hand, and such holders, on the other hand, shall each select an appraiser experienced in the business of evaluating or appraising the market value of the relevant securities or property other than securities. The appraisers so selected (the “Initial Appraisers”) shall, on or prior to the scheduled distribution, appraise such securities or other property. If the difference between the resulting appraisals is no greater than ten percent of the higher appraisal, then the average of the appraisals shall be deemed the fair market value; otherwise, the Initial Appraisers shall select an additional appraiser (the “Additional Appraiser”), who shall be experienced in a manner similar to the Initial Appraisers. The Additional Appraiser shall then choose from the values determined by the Initial Appraisers the value that the Additional Appraiser considers closest to the fair market value of the property to be distributed, and such value shall be the fair market value. The Corporation shall pay the expenses and fees of each Appraiser. The fair market value determined pursuant to this provision shall apply to all holders of Series D Preferred Stock, including any holders of Series D Preferred Stock not providing notice of a challenge pursuant to this provision.

4.4 For purposes of this Section 4, the sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Corporation (by way of merger, consolidation or otherwise) shall not be deemed a voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, nor shall the merger, consolidation, statutory exchange or any other business combination transaction of the Corporation into or with any other Person or the merger, consolidation, statutory exchange or any other business combination transaction of any other Person into or with the Corporation be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

#### Section 5. Voting Rights.

5.1 Voting Generally. Except as otherwise set forth herein or to the extent required by the DGCL, the holders of the Series D Preferred Stock shall have no voting rights, and their consent shall not be required for taking any corporate action.

5.2 Adverse Changes. So long as any shares of Series D Preferred Stock remain outstanding, the affirmative vote or consent of the holders of at least a majority of the shares of Series D Preferred Stock outstanding at such time, voting together as a separate class, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, will be necessary for effecting or validating any of the following actions by the Corporation, whether or not such approval is required pursuant to the DGCL:

(i) any amendment or waiver (whether by merger, consolidation or otherwise) of any provision of the Organizational Documents (as defined in the Securities Purchase Agreement) of the Corporation or any of its Subsidiaries, in either case, in a way that materially and adversely affects the rights, preferences and privileges or power of the Series D Preferred Stock;

(ii) the authorization, creation or issuance of, or the combination or reclassification of any securities into (in each case whether by merger, consolidation, or otherwise), any additional shares of Series D Preferred Stock, any Parity Securities or any Senior Securities or any other class or series of Capital Stock of the Corporation or its Subsidiaries ranking senior to (or otherwise having a priority on payment to), or on a parity basis with, the Series D Preferred Stock as to dividend or distribution rights, redemption rights or rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation;

(iii) the declaration or payment of any dividend or distribution on, or redemption or repurchase of, any issued and outstanding shares of Common Stock or any other Junior Securities; provided that the Corporation may (a) acquire shares of Common Stock or Junior Securities in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of present or former employees or directors of the Corporation and its Subsidiaries for the purposes of satisfying applicable taxes or netting of applicable exercise price or otherwise as required by any such plan, agreement or arrangement; and (b) acquire Junior Securities as a result of an exchange or conversion of such shares of Junior Securities for any other shares of Junior Securities and purchase any fractional shares of Junior Securities in connection therewith; and

(iv) the incurrence of Indebtedness, other than (a) any Indebtedness that would be permitted to be incurred under both the New Term Loan and the New ABL, (b) without duplication of the foregoing, any Indebtedness incurred to refinance or replace Indebtedness outstanding on the Issuance Date (including successive refinancings or replacements), in an aggregate principal amount at maturity not to exceed the sum of (1) the principal amount at maturity of the Indebtedness being refinanced, (2) accrued and unpaid interest on the Indebtedness being refinanced, (3) premiums, fees and expenses payable in connection with the repayment of such and provided that after such incurrence the Corporation and its Subsidiaries would not have a Consolidated Net Leverage Ratio greater than 3.50:1.00, and (c) any Indebtedness, the net proceeds of which are contemporaneously used to redeem outstanding shares of Series D Preferred Stock;

(v) the making of any Dispositions unless (a) such Dispositions are otherwise permitted under the New Term Loan and the New ABL and (b) the Corporation uses the Net Cash Proceeds from such Disposition to permanently repay Indebtedness and extinguish all commitments for the Indebtedness and, insofar as there are any remaining Net Cash Proceeds from any Dispositions after repayment and extinguishment of all such Indebtedness in excess of \$25 million, such excess is applied to redeem shares of Series D Preferred Stock;

(vi) any voluntary Liquidation or bankruptcy filing; and

(vii) agree to take any of the foregoing actions.

provided, however, that the authorization or creation of, or the increase in the number of authorized or issued shares of, or any securities convertible into shares of, or the reclassification of any security (other than the Series D Preferred Stock) into, or the issuance of, Junior Securities will not require the vote of the holders of the Series D Preferred Stock as long as the proceeds from any such issuance consist entirely of cash and the net proceeds are used by the Corporation to repay indebtedness of the Corporation and/or its Subsidiaries from any such issuance (after payment of related expenses and underwriting, placement agent or broker fees in connection with such issuance) or to redeem shares of Series D Preferred Stock and/or pay any Series D Dividend, or pursuant to an equity incentive plan.

5.3 Remedies. In addition to, and without limiting, any of the rights and remedies the holders of Series D Preferred Stock would have at law or in equity, in the event of a breach of any provision of Section 5.2 by the Corporation or its Subsidiaries: (a) the Corporation shall be required to give prompt notice of such breach to the holders of Series D Preferred Stock; (b) the then effective Cash Dividend Rate and Preference Accrual Rate shall each increase by an amount equal to 4.0% per annum above the amount otherwise applicable under Section 3.1 hereof (and subject to additional increases pursuant to the terms thereof) from the date such breach first occurred until the date (if any) that the Corporation shall have remedied such breach; and (c) in the event that the Corporation shall not have cured such breach within thirty (30) days of the first occurrence of the breach, each holder of Series D Preferred Stock shall have the right to require the redemption of, and the Corporation shall be required to redeem, any or all of its shares of Series D Preferred Stock in accordance with the terms and procedures set forth in Section 7.2(i)(b).

Section 6. Non-Convertible Stock. The shares of Series D Preferred Stock shall not be convertible into or exchangeable for shares of Common Stock or any other security.

Section 7. Redemption.

7.1 Optional Redemption by the Corporation.

(i) The Corporation has the option in its sole discretion, from time to time, other than in connection with a Liquidation pursuant to Section 4.1, to redeem all or a portion of (but in no event in increments of fewer than 25,000 shares of Series D Preferred Stock) the then outstanding shares of Series D Preferred Stock at a redemption price per share of Series D Preferred Stock payable in cash on the Optional Redemption Date via wire transfer to an account designated by the holder of Series D Preferred Shares being redeemed in an amount equal to the Liquidation Preference then in effect of such share of Series D Preferred Stock (the "Redemption Price"). If the Corporation redeems only a portion of the then outstanding shares of Series D Preferred Stock, the shares of Series D Preferred Stock subject to such redemption shall be allocated pro rata among the holders of the then outstanding shares of Series D Preferred Stock.

(ii) The Corporation may exercise its redemption option under this Section 7.1 (or under Section 7.2(ii)) in the event of a Change of Control) by delivery of a written notice to the holders of the shares of Series D Preferred Stock (the "Optional Redemption Notice"). Such redemption shall be completed on a date specified in the Optional Redemption Notice, which shall be not less than five (5) Business Days and not more than sixty (60) Business Days following the date of the Optional Redemption Notice (the "Optional Redemption Date") and may, subject to the Corporation's discretion, be subject to one or more conditions precedent. The Optional Redemption Notice shall state (a) the Redemption Price, (b) the Optional Redemption Date, (c) that dividends on the shares of Series D Preferred Stock will cease to accrue on the Optional Redemption Date, (d) that the holder is to surrender to the Corporation, in the manner and at the price designated, its shares of Series D Preferred Stock in accordance with the notice and the applicable procedures of any applicable depository or transfer agent, and (e) if fewer than all of the shares of Series D Preferred Stock held by any holder are to be redeemed, then the number of shares of Series D Preferred Stock held by such holder to be redeemed.

7.2 Optional Redemption Upon a Change of Control.

(i) Redemption at Holder's Option. If at any time, a Change of Control (as defined in the Securities Purchase Agreement) of the Corporation occurs and there are shares of Series D Preferred Stock then outstanding, each holder shall have the right, at such holder's option, to require the Corporation to redeem all or a portion of such holder's shares of Series D Preferred Stock for cash at the Redemption Price then in effect on the Holder Redemption Date.

(a) The Corporation shall give written notice (the "Redemption Event Notice") promptly, and in no event later than the applicable Holder Redemption Notice Date, to all holders of record of shares of Series D Preferred Stock. Each Redemption Event Notice shall specify (i) the events causing the Change of Control, (ii) the Redemption Price, (iii) the Holder Redemption Date, and (iv) the procedures that holders must follow in order to require the Corporation to redeem the shares of Series D Preferred Stock, which shall include a form of Demand Notice and delivery instructions for the same.

(b) Redemption of shares of Series D Preferred Stock pursuant to this Section 7.2(i) shall be made, at the option of the holder, upon written notice (a "Demand Notice") delivered to the Corporation prior to the Holder Redemption Date that the Corporation redeem in cash all or a portion of the shares of Series D Preferred Stock held by such holder. As promptly as practicable following the date of the applicable Demand Notice (but in no event later than the applicable Holder Redemption Date), each holder shall (i) in the event that the shares of Series D Preferred Stock to be redeemed are uncertificated, such shares shall be redeemed in accordance with the notice and applicable procedures of any depository or transfer agent and no further action on the part of the holders of such stock shall be required, or (ii) in the event that the shares of Series D Preferred Stock are certificated, surrender the certificate or certificates representing the Series D Preferred Stock requested to be redeemed by such holder, duly endorsed (or otherwise in proper form for transfer, as determined by the Corporation), in the manner and at the place designated in the Redemption Event Notice. On the applicable Holder Redemption Date, the full Redemption Price for the shares requested to be redeemed shall be paid by the Corporation in cash to the holder as indicated on the Demand Notice and, to the extent such shares are certificated, each surrendered certificate shall be canceled and retired. The Company shall not be permitted to consummate a Change of Control unless all shares of Series D Preferred Stock required to be redeemed under this Section 7.2(i) shall be redeemed prior to or substantially concurrently with the consummation of such Change of Control.

(ii) Redemption at Corporation's Option. If at any time a Change of Control (as defined in the Securities Purchase Agreement) of the Corporation occurs and there are shares of Series D Preferred Stock then outstanding, the Corporation shall have the option in its sole discretion, to redeem all or a portion of the then outstanding shares of Series D Preferred Stock, in the manner set forth in Section 7.1(i) above, for cash at the Redemption Price then in effect on the Optional Redemption Date.

7.3 Effect of Redemption. On and after a Redemption Date, all rights of the shares of Series D Preferred Stock to be redeemed and the rights of the holders of such shares with respect to such redeemed shares of Series D Preferred Stock shall terminate with respect thereto on such Redemption Date, other than the right of the holders of the Series D Preferred Stock to receive cash in exchange thereof.

#### Section 8. Transfer; Registration.

8.1 Restrictive Legend. The shares of Series D Preferred Stock (unless and until registered under the Securities Act of 1933, as amended (the "Securities Act") or transferred pursuant to Rule 144 promulgated under the Securities Act, or any successor rule or regulation hereafter adopted by the Securities and Exchange Commission, as such rule may be amended from time to time ("Rule 144")), will be stamped or imprinted with a legend in substantially the following form:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT UNDER ANY CIRCUMSTANCES BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF WITHOUT AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY OTHER APPLICABLE SECURITIES LAWS OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE SECURITIES LAWS.

8.2 Transferability. Subject to the provisions of Section 8.1, unless otherwise provided in the Securities Purchase Agreement, any holder of Series D Preferred Stock may sell, assign, transfer, pledge or dispose of all or any portion of such holder's shares of Series D Preferred Stock at any time or from time to time.

8.3 Register; Book Entry Form. The Corporation shall keep at its principal office a register for the registration of Series D Preferred Stock. Any certificate representing Series D Preferred Stock shall be held by the Company (or the Company's transfer agent) in book-entry form, unless any Holder requests the physical delivery of such certificate. Upon the surrender of any certificate representing Series D Preferred Stock at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of shares of Series D Preferred Stock represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of shares of Series D Preferred Stock as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate, and dividends shall accrue on the Series D Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such Series D Preferred Stock represented by the surrendered certificate.

Section 9. Replacement. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing shares of Series D Preferred Stock, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation, or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at its expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Series D Preferred Stock represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

Section 10. Definitions.

As used in this Certificate of Designation:

"Additional Appraiser" has the meaning set forth in Section 4.3.

"Affiliate" means, with respect to any Person, any other Person who, directly or indirectly, controls, is controlled by, or under common control with such Person; for purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Appraiser" means any Initial Appraiser or Additional Appraiser.

"Board of Directors" means the board of directors (including any authorized committee thereof) of the Corporation.

"Business Day" means any day excluding Saturday, Sunday or any day which is a legal holiday under the laws of the State of New York or on which banking institutions are authorized or required by law or other governmental action to close.

“Capital Stock” means, with respect to any Person, (i) any capital stock of such Person, (ii) any security convertible, with or without consideration, into any capital stock of such Person, (iii) any other shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) the capital stock of such Person and (iv) any other equity interest in, or right to vote generally in elections of directors or the comparable governing body of, such Person.

“Cash Dividend Rate” has the meaning set forth in Section 3.1.

“Certificate of Incorporation” means the Corporation’s Restated Certificate of Incorporation, as amended.

“Common Stock” means, collectively, the Corporation’s Common Stock and any Capital Stock of any class of the Corporation hereafter authorized which is not limited to a fixed sum or percentage of par or stated value in respect to the rights of the holders thereof to participate in dividends or in the distribution of assets upon any liquidation, dissolution or winding up of the Corporation.

“Consolidated Net Leverage Ratio” has the meaning given such term in the New Term Loan.

“Demand Notice” has the meaning set forth in Section 7.2(i)(b).

“DGCL” has the meaning set forth in the preamble.

“Dispositions” has the meaning given to such term in the New Term Loan.

“Dividend Payment Date” has the meaning set forth in Section 3.1.

“Dividend Period” has the meaning set forth in Section 3.1.

“holder” of Series D Preferred Stock means a Person in whose name the shares of the Series D Preferred Stock are registered, which Person shall be treated by the Corporation, and any transfer agent, registrar, paying agent and conversion agent of the Corporation, as the absolute owner of the shares of Series D Preferred Stock for the purpose of making payment and settling conversions and for all other purposes; provided that, to the fullest extent permitted by law, no Person that has received shares of Series D Preferred Stock in violation of the Securities Purchase Agreement or this Certificate of Designation shall be a holder, and any such transfer agent, registrar, paying agent and conversion agent, as applicable, shall not, unless directed otherwise by the Corporation, recognize any such Person as a holder and the Person in whose name the shares of the Series D Preferred Stock were registered immediately prior to such transfer shall remain the holder of such shares.

“Holder Redemption Date” means the date specified by the Corporation in the Redemption Event Notice, which date shall be no earlier than ten (10) Business Days following the Redemption Event Notice is given.

“Holder Redemption Notice Date” shall be the date on which the Corporation is required to give notice of a Change of Control, which shall be no later than the earlier of (i) ten (10) Business Days prior to a Change of Control or (ii) five (5) Business Days following the entry into any agreement by the Corporation that, if consummated, would result in a Change of Control.

“Indebtedness” has the meaning given to such term in the Term Loan.

“Initial Appraisers” has the meaning set forth in Section 4.3.

“Initial Liquidation Preference” means \$1,000 per share of Series D Preferred Stock.

“Issuance Date” means March 22, 2021.

“Junior Securities” means any Capital Stock of the Corporation, except for the Series D Preferred Stock or any other class or series of the Corporation’s Capital Stock which is senior to or *pari passu* with the Series D Preferred Stock with respect to preference and priority on dividends or liquidation as permitted by the terms of the Series D Preferred Stock hereunder.

“Liquidation Preference” means, with respect to any share of Series D Preferred Stock, on any given date, an amount in cash equal to the greater of (i) the Initial Liquidation Preference as such amount may have been increased for any Liquidation Preference Adjustment and any Specified Date Adjustment, plus, without duplication, all accrued and unpaid distributions or dividends, and (ii) the Minimum Amount.

“Liquidation Preference Adjustment” has the meaning set forth in Section 3.1.

“Minimum Amount” means an amount equal to 140% of the Initial Liquidation Preference.

“New Credit Facility” means (i) that certain Term Loan Credit Agreement, entered into on March 22, 2021, by and between the Company, as borrower, and Oaktree Fund Administration, LLC, as administrative agent (the “New Term Loan”), as in effect on the Issuance Date and (ii) that certain Credit Agreement, entered into on March 22, 2021, by and among the Company, the other loan parties thereto, the lender parties thereto, and JPMorgan Chase Bank, N.A. (the “New ABL”), as in effect on the Issuance Date.

“Optional Redemption Date” has the meaning set forth in Section 7.1(ii).

“Optional Redemption Notice” has the meaning set forth in Section 7.1(ii).

“Parity Securities” means any Capital Stock of the Corporation, the terms of which provide that such class or series ranks on a parity with the Series D Preferred Stock with respect to preference and priority on dividends or liquidation of the Corporation as permitted by the terms of the Series D Preferred Stock hereunder.

“Person” means any individual, partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, unincorporated organization or governmental entity (or any department, agency or political subdivision thereof).

“Preference Accrual Rate” has the meaning set forth in Section 3.1.

“Redemption Date” means, as applicable, the Optional Redemption Date or Holder Redemption Date.

“Redemption Event Notice” has the meaning set forth in Section 7.2(i)(a).

“Securities Purchase Agreement” shall mean that certain Securities Purchase Agreement, dated as of March 22, 2021, among the Corporation and the other parties thereto.

“Senior Securities” means any Capital Stock of the Corporation, the terms of which expressly provide that such class or series ranks senior to the Series D Preferred Stock with respect to preference and priority on dividends or liquidation of the Corporation as permitted by the terms of the Series D Preferred Stock hereunder.

“Series D Dividend” has the meaning set forth in Section 3.1.

“Specified Date” means the March 22, 2026.

“Specified Date Adjustment” has the meaning set forth in Section 3.1.

“Subsidiary” means, as to any Person, any corporation or other entity of which: (a) at least a majority of the outstanding equity interest having by the terms thereof ordinary voting power to elect a majority of the board of directors or similar governing body of such corporation or other entity (irrespective of whether or not at the time any equity interest of any other class or classes of such corporation or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more of its Subsidiaries; (b) such Person or a Subsidiary of such Person is a general partner or, in the case of a limited liability company, the sole or managing member or manager thereof; or (c) any corporation or other entity as to which such Person consolidates for accounting purposes; *provided*, however, for the avoidance of doubt that the Wuxi JV (as defined in the Securities Purchase Agreement) shall not be considered a Subsidiary of the Corporation for purposes of this Certificate of Designation.

Section 11. Amendment and Waiver. Except as set forth herein, no amendment, modification, alteration, repeal or waiver (whether by merger, consolidation or otherwise) of any provision of this Certificate of Designation shall be binding or effective without the prior written consent of the holders of a majority of the Series D Preferred Stock outstanding at the time such action is taken.

Section 12. Notices. Except as otherwise expressly provided hereunder, all notices referred to herein shall be in writing and all notices hereunder shall be deemed to have been given upon the earlier of receipt thereof or three (3) Business Days after the mailing thereof if sent by registered or certified mail with postage prepaid, or by private courier service addressed: (i) if to the Corporation, to its office at NN, Inc., 6210 Ardrey Kell Road, Charlotte, North Carolina 28277 (Attention: General Counsel); (ii) if to any holder, to such holder at the address of such holder as listed in the stock record books of the Corporation; or (iii) to such other address as the Corporation or any such holder, as the case may be, shall have designated by notice similarly given.

Section 13. Other Rights. The shares of Series D Preferred Stock shall not have any rights, preferences, privileges or voting powers or relative, participating, optional or other special rights, or qualifications, limitations or restrictions thereof, other than as set forth herein or in the Certificate of Incorporation or as provided by applicable law and regulation.

Section 14. Severability. Whenever possible, each provision hereof shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision hereof is held to be prohibited by or invalid under applicable law, then such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise adversely affecting the remaining provisions hereof. If a court of competent jurisdiction should determine that a provision hereof would be valid or enforceable if a period of time were extended or shortened or a particular percentage were increased or decreased, then such court may make such change as shall be necessary to render the provision in question effective and valid under applicable law.

Section 15. Headings. The headings of the various sections and subsections hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

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Section 16. Cancellation of Series D Preferred Stock. Any share of Series D Preferred Stock acquired (whether by repurchase, redemption or otherwise) by the Corporation or any of its Subsidiaries shall immediately upon acquisition of such shares of Series D Preferred Stock be cancelled and may not be held in treasury or otherwise by the Corporation or any of its Subsidiaries.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation to be signed and acknowledged by the undersigned this 22nd day of March 2021.

**NN, INC.**

By: /s/ Matthew S. Heiter

Name: Matthew S. Heiter

Title: Senior Vice President, General Counsel and Secretary

*Signature Page to  
Certificate of Designation of Series D Perpetual Preferred Stock of NN, Inc.*

NN, INC.  
COMMON STOCK WARRANT

***THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR QUALIFIED UNDER ANY STATE OR FOREIGN SECURITIES LAWS AND MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED OR ASSIGNED UNLESS (I) A REGISTRATION STATEMENT COVERING SUCH SHARES IS EFFECTIVE UNDER THE ACT AND IS QUALIFIED UNDER APPLICABLE STATE AND FOREIGN LAW OR (II) THE TRANSACTION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS UNDER THE ACT AND THE QUALIFICATION REQUIREMENTS UNDER APPLICABLE STATE AND FOREIGN LAW AND, IF THE CORPORATION REQUESTS, AN OPINION SATISFACTORY TO THE CORPORATION TO SUCH EFFECT HAS BEEN RENDERED BY COUNSEL.***

Warrant Certificate No.: CSW-1

Original Issue Date: March 22, 2021

Reissuance Date, if any:

FOR VALUE RECEIVED, NN, Inc., a Delaware corporation (the "Company"), hereby certifies that NHTV Nevada Holdings LP or its registered assigns (the "Holder") is entitled to purchase from the Company 1,900,000 duly authorized, validly issued, fully paid and nonassessable shares of Common Stock at a purchase price per share of \$0.01 (the "Exercise Price"), all subject to the terms, conditions and adjustments set forth below in this Warrant.

1. Definitions. As used in this Warrant, the following terms have the respective meanings set forth below:

"Affiliate" means, with respect to any Person, any other Person that directly or indirectly controls, is controlled by, or is under common control with, such Person, it being understood for purposes of this definition that "control" of a Person means the power directly or indirectly to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

"Aggregate Exercise Price" means an amount equal to the product of (a) the number of Warrant Shares in respect of which this Warrant is then being exercised pursuant to Section 3 hereof, multiplied by (b) the Exercise Price.

"Business Day" means any day, except a Saturday, Sunday or legal holiday, on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

"Change of Control" has the meaning ascribed to such term in the Purchase Agreement.

"Common Stock" means the common stock, par value \$0.01 per share, of the Company, and any capital stock into which such Common Stock shall have been converted, exchanged or reclassified following the date hereof.

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

“Excluded Issuances” means any issuance of shares of any equity securities pursuant to an employee stock option plan, management incentive plan, restricted stock plan, stock purchase plan or stock, ownership plan or similar benefit plan, similar program or similar agreement as approved by the Board of Directors and shareholders of the Company.

“Exercise Date” means, for any given exercise of this Warrant, the date on which the conditions to such exercise as set forth in Section 3 shall have been satisfied at or prior to 5:00 p.m., New York City, NY time, on a Business Day.

“Exercise Period” has the meaning set forth in Section 2.

“Exercise Price” has the meaning set forth in the preamble.

“Fair Market Value” of the Common Stock on any date of determination means (i) if the Common Stock is listed for trading on a national securities exchange, the closing sale price per share of the Common Stock on the trading day immediately prior to such date of determination, as reported by the national securities exchange, (ii) if the Common Stock is not listed on a national securities exchange but is listed in the over-the-counter market, the average last quoted sale price for the Common Stock (or, if no sale price is reported, the average of the high bid and low asked price for such date) on the trading day immediately prior to such date of determination, in the over-the-counter market as reported by OTC Markets Group Inc. or other similar organization, or (iii) in all other cases, (A) as agreed upon in good faith by the Holder and the Company or (B) as determined by an independent accounting, appraisal or investment banking firm or consultant of nationally recognized standing that is retained at the sole cost and expense of the Company.

“Holder” has the meaning set forth in the preamble.

“Person” means any individual, sole proprietorship, partnership, limited liability company, corporation, joint venture, trust, incorporated organization or government or department or agency thereof.

“Purchase Agreement” means that certain Securities Purchase Agreement among the Company and the other parties thereto, dated as of March 22, 2021.

“Warrant” means this Warrant and all warrants issued upon division or combination of, or in substitution for, this Warrant.

“Warrant Shares” means the shares of Common Stock or other capital stock of the Company then purchasable upon exercise of this Warrant in accordance with the terms of this Warrant.

2. Term of Warrant. Subject to the terms and conditions hereof, at any time or from time to time after the date hereof and prior to 5:00 p.m., New York City, NY time, on the sixth anniversary of the Original Issue Date or, if such day is not a Business Day, on the next preceding Business Day (the “Exercise Period”), the Holder of this Warrant may exercise this Warrant for all or any part of the Warrant Shares purchasable hereunder (subject to adjustment as provided herein).

3. Exercise of Warrant.

(a) Exercise Procedure. This Warrant may be exercised from time to time on any Business Day during the Exercise Period, for all or any part of the unexercised Warrant Shares, upon:

(i) surrender of this Warrant to the Company at its then principal executive offices (or an indemnification undertaking with respect to this Warrant in the case of its loss, theft or destruction), together with duly completed and executed exercise notice in the form attached hereto as Exhibit A (the "Notice of Exercise"); and

(ii) payment to the Company of the Aggregate Exercise Price in accordance with Section 3(b) (unless the Holder elects the cashless exercise procedures set forth in Section 3(g)).

(b) Payment of the Aggregate Exercise Price. Payment of the Aggregate Exercise Price shall be made by delivery to the Company of a certified or official bank check payable to the order of the Company or by wire transfer of immediately available funds to an account designated in writing by the Company, in the amount of such Aggregate Exercise Price.

(c) Delivery of Warrant Shares Upon Exercise. In accordance with Section 3(a) hereof, the Company shall, as promptly as practicable, and in any event within three (3) Business Days thereafter, instruct the transfer agent (the "Transfer Agent") for the Common Stock to record the issuance of the Warrant Shares purchased hereunder to the Holder in book-entry form pursuant to the Transfer Agent's regular procedures. The stock certificate or certificates so delivered shall be, to the extent possible, in such denomination or denominations as the exercising Holder shall reasonably request and shall be registered in the name of the Holder or, subject to compliance with Section 5 below, such other Person's name as shall be designated. This Warrant shall be deemed to have been exercised and such certificate or certificates of Warrant Shares shall be deemed to have been issued, and the Holder or any other Person so designated to be named therein shall be deemed to have become a holder of record of such Warrant Shares for all purposes, as of the Exercise Date.

(d) Delivery of New Warrant. Unless the purchase rights represented by this Warrant shall have expired or shall have been fully exercised, the Company shall, at the time of delivery of the certificate or certificates representing the Warrant Shares being issued in accordance with Section 3(c) hereof, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unexpired and unexercised Warrant Shares called for by this Warrant. Such new Warrant shall in all other respects be identical to this Warrant.

(e) Reservation of Shares. During the Exercise Period, the Company shall at all times reserve and keep available out of its authorized but unissued Common Stock or other securities constituting Warrant Shares, solely for the purpose of issuance upon the exercise of this Warrant, the maximum number of Warrant Shares issuable upon the exercise of this Warrant, and the par value per Warrant Share shall at all times be less than or equal to the applicable Exercise Price. The Company shall not increase the par value of any Warrant Shares receivable upon the exercise of this Warrant above the Exercise Price then in effect, and shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable shares of Common Stock upon the exercise of this Warrant.

(f) Exercise Restriction. Notwithstanding anything herein to the contrary, the Company shall not effect the exercise of any portion of this Warrant, and the Holder shall not have the right to exercise any portion of this Warrant, and any such exercise shall be null and void and

treated as if never made, to the extent that (1) after giving effect to such exercise, the number of Warrant Shares then beneficially owned by the Holder and its Affiliates and any other Persons or entities whose beneficial ownership of Common Stock, for purposes of Section 13(d) of the Securities Exchange Act of 1934 (as amended, the “Exchange Act”), would be aggregated with the Holder’s (including any shares held by any “group” of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to exchange, convert, exercise or purchase similar to the limitation set forth herein) would exceed 19.99% of the total number of Common Stock issued and outstanding or (2) such issuance, when aggregated with any other Common Stock theretofore or simultaneously therewith issued to or otherwise beneficially owned by the Holder and its Affiliates and any other Persons or entities whose beneficial ownership of Common Stock would be aggregated with the Holder’s for purposes of Section 13(d) of the Exchange Act (including any shares held by any “group” of which the Holder is a member, but excluding shares beneficially owned by virtue of the ownership of securities or rights to acquire securities that have limitations on the right to exchange, convert, exercise or purchase similar to the limitation set forth herein) would otherwise result in a “change of control” of the Company within the meaning of Nasdaq Listing Rule 5635(b); except that such limitation shall not apply in the event that the Company obtains all necessary shareholder approvals for such exchange in accordance with the Nasdaq Listing Rules. For purposes hereof, “group” has the meaning set forth in Section 13(d) of the Exchange Act and applicable regulations of the Securities and Exchange Commission, and the percentage held by the Holder shall be determined in a manner consistent with the provisions of Section 13(d) of the Exchange Act.

(g) Cashless Exercise. In lieu of paying the Aggregate Exercise Price for the Warrant Shares specified in the applicable Notice of Exercise by wire transfer or check drawn on a United States bank pursuant to Section 3(a), the Holder may elect to exercise the purchase rights represented by this Warrant by authorizing the Company to withhold and not issue to the Holder, in payment of the Exercise Price thereof, a number of such Warrant Shares equal to (x) the number of Warrant Shares for which the Warrant is being exercised, multiplied by (y) the Exercise Price, and divided by (z) the Fair Market Value of a share of Common Stock on the Exercise Date (any such exercise, a “Cashless Exercise”); and such withheld Warrant Shares shall no longer be issuable under the Warrant, and the Holder shall not have any rights or be entitled to any payment with respect to such withheld Warrant Shares. The Company and Holder agree to treat the Cashless Exercise of this Warrant pursuant to this Section 2(g) as a recapitalization under Section 368(a)(1)(E) of the Internal Revenue Code of 1986, as amended, unless otherwise required by applicable law. In the event of a Change of Control in which the Common Stock is converted into solely the right to receive cash upon closing of such Change of Control, if this Warrant has not previously been exercised in full on an Exercise Date occurring before the third Business Day prior to the consummation of such Change of Control, any unexercised portion of this Warrant shall be deemed exercised in full, without the delivery of a Notice of Exercise, effective immediately prior to the consummation of such Change of Control and the Holder shall be entitled to receive cash in an amount equal to the amount of cash payable in such Change of Control in respect of a number of shares of Common Stock equal to the number of Warrant Shares that would be deliverable upon an exercise of this Warrant in full immediately prior to consummation of such Change of Control pursuant to this Section 2(g) of the unexercised portion of this Warrant, where Fair Market Value of a share of Common Stock in such an exercise is deemed for these purposes to be the cash payable in respect of a share of Common Stock in such Change of Control; provided, that, for the avoidance of doubt, if the cash payable in respect of a share of Common Stock in such Change of Control in which the Common Stock is converted into solely the right to receive cash upon closing of such Change of Control is less than the then-applicable Exercise Price, then upon consummation of such Change of Control the unexercised portion of this Warrant shall be cancelled for no consideration.

4. Adjustment to Number of Warrant Shares. In order to prevent dilution of the purchase rights granted under this Warrant, the number of Warrant Shares issuable upon exercise of this Warrant shall be subject to adjustment from time to time as provided in this Section 4 (in each case, after taking into consideration any prior adjustments pursuant to this Section 4).

(a) Adjustment to Number of Warrant Shares Upon Stock Dividends, Certain Issuances, Subdivisions or Combinations of Common Stock. If the Company shall, at any time or from time to time after the Original Issue Date, issue a stock dividend, issue Common Stock (or any securities convertible into or exercisable for Common Stock) to employees, independent contractors or consultants in accordance with an equity incentive plan or otherwise or subdivides (by any stock split, recapitalization or otherwise) its outstanding shares of Common Stock into a greater number of shares, the number of Warrant Shares issuable upon exercise of this Warrant immediately prior to any such stock dividend, stock issuance to employees or consultants or subdivision shall be proportionately increased. If the Company at any time combines (by combination, reverse stock split or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the number of Warrant Shares issuable upon exercise of this Warrant immediately prior to such combination shall be proportionately decreased. Any adjustment under this Section 4(a) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(b) Adjustment to Number of Warrant Shares Upon Reorganization, Reclassification, Consolidation or Merger. In the event of any (i) capital reorganization of the Company, (ii) reclassification of the stock of the Company (other than a change in par value or from par value to no par value or from no par value to par value or as a result of a stock dividend or subdivision, split-up or combination of shares), (iii) consolidation or merger of the Company with or into another Person, (iv) sale of all or substantially all of the Company's assets to another Person or (v) other similar transaction (other than any such transaction covered by Section 4(a)), in each case which entitles the holders of Common Stock to receive (either directly or upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock, each Warrant shall, immediately after such reorganization, reclassification, consolidation, merger, sale or similar transaction, remain outstanding and shall thereafter, in lieu of or in addition to (as the case may be) the number of Warrant Shares then exercisable under this Warrant, be exercisable for the kind and number of shares of stock or other securities or assets of the Company or of the successor Person resulting from such transaction to which the Holder would have been entitled upon such reorganization, reclassification, consolidation, merger, sale or similar transaction if the Holder had exercised this Warrant in full immediately prior to the time of such reorganization, reclassification, consolidation, merger, sale or similar transaction and acquired the applicable number of Warrant Shares then issuable hereunder as a result of such exercise (without taking into account any limitations or restrictions on the exercisability of this Warrant); and, in such case, appropriate adjustment (in form and substance satisfactory to the Holder) shall be made with respect to the Holder's rights under this Warrant to insure that the provisions of this Section 4 hereof shall thereafter be applicable, as nearly as possible, to this Warrant in relation to any shares of stock, securities or assets thereafter acquirable upon exercise of this Warrant. The provisions of this Section 4(b) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales or similar transactions. The Company shall not effect any such reorganization, reclassification, consolidation, merger, sale or similar transaction unless, prior to the consummation thereof, the successor Person (if other than the Company) resulting from such reorganization, reclassification, consolidation, merger, sale or similar transaction, shall assume, by written instrument substantially similar in form and substance to this Warrant and satisfactory to the Holder, the obligation to deliver to the Holder such shares of stock, securities or assets which, in accordance with the foregoing provisions, such Holder shall be entitled to receive upon exercise of this Warrant.

(c) Other Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) other than any dividend or distribution referred to in Section 4(a) or Section 4(b) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution. To the extent that this Warrant has not been partially or completely exercised at the time of such Distribution, such portion of the Distribution shall be held in abeyance for the benefit of the Holder until the Holder has exercised this Warrant.

(d) Exceptions to Adjustment Upon Issuance of Common Stock. Anything herein to the contrary notwithstanding, there shall be no adjustment to the number of Warrant Shares issuable upon exercise of this Warrant with respect to any Excluded Issuance.

(e) Proceedings Prior to Any Action Requiring Adjustment. As a condition precedent to the taking of any action which would require an adjustment pursuant to this Section 4, the Company shall take any action which may be necessary, including obtaining regulatory, Nasdaq Stock Market or other applicable national securities exchange or stockholder approvals or exemptions, as applicable, in order that the Company may thereafter validly and legally issue as fully paid and nonassessable all shares of Common Stock that the Holder is entitled to receive upon exercise of this Warrant pursuant to this Section 4.

(f) Certificate as to Adjustment.

(i) As promptly as reasonably practicable following any adjustment of the number of Warrant Shares pursuant to the provisions of this Section 4, but in any event not later than three (3) Business Days thereafter, the Company shall furnish to the Holder a certificate of an executive officer setting forth in reasonable detail such adjustment and the facts upon which it is based and certifying the calculation thereof.

(ii) As promptly as reasonably practicable following the receipt by the Company of a written request by the Holder, but in any event not later than three (3) Business Days thereafter, the Company shall furnish to the Holder a certificate of an executive officer certifying the number of Warrant Shares or the amount, if any, of other shares of stock, securities or assets then issuable upon exercise of the Warrant.

(g) Notices. In the event:

(i) that the Company shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon exercise of the Warrant) for the purpose of entitling or enabling them to receive any dividend or other distribution, to vote at a meeting (or by written consent), to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(ii) of any capital reorganization of the Company, any reclassification of the Common Stock of the Company, any consolidation or merger of the Company with or into another Person, or sale of all or substantially all of the Company's assets to another Person; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company;

then, and in each such case, the Company shall send or cause to be sent to the Holder at least five (5) Business Days prior to the applicable record date or the applicable expected effective date, as the case may be, for the event, a written notice specifying, as the case may be, (A) the record date for such dividend, distribution, meeting or consent or other right or action, and a description of such dividend, distribution or other right or action to be taken at such meeting or by written consent, or (B) the effective date on which such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up is proposed to take place, and the date, if any is to be fixed, as of which the books of the Company shall close or a record shall be taken with respect to which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon exercise of the Warrant) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Warrant and the Warrant Shares.

5. Transfer of Warrant. Subject to the transfer conditions referred to in the legend endorsed hereon, this Warrant and all rights hereunder are transferable, in whole or in part, by the Holder without charge to the Holder, upon surrender of this Warrant to the Company at the address for notices in Section 10 below (email being sufficient) with a properly completed and duly executed assignment in the form set forth on Exhibit B. Upon such compliance, surrender and delivery and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees and in the denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant, if any, not so assigned and this Warrant shall promptly be cancelled.

6. Holder Not Deemed a Stockholder; Limitations on Liability. Other than as set forth herein, prior to the issuance to the Holder of the Warrant Shares to which the Holder is then entitled to receive upon the due exercise of this Warrant, the Holder shall not be entitled to vote or be deemed the holder of shares of capital stock of the Company for any purpose (other than for Tax purposes), nor shall anything contained in this Warrant be construed to confer upon the Holder, as such, any right to vote, give or withhold consent to any corporate action (whether any reorganization, issue of stock, reclassification of stock, consolidation, merger, conveyance or otherwise) or receive notice of meetings. In addition, nothing contained in this Warrant shall be construed as imposing any liabilities on the Holder to purchase any securities (upon exercise of this Warrant or otherwise) or as a stockholder of the Company, whether such liabilities are asserted by the Company or by creditors of the Company.

7. Replacement on Loss; Division and Combination.

(a) Replacement of Warrant on Loss. Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and upon delivery of an indemnity reasonably satisfactory to it (it being understood that a written indemnification agreement or affidavit of loss of the Holder shall be a sufficient indemnity) and, in case of mutilation, upon surrender of such Warrant for cancellation to the Company, the Company at its own expense shall execute and deliver to the Holder, in lieu hereof, a new Warrant of like tenor and exercisable for an equivalent number of Warrant Shares as the Warrant so lost, stolen, mutilated or destroyed; *provided*, that, in the case of mutilation, no indemnity shall be required if this Warrant in identifiable form is surrendered to the Company for cancellation.

(b) Division and Combination of Warrant. Subject to compliance with the applicable provisions of this Warrant as to any transfer or other assignment which may be involved in such division or combination, this Warrant may be divided or, following any such division of this Warrant, subsequently combined with other Warrants, upon the surrender of this Warrant or Warrants to the Company at its then principal executive offices, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the respective Holders or their agents or attorneys. Subject to compliance with the applicable provisions of this Warrant as to any transfer or assignment which may be involved in such division or combination, the Company shall at its own expense execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants so surrendered in accordance with such notice. Such new Warrant or Warrants shall be of like tenor to the surrendered Warrant or Warrants and shall be exercisable in the aggregate for an equivalent number of Warrant Shares as the Warrant or Warrants so surrendered in accordance with such notice.

8. Compliance with the Act. The Holder, by acceptance of this Warrant, agrees to comply in all respects with the provisions of this Section 8 and the restrictive legend requirements set forth on the face of this Warrant and further agrees that such Holder shall not offer, sell or otherwise dispose of this Warrant or any Warrant Shares to be issued upon exercise hereof except under circumstances that will not result in a violation of the Act. This Warrant and all Warrant Shares issued upon exercise of this Warrant (unless registered under the Act) shall be stamped or imprinted with a legend in substantially the following form:

“THIS WARRANT AND THE SECURITIES ISSUABLE UPON EXERCISE OF THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR QUALIFIED UNDER ANY STATE OR FOREIGN SECURITIES LAWS AND MAY NOT BE OFFERED FOR SALE, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED OR ASSIGNED UNLESS (I) A REGISTRATION STATEMENT COVERING SUCH SHARES IS EFFECTIVE UNDER THE ACT AND IS QUALIFIED UNDER APPLICABLE STATE AND FOREIGN LAW OR (II) THE TRANSACTION IS EXEMPT FROM THE REGISTRATION AND PROSPECTUS DELIVERY REQUIREMENTS UNDER THE ACT AND THE QUALIFICATION REQUIREMENTS UNDER APPLICABLE STATE AND FOREIGN LAW AND, IF THE CORPORATION REQUESTS, AN OPINION SATISFACTORY TO THE CORPORATION TO SUCH EFFECT HAS BEEN RENDERED BY COUNSEL.”

9. Warrant Register. The Company shall keep and properly maintain at its principal executive offices books for the registration of the Warrant and any transfers thereof. The Company may deem and treat the Person in whose name the Warrant is registered on such register as the Holder thereof for all purposes, and the Company shall not be affected by any notice to the contrary, except any assignment, division, combination or other transfer of the Warrant effected in accordance with the provisions of this Warrant.

10. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10).

If to the Company: NN, Inc.  
6210 Ardrey Kell Road  
Charlotte, NC 28277  
Attention: Matthew S. Heiter, Senior Vice President and General Counsel  
E-mail: matt.heiter@nninc.com

with a copy to: Bass, Berry & Sims PLC  
The Tower at Peabody Place  
100 Peabody Place, Suite 1300  
Attention: Richard Mattern  
E-mail: rmattern@bassberry.com

If to the Holder: To such Holder at the address of such Holder as listed in the stock record books of the Company.

11. Cumulative Remedies. Except to the extent expressly provided to the contrary, the rights and remedies provided in this Warrant are cumulative and are not exclusive of, and are in addition to and not in substitution for, any other rights or remedies available at law, in equity or otherwise.

12. Equitable Relief. Each of the Company and the Holder acknowledges that a breach or threatened breach by such party of any of its obligations under this Warrant would give rise to irreparable harm to the other party hereto for which monetary damages would not be an adequate remedy and hereby agrees that in the event of a breach or a threatened breach by such party of any such obligations, the other party hereto shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction.

13. Entire Agreement. This Warrant, together with the Purchase Agreement, constitutes the sole and entire agreement of the parties to this Warrant with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Warrant and the Purchase Agreement, the statements in the body of this Warrant shall control.

14. Successor and Assigns. This Warrant and the rights evidenced hereby shall be binding upon and shall inure to the benefit of the parties hereto and the successors of the Company and the successors and permitted assigns of the Holder. Such successors and/or permitted assigns of the Holder shall be deemed to be a Holder for all purposes hereunder.

15. No Third-Party Beneficiaries. This Warrant is for the sole benefit of the Company and the Holder and their respective successors and, in the case of the Holder, permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Warrant.

16. Headings. The headings in this Warrant are for reference only and shall not affect the interpretation of this Warrant.
17. Amendment and Modification; Waiver. Except as otherwise provided herein, this Warrant may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by the Company or the Holder of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Warrant shall operate or be construed 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.
18. Severability. If any term or provision of this Warrant is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Warrant or invalidate or render unenforceable such term or provision in any other jurisdiction.
19. Governing Law. This Warrant shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Delaware.
20. Submission to Jurisdiction. Any legal suit, action or proceeding arising out of or based upon this Warrant or the transactions contemplated hereby may be instituted in the federal courts of the United States of America or the Chancery Court of the State of Delaware in each case located in the city of Wilmington, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by certified or registered mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. The parties irrevocably and unconditionally waive any objection to the laying of venue of any suit, action or any proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.
21. Waiver of Jury Trial. Each party acknowledges and agrees that any controversy which may arise under this Warrant is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Warrant or the transactions contemplated hereby.
22. Counterparts. This Warrant may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Warrant delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Warrant.
23. No Strict Construction. This Warrant shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

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*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the Company has duly executed this Warrant as of the Original Issue Date.

**NN, INC.**

By: /s/ Matthew S. Heiter

Name: Matthew S. Heiter

Title: Senior Vice President, General Counsel and Secretary

*Signature Page to Common Stock Warrant*

**EXHIBIT A**

**NOTICE OF EXERCISE**

To: NN, INC.

Reference is made to that certain Common Stock Purchase Warrant (the "Warrant") issued by NN, Inc. (the "Company") on March 22, 2021. Capitalized terms used but not otherwise defined herein shall the respective meanings give thereto in the Warrant.

(1) The undersigned Holder of the Warrant hereby elects to exercise the Warrant for \_\_\_\_\_ Warrant Shares, subject to (check one):

- delivery of the aggregate Exercise Price for the Warrant Shares as to which the Warrant is so exercised; or
- tender of \_\_\_\_\_ Warrant Shares pursuant to the cashless exercise provisions of Section 3(g) of the Warrant.

The undersigned Holder hereby instructs the Company to issue the applicable number of Warrant Shares, or the net number of shares of Common Stock issuable upon exercise of the Warrant pursuant to the cashless exercise provisions of Section 2(e) of the Warrant, in the name of the undersigned Holder.

(2) The undersigned Holder hereby represents and warrants to the Company that, as of the date hereof:

a) Experience; Accredited Investor Status. The Holder (i) is an accredited investor as that term is defined in Rule 501 of Regulation D promulgated under the Securities Act, (ii) is capable of evaluating the merits and risks of its investment in the Company, (iii) has the capacity to protect its own interests, and (iv) has the financial ability to bear the economic risk of its investment in the Company.

b) Company Information. The Holder has been provided access to all information regarding the business and financial condition of the Company, its expected plans for future business activities, material contracts, intellectual property, and the merits and risks of its purchase of the Warrant Shares, which it has requested or otherwise needs to evaluate an investment in the Warrant Shares. It has had an opportunity to discuss the Company's business, management and financial affairs with directors, officers and management of the Company and has had the opportunity to review the Company's operations and facilities. It has also had the opportunity to ask questions of, and receive answers from, the Company and its management regarding the terms and conditions of this investment and all such questions have been answered to its satisfaction.

c) Investment. The Holder has not been formed solely for the purpose of making this investment and is acquiring the Warrant Shares for investment for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution of any part thereof. It understands that the Warrant Shares have not been registered under the Securities Act or applicable state and other securities laws and are being issued by reason of a specific exemption from the registration provisions of the Securities Act and applicable state and other securities laws, the availability of which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of its representations as expressed herein.

d) Transfer Restrictions. The Holder acknowledges and understands that (i) transfers of the Warrant Shares are subject to transfer restrictions under the federal securities laws and (ii) it may have to bear the economic risk of this investment for an indefinite period of time unless the Warrant Shares are subsequently registered under the Securities Act and applicable state and other securities laws or unless an exemption from such registration is available.

Name of Registered Owner: \_\_\_\_\_

Signature of Authorized Signatory of Registered Owner: \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**

**ASSIGNMENT FORM**

*(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)*

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name:

(Please Print)

Address:

(Please Print)

Dated: \_\_\_\_\_, \_\_\_\_\_

Holder's Signature: \_\_\_\_\_

Holder's Address: \_\_\_\_\_

**SECURITIES PURCHASE AGREEMENT**

between

**NN, INC.**

and

**THE PURCHASER PARTY HERETO**

March 22, 2021

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EXHIBIT A – Form of Certificate of Designation for the Series D Preferred Stock

EXHIBIT B – Form of Warrant

EXHIBIT C – Form of Board Observer Agreement

EXHIBIT D – Form of Legal Opinion

**SECURITIES PURCHASE AGREEMENT**

This **SECURITIES PURCHASE AGREEMENT**, dated as of March 22, 2021 (this "Agreement"), is entered into by and among **NN, INC.**, a Delaware corporation (the "Company"), and **NHTV Nevada Holdings LP**, a Delaware limited partnership (the "Purchaser").

**WHEREAS**, the Company desires to issue and sell to the Purchaser, and the Purchaser desires to purchase from the Company, the Purchased Securities (as defined below), in accordance with the provisions of this Agreement; and

**WHEREAS**, contemporaneously with the issuance and sale of the Purchased Securities, the Company shall redeem all of the outstanding shares of Series B Convertible Preferred Stock (as defined below) (the "Redemption").

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

**ARTICLE I  
DEFINITIONS**

**Section 1.01 Definitions.** As used in this Agreement, the following terms have the meanings indicated: "Affiliate" means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries' controls, is controlled by or is under common control with, the Person in question. As used herein, the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise. For the avoidance of doubt, for purposes of this Agreement, (a) the Company Entities, on the one hand, and the Purchaser, on the other, shall not be considered Affiliates and (b) the Wuxi JV shall not be considered an Affiliate of the Company or any other Company Entity for purposes of this Agreement.

"Agent" means J.P. Morgan Securities LLC.

"Agreement" has the meaning set forth in the introductory paragraph of this Agreement.

"Amended and Restated Credit Agreement" means the second amended and restated credit agreement dated as of December 19, 2019 (as amended by Amendment No. 1 to Amended and Restated Credit Agreement, dated as of July 29, 2020, and Amendment No. 2 to Amended and Restated Credit Agreement, dated as of August 22, 2020, and as it may be further amended, restated, amended and restated or otherwise modified from time to time), by and among the Company, as the Borrower, Trust Bank, as Administrative Agent, and the certain lenders named therein.

"Anti-Corruption Laws" means all laws, rules and regulations of any jurisdiction applicable to the Company or its Subsidiaries from time to time concerning or relating to bribery, money-laundering or corruption, including the US Foreign Corrupt Practices Act of 1977 and the UK Bribery Act.

Any Person shall be deemed to "beneficially own", to have "beneficial ownership" of, or to be "beneficially owning" any securities (which securities shall also be deemed "beneficially owned" by such Person) that such Person is deemed to "beneficially own" within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act.

“Balance Sheet Date” has the meaning specified in Section 3.05(b).

“Board Observer Agreement” has the meaning specified in Section 2.06(a)(ii).

“Board of Directors” means the board of directors of the Company.

“Business” means the design and manufacture of high-precision metal and plastic components and assemblies. When determined as of any date or time, the term “Business” shall include only those jurisdictions or markets where the Company then conducts the Business.

“Business Day” means any day other than a Saturday, Sunday, any federal legal holiday or day on which banking institutions in the State of New York are authorized or required by Law or other governmental action to close.

“Certificate of Designation” means the Certificate of Designation of the Series D Preferred Stock, substantially in the form attached hereto as Exhibit A, with such changes thereto as may be consented to by the parties hereto prior to the Closing; it being agreed that the parties hereto shall consent to any commercially reasonable changes as may be reasonably required by Nasdaq staff to comply with Nasdaq listing rules.

“Change of Control” shall be deemed to have occurred at such time as any of the following events shall occur:

(a) any “person” or “group”, other than the Company, its Subsidiaries or any employee benefits plan of the Company or its Subsidiaries, files, or is required by applicable law to file, a Schedule 13D (or any successor schedule, form or report) pursuant to the Exchange Act, disclosing that such person has become the direct or indirect beneficial owner of shares with a majority of the total voting power of the Company’s outstanding Common Stock or the Company becomes otherwise aware that any person or group has become the direct or indirect beneficial owner of shares with a majority of the total voting power of the Company’s outstanding Common Stock; unless such beneficial ownership arises solely as a result of a revocable proxy delivered in response to a proxy or consent solicitation made pursuant to applicable rules and regulations under the Exchange Act;

(b) the Company consolidates with or merges with or into another person (other than a Subsidiary of the Company), or sells, conveys, transfers, leases or otherwise disposes of all or substantially all of the consolidated properties and assets of the Company and its Subsidiaries to any person (other than a Subsidiary of the Company) or any person (other than a Subsidiary of the Company) consolidates with, or merges with or into the Company, provided that none of the circumstances set forth in this clause (b) shall be a Change of Control if persons that beneficially own the Common Stock of the Company immediately prior to the transaction own, directly or indirectly, shares with a majority of the total voting power of all outstanding Common Stock of the surviving or transferee person immediately after the transaction in substantially the same proportion as their ownership of the Company’s Common Stock immediately prior to the transaction;

(c) the Common Stock ceases to be listed or quoted on any of the New York Stock Exchange, New York Stock Exchange American, the Nasdaq Global Select Market or the Nasdaq Global Market or any other national securities exchange regulated under Section 6(a) of the Exchange Act; or

(d) the occurrence of a “Change in Control” under the Term Loan or the ABL as such term is defined in the Term Loan and the ABL respectively, or other similar provision.

“Closing” has the meaning specified in Section 2.02.

“Closing Date” means the date on which the Closing occurs.

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

“Commission” means the United States Securities and Exchange Commission.

“Common Stock” means the common stock, par value \$0.01 per share, of the Company.

“Company” has the meaning set forth in the introductory paragraph of this Agreement.

“Company Entities” means, collectively, the Company and its Subsidiaries.

“Company SEC Documents” means the Company’s forms, registration statements, reports, schedules and statements or other document (including exhibits) filed with, or furnished to, the Commission and publicly available after December 31, 2019 and prior to the date hereof.

“Competitor” means any Person who is a Person engaged in the Business or owns a controlling interest in a Person engaged in the Business.

“Consent” has the meaning specified in Section 3.15.

“Contract” means any contract, agreement, indenture, note, bond, mortgage, deed of trust, loan, instrument, lease, license, commitment or other arrangement, understanding, undertaking, commitment or obligation, in each case that is legally binding, whether written or oral.

“DGCL” means the Delaware General Corporation Law, as may be amended or revised from time to time.

“Environmental Law” means any and all Federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to water or public wastewater treatment systems, applicable in, or pursuant to the laws of, any jurisdiction.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Company within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Company or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Company or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate any Pension Plan or the treatment of a Pension Plan amendment, in each case, as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension

Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; or (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA.

“Exchange Act” means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations of the Commission promulgated thereunder.

“Foreign Government Scheme or Arrangement” has the meaning specified in Section 3.20(e).

“Foreign Plan” has the meaning specified in Section 3.20(e).

“Fundamental Representations” mean those representations and warranties contained in Section 3.01, Section 3.02, Section 3.04, Section 3.09, Section 3.10, Section 3.13, Section 3.14, Section 3.16, Section 3.17, Section 3.26 or Section 3.31.

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“Indemnified Party” has the meaning specified in Section 6.02(b).

“Indemnifying Party” has the meaning specified in Section 6.02(b).

“IT Systems” has the meaning specified in Section 3.30.

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

“Lien” means any mortgage, pledge, lien (statutory or otherwise), security interest, security agreement, or other encumbrance upon or with respect to any property of any kind.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon the operations, business, properties, assets, or condition (financial or otherwise) of the Company or the Company Entities, taken as a whole; or (b) a material impairment of the ability of the Company Entities, taken as a whole to perform their obligations under the Transaction Documents to which they are party or to consummate the transactions contemplated thereby; *provided* however, that a Material Adverse Effect shall not include any material and adverse effect on the foregoing to the extent such material and adverse effect result from, arises out of, or relates to (1) the announcement of the transactions

contemplated by this Agreement or the satisfaction of the obligations set forth herein, (2) a general deterioration in the industry in which the Company operates, (3) a general deterioration in the economy, credit or financial or capital markets, in the United States or elsewhere in the world, in which the Company operates, including changes in interest or exchange rates, (4) any change or decline in market price or change in trading volume, of the capital stock of the Company, (5) the outbreak or escalation of hostilities involving the United States, the declaration by the United States of a national emergency or war or the occurrence of any other calamity or crisis, including acts of terrorism, or (6) any epidemic, pandemic or disease outbreak (including the COVID-19 pandemic), or any Law, pronouncement or guidance issued by a Governmental Authority, the Centers for Disease Control and Prevention, or the World Health Organization generally applicable to the industry in which the Company Entities operate providing for business closures, “sheltering-in-place” or other related restrictions; except, in each case with respect to subclauses (b)(2), (b)(5) or (b)(6), to the extent that such event, change or development disproportionately affects the Company Entities, taken as a whole, relative to other similar situated companies in the industries in which the Company Entities operate.

“Material Subsidiaries” means the Subsidiaries of the Company that are “significant subsidiaries” of the Company as defined in Rule 1-02(w) of Regulation S-X under the Exchange Act.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Company or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

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

“Nasdaq” means the Nasdaq Stock Market LLC.

“New Credit Facility” means (i) that certain Term Loan Credit Agreement, entered into on March 22, 2021, by and between the Company, as borrower, and Oaktree Fund Administration, LLC, as administrative agent (the “Term Loan”), and (ii) that certain Credit Agreement, entered into on March 22, 2021, by and among the Company, the other loan parties thereto, the lender parties thereto, and JPMorgan Chase Bank, N.A. (the “ABL”).

“Organizational Documents” means, (a) (i) with respect to any corporation, the certificate or articles of incorporation, the bylaws, the certificates of designation (if any) and any stockholder agreement (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdictions); (ii) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (iii) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity, or (b) with respect to entities incorporated in any non-U.S. jurisdiction, equivalent or comparable constitutive documents.

“Outside Date” has the meaning specified in Section 7.01(c).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Company and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Transferee” means, with respect to any transferor, (i) any Affiliate of such transferor, (ii) any successor entity of such Person, (iii) with respect to any transferor that is an investment fund, vehicle or similar entity, any other investment fund, vehicle or similar entity that is controlled by or under common control with such transferor and (iv) any co-investor, limited partner, stockholder or other equityholder in such transferor or its Affiliates.

“Person” means any individual, corporation, company, voluntary association, partnership, joint venture, trust, limited liability company, unincorporated organization, government or any agency, instrumentality or political subdivision thereof or any other form of entity.

“Personal Data” has the meaning specified in Section 3.30.

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Company or any ERISA Affiliate or any such Plan to which the Company or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Purchase Price” means \$65,000,000.

“Purchased Preferred Stock” means 65,000 shares of Series D Preferred Stock.

“Purchased Securities” means the Purchased Preferred Stock and the Purchased Warrants, collectively.

“Purchased Warrants” shall mean the warrant providing for the purchase by the Purchaser of 1,900,000 shares of Common Stock, as evidenced by certificates substantially in the form attached as **Exhibit B**, with such changes thereto as may be consented to by the parties hereto prior to Closing, it being agreed that the parties hereto shall consent to any commercially reasonable changes as may be reasonably required by Nasdaq staff to comply with Nasdaq listing rules.

“Purchaser” has the meaning specified in the introductory paragraph of this Agreement.

“Purchaser Related Parties” has the meaning specified in Section 6.01.

“Redemption” has the meaning specified in the recitals of this Agreement.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Representatives” means, with respect to a specified Person, the Affiliates, officers, directors, managers, employees, agents, advisors, counsel, accountants, investment bankers and other representatives of such Person.

“Restricted Period” means the period commencing on the Closing Date and ending on the 180th day following the Closing Date.

“Sanctioned Country” means at any time, a country or territory which is itself the subject or target of any Sanctions (as of the date hereof, including, without limitation, Crimea, Cuba, Iran, North Korea, and Syria).

“Sanction(s)” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by 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, Her Majesty’s Treasury of the United Kingdom, the Netherlands or any other European Union member state.

“Securities Act” means the Securities Act of 1933, as amended from time to time, and the rules and regulations of the Commission promulgated thereunder.

“Series B Convertible Preferred Stock” means the Series B Convertible Preferred Stock, par value \$0.01 per share, of the Company.

“Series D Preferred Stock” means the Series D Preferred Stock of the Company, par value \$0.01 per share, having the terms set forth in the Certificate of Designation.

“Short Sales” means, all “short sales” as defined in Rule 200 promulgated under Regulation SHO under the Exchange Act and forward sale contracts, options, puts, calls, “put equivalent positions” (as defined in Rule 16a-1(h) under the Exchange Act) and similar arrangements.

“Standstill Period” means the period commencing on the Closing Date and ending on the second anniversary of the Closing Date.

“Subsidiary” means, as to any Person, any corporation or other entity of which: (a) at least a majority of the outstanding equity interest having by the terms thereof ordinary voting power to elect a majority of the board of directors or similar governing body of such corporation or other entity (irrespective of whether or not at the time any equity interest of any other class or classes of such corporation or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more of its Subsidiaries; (b) such Person or a Subsidiary of such Person is a general partner or, in the case of a limited liability company, the sole or managing member or manager thereof; or (c) any corporation or other entity as to which such Person consolidates for accounting purposes; *provided*, however, that the Wuxi JV shall be considered a Subsidiary of the Company for purposes of this Agreement.

“Tax Return” means any return, report or similar filing (including the attached schedules) filed or required to be filed with respect to Taxes (and any amendments thereto), including any information return, claim for refund or declaration of estimated Taxes.

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

“Third-Party Claim” has the meaning specified in Section 6.02(b).

“Trading Affiliates” has the meaning set forth in Section 4.07(b).

“Transaction Documents” means, collectively, this Agreement, the Certificate of Designation, Warrants and any and all other agreements or instruments executed and delivered to the Purchaser by the Company hereunder or thereunder, as applicable.

“Transfer” means to voluntarily or involuntarily sell, transfer, assign, pledge, hypothecate, participate, gift, donate or otherwise encumber or dispose of, directly or indirectly. “Transfer” used as a noun has a correlative meaning.

“Underlying Shares” has the meaning set forth in Section 3.02(d).

“Wuxi JV” shall mean the Company’s 49% investment in the joint venture with Wuxi Weifu Hi-Technology Co., Ltd.

**Section 1.02 Accounting Procedures and Interpretation.** Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all determinations with respect to accounting matters hereunder shall be made, and all financial statements of the Company and certificates and reports as to financial matters required to be furnished to the Purchaser hereunder shall be prepared, in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q promulgated by the Commission) and in compliance as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the Commission with respect thereto.

## ARTICLE II AGREEMENT TO SELL AND PURCHASE

**Section 2.01 Sale, Purchase and Redemption.** Subject to the terms and conditions hereof, at the Closing:

- (a) The Purchaser hereby agrees to purchase the Purchased Securities from the Company, and to pay the Company the Purchase Price with respect to such Purchased Securities.
- (b) The Company hereby agrees to issue and sell to the Purchaser the Purchased Securities.
- (c) The Company shall effect the Redemption.

**Section 2.02 Closing.** Subject to the satisfaction or waiver of the conditions precedent set forth in Section 2.03, Section 2.04 and Section 2.05 (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at such time), the consummation of the purchase and sale of the Purchased Securities and the Redemption hereunder (the “Closing”) shall take place electronically at 9:00 a.m. New York City time on the date hereof, or at such other place, time or date as may be mutually agreed upon in writing by the Company and the Purchaser.

**Section 2.03 Mutual Conditions.** The respective obligations of each party to consummate the purchase and sale of the Purchased Securities at the Closing shall be subject to the satisfaction, on or prior

to the Closing Date, of each of the following conditions (any or all of which may be waived by a party on behalf of itself in writing, in whole or in part, to the extent permitted by applicable Law):

(a) no statute, rule, order, decree or regulation shall have been enacted or promulgated, and no action shall have been taken, by any Governmental Authority which temporarily, preliminarily or permanently restrains, precludes, enjoins or otherwise prohibits the consummation of the transactions contemplated hereby or makes the transactions contemplated hereby illegal; and

(b) there shall not be pending any suit, action or proceeding by any Governmental Authority seeking to restrain, preclude, enjoin or prohibit the transactions contemplated by this Agreement.

**Section 2.04 Conditions to the Purchaser's Obligations.** The obligation of the Purchaser to consummate its purchase of the Purchased Securities shall be subject to the satisfaction on or prior to the Closing Date of each of the following conditions (any or all of which may be waived by the Purchaser with respect to itself in writing, in whole or in part, to the extent permitted by applicable Law):

(a) the representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects (other than the Fundamental Representations or those representations and warranties that are qualified by materiality or Material Adverse Effect, which, in each case, shall be true and correct in all respects) when made and as of the Closing Date (except that representations and warranties made as of a specific date shall be required to be true and correct as of such date only);

(b) the Company shall have performed and complied in all material respects with all of the covenants and agreements contained in this Agreement that are required to be performed or complied with by it on or prior to the Closing Date;

(c) the Company shall have filed with Nasdaq a "Notification Form: Listing of Additional Shares" and supporting documentation, if required, related to the Underlying Shares and Nasdaq shall have not raised any objection with respect thereto that has not been withdrawn;

(d) the Company shall have duly adopted and filed with the Secretary of State of the State of Delaware the Certificate of Designation and such filing shall have been accepted and the Certificate of Designation shall be effective;

(e) since the date of this Agreement, no downgrading shall have occurred in the rating accorded the "Company's Indebtedness" (as defined in the Amended and Restated Credit Agreement) by any "nationally recognized statistical rating organization", as that term is defined in Section 3(a)(62) under the Exchange Act;

(f) no notice of delisting from Nasdaq shall have been received by the Company with respect to the Common Stock; and

(g) the Company shall have delivered, or caused to be delivered, to the Purchaser the Company's Closing deliveries described in Section 2.06(a), as applicable.

**Section 2.05 Conditions to the Company's Obligations.** The obligation of the Company to consummate the sale and issuance of the Purchased Securities to the Purchaser shall be subject to the satisfaction on or prior to the Closing Date of each of the following conditions (any or all of which may be waived by the Company in writing, in whole or in part, to the extent permitted by applicable Law):

(a) the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects (other than those representations and warranties that are qualified by materiality, which, in each case, shall be true and correct in all respects) when made and as of the Closing Date (except that representations and warranties made as of a specific date or for a specific period shall be required to be true and correct as of such date or for such specific period only);

(b) such Purchaser shall have performed and complied in all material respects with all of the covenants and agreements contained in this Agreement that are required to be performed or complied with by it on or prior to the Closing Date; and

(c) such Purchaser shall have delivered, or caused to be delivered, to the Company the Purchaser's Closing deliveries described in Section 2.06(b), as applicable.

**Section 2.06 Deliveries at the Closing.**

(a) Deliveries of the Company. At the Closing, the Company shall deliver, or cause to be delivered, to the Purchaser:

(i) The Warrants, free and clear of any Liens, other than transfer restrictions under this Agreement and applicable federal and state securities Laws and those created by the Purchaser;

(ii) A counterpart of the Board Observer Agreement in the form attached hereto as **Exhibit C** (the "Board Observer Agreement"), which shall have been duly executed by the Company;

(iii) A fully executed "Supplemental Listing Application" approving the Underlying Shares for listing by Nasdaq;

(iv) Evidence of issuance of the Purchased Preferred Stock credited to book-entry accounts maintained by the transfer agent of the Company, bearing a restrictive notation meeting the requirements of the Securities Act, free and clear of any Liens, other than transfer restrictions under this Agreement and applicable federal and state securities Laws and those created by the Purchaser;

(v) A certificate of the Secretary of the Company, on behalf of the Company, dated the Closing Date, certifying as to and attaching (A) the certificate of incorporation of the Company, (B) the bylaws of the Company and (C) resolutions of the Board of Directors authorizing the execution and delivery of the Transaction Documents and the consummation of the transactions contemplated thereby, including the issuance of the Purchased Securities, the Redemption and the execution and delivery of the New Credit Agreement;

(vi) A certificate of the Secretary of State of Delaware dated as of a recent date, to the effect that the Company is in good standing in its jurisdiction of formation;

(vii) A certificate of the Secretary of State of Delaware dated as of a recent date, evidencing the filing of the Certificate of Designation;

(viii) A certificate of the Chief Financial Officer of the Company, on behalf of the Company, dated the Closing Date, certifying, in their applicable capacities, to the effect that the conditions set forth in Section 2.04(a) and Section 2.04(b) have been satisfied;

(ix) A cross-receipt executed by the Company certifying that it has received the Purchase Price from the Purchaser;

(x) An opinion of Bass, Berry & Sims PLC, counsel to the Company, that includes paragraphs substantially in the form of **Exhibit E**, subject to customary assumptions, limitations and qualifications;

(xi) Evidence that the Redemption shall have been effected; and

(xii) Such other documents relating to the transactions contemplated by this Agreement as the Purchaser or their counsel may reasonably request.

(b) **Deliveries of the Purchaser.** At the Closing, the Purchaser shall deliver or cause to be delivered to the Company:

(i) A counterpart of the Board Observer Agreement, which shall have been duly executed by the Purchaser;

(ii) A cross-receipt executed by the Purchaser certifying that it has received the Purchased Securities from the Company;

(iii) Payment of the Purchase Price payable by wire transfer of immediately available funds to an account designated in advance of the Closing Date by the Company;

(iv) A properly executed Internal Revenue Service Form W-9 from the Purchaser;

(v) A certificate of an duly appointed officer of the Purchaser, on behalf of the Purchaser, dated the Closing Date, certifying, in its capacity as an officer of the Purchaser, to the effect that the conditions set forth in Section 2.05(a) and Section 2.05(b) have been satisfied; and

(vi) Such other documents relating to the transactions contemplated by this Agreement as the Company or its counsel may reasonably request.

**Section 2.07 Further Assurances.** From time to time after the date hereof, without further consideration, the Company shall use its commercially reasonable efforts to take, or cause to be taken, all actions necessary or appropriate to consummate the transactions contemplated by this Agreement.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES RELATED TO THE COMPANY**

The Company represents and warrants to the Purchaser as of the date hereof and the Closing Date as follows:

**Section 3.01 Existence, Qualification and Power.** Each of the Company Entities (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b)(1) has all requisite power and authority and (2) all requisite governmental licenses, authorizations, consents and approvals to in the case of each of clause (b)(1) and (2), (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under this Agreement to which it is a party, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in the case of clause (b)(2) and clause (c), to the extent that failure to do so would not reasonably be expected to have a Material Adverse Effect.

### **Section 3.02 Capitalization and Valid Issuance and Redemption of Securities.**

(a) As of March 12, 2021, (i) the authorized capital stock of the Company is 95,000,000 shares, of which 90,000,000 shares, par value \$0.01 per share, are designated as common shares and of which 5,000,000 shares, par value \$0.01 per share, are designated as preferred shares (of which only 200,000 shares have been designated as Series A Junior Participating Preferred Stock, 100,000 shares have been designated as Series B Convertible Preferred Stock, 200,000 shares have been designated as Series C Junior Participating Preferred Stock, and no other preferred shares have been designated or issued); (ii) the number of shares of capital stock issued and outstanding is 42,791,476 shares of voting Common Stock; (iii) no shares of Series A Junior Participating Preferred Shares are outstanding; (iv) 100,000 shares of Series B Convertible Preferred Stock are outstanding; (v) no shares of Series C Junior Participating Preferred Stock are outstanding; (vi) the number of shares of capital stock issuable pursuant to the Company's stock plans (including the 2019 Omnibus Incentive Plan) is 2,520,553; and (vii) the number of shares of capital stock issuable and reserved for issuance pursuant to securities exercisable for, or convertible into or exchangeable for any shares of capital stock of the Company is 2,924,851. All of the issued and outstanding shares of the Company's capital stock have been duly authorized and validly issued and are fully paid and nonassessable and were issued in compliance with applicable state and federal securities laws and any rights of third parties or in violation of pre-emptive or similar rights.

(b) The Purchased Securities have been, or prior to the Closing will be, duly and validly authorized and, when issued and paid for pursuant to this Agreement, will be validly issued, fully paid and nonassessable, and shall be free and clear of all Liens and restrictions on transfer, except for restrictions on transfer set forth in the Transaction Documents or imposed by applicable securities laws.

(c) No Person is entitled to pre-emptive or similar statutory or contractual rights with respect to any securities of the Company Entities. Other than as contemplated by this Agreement, there are no outstanding warrants, options, convertible securities or other rights, agreements or arrangements of any character under which any Company Entity is or may be obligated to issue any equity securities of any kind, other than options granted under the Company's stock plans (including the 2019 Omnibus Incentive Plan) and prior stock plans. Other than as contemplated by this Agreement, there are no voting agreements, buy-sell agreements, option or right of first purchase agreements or other agreements of any kind among the Company and any of the securityholders of the Company relating to the securities of the Company held by them. No Person has the right to require the Company to register any securities of the Company under the Securities Act, whether on a demand basis or in connection with the registration of securities of the Company for its own account or for the account of any other Person. The issuance and sale of the Purchased Securities hereunder will not obligate the Company to issue Common Stock or other securities to any other Person (other than the Purchaser) and will not result in the adjustment of the exercise, conversion, exchange or reset price of any outstanding security. The Company does not have outstanding stockholder purchase rights or "poison pill" or any similar arrangement in effect giving any Person the right to purchase any equity interest in the Company upon the occurrence of certain events.

(d) All shares of Common Stock issuable upon exercise of the Warrants (the "Underlying Shares") (without regard to any limitations on beneficial ownership) have been duly authorized and reserved pursuant to the Company's Restated Certificate of Incorporation and the Warrants and, upon issuance and delivery by the Company to the Purchaser in accordance with this Agreement and the terms of the Purchased Securities, will be duly authorized, validly issued, fully paid and non-assessable and will be free of any preemptive rights or any Liens and restrictions on transfer, other than (i) restrictions on transfer under the Warrants or this Agreement and under applicable state and federal securities laws and (ii) such Liens as are created by the Purchaser or its Affiliates.

(e) The capital of the Company is not impaired, and the Redemption will not cause any impairment of the capital of the Company. The funds necessary to effect the Redemption constitute "surplus" under Section 154 of the DGCL and are (or will be, following receipt of the Purchase Price)

readily accessible to the Company, and the Redemption, including the distribution of such funds to effect the Redemption, will not violate applicable law with respect to insolvency, creditors' rights and the impairment of capital.

**Section 3.03 Ownership of the Material Subsidiaries.** Except as disclosed in the Company's SEC Documents (excluding any disclosures set forth in the risk factors or "forward-looking statements" sections of such reports or similar statements that are similarly non-specific and are predictive or forward-looking in nature), all of the outstanding shares of capital stock or other equity interests of each Material Subsidiary owned directly or indirectly by the Company (a) have been duly authorized and validly issued and are fully paid and nonassessable, and (b) are wholly-owned, directly or indirectly, by the Company, free and clear of all Liens, except for Liens under the Company's existing debt arrangements and for restrictions on transferability in the Organizational Documents of such Material Subsidiary and (ii) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 3.04 Company SEC Documents.** Since March 31, 2020, the Company's forms, registration statements, reports, schedules and statements required to be filed by it under the Exchange Act have been filed with the Commission on a timely basis. The Company SEC Documents, at the time filed (or in the case of registration statements, solely on the dates of effectiveness), except to the extent corrected by a subsequent Company SEC Document, (a) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made in the case of any such documents other than a registration statement, not misleading and (b) complied as to form in all material respects with the applicable requirements of the Exchange Act and the Securities Act, as the case may be.

**Section 3.05 Financial Statements.**

(a) Except as disclosed in the Company's SEC Documents (excluding any disclosures set forth in the risk factors or "forward-looking statements" sections of such reports or similar statements that are similarly non-specific and are predictive or forward-looking in nature), the historical financial statements (including the related notes and supporting schedule) contained or incorporated by reference in the Company SEC Documents (i) comply as to form in all material respects with the applicable accounting requirements under the Securities Act and the Exchange Act (except that certain supporting schedules are omitted), (ii) fairly present in all material respects the consolidated financial condition of the Company and its Subsidiaries as of the date thereof and the consolidated results of operations, cash flow and stockholder equity for the respective periods (subject, in the case of unaudited quarterly financial statements, to normal year-end adjustments) and (iii) have been prepared in all material respects in accordance with GAAP (except, in the case of unaudited quarterly statements, as permitted by Form 10-Q of the Commission or other rules and regulations of the Commission) consistently applied throughout the periods involved, (except (y) as may be indicated in the notes thereto or (z) as permitted by Regulation S-X).

(b) Neither the Company nor any of its Subsidiaries has any liabilities of any nature (whether accrued, absolute, contingent or otherwise) that would be required under GAAP, as in effect on the date hereof, to be reflected on a consolidated balance sheet of the Company (including the notes thereto) except (i) liabilities reflected or reserved against in the balance sheet (or notes thereto) of the Company and its Subsidiaries as of the date of the most recent balance sheet of the Company audited by the Company's auditors prior to the date hereof (the "Balance Sheet Date") including in the Company SEC Documents, (ii) (A) trade payables and accrued expenses and (B) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in filings made with the Commission, in each case, incurred after the Balance Sheet Date, (iii) as contemplated by this Agreement or otherwise incurred in connection with the transactions contemplated hereby, (iv) that have been discharged or paid prior to the date of this Agreement or (v) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 3.06 Internal Controls.** Except as disclosed in the Company’s SEC Documents (excluding any disclosures set forth in the risk factors or “forward-looking statements” sections of such reports or similar statements that are similarly non-specific and are predictive or forward-looking in nature), the Company Entities, taken as a whole, maintain a system of internal accounting controls sufficient to provide reasonable assurance that (a) transactions are executed in accordance with management’s general or specific authorization, (b) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets, (c) access to assets is permitted only in accordance with management’s general or specific authorization and (d) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Except as disclosed in the Company’s SEC Documents (excluding any disclosures set forth in the risk factors or “forward-looking statements” sections of such reports or similar statements that are similarly non-specific and are predictive or forward-looking in nature), the Company is not aware of (i) any “material weakness” in the Company’s internal control over reporting, whether or not subsequently remediated or (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company’s internal control over financial reporting.

**Section 3.07 Disclosure Controls and Procedures.** Except as disclosed in the Company’s SEC Documents (excluding any disclosures set forth in the risk factors or “forward-looking statements” sections of such reports or similar statements that are similarly non-specific and are predictive or forward-looking in nature), (a) to the extent required by Rule 13a-15 under the Exchange Act, each of the Company Entities has established and maintains disclosure controls and procedures (to the extent required by and as such term is defined in Rule 13a-15(e) under the Exchange Act), (b) such disclosure controls and procedures are designed to provide reasonable assurance that that the information required to be disclosed by the Company in the reports to be filed or submitted under the Exchange Act is accumulated and communicated to management of the Company, as appropriate, to allow timely decisions regarding required disclosure to be made and (c) to the extent required by Rule 13a-15 under the Exchange Act, such disclosure controls and procedures are effective in all material respects to perform the functions for which they were established.

**Section 3.08 No Material Adverse Change.** Since December 31, 2019, except as disclosed in the Company’s SEC Documents (excluding any disclosures set forth in the risk factors or “forward-looking statements” sections of such reports or similar statements that are similarly non-specific and are predictive or forward-looking in nature) and except for the execution and performance of this Agreement (i) there has been no event or circumstance, either individually or in the aggregate, that has had or that could reasonably be expected to result in a Material Adverse Effect, (ii) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock (other than with respect to the Redemption) and (iii) the Company has not issued any equity securities to any officer, director or Affiliate, except pursuant to existing Company stock option plans. The Company does not have pending before the Commission any request for confidential treatment of information. Except for the issuance of the Purchased Securities contemplated by this Agreement, no event, liability or development has occurred or exists with respect to any Company Entity or their respective business, properties, operations or financial condition, that would be required to be disclosed by the Company under applicable federal securities laws at the time this representation is made that has not been publicly disclosed.

**Section 3.09 No Registration Required.** Assuming the accuracy of the representations and warranties of the applicable Purchaser contained in Article IV, the issuance and sale of the Purchased

Securities to the Purchaser pursuant to this Agreement is exempt from registration requirements of the Securities Act, and neither the Company nor, to the Company's knowledge, any Person acting on its behalf, has taken nor will take any action hereafter that would cause the loss of such exemption.

**Section 3.10 No Restrictions or Registration Rights.** There are no restrictions upon the voting or transfer of, any Common Stock arising under the Company's Organizational Documents or the DGCL. Neither the offering nor sale of the Purchased Securities as contemplated by this Agreement gives rise to any rights for or relating to the registration of any Purchased Securities or other securities of the Company.

**Section 3.11 Litigation.** Except as disclosed in the Company's SEC Documents (excluding any disclosures set forth in the risk factors or "forward-looking statements" sections of such reports or similar statements that are similarly non-specific and are predictive or forward-looking in nature), (a) there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Company, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against any of the Company Entities or against any of their properties, or before or by any self-regulatory organization or other non-government regulatory authority, that (i) purport to affect or pertain to this Agreement or any other Transaction Document, or any of the transactions contemplated hereby or thereby, or (ii) either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect and (b) no labor dispute with the employees of the Company or any of its Subsidiaries exists or, to the Company's knowledge, is threatened, except as would not have a Material Adverse Effect.

**Section 3.12 Compliance with Law.** Except as disclosed in the Company's SEC Documents (excluding any disclosures set forth in the risk factors or "forward-looking statements" sections of such reports or similar statements that are similarly non-specific and are predictive or forward-looking in nature), the Company and each of its Subsidiaries is in compliance in all material respects with the requirements of applicable Laws, and any rule or regulation of any self-regulatory organization or other non-governmental regulatory authority (including the rules and regulations of Nasdaq), and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**Section 3.13 No Existing Defaults; No Conflicts.**

(a) Neither the Company nor any of its Subsidiaries is (i) in violation of its Organizational Documents, (ii) in violation of any statute or any judgment, order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its Subsidiaries or any of their respective properties, or (iii) in default (or, with the giving of notice or lapse of time or both, would be in default) under any indenture, mortgage, deed of trust, lease, loan agreement or other agreement or instrument to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of the property or assets of the Company or any of its Subsidiaries is subject, except, in the case of clauses (ii) and (iii) above, for any such violation or default that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(b) The issuance and sale by the Company of the Purchased Securities, the Redemption, the execution, delivery and performance of the Transaction Documents and the consummation of the transactions contemplated thereby by each Company Entity do not and will not (i) contravene the terms of any of such Company Entity's Organizational Documents; (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (x) any

provision of any security issued by such Company Entity or of any agreement, instrument or other undertaking to which such Company Entity is a party or by which it or any of its property is bound or (y) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Company Entity or its property is subject; or (iii) violate any Law or any rule or regulation of any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, the rules and regulations of Nasdaq), except in the case of clauses (ii) and (iii) above, for any such violation or default that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 3.14 Authority; Enforceability.**

(a) The execution, delivery and performance by the Company of each the Transaction Documents have been duly authorized by all necessary corporate action. The Company has all requisite power and authority to issue, sell and deliver the Purchased Securities, in accordance with and upon the terms and conditions set forth in this Agreement and effect the Redemption in accordance with the terms of the Organizational Documents. On or prior to the Closing Date, all action required to be taken by the Company for the authorization, issuance, sale and delivery of the Purchased Securities, the execution and delivery of the Transaction Documents and the consummation of the transactions contemplated thereby shall have been validly taken. No approval from the holders of outstanding Common Stock is required under the Organizational Documents of the Company or the rules of Nasdaq in connection with the Company's issuance and sale of the Purchased Securities (or Underlying Shares) to the Purchaser.

(b) Each of the Transaction Documents has been or, when delivered hereunder, will have been, duly executed and delivered by the Company. Each of the Transaction Documents constitutes, or will constitute, a legal, valid and binding obligation of the Company, enforceable in accordance with its terms; *provided* that, with respect to each such agreement, the enforceability thereof may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar Laws from time to time in effect affecting the enforcement of creditors' rights and remedies generally and by general principles of equity (regardless of whether such principles are considered in a proceeding in equity or at law).

**Section 3.15 Approvals.** No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person (each, a "Consent"), is necessary or required in connection with the issuance and sale of the Purchased Securities by the Company, the execution, delivery and performance of this Agreement and the other Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby or thereby, other than (i) the filing of the Certificate of Designation with the Secretary of State of Delaware, (ii) the applicable requirements under the state securities or "blue sky" Laws and (iii) in connection with the exercise of the Warrants, compliance with and filings or notifications under the HSR Act and other applicable U.S. or foreign competition, antitrust, or merger control Laws, as set forth in Section 5.02.

**Section 3.16 Investment Company Status.** None of the Company Entities is, and immediately after the sale of the Purchased Securities hereunder and the application of the net proceeds from such sale none of the Company Entities will be, required to be registered as an "investment company" under the Investment Company Act of 1940, as amended.

**Section 3.17 Certain Fees.** Except for J.P. Morgan Securities LLC, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission from the Company with respect to the sale of any of the Purchased Securities or the consummation of the transactions contemplated by this Agreement based upon arrangements made by or on behalf of any Company

Entities. The Company agrees that it will indemnify and hold harmless the Purchaser from and against any and all claims, demands, or liabilities for broker's, finder's, placement, or other similar fees or commissions incurred by the Company Entities or alleged to have been incurred by the Company Entities in connection with the sale of the Purchased Securities or the consummation of the transactions contemplated by this Agreement.

**Section 3.18 Insurance.** Except as disclosed in the Company's SEC Documents (excluding any disclosures set forth in the risk factors or "forward-looking statements" sections of such reports or similar statements that are similarly non-specific and are predictive or forward-looking in nature), the properties of the Company and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Company, in such amounts with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Company or its applicable Subsidiaries operate. The Company has no reason to believe that it or any of its Subsidiaries will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions and as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not reasonably be expected to have a Material Adverse Effect.

**Section 3.19 Listing and Maintenance Requirements.** The Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and the Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification that the Commission is contemplating terminating such registration. The Common Stock is listed on Nasdaq, and the Company has not received any notice of delisting that is in effect as of the date of this Agreement. The Company is in compliance in all material respects with the listing and listing maintenance requirements of Nasdaq applicable to it for the continued trading of its Common Stock on Nasdaq.

**Section 3.20 ERISA Compliance.**

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other applicable federal or state Laws. Each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the knowledge of the Company, nothing has occurred that would prevent or cause the loss of, such tax-qualified status.

(b) There are no pending or, to the knowledge of the Company, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or material violation of the fiduciary responsibility rules with respect to any Plan.

(c) Except as could not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect, (i) no ERISA Event has occurred with respect to any Pension Plan; (ii) the Company and each ERISA Affiliate have met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) except as disclosed in the Company's SEC Documents (excluding any disclosures set forth in the risk factors or "forward-looking statements" sections of such reports or similar statements that are similarly non-specific and are predictive or forward-looking in nature), neither the Company nor any ERISA Affiliate has incurred any liability to the PBGC

other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; and (iv) neither the Company nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA.

(d) Except as disclosed in the Company's SEC Documents (excluding any disclosures set forth in the risk factors or "forward-looking statements" sections of such reports or similar statements that are similarly non-specific and are predictive or forward-looking in nature), neither the Company or any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan.

(e) With respect to each scheme or arrangement mandated by a government other than the United States (a "Foreign Government Scheme or Arrangement") and with respect to each employee benefit plan maintained or contributed to by the Company or any Subsidiary of the Company that is not subject to United States Law (a "Foreign Plan"), each such Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

**Section 3.21 Tax Returns; Taxes.** The Company and its Subsidiaries have filed all income and other material Tax Returns required to be filed, and have paid all Taxes imposed upon them that are due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. As of the date hereof, no Tax Lien has been filed against the Company, any Subsidiary, or any assets of either other than statutory Liens for Taxes not yet due and payable. There is no proposed tax assessment against the Company or any of its Subsidiaries that would, if made, have a material impact on the finances or operations of any of the Company Entities.

**Section 3.22 Required Disclosures and Descriptions.** There are no legal or governmental actions, suits or proceedings (including an audit or examination by any taxing authority) pending or, to the knowledge of the Company Entities, threatened, against any of the Company Entities, or to which any of the Company Entities is a party, or to which any of their respective properties is subject, that are required to be described in the Company SEC Documents but are not described as required, and there are no Contracts that are required to be described in the Company SEC Documents or to be filed as an exhibit to the Company SEC Documents that are not described or filed as required by the Securities Act or the Exchange Act.

**Section 3.23 Environmental Compliance.** Except as disclosed in the Company's SEC Documents (excluding any disclosures set forth in the risk factors or "forward-looking statements" sections of such reports or similar statements that are similarly non-specific and are predictive or forward-looking in nature), each Company Entity conducts in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties. No Environmental Laws or claims could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 3.24 Title to Property.** The Company Entities have good and marketable title to, or valid, subsisting and enforceable leasehold interests in all property material to its business or otherwise described in the Company SEC Documents as being owned or leased by any of them, free and clear of all Liens, except for (a) Liens that do not materially affect the value of such property and do not materially interfere with the use made or proposed to be made of such property by the Company Entities and (b) Liens as are described in the Company SEC Documents.

**Section 3.25 Anti-Corruption Laws and Sanctions.**

(a) None of the Company, any of its Subsidiaries or any director, officer, agent, employee, affiliate or other person associated with or acting on behalf of the Company or its Subsidiaries has (i) made, offered, promised, authorized, or taken any action in furtherance of any unlawful contribution, gift, entertainment or other unlawful expense or thing of value; (ii) made, offered, promised, authorized, or taken any action in furtherance of any direct or indirect unlawful payment; or (iii) violated or is in violation of any provision of any applicable Anti-Corruption Laws to improperly influence official action by any person for the benefit of the Company or its subsidiaries or affiliates or to otherwise secure any improper advantage.

(b) None of the Company, any of its Subsidiaries, or any director, officer, agent, employee or affiliate of the Company or any of its Subsidiaries is, or is owned or controlled by one or more Persons that are, currently the subject or the target of any Sanctions, nor is the Company or any of its Subsidiaries located, organized or resident in a Sanctioned Country. The Company has not directly or indirectly funded or facilitated any activities of or business with any person, or in any country or territory, that, at the time of such funding, was the subject or the target of Sanctions or in any other manner that would result in a violation by any person of Sanctions.

(c) The Company will not, directly or indirectly, use the proceeds from the transactions contemplated hereby or lend, contribute, or otherwise make available such proceeds to any Person (i) fund any activities or business of or with any Person or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions; (ii) to fund or facilitate any money laundering or terrorist financing activities; or (iii) in any other manner that would cause or result in a violation of any Anti-Corruption Laws or Sanctions by any Person (including any Party to this Agreement).

(d) The Company and its Subsidiaries have instituted and maintained and continue to maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, compliance with all Anti-Corruption Laws and Sanctions. No investigation, inquiry, action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to Anti-Corruption Laws or Sanctions is pending or, to the knowledge of the Company, threatened.

**Section 3.26 No Directed Selling Efforts or General Solicitation.** Neither the Company nor any Person acting on its behalf has conducted any general solicitation or general advertising (as those terms are used in Regulation D of the Securities Act) in connection with the offer or sale of any of the Purchased Securities.

**Section 3.27 No Integrated Offering.** Neither the Company nor any of its Affiliates, nor any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any Company security or solicited any offers to buy any security, under circumstances that would adversely affect reliance by the Company on Section 4(a)(2) of the Securities Act for the exemption from registration for the transactions contemplated hereby or would require registration of the Purchased Securities under the Securities Act.

**Section 3.28 Intellectual Property.** Except as disclosed in the Company's SEC Documents, the Company and its Subsidiaries own, possess or can acquire on commercially reasonable terms, adequate trademarks, trade names and other rights to inventions, know-how, patents, copyrights, confidential information and other intellectual property necessary to conduct the business now operated by them, or presently employed by them, and have not received any notice of infringement of or conflict with asserted rights of others with respect to any intellectual property rights that, if determined adversely to the Company Entities could reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

**Section 3.29 Occupational Safety.** Except as disclosed in the Company's SEC Documents, the Company and each of its Subsidiaries are in compliance in all material respects with all applicable provisions of the Occupational Safety and Health Act of 1970, as amended, including all applicable regulations thereunder, except for such noncompliance as would not, individually or in the aggregate, have a Material Adverse Effect.

**Section 3.30 Information Technology.** Except as disclosed in the Company's SEC Documents, the Company and its Subsidiaries' information technology assets and equipment, computers, systems, networks, hardware, software, websites, applications and databases (collectively, "**IT Systems**") are adequate for, and operate and perform as required in connection with the operation of the business of the Company and its Subsidiaries as currently conducted, free and clear of all bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants, except in each case as would not, individually or in the aggregate, be reasonably expected to result in a Material Adverse Effect. The Company and its Subsidiaries (i) (x) have implemented and maintained commercially reasonable controls, policies, procedures and safeguards to maintain and protect their confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data (including all personal, personally identifiable, sensitive, confidential or regulated data ("**Personal Data**")) used in connection with their businesses, and (y) there have been no material breaches, violations, outages or unauthorized uses of or accesses to same, nor any incidents under internal review or investigations relating to the same; (ii) are presently in compliance in all material respects with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Data and to the protection of such IT Systems and Personal Data from unauthorized use, access, misappropriation or modification; and (iii) have taken all material, necessary actions to prepare to comply with the European Union General Data Protection Regulation (and all other applicable laws and regulations with respect to Personal Data that have been announced as of the date hereof as becoming effective within 12 months after the date hereof) as soon they take effect.

**Section 3.31 Restricted Payments.** (a) Except for the Amended and Restated Credit Agreement and the New Credit Facility, true, correct and complete copies of which have been provided to the Purchaser prior to the date hereof, there are no agreements to which the Company or any of its Subsidiaries is subject, prohibiting the Company or any of its Subsidiaries from making distributions on the Series D Preferred Stock or Warrants or repurchasing, redeeming or repaying the Series D Preferred Stock or exercising the Warrants, and (b) the Company is not aware of any laws and regulations of the State of Delaware or any political subdivisions thereof, prohibiting it directly or indirectly, from paying any dividends or from making any other distribution on its capital stock or repurchasing, redeeming or repaying its capital stock, except as described in or contemplated by SEC Documents.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to the Company as of the date hereof and the Closing Date as follows:

**Section 4.01 Existence.** The Purchaser is duly organized and validly existing and in good standing under the Laws of its jurisdiction of organization or formation, with all necessary power and authority to own and operate its properties and to conduct its business as currently conducted.

**Section 4.02 Authorization, Enforceability.** The Purchaser has all necessary corporate, limited liability company, trust or partnership power and authority to execute, deliver and perform its obligations under the Transaction Documents to which it is a party. The execution, delivery and performance of such Transaction Documents by the Purchaser and the consummation by it of the transactions contemplated thereby have been duly and validly authorized by all necessary legal action, and no further consent or authorization of the Purchaser or any other Person is required. Each of the Transaction Documents to which the Purchaser is a party has been duly executed and delivered by the Purchaser, where applicable, and constitutes a legal, valid and binding obligation of the Purchaser; *provided* that, with respect to each such agreement, the enforceability thereof may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or similar Laws from time to time in effect affecting the enforcement of creditors' rights and remedies generally and by general principles of equity (regardless of whether such principles are considered in a proceeding in equity or at law).

**Section 4.03 No Breach.** The execution, delivery and performance of the Transaction Documents to which the Purchaser is a party by the Purchaser and the consummation by the Purchaser of the transactions contemplated thereby will not (a) conflict with or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any material agreement to which the Purchaser is a party or by which the Purchaser is bound or to which any of the property or assets of the Purchaser is subject, (b) conflict with or result in any violation of the provisions of the Organizational Documents of the Purchaser, or (c) violate any Law of any Governmental Authority or body having jurisdiction over the Purchaser or the property or assets of the Purchaser, except in the case of clauses (a) and (c), for such conflicts, breaches, violations or defaults as would not prevent the consummation of the transactions contemplated by such Transaction Documents.

**Section 4.04 Certain Fees.** No fees or commissions are or will be payable by the Purchaser to brokers, finders or investment bankers with respect to the purchase of any of the Purchased Securities or the consummation of the transactions contemplated by this Agreement, except for fees or commissions for which the Company is not responsible.

**Section 4.05 Unregistered Securities.**

(a) Accredited Purchaser Status; Sophisticated Purchaser. The Purchaser is (a) an "accredited investor" within the meaning of Rule 501(a) (1), (2), (3) or (7) under the Securities Act, as amended, and (b) an Institutional Account (as defined in FINRA Rule 4512(c)) and (c) a sophisticated institutional investor, experienced in investing in private equity transactions and capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, including the Purchaser's participation in the transactions contemplated hereby. The Purchaser has determined based on its own independent review and such professional advice as it deems appropriate that its purchase of the Purchased Securities and participation in the transactions contemplated hereby (i) are consistent with its financial needs, objectives and condition, (ii) comply and are consistent with all investment policies, guidelines and other restrictions applicable to the Purchaser, (iii) have been duly authorized and approved by all necessary action, and (iv) are a fit, proper and suitable investment for the Purchaser, notwithstanding the substantial risks inherent in investing in or holding the Purchased Securities. The Purchaser is able to bear the substantial risks associated with its purchase of the Purchased Securities, including but not limited to loss of its entire investment therein.

(b) Information. The Purchaser and its Representatives have (i) had the opportunity to ask questions of and receive answers from the Company directly and review the Company's public filings with the Commission and (ii) conducted and completed its own independent due diligence with respect to the transactions contemplated hereby. Based on such information as the Purchaser has deemed

appropriate and without reliance upon the Agent or any of its Affiliates, the Purchaser has independently made its own judgment concerning the Company and its businesses, operations and prospects and analysis and decision to enter into this Agreement and the transactions contemplated hereby. Except for the representations, warranties and agreements of the Company expressly set forth in this Agreement and the other Transaction Documents, the Purchaser is relying exclusively on its own sources of information, investment analysis and due diligence (including professional advice it deems appropriate) with respect to the transactions contemplated hereby, the Purchased Securities and the business, condition (financial and otherwise), management, operations and properties of the Company, including but not limited to all business, legal, regulatory, accounting, credit and tax matters. Neither any inquiries nor any other due diligence investigations conducted at any time by the Purchaser and its Representatives, nor any provisions of this Section 4.05, shall modify, amend or affect the Purchaser's right (i) to rely on the Company's representations and warranties contained herein or in any other Transaction Document or (ii) to indemnification or any other remedy based on, or with respect to the accuracy or inaccuracy of, or compliance with, the representations, warranties, covenants and agreements in any Transaction Document. The Purchaser understands that its purchase of the Purchased Securities involves a high degree of risk.

(c) Legends. The Purchaser understands that, until such time as the Purchased Securities or Underlying Shares have been sold pursuant to an effective registration statement under the Securities Act, or the Purchased Securities or Underlying Shares are eligible for resale pursuant to Rule 144 promulgated under the Securities Act without any restriction as to the number of securities as of a particular date that can then be immediately sold, the Purchased Securities or Underlying Shares (as applicable) will bear a restrictive legend substantially as follows: "THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT UNDER ANY CIRCUMSTANCES BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF WITHOUT AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY OTHER APPLICABLE SECURITIES LAWS OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE SECURITIES LAWS." Additionally, if required by the authorities of any state in connection with the issuance or sale of the Purchased Securities or Underlying Shares, such Purchased Securities or Underlying Shares (as applicable) shall bear the legend required by such state authority.

(d) Acquisition for Investment Purposes. The Purchaser is acquiring its entire beneficial ownership interest in the Purchased Securities for its own account for investment purposes only and not with a view to any distribution of the Purchased Securities in any manner that would violate the securities laws of the United States or any other jurisdiction. The Purchaser has been advised and understands that the Purchased Securities have not been registered under the Securities Act, the "blue sky" laws of any jurisdiction or the laws of any other jurisdiction and may be resold only if registered pursuant to the provisions of the Securities Act (or if eligible, pursuant to the provisions of Rule 144 promulgated under the Securities Act or pursuant to another available exemption from the registration requirements of the Securities Act) and in compliance with the restrictions on transfer set forth in the Transaction Documents. The Purchaser has been advised and understands that the Company, in issuing the Purchased Securities, is relying upon, among other things, the representations and warranties of the Purchaser contained in this Article IV in concluding that such issuance is a "private offering" and is exempt from the registration provisions of the Securities Act.

(e) Rule 144. The Purchaser understands that the Purchased Securities must be held indefinitely unless and until the Purchased Securities are registered under the Securities Act or an exemption from registration is available. The Purchaser has been advised of and is aware of the provisions of Rule 144 promulgated under the Securities Act.

(f) **Reliance by the Company.** The Purchaser understands that the Purchased Securities are being offered and sold in reliance on a transactional exemption from the registration requirements of federal and state securities Laws and that the Company is relying upon the truth and accuracy of the representations, warranties, agreements, acknowledgments and understandings of the Purchaser set forth herein in order to determine the applicability of such exemptions and the suitability of the Purchaser to acquire the Purchased Securities.

**Section 4.06 Sufficient Funds.** The Purchaser will have available to it at the Closing sufficient funds to enable the Purchaser to pay in full at the Closing the entire amount of the Purchase Price in immediately available cash funds.

**Section 4.07 Ownership; No Prohibited Trading.**

(a) As of the date of this Agreement, the Purchaser beneficially does not own, directly or indirectly, any shares of Common Stock, inclusive of all shares of Common Stock in which the Purchaser or its Affiliate, has any interest or right to acquire, whether through derivative securities, voting agreements or otherwise (whether or not such Common Stock can be acquired within sixty (60) days).

(b) From such time as the Purchaser was first contacted by the Company or any other Person acting on behalf of the Company regarding the transactions contemplated hereby until the first public announcement of the execution of this Agreement, the Purchaser and any Affiliate of the Purchaser which (i) had knowledge of the transactions contemplated hereby, (ii) has or shares discretion relating to the Purchaser's investments or trading or information concerning the Purchaser's investments, including in respect of the Purchased Securities, or (iii) is subject to the Purchaser's review or input concerning such Affiliate's investments or trading (collectively, "Trading Affiliates") has not (x) offered, sold, contracted to sell, sold any option or contract to purchase, purchased any option or contract to sell, granted any option, right or warrant to purchase, lent, or otherwise transferred or disposed of, directly or indirectly, any of the Purchased Securities or (y) directly or indirectly engaged in any Short Sales or other derivative or hedging transactions with respect to Common Stock, including by means of any swap or other transaction or arrangement that transfers or that is designed to, or that might reasonably be expected to, result in the transfer to another, in whole or in part, of any of the economic consequences of ownership of any Purchased Securities, regardless of whether any transaction described in this Section 4.07 is to be settled by delivery of Common Stock or other securities, in cash or otherwise. For the avoidance of doubt, nothing in this Section 4.07 shall preclude any actions described in clauses (x) or (y) above following the first public announcement of the execution of this Agreement.

**Section 4.08 No General Solicitation.** The Purchaser did not learn of the investment in the Purchased Securities as a result of any general solicitation or general advertising.

**Section 4.09 No Reliance.** The Purchaser hereby acknowledges and agrees that (a) the Agent is acting solely as the Company's placement agent in connection with the transactions contemplated hereby and is not acting as underwriter or in any other capacity and is not and shall not be construed as a fiduciary for the Purchaser, the Company or any other person or entity in connection with the transactions contemplated hereby, (b) the Agent and its Affiliates have not made and will not make any representation or warranty, whether express or implied, of any kind or character and has not provided any advice or recommendation in connection with the transactions contemplated hereby, (c) the Agent and its Affiliates will have no responsibility with respect to (i) any representations, warranties or agreements made by any person or entity under or in connection with the transactions contemplated hereby or any of the documents furnished pursuant thereto or in connection therewith, or the execution, legality, validity or enforceability (with respect to any person) or any thereof, or (ii) the business, affairs, financial condition, operations, properties or prospects of, or any other matter concerning the Company or the transactions

contemplated hereby, and (d) the Agent and its Affiliates shall have no liability or obligation (including without limitation, for or with respect to any losses, claims, damages, obligations, penalties, judgments, awards, liabilities, costs, expenses or disbursements incurred by the Purchaser, the Company or any other person or entity), whether in contract, tort or otherwise, to the Purchaser, or to any person claiming through the Purchaser, in respect of the transactions contemplated hereby. In connection with the issuance of the Purchased Securities to the Purchaser, neither the Agent nor any of its Affiliates have acted as a financial advisor or fiduciary to the Purchaser.

**Section 4.10 Use of Proceeds.** The Purchaser hereby acknowledges that an Affiliate of the Agent will receive a portion of any proceeds of the offering that are used to effect repay all or a part of the Revolving Credit Loans (as defined below) and the Amended and Restated Credit Agreement.

## **ARTICLE V COVENANTS**

**Section 5.01 Cooperation; Further Assurances.** The Company shall use its reasonable best efforts to obtain all approvals and consents required by or necessary to consummate the transactions contemplated by this Agreement and the other Transaction Documents. The Company agrees to execute and deliver all such documents or instruments, to take all commercially reasonable action and to do all other commercially reasonable things it determines to be necessary, proper or advisable under applicable Laws and regulations or as otherwise reasonably requested by the Purchasers to consummate the transactions contemplated by this Agreement. Prior to the Closing, the Company shall use its reasonable best efforts to operate in the ordinary course of business consistent with past practices.

**Section 5.02 Regulatory Approvals.** The Company and the Purchaser acknowledge that one or more filings under the HSR Act or other antitrust laws may be necessary in connection with the issuance of Common Stock upon conversion of the Warrants. The Purchaser will promptly notify the Company if any such filing is required and, to the extent reasonably requested by the Purchaser, the Company and the Purchaser will use all reasonable efforts to cooperate in timely making or causing to be made all applications and filings under the HSR Act or any other antitrust requirements in connection with the issuance of Common Stock upon conversion of the Warrants held by the Purchaser in a timely manner and as required by the law of the applicable jurisdiction; *provided* that, notwithstanding anything in this Agreement to the contrary, the Company shall not have any responsibility or liability for failure of the Purchaser or any of its Affiliates to comply with any such applicable law. For as long as there are Warrants outstanding and owned by the Purchaser, the Company shall as promptly as reasonably practicable provide (no more than four (4) times per calendar year) such information regarding the Company and its Subsidiaries as such Person may reasonably request in order to determine what antitrust or foreign investment requirements may exist with respect to any potential conversion of the Warrants. The Purchaser shall be responsible for the payment of the filing fees associated with any such applications or filings.

**Section 5.03 Use of Proceeds; Amended & Restated Credit Agreement.** The Company shall only use the proceeds of the New Credit Facility and the offering of the Purchased Securities for one or more of the following purposes: (i) effect the Redemption; (ii) repay all of the Revolving Credit Loans (as defined in the Amended and Restated Credit Agreement); (iii) prepay Term Loans (as defined in the Amended and Restated Credit Agreement) in accordance with the Amended and Restated Credit Agreement; (iv) pay any fees, costs and expenses (including fees and disbursements of the Agent, counsel, financial advisors and accountants) incurred in connection with clauses (ii) and (iii) above; (v) pay any fees and expenses in connection with the transactions contemplated by this Agreement; and (vi) with respect to any remaining proceeds after giving effect to clauses (i) through (v), for the Company's working capital and other general corporate purposes.

**Section 5.04 Subsequent Equity Sales.** The Company shall not, and shall use its commercially reasonable efforts to ensure that no Affiliate or Subsidiary of the Company shall, sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that will be integrated with the offer or sale of the Purchased Securities in a manner that would require the registration under the Securities Act of the sale of the Purchased Securities to the Purchaser, or that will be integrated with the offer or sale of the Purchased Securities for purposes of the rules and regulations of any trading market such that it would require stockholder approval prior to the closing of such other transaction unless stockholder approval is obtained before the closing of such subsequent transaction.

**Section 5.05 Standstill.** During the Standstill Period, the Purchaser will not without the prior written consent of the Company:

(a) effect or seek, offer or propose (whether publicly or otherwise) to effect, or announce any intention to effect or cause or participate in or in any way assist, facilitate or encourage any other person to effect or seek, offer or propose (whether publicly or otherwise) to effect or participate in, (i) any acquisition of any equity securities (or beneficial ownership thereof), rights or options to acquire any equity securities (or beneficial ownership thereof), or any securities convertible into or exchangeable for any such equity securities (or beneficial ownership thereof), of the Company, (ii) any tender or exchange offer, merger or other business combination involving the Company or its Subsidiaries or assets of the Company or its Subsidiaries constituting a significant portion of the consolidated assets of the Company and its Subsidiaries, or (iii) any “solicitation” of “proxies” (as such terms are used in the proxy rules of the SEC) or consents to vote any voting securities of the Company or any of its Affiliates;

(b) otherwise act, alone or in concert with others, to seek representation on or to control or influence the management, the Board or policies of the Company or to obtain representation on the Board of Directors (beyond any such right to do so based on such representation on the Board of Directors pursuant to the Board Observer Agreement);

(c) submit any shareholder proposal to the Company;

(d) form, join or in any way participate in a “group” (as defined under the Exchange Act) with respect to any securities of the Company or its Subsidiaries;

(e) take any action, or disclose any intention, plan or arrangement to take such action, that would reasonably be expected to require the Purchaser or the Company to make a public announcement regarding any of the types of matters set forth in this Section 5.05; or

(f) advise, assist, direct, support or encourage any other Person in doing any of the foregoing.

(g) For the avoidance of any doubt, nothing in this agreement shall be construed to limit the activities in the normal course of business of Morgan Stanley and its Affiliates (other than the Purchaser) including brokerage, investment advisory, financial advisory, anti-raid advisory, merger advisory, financing, asset management, trading, market making, arbitrage and other similar activities conducted in the ordinary course of its business.

**Section 5.06 Transfer Restrictions.**

(a) Except as otherwise permitted by Section 5.06(b), during the Restricted Period, the Purchaser will not (i) Transfer any Purchased Securities or Underlying Shares, or (ii) make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a short sale of or the purpose of which is to offset the loss that results from a decline in the market price of, the Purchased Securities or the Underlying Shares, or otherwise establish or increase, directly or indirectly, a put equivalent position, as defined in Rule 16a-1(h) of the Exchange Act, with respect to any of the Purchased Securities or Underlying Shares or any other capital stock of the Company.

(b) Notwithstanding Section 5.06(a), during the Restricted Period, the Purchaser shall be permitted to Transfer any portion or all of its Purchased Securities or Underlying Shares under the following circumstances:

(i) Transfers to any Permitted Transferee, but only if the transferee agrees in writing prior to such Transfer for the express benefit of the Company (in form and substance reasonably satisfactory to the Company and with a copy thereof to be furnished to the Company) to be bound by the terms of this Agreement;

(ii) Transfers of Purchased Securities or Underlying Shares pursuant to a tender offer or exchange offer for at least a majority of the equity securities of the Company made by a Person who is not an Affiliate of the Purchaser to all shareholders of the Company, with the prior consent of the Board; and

(iii) Transfers permitted under the Certificate of Designation in connection with the redemption by the Company of the Series D Preferred Stock.

(c) Following the end of the Restricted Period, Transfers may only be made by the Purchaser to any Person that is not a Competitor in compliance with the provisions of Section 5.06(d).

(d) For a Transfer to comply with this Section 5.06(d), (i) the transferor in any such Transfer shall provide prior written notice to the Company of the identity of the transferee, together with a certification by the transferor that to its knowledge the transferee is not a Competitor and (ii) the transferee shall (A) provide to the Company prior to such Transfer a certification by the transferee that it is not a Competitor and (B) agree in writing prior to such Transfer for the express benefit of the Company (in form and substance reasonably satisfactory to the Company) to be bound by the restrictions on Transfers set forth in Section 5.06(c) to the same extent as if it were the Purchaser.

(e) Any attempted Transfer in violation of this Section 5.06 shall be null and void *ab initio* and the Company shall not be required to recognize such Transfer.

**Section 5.07 Removal of Legend.** In connection with a sale of Purchased Securities or Underlying Shares by the Purchaser in reliance on Rule 144 promulgated under the Securities Act, the applicable Purchaser or its broker shall deliver to the Company a broker representation letter reasonably acceptable to the Company and its transfer agent, providing to the Company the information required under Rule 144 to determine that the sale of such Purchased Securities is made in compliance with Rule 144 promulgated under the Securities Act, including, as may be appropriate, a certification that the Purchaser is not an affiliate of the Company (as defined in Rule 144 promulgated under the Securities Act) and a certification as to the length of time that such securities have been held. Upon receipt of such representation letter, the Company shall promptly remove the notation of a restrictive legend in the Purchaser's book-entry account maintained by the Company, including the legend referred to in Section 4.05(c), and the Company shall bear all costs associated with the removal of such legend in the

Company's books. At such time as the Purchased Securities or Underlying Shares (as applicable) have been sold pursuant to an effective registration statement under the Securities Act or have been held by the Purchaser for more than one year where the Purchaser is not, and has not been in the preceding three months, an affiliate of the Company (as defined in Rule 144 promulgated under the Securities Act) or acting in concert with such a Person, if the book-entry account of the Purchaser still bears the notation of the restrictive legend referred to in Section 4.05(c), the Company agrees, upon request of the Purchaser or its permitted assignee, to take all steps necessary to promptly effect the removal of the legend described in Section 4.05(c), and the Company shall bear all costs associated with the removal of such legend in the Company's books, regardless of whether the request is made in connection with a sale or otherwise, so long as the Purchaser or its permitted assignee provides to the Company the information required under Rule 144 (or other applicable exemptions) to determine that the legend is no longer required under the Securities Act or applicable state Laws, including (if there is no such registration statement) a certification that the holder is not an affiliate of the Company (as defined in Rule 144 promulgated under the Securities Act), a covenant to inform the Company if it should thereafter become an affiliate (as defined in Rule 144 promulgated under the Securities Act) and to consent to the notation of an appropriate restriction, and a certification as to the length of time such securities have been held. The Company shall cooperate with the Purchaser to effect the removal of the legend referred to in Section 4.05(c) at any time such legend is no longer appropriate.

**Section 5.08 Tax Matters.** The Company may deduct and withhold any withholding Taxes or other amounts required to be withheld with respect to the Purchased Securities and may set off any such amounts required to be withheld against payments (whether made in cash or other property) on the Purchased Securities. The Company and the Purchaser agree that it is their intention that (i) the Purchased Preferred Stock shall be treated as stock that is not "preferred stock" within the meaning of subsections (b)(4) and (c) of Section 305 of the Code and Treasury Regulations Section 1.305-5(a), and (ii) the Purchaser shall not be required to include in income as a dividend for U.S. federal income tax purposes any income or gain in respect of the Purchased Preferred Stock on account of the accrual or payment of dividends thereon (including any deemed dividends as a result of any discount or otherwise) unless and until such dividends are declared and paid in cash. The Company agrees to take no position or action inconsistent with such treatment, including on any Internal Revenue Service Form 1099, unless otherwise required by (A) a change in applicable law after the date hereof or (B) a final determination within the meaning of Section 1313 of the Code.

**Section 5.09 Listing; SEC Compliance.**

(a) The Company shall use its reasonable best efforts to maintain the listing of all of the Underlying Shares upon each national securities exchange and automated quotation system, if any, upon which shares of Common Stock are then listed (subject to official notice of issuance) and shall maintain, so long as any other shares of Common Stock shall be so listed, such listing of the Underlying Shares.

(b) Beginning on the fifth (5th) anniversary of the Closing, the Purchaser or its Permitted Transferees (the "Applicable Holders"), to the extent any such Applicable Holders still beneficially own any Purchased Warrants or Underlying Shares (the "Registrable Securities"), shall have the right, by delivering written notice to the Company, to require the Company to register, and the Company shall use its reasonable best efforts to (i) promptly register for resale, under an effective registration state under the Securities Act, the number of Registrable Securities stated in such request, (ii) maintain the effectiveness of such registration statement and (iii) if the Applicable Holders so elect, to cause the offering of such Registrable Securities to be in the form of a firm commitment underwritten offering.

**ARTICLE VI  
INDEMNIFICATION, COSTS AND EXPENSES**

**Section 6.01 Indemnification by the Company.** The Company agrees to indemnify the Purchaser and its Representatives (collectively, “Purchaser Related Parties”) from costs, losses, liabilities, damages or expenses of any kind or nature whatsoever, and hold each of them harmless against, any and all actions, suits, proceedings (including any investigations, litigation or inquiries), demands and causes of action, and, in connection therewith, promptly upon demand, pay or reimburse each of them for all costs, losses, liabilities, damages, or expenses of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel and all other reasonable expenses incurred in connection with investigating, defending or preparing to defend any such matter that may be incurred by them or asserted against or involve any of them), whether or not involving a Third-Party Claim, as a result of or arising out of (a) the failure of any of the representations or warranties made by the Company contained herein to be true and correct in all material respects (other than the Fundamental Representations or other representations and warranties that are qualified by materiality or Material Adverse Effect, which, in each case, shall be true and correct in all respects) when made and as of the Closing Date (except for any representations and warranties made as of a specific date, which shall be required to be true and correct as of such date only) or (b) the breach in any material respect of any covenants of the Company contained herein; *provided* that, in the case of the immediately preceding clause (a), such claim for indemnification is made prior to the expiration of the survival period of such representation or warranty; *provided, further*, that for purposes of determining when an indemnification claim has been made, the date upon which a Purchaser Related Party shall have given notice (stating in reasonable detail the basis of the claim for indemnification) to the Company shall constitute the date upon which such claim has been made; and *provided, further*, that the aggregate liability of the Company to the Purchaser pursuant to this Section 6.01 shall not be greater in amount than the Purchase Price. No Purchaser Related Party shall be entitled to recover special, indirect, incidental, consequential, exemplary, lost profits, speculative or punitive damages under this Section 6.01; *provided, however*, that such limitation shall not prevent any Purchaser Related Party from recovering under this Section 6.01 for any such damages to the extent that such damages are in the form of diminution in value or are payable to a third party in connection with any Third-Party Claims.

**Section 6.02 Indemnification Procedures.**

(a) A claim for indemnification for any matter not involving a Third-Party Claim may be asserted by notice to the party from whom indemnification is sought; *provided, however*, that failure to so notify the indemnifying party shall not preclude the indemnified party from any indemnification which it may claim in accordance with this Article VI, except as otherwise provided in Section 6.01.

(b) Promptly after any Purchaser Related Party (hereinafter, the “Indemnified Party”) has received notice of any indemnifiable claim hereunder, or the commencement of any action, suit or proceeding by a third person, which the Indemnified Party believes in good faith is an indemnifiable claim under this Agreement (each a “Third-Party Claim”), the Indemnified Party shall give the indemnitor hereunder (the “Indemnifying Party”) written notice of such Third-Party Claim, but failure to so notify the Indemnifying Party will not relieve the Indemnifying Party from any liability it may have to such Indemnified Party hereunder except to the extent that the Indemnifying Party is materially prejudiced by such failure. Such notice shall state the nature and the basis of such Third-Party Claim to the extent then known. The Indemnifying Party shall have the right to defend and settle, at its own expense and by its own counsel who shall be reasonably acceptable to the Indemnified Party, any such matter as long as the Indemnifying Party pursues the same diligently and in good faith. If the Indemnifying Party undertakes to defend or settle, it shall promptly notify the Indemnified Party of its intention to do so, and the Indemnified Party shall cooperate with the Indemnifying Party and its counsel in all commercially

reasonable respects in the defense thereof and the settlement thereof. Such cooperation shall include, but shall not be limited to, furnishing the Indemnifying Party with any books, records and other information reasonably requested by the Indemnifying Party and in the Indemnified Party's possession or control. Such cooperation of the Indemnified Party shall be at the cost of the Indemnifying Party. After the Indemnifying Party has notified the Indemnified Party of its intention to undertake to defend or settle any such asserted liability, and for so long as the Indemnifying Party diligently pursues such defense, the Indemnifying Party shall not be liable for any additional legal expenses incurred by the Indemnified Party in connection with any defense or settlement of such asserted liability; *provided, however*, that the Indemnified Party shall be entitled (i) at its expense, to participate in the defense of such asserted liability and the negotiations of the settlement thereof and (ii) if (A) the Indemnifying Party has failed to assume the defense or employ counsel reasonably acceptable to the Indemnified Party or (B) if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and counsel to the Indemnified Party shall have concluded that there may be reasonable defenses available to the Indemnified Party that are different from or in addition to those available to the Indemnifying Party or if the interests of the Indemnified Party reasonably may be deemed to conflict with the interests of the Indemnifying Party, then the Indemnified Party shall have the right to select a separate counsel and to assume such legal defense and otherwise to participate in the defense of such action, with the expenses and fees of such separate counsel and other expenses related to such participation to be reimbursed by the Indemnifying Party as incurred. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not settle any indemnified claim without the consent of the Indemnified Party, unless the settlement thereof imposes no liability or obligation on, and includes a complete release from liability of, and does not include any admission of wrongdoing or malfeasance by, the Indemnified Party.

**Section 6.03 Tax Matters.** All indemnification payments under this Article VI shall be treated as adjustments to the Purchase Price for Tax purposes except as otherwise required by applicable Law.

## ARTICLE VII TERMINATION

**Section 7.01 Termination.** This Agreement shall be terminated:

- (a) at any time, by mutual written consent of the Company and the Purchaser;
- (b) prior to the Closing, by written notice from either the Company or the Purchaser if any Governmental Authority with lawful jurisdiction shall have issued a final order, decree or ruling or taken any other final action restraining, enjoining or otherwise prohibiting the transactions contemplated by the Transaction Documents and such order, decree, ruling or other action is or shall have become final and non-appealable;
- (c) if Closing does not occur by 11:59 p.m. New York time on March 31, 2021 (the "Outside Date"), by written notice from either the Company or the Purchaser; *provided, however*, that no party may terminate this Agreement pursuant to this Section 7.01(c) if such party is, at the time of providing such written notice, in breach of any of its obligations under this Agreement; and
- (d) at such time as no Purchased Securities remain outstanding, automatically without any further action by the Company or the Purchaser.

**Section 7.02 Certain Effects of Termination.** In the event that this Agreement is terminated pursuant to Section 7.01, this Agreement (other than Article VI and Section 8.01) shall become null and void and have no further force or effect and there shall be no liability on the part of the Company or the

Purchaser or any of its respective Representatives in connection with this Agreement, except that no such termination shall relieve any party from liability for damages to another party resulting from a willful and material breach of this Agreement prior to the date of termination or from fraud; *provided* that, notwithstanding any other provision set forth in this Agreement, except in the case of fraud, neither the Company nor the Purchaser shall have any such liability in excess of the Purchase Price.

## ARTICLE VIII MISCELLANEOUS

**Section 8.01 Expenses.** All costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with the Transaction Documents and the transactions contemplated thereby shall be paid by the party incurring such costs and expenses; *provided*, that the Company shall reimburse the Purchaser for all third party expenses (including legal fees and expenses) incurred in connection with the diligence and negotiation of the transactions contemplated hereby, and the purchase by the Purchaser of the Purchased Securities, provided that such fees shall not exceed \$300,000 in the aggregate (which reimbursement may be made as a deduction from the payment of the Purchase Price in the flow of funds at the Closing).

**Section 8.02 Interpretation.** Article, Section, Schedule and Exhibit references in this Agreement are references to the corresponding Article, Section, Schedule or Exhibit to this Agreement, unless otherwise specified. All Exhibits and Schedules to this Agreement are hereby incorporated and made a part hereof as if set forth in full herein and are an integral part of this Agreement. All references to instruments, documents, Contracts and agreements are references to such instruments, documents, Contracts and agreements as the same may be amended, supplemented and otherwise modified from time to time, unless otherwise specified. The word “including” shall mean “including but not limited to” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it. Any reference in this Agreement to “\$” shall mean U.S. dollars. Whenever any determination, consent or approval is to be made or given by any party to this Agreement, such action shall be in such party’s sole discretion, unless otherwise specified in this Agreement. If any provision in the Transaction Documents is held to be illegal, invalid, not binding or unenforceable, (a) such provision shall be fully severable and the Transaction Documents shall be construed and enforced as if such illegal, invalid, not binding or unenforceable provision had never comprised a part of the Transaction Documents, and the remaining provisions shall remain in full force and effect, and (b) the parties hereto shall negotiate in good faith to modify the Transaction Documents so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to the Transaction Documents, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day. Any words imparting the singular number only shall include the plural and vice versa. The words such as “herein,” “hereinafter,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement.

**Section 8.03 Survival of Provisions.** The Fundamental Representations and the representations and warranties set forth in Section 4.01, Section 4.02, Section 4.04, Section 4.05(a), Section 4.05(b), Section 4.05(d) and Section 4.07(b) hereunder shall survive the execution and delivery of this Agreement indefinitely, and the other representations and warranties set forth herein shall survive for

a period of twelve (12) months following the Closing Date, regardless of any investigation made by or on behalf of the Company, the Purchaser or the Agent and its Affiliates. The covenants made in this Agreement (including those in Article V) or any other Transaction Document that by their terms are to be performed following the Closing shall survive the Closing and remain operative and in full force and effect until fully performed. Regardless of any purported general termination of this Agreement, the provisions of Article VI and all indemnification rights and obligations of the Company and the Purchaser thereunder, Section 8.01 and this Article VIII shall remain operative and in full force and effect as between the Company and the Purchaser, unless the Company and the Purchaser execute a writing that expressly terminates such rights and obligations as between the Company and the Purchaser.

**Section 8.04 No Waiver: Modifications in Writing.**

(a) Delay. No failure or delay on the part of any party in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies provided for herein are cumulative and are not exclusive of any remedies that may be available to a party at law or in equity or otherwise.

(b) Specific Waiver; Amendment. Except as otherwise provided herein or as specifically provided otherwise in any other Transaction Document with respect thereto, no amendment, waiver, consent, modification or termination of any provision of any Transaction Document shall be effective unless signed by each of the Company and the Purchaser. Any amendment, supplement or modification of or to any provision of any Transaction Document, any waiver of any provision of any Transaction Document and any consent to any departure by the Company or the Purchaser from the terms of any provision of any Transaction Document shall be effective only in the specific instance and for the specific purpose for which made or given. Except where notice is specifically required by this Agreement, no notice to or demand on the Company or the Purchaser in any case shall entitle the Company or the Purchaser to any other or further notice or demand in similar or other circumstances. Any investigation by or on behalf of any party shall not be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained herein.

**Section 8.05 Binding Effect; Assignment.**

(a) This Agreement shall be binding upon the Company, the Purchaser and their respective successors and permitted assigns. Except as expressly provided in this Agreement, this Agreement shall not be construed so as to confer any right or benefit upon any Person other than the parties to this Agreement and their respective successors and permitted assigns.

(b) Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of Law or otherwise, by the Purchaser without the prior written consent of the Company (such consent not to be unreasonably withheld); *provided*, however, that a Purchaser may transfer or assign its rights hereunder in connection with the transfer of the Purchased Preferred Stock or the Warrants, each in accordance with the terms thereof, and subject to Purchaser providing written notice of any such assignment to the Company promptly after such assignment is effected and that the transferee agrees to assume all of the Purchaser's rights and obligations in connection with such transfer and be bound by, and entitled to the benefits of, this Agreement as an original party hereto.

**Section 8.06 Publicity.** Except as set forth below, no public release or announcement concerning the transactions contemplated hereby shall be issued by the Company or the Purchaser without the prior consent of the Company (in the case of a release or announcement by the Purchaser) or the

Purchaser (in the case of a release or announcement by the Company) (which consents shall not be unreasonably withheld), except as such release or announcement may be required by law or the applicable rules or regulations of any securities exchange or securities market, in which case the Company or the Purchaser, as the case may be, shall allow the Purchaser or the Company, as applicable, to the extent reasonably practicable in the circumstances, reasonable time to comment on such release or announcement in advance of such issuance. The parties acknowledge that (i) as of 9:30 a.m. (New York time) on the trading day immediately following the date hereof, no Purchaser shall be in possession of any material, nonpublic information received from the Company or any of its respective officers, directors, employees or agents, with respect to the transactions contemplated hereby, and (ii) prior to such time the Company shall issue a press release or file a report on Form 8-K disclosing any material information required to comply with the preceding clause (i), and that, in addition, the Company will make such other filings and notices in the manner and time required by the Commission or Nasdaq with respect to such matters. The Company shall not, and shall cause each of its Subsidiaries and each of their respective officers, directors, employees and agents, not to, provide the Purchaser with any such material, nonpublic information regarding the Company or any of the Company Entities from and after the filing of the press release without the express written consent of the Purchaser. For the avoidance of doubt, following the issuance of such press release, this Agreement shall not prohibit the Purchaser from trading Common Stock as it sees fit.

**Section 8.07 Communications.** All notices and demands provided for hereunder shall be in writing and shall be given by registered or certified mail, return receipt requested, telecopy, electronic mail, air courier guaranteeing overnight delivery or personal delivery to the following addresses

(a) If to the Purchaser, to:

Attention: Tia G. Lowe and Teddy Cummings  
Address: 1585 Broadway, 37th Floor  
New York, NY 10036  
Emails: Tia.Lowe@morganstanley.com; Teddy.Cummings@morganstanley.com;  
MSTacValueFundAdmin@sannegroup.com

with a copy to (which shall not constitute notice):

Steven R. Shoemate  
Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166  
Email: sshoemate@gibsondunn.com

(b) If to the Company, to:

Matthew S. Heiter  
Senior Vice President, General Counsel and Secretary  
NN, Inc.  
6210 Ardrey Kell Road  
Charlotte, North Carolina 28277  
Email: matt.heiter@nninc.com

with a copy to (which shall not constitute notice):

Richard Mattern  
Bass, Berry & Sims PLC  
100 Peabody Place, Suite 1300  
Memphis, TN 38103  
Email: rmattern@bassberry.com

or to such other address as the Company or the Purchaser may designate in writing. All notices and communications shall be deemed to have been duly given: at the time delivered by hand, if personally delivered; upon actual receipt if sent by certified or registered mail, return receipt requested, or regular mail, if mailed; upon actual receipt of the facsimile, if sent via facsimile; when sent, if sent by electronic mail prior to 5:00 pm New York time on a Business Day, or on the next succeeding Business Day, if not; and upon actual receipt when delivered to an air courier guaranteeing overnight delivery.

**Section 8.08 Entire Agreement.** This Agreement, the other Transaction Documents and the other agreements and documents referred to herein are intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein. There are no restrictions, promises, warranties or undertakings, other than those set forth or referred to in this Agreement or the other Transaction Documents with respect to the rights granted by the Company or any of its Affiliates or Subsidiaries or the Purchaser or any of their respective Affiliates. This Agreement, the other Transaction Documents and the other agreements and documents referred to herein or therein supersede all prior agreements and understandings among the parties with respect to such subject matter.

**Section 8.09 Governing Law; Submission to Jurisdiction.** This Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement), will be construed in accordance with and governed by the Laws of the State of Delaware without regard to principles of conflicts of laws that would result in the application of the law of any other jurisdiction. Any action against any party relating to the foregoing shall be brought exclusively in the Delaware Court of Chancery (and if jurisdiction in the Delaware Court of Chancery shall be unavailable, in any federal or state court of competent jurisdiction located within the State of Delaware), and the parties hereto hereby irrevocably submit to the jurisdiction of such courts located within the State of Delaware over any such action. The parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

**Section 8.10 Waiver of Jury Trial.** THE PARTIES TO THIS AGREEMENT EACH HEREBY WAIVES, AND AGREES TO CAUSE ITS SUBSIDIARIES AND/OR AFFILIATES TO WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AGREEMENT OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. THE PARTIES TO THIS AGREEMENT EACH HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

**Section 8.11 No Recourse Against Others.**

(a) All claims, obligations, liabilities or causes of action (whether in contract or in tort, in law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with or relate in any manner to this Agreement, or the negotiation, execution or performance of this Agreement (including any representation or warranty made in, in connection with, or as an inducement to, this Agreement), may be made only against (and are expressly limited to) the Company and its Subsidiaries and the Purchaser. No Person other than the Company or the Purchaser, including no member, partner, stockholder, Affiliate, Subsidiary or Representative thereof, nor any member, partner, stockholder, Affiliate, Subsidiary or Representative of any of the foregoing, shall have any liability (whether in contract or in tort, in law or in equity, or granted by statute) for any claims, causes of action, obligations or liabilities arising under, out of, in connection with or related in any manner to this Agreement or based on, in respect of or by reason of this Agreement or its negotiation, execution, performance or breach; and, to the maximum extent permitted by Law, each of the Company and the Purchaser hereby waives and releases all such liabilities, claims, causes of action and obligations against any such third Person.

(b) Without limiting the foregoing, to the maximum extent permitted by Law, (i) each of the Company and its Subsidiaries on the one hand and the Purchaser on the other hereby waives and releases any and all rights, claims, demands or causes of action that may otherwise be available at law or in equity, or granted by statute, to avoid or disregard the entity form of the other or otherwise impose liability of the other on any third Person in respect of the transactions contemplated hereby, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization or otherwise; and (ii) each of the Company and the Purchaser disclaims any reliance upon any third Person with respect to the performance of this Agreement or any representation or warranty made in, in connection with or as an inducement to this Agreement.

**Section 8.12 No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to or shall confer upon any Person, other than the Company and the Purchaser and their respective permitted assigns any rights or remedies hereunder. Notwithstanding the foregoing, the Agent is a third party beneficiary of, and may rely on, the representations and warranties of the Purchaser contained in Section 4.05, Section 4.08 and Section 4.09.

**Section 8.13 Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same agreement.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto execute this Agreement, effective as of the date first above written.

**NN, INC.**

By: /s/ Matthew S. Heiter  
Name: Matthew S. Heiter  
Title: Senior Vice President, General Counsel and  
Secretary

**PURCHASER**

**NHTV Nevada Holdings LP**

By: NHTV Nevada Holdings GP LLC, its general partner

By: North Haven Tactical Value Fund LP, its managing  
member

By: MS Tactical Value Fund GP LP, its general partner

By: MS Tactical Value Fund GP Inc., its general partner

By: /s/ Teddy Cummings  
Name: Teddy Cummings  
Title: Vice President

*[Signature Page to Purchase Agreement]*

**BOARD OBSERVER AGREEMENT**

This **BOARD OBSERVER AGREEMENT** (the "Agreement") is entered into as of March 22, 2021, by and among NN, Inc., a Delaware corporation (the "Company") and NHTV Nevada Holdings LP LP ("NHTV").

**WHEREAS**, in connection with the financing pursuant to that certain Securities Purchase Agreement, dated March 22, 2021, by and among the Company and NHTV (the "Purchase Agreement"), NHTV shall have the right to designate a non-voting board observer (an "Observer") to the board of directors of the Company (the "Board") and any and all committees thereof (each a "Committee", and collectively, the "Committees");

**WHEREAS**, the Observer shall receive and be provided access to certain confidential and proprietary information, data and know-how relating to the business and prospective business of the Company and to existing or potential products, processes and services of the Company; and

**WHEREAS**, the Company wishes to maintain in confidence such information and NHTV recognizes the necessity of maintaining the strictest confidence with respect to the Company's confidential information.

**NOW, THEREFORE**, in consideration of the mutual agreements and covenants herein, as well as other valuable consideration received, the parties agree as follows:

1 Observer Rights.

(a) Beginning on the date hereof and ending on the date that NHTV no longer beneficially owns at least one third (1/3) of the outstanding shares of Series D Preferred Stock (as defined in the Purchase Agreement) (the "Board Rights Termination Date" and such period from the date of this Agreement to the Board Rights Termination Date, the "Observation Period"), NHTV shall have the right to designate, from time to time in its sole discretion, by written notice to the Board, an Observer to attend all meetings (including telephonic or videoconference meetings) of the Board and all Committees during the Observation Period in a non-voting, observer capacity. NHTV hereby designates Teddy Cummings to serve as the Observer until his/her successor shall have been designated by NHTV. The Observer may participate fully in discussions of all matters brought to the Board or Committee, as the case may be, for consideration, but in no event shall the Observer (i) be deemed to be a member of the Board or any Committee; (ii) have or be deemed to have, or otherwise be subject to, any duties (fiduciary or otherwise) to the Company or its stockholders; (iii) have the right to propose or offer any motions or resolutions to the Board or Committees; or (iv) have the right to vote on any matter under consideration by the Board or any Committee or otherwise have any power to cause the Company to take, or not to take, any action. The Company shall allow the Observer to attend Board or Committee meetings either in person or by telephone or electronic communication, as the Observer may elect in its sole discretion. The Observer's presence shall not be required for purposes of establishing a quorum.

(b) The Company shall provide the Observer copies of all notices, minutes, consents and other materials that it provides to the members of the Board (or Committee, as applicable), except materials that relate to executive sessions of the Board (collectively, "Board Materials"), including any draft versions, proposed written consents, and exhibits and annexes to any such materials, at the same time and in the same manner as such information is delivered to the Board members (or Committee members, as applicable), except to the extent the Observer has been excluded therefrom pursuant to clause (c) below.

(c) Notwithstanding anything herein to the contrary, the Company may exclude the Observer from access to any Board Materials, meeting or portion thereof if the Board concludes, acting in good faith, upon advice of the Company's counsel, that (i) such exclusion is reasonably necessary to preserve the attorney-client or work product privilege between the Company or its affiliates and its counsel; provided, however, that any such exclusion shall only apply to such portion of such material or meeting which would be required to preserve such privilege; or (ii) such Board Materials or discussion relates to an existing or potential conflict of interest between the Company or any of its affiliates and NHTV affiliates; or (iii) such portion of a meeting is an executive session limited solely to independent director members of the Board, independent auditors and/or legal counsel, as the Board may designate, and the Observer (assuming such Observer were a member of the Board) would not meet the then-applicable standards for independence adopted by the Nasdaq Stock Market LLC, or such other exchange on which the Company's securities are then traded.

(d) From and after the Board Rights Termination Date, the rights of NHTV and its designated Observer provided in Sections 1(a) and 1(b) shall cease.

## 2 Confidentiality.

(a) All information, including verbal information and written materials, provided to an Observer in accordance with Sections 1(a) and 1(b) shall be treated as confidential and sensitive ("Confidential Information") and, prior to the Observer's attendance at any Board or Committee meeting, the Board may elect to require the Observer to execute and deliver to the Company a confidentiality agreement in the form attached hereto as Exhibit A. NHTV shall be entitled to receive Confidential Information from the Observer and NHTV agrees not disclose any Confidential Information to any person, except that Confidential Information may be disclosed:

(i) to NHTV's partners, shareholders, members, directors, trustees, officers, employees, agents, counsel, accountants, consultants, investment advisers or other professionals or representatives, or its affiliates or wholly owned subsidiaries ("Representatives") in the normal course of the performance of their duties for NHTV (it being understood that such Representatives shall be informed by NHTV of the confidential nature of such information and shall be directed to treat such information in accordance with this Section 2);

(ii) to the extent requested or required by applicable law, rule or regulation; provided, that NHTV shall give the Company prompt written notice of such request(s) (including if received by a Representative), to the extent permitted by applicable law, so that the Company may, at its sole expense, seek an appropriate protective order or similar relief (and NHTV or such Representative shall

cooperate with such efforts by the Company, and shall in any event make only the minimum disclosure required by such applicable law, rule or regulation and shall use commercially reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such information);

(iii) to any person to whom NHTV is contemplating a bona fide transfer of its equity securities of the Company permitted in accordance with the terms of the Purchase Agreement; provided, that such person is not prohibited from receiving such information pursuant to this Section 2 and, prior to such disclosure, such potential transferee is advised of the confidential nature of such information and executes a non-disclosure agreement in customary form (and otherwise containing confidentiality obligations no less restrictive than those contemplated by this Section 2);

(iv) to any governmental, regulatory or self-regulatory authority or rating agency to which NHTV or any of its affiliates is subject or with which it has regular dealings in connection with any routine request of or any routine examination by such authority or agency, as long as such authority or agency is advised of the confidential nature of such information;

(v) in connection with NHTV or NHTV's affiliates' normal fund raising, marketing, informational or reporting activities or to any bona fide prospective purchaser of the equity or assets of NHTV or NHTV's affiliates, or prospective merger partner of NHTV or NHTV's affiliates; provided, that prior to such disclosure the persons to whom such information is disclosed are advised of the confidential nature of such information and execute and deliver a non-disclosure agreement in customary form (and otherwise containing confidentiality obligations no less restrictive than those contemplated by this Section 2) or such person is otherwise bound by a legal or similar duty of confidentiality in respect of such information; or

(vi) if the prior written consent of the Company shall have been obtained.

(b) Nothing contained herein shall prevent the use (subject, to the extent possible, to a protective order) of Confidential Information in connection with the assertion or defense of any claim by or against the Company. The restrictions contained in this Section 2 shall terminate twenty-four (24) months following the date on which NHTV ceases to own any shares of Common Stock (as defined in the Purchase Agreement) or any other shares of capital stock of the Company.

(c) Confidential Information, with respect to NHTV, does not include information that: (A) is or becomes generally available to the public (including as a result of any information filed or submitted by the Company with the Securities and Exchange Commission) other than as a result of a disclosure by NHTV or its Representatives in violation of any confidentiality provision of this Agreement or any other applicable agreement; (B) is or was available to NHTV or its Representatives on a non-confidential basis prior to its disclosure to NHTV or its Representatives by the Company; or (C) was or becomes available to NHTV or its Representatives on a non-confidential basis, in each case of (B) and (C), from a source other than the Company, which source is or was (at the time of receipt of the relevant information) not, to the best of NHTV's or its Representatives' knowledge, bound by a confidentiality agreement with (or other confidentiality obligation to) the Company or another person.

3 Expenses. The Company shall be responsible for any and all out-of-pocket expenses incurred in connection with the Observer's attendance at Board and Committee meetings.

4 Miscellaneous.

(a) Each provision of this Agreement shall be treated as a separate and independent clause, and the enforceability of any one clause shall in no way impair the enforceability of any other clauses herein. Moreover, if one or more of the provisions herein shall for any reason be held to be unenforceable, the appropriate judicial body shall construe such provision by limiting or reducing it or them, so as to be enforceable to the maximum extent compatible with the applicable law as it shall then appear.

(b) This Agreement may not be amended, modified or waived except by a specific writing signed by both parties. Any waiver by NHTV or the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision hereof.

(c) This Agreement and all aspects of the relationship between the parties hereto shall be construed and enforced in accordance with and governed by the internal laws of the State of Delaware without regard to its conflict of laws provisions. Any claims or legal actions by one party against the other shall be commenced and maintained in any state or federal court located in the State of Delaware and both parties hereby submit to the exclusive jurisdiction and venue of any such court.

(d) The Company, on the one hand, and NHTV, on the other hand, each acknowledge and agree that monetary damages may not be a sufficient remedy for any breach (or threatened breach) of this Agreement by it and that, in the event of any breach or threatened breach hereof, (i) the non-breaching party shall have the right to seek immediate injunctive and other equitable relief, without proof of actual damages; (ii) the breaching party will not plead in defense thereto that there would be an adequate remedy at law; and (iii) the breaching party agrees to waive any applicable right or requirement that a bond be posted by the non-breaching party. Such remedies will not be the exclusive remedies for a breach of this Agreement, but will be in addition to all other remedies that may be available to the non-breaching party at law or in equity.

(e) This Agreement may be executed and delivered either originally or by facsimile and in counterparts, each of which shall constitute an original but taken together shall constitute one and the same instrument.

(f) The provisions of Sections 2, 3, 4(c), 4(d) and this Section 4(f) will survive termination of this Agreement.

*[Signature Page Follows.]*

IN WITNESS WHEREOF, the parties have executed this Board Observer Agreement as of the date first above written.

**NN, INC.**

By: /s/ Matthew S. Heiter  
Name: Matthew S. Heiter  
Title: Senior Vice President, General Counsel and Secretary

**PURCHASER**

**NHTV Nevada Holdings LP**

By: NHTV Nevada Holdings GP LLC, its general partner

By: North Haven Tactical Value Fund LP, its managing member

By: MS Tactical Value Fund GP LP, its general partner

By: MS Tactical Value Fund GP Inc., its general partner

By: /s/ Teddy Cummings  
Name: Teddy Cummings  
Title: Vice President

*Signature Page to Board Observer Agreement*

Exhibit A

*Form of Observer Confidentiality Agreement*

**OBSERVER CONFIDENTIAL INFORMATION AGREEMENT**

THIS OBSERVER CONFIDENTIAL INFORMATION AGREEMENT ("Agreement") is made and entered into as of the     day of     , 2021, by and between NN, Inc., a Delaware corporation (the "Company") and      ("Observer"; collectively with the Company, the "Parties").

1. **Confidential Information.**

- (a) The Observer hereby acknowledges and represents that he has had the opportunity to consult with independent legal counsel regarding his rights and obligations under this Agreement and that he fully understands the terms and conditions contained herein. The Observer agrees that he will not: (i) use, disclose, or reverse engineer the Confidential Information except as authorized by the Company Entities or as otherwise permitted herein or (ii) upon the Observer's resignation or termination retain Confidential Information, including any copies existing in any form (including electronic form), that are in his possession or control (other than back-up copies of electronic files created in the ordinary course of business, which the Observer shall keep confidential in accordance with the terms of this Agreement for so long as they exist and remain Confidential Information, irrespective of the provisions of Paragraph 5). Notwithstanding the foregoing, the Observer may use the Confidential Information in the course of performing his duties as Observer on behalf of NHTV Nevada Holdings LP ("NHTV") as described hereunder; provided, that such use is made in good faith.
- (b) Notwithstanding the prior paragraph, the Parties acknowledge and agree that the Observer shall not be held criminally or civilly liable under trade secret law for the disclosure of a trade secret made in confidence to a government official, either directly or indirectly, or to an attorney solely for the purpose of reporting or investigating a suspected violation of law or made in a complaint or other document filed under seal in a lawsuit or other proceeding. Nothing in this Agreement prohibits the Observer from reporting possible violations of applicable laws or regulations to any applicable governmental agency or entity or from making other disclosures that are protected under the whistleblower provisions of federal law or regulation. The Observer does not need the prior authorization of the Company to make any such reports or disclosures, and the Observer is not required to notify the Company that the Observer has made such reports or disclosures.

- (c) The Parties acknowledge and agree that the Company and NHTV are parties to that certain Board Observer Agreement, dated as of March 22, 2021 (the "Observer Agreement"), pursuant to which "Confidential Information" (as defined in the Observer Agreement) may from time to time be provided or made available to NHTV on the terms and conditions of the Observer Agreement. Nothing contained in this Agreement shall be deemed to restrict or prohibit the disclosure or use by NHTV of any "Confidential Information" (as defined in the Observer Agreement) that has been provided or made available to NHTV pursuant to the Observer Agreement, provided that such disclosure or use is in accordance with the Observer Agreement.
- (d) "Company Entities" means the Company and its subsidiaries.
- (e) "Confidential Information" means all valuable and confidential materials and information (whether or not reduced to writing) that the Observer obtains or to which the Observer obtains access as a result of his activities as Observer, including, without limitation, the following: (a) any and all data, information, materials, systems, processes, procedures or intellectual property owned or used by the Company Entities (as defined in the Purchase Agreement) that is competitively sensitive and not generally known to the public, including, but not limited to, information relating to employees, customers, clients, vendors or suppliers; information provided to the Observer by any of the Company Entities' employees, customers, vendors or suppliers; customer lists; any and all financial statements, budgets, projections and related data; information, processes, procedures or systems relating to research and development, engineering, legal matters, human resources, sourcing, operations, purchasing and manufacturing; business, marketing, advertising and sales plans or estimates; internal performance results; information relating to possible partnerships, joint ventures or acquisitions of a Party; contracts; business records, corporate books and other Company Entity-related records; (b) any creative, scientific or technical information, drawing, design, diagram, process, plan, method, or formula; and (c) all confidential or proprietary concepts (oral or written), documentation, reports, data, specifications, computer hardware or software, source code, object code, flow charts, databases, inventions, know-how, show how and trade secrets, which pertain to the Company Entities regardless of form and whether or not patented or patentable, copyrighted or able to be copyrighted or registered as a trademark or registrable as a trademark and all modifications, derivative works, enhancements and versions thereof. Confidential Information shall not include any information that (i) is or becomes generally available to the public other than as a result of a disclosure by the Observer, his agents or his representatives in violation of this Agreement, (ii) was available to the Observer on a non-confidential basis prior to its disclosure to the Observer by or on behalf of a Company Entity, (iii) is shown to have been

independently developed and disclosed by the Observer or others without violating this Agreement or, to the best knowledge of the Observer after reasonable inquiry, the legal rights of a Company Entity or (iv) to the Observer's actual knowledge otherwise enters the public domain not in violation of any duty or obligation of confidentiality in favor of a Company Entity.

2. **Choice of Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Delaware applicable to agreements made and not to be performed entirely within such state, without regard to conflicts of laws principles.
3. **JURY TRIAL WAIVER.** THE OBSERVER HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AND ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT.
4. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto and supersede all previous understandings, discussions, negotiations, and agreements, with respect to the subject matter herein. No other promises or inducements have been made or entered into by either Party.
5. **Survival.** The provisions of this Agreement shall survive for a period of one (1) year following the termination of Observer's service as Observer, regardless of the reason, and the assignment of this Agreement by Company to any successor in interest or other assignee.

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ACCEPTED AND AGREED:

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Date

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TERM LOAN CREDIT AGREEMENT

Dated as of March 22, 2021

among

NN, INC.,  
as the Borrower and

OAKTREE FUND ADMINISTRATION, LLC,  
as Administrative Agent

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#### EXHIBITS

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B	Assignment and Assumption
C	Term Note
D	Compliance Certificate
E	ABL Intercreditor Agreement
F-1	U.S. Tax Compliance Certificate (Non-Partnership Foreign Lenders)
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F-3	U.S. Tax Compliance Certificate (Foreign Participant Partnerships)
F-4	U.S. Tax Compliance Certificate (Foreign Lender Partnerships)

## CREDIT AGREEMENT

This TERM LOAN CREDIT AGREEMENT (this "Agreement") is entered into as of March 22, 2021, among NN, Inc., a Delaware corporation (the "Borrower"), each lender from time to time party hereto (collectively, the "Lenders" and each individually, a "Lender"), and OAKTREE FUND ADMINISTRATION, LLC, as Administrative Agent (the "Administrative Agent").

### PRELIMINARY STATEMENTS:

WHEREAS, the Borrower has request that, upon the satisfaction in full of the applicable conditions precedent set forth in Article IV below, the applicable Lenders make term loans to the Borrower in an aggregate principal amount of \$150,000,000 on the Closing Date (as hereinafter defined), the proceeds of which shall be used to repay, redeem, defease, discharge or terminate the Borrower's outstanding obligations under the Existing Credit Agreement (as hereinafter defined);

WHEREAS, each Loan Party (as hereinafter defined) desires to secure all of the Obligations (as hereinafter defined) under the Loan Documents (as hereinafter defined) by granting to the Administrative Agent, for the benefit of the Lenders, a security interest in certain property of such Loan Party, subject to the limitations described herein and in the Collateral Documents (as hereinafter defined); and

WHEREAS, the Lenders are willing to extend such credit to the Borrower on the terms and subject to the conditions set forth herein.

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

### ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

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

"ABL Administrative Agent" means JPMorgan Chase Bank, N.A., in its capacity as administrative agent under the ABL Credit Agreement, and any applicable successors or assigns in such capacity.

"ABL Credit Agreement" means the Credit Agreement dated as of the Closing Date, by and among the Borrower, the ABL Lenders and the ABL Administrative Agent, as the same may be amended, restated, supplemented, refinanced, replaced or otherwise modified from time to time in accordance with the ABL Intercreditor Agreement.

"ABL Facility," means any "ABL Facility" under and as defined in the ABL Intercreditor Agreement.

"ABL Intercreditor Agreement" means the intercreditor agreement dated as of the date hereof, between the Administrative Agent and the ABL Administrative Agent substantially in the form of Exhibit E hereto.

"ABL Lenders" means the "Lenders" under and as defined in the ABL Credit Agreement.

"ABL Loan Documents" means the ABL Credit Agreement and all security and other collateral or other documents related thereto or entered into in connection therewith that are deemed to be "Loan Documents" under the ABL Credit Agreement.

"ABL Obligations" means the Obligations, under and as defined in the ABL Credit Agreement.

"ABL Priority Collateral" has the meaning specified in the ABL Intercreditor Agreement.

“ABL Revolving Credit Commitments” means the Commitments, under and as defined in the ABL Credit Agreement.

“ABL Revolving Loans” means the Loans, under and as defined in the ABL Credit Agreement.

“Acquisition” means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of any Person, or any business or division of any Person, (b) the acquisition of in excess of 50% of the Equity Interests of any Person, or (c) the acquisition of another Person by a merger, consolidation, amalgamation or any other combination with such Person.

“Additional Lender” means, at any time, any bank, financial institution or other institutional lender or investor that, in any case, is not an existing Lender and that agrees to provide any portion of any Incremental Facility in accordance with Section 2.16.

“Administrative Agent” means Oaktree Fund Administration, LLC in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

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

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

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

“Aggregate Commitments” means the Commitments of all the Lenders.

“Agreement” has the meaning specified in the introductory paragraph hereto.

“AHYDO Catch-up Payment”: with respect to Indebtedness that would constitute an applicable high yield debt obligation pursuant to Section 163(i) of the Code but for such AHYDO Catch-Up Payment and solely with respect to any associated interest payment date occurring on or after the fifth anniversary of the issuance of such Indebtedness, and each interest payment date thereafter, excluding the interest payment date that falls on the maturity date of such Indebtedness, the amount of payment required for such Indebtedness not to be treated as having a “significant original issue discount” within the meaning of Section 163(i)(2) of the Code.

“Anti-Corruption Laws” means the U.S. Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and any other laws or regulations concerning or relating to bribery or corruption.

“Anti-Money Laundering Laws” means the Bank Secrecy Act, as amended by the PATRIOT Act, and any other laws or regulations concerning or relating to money laundering or terrorism financing.

“Applicable Percentage” means in respect of the Term Facility, with respect to any Term Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Facility represented by (i) such Term Lender’s Term Commitment at such time, subject to adjustment as provided in Section 2.15, plus (ii) the principal amount of such Term Lender’s Term Loans at such time. If the commitment of each Lender to make Loans has been terminated pursuant to Section 8.02, or if the Term Commitments have expired, then the Applicable Percentage of each Lender in respect of the Term Facility shall be determined based on the Applicable Percentage of such Lender in respect of the Term Facility most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender in respect of the Term Facility is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Rate” means, at any time, in respect of the Term Loans (A) 5.875% per annum for Base Rate Loans and (B) 6.875% per annum for Eurodollar Rate Loans.

“Appropriate Lender” means, at any time, with respect to the Term Facility, a Lender that has a Commitment with respect to the Term Facility or holds a Loan under the Term Facility at such time.

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

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

“Attributable Indebtedness” means, on any date, (a) in respect of any Financing Lease Obligations of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Financing Lease Obligations and (c) all Synthetic Debt of such Person.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period 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 Section 1.07(d).

“Auction Agent” means (a) the Administrative Agent or (b) any other financial institution or advisor employed by the Borrower (whether or not an Affiliate of the Administrative Agent) to act as an arranger in connection with any Dutch Auction; *provided* that the Borrower shall not designate the Administrative Agent as the Auction Agent without the written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Auction Agent); *provided, further*, that neither the Borrower nor any of its Affiliates may act as the Auction Agent.

“Audited Financial Statements” means the audited consolidated balance sheet of the Borrower and its Subsidiaries for the fiscal years ended December 31, 2018, December 31, 2019 and December 31, 2020, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

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

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time that 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).

“Base Rate” shall mean the highest of (i) the prime commercial lending rate published by the Wall Street Journal as the “prime rate,” (ii) the Federal Funds Rate, as in effect from time to time (which in no event shall be less than zero), plus one-half of one percent (0.50%) *per annum*, and (iii) the Eurodollar Rate determined on a daily basis for an Interest Period of one (1) month, plus one percent (1.00%) *per annum* (any changes in such rates to be effective as of the date of any change in such rate). The Administrative Agent may make commercial loans or other loans at rates of interest at, above, or below the Administrative Agent’s prime lending rate.

“Base Rate Loan” means a Loan that bears interest based on the Base Rate.

“Benchmark” means, initially, USD LIBOR; provided that if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to USD LIBOR or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 1.07(a).

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

- (1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;
- (2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;
- (3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent 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 U.S. dollar-denominated syndicated or bilateral credit facilities at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is 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. If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) 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” means, 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:

(1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Administrative Agent:

- (a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;
- (b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(2) for purposes of clause (3) of the definition of “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 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 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 U.S. dollar-denominated syndicated or bilateral credit facilities;

provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “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 decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement 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 determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the 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);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein; or

(3) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

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” means the occurrence of one or more of the following events with respect to the 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 FRB, the Federal Reserve Bank of New York, 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), 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 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” means 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 the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 1.07 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 1.07.

“BHC Act Affiliate” of a party shall mean an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Borrower” has the meaning specified in the introductory paragraph hereto.

“Borrower Interim Financial Statements” has the meaning specified in Section 4.01(a)(x).

“Borrower Materials” means materials and/or information provided by or on behalf of the Borrower to the Administrative Agent and the Lenders in connection with this Agreement.

“Borrower Pro Forma Financial Statements” has the meaning specified in Section 4.01(a)(xi).

“Borrowing” means a Term Borrowing.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

“Capital Distribution” means a payment made, liability incurred or other consideration given by the Borrower or any of its Subsidiaries, for the purchase, acquisition, redemption, repurchase, payment, defeasance, cancellation, termination or retirement of any capital stock or other Equity Interest of the Borrower or such Subsidiary, as applicable, or as a dividend, return of capital or other distribution (other than any stock dividend, stock split or other equity distribution payable only in its common capital stock or other Equity Interests (other than Disqualified Equity Interests)) in respect of the Borrower’s or such Subsidiary’s (as the case may be) capital stock or other Equity Interest.

“Capital Expenditures” means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance that are properly charged to current operations).

“Cash Equivalents” means any type of Investment permitted pursuant to Section 7.03(a)(ii).

“CFC” means a “controlled foreign corporation” within the meaning of Section 957 of the Code in which any Loan Party is a United States shareholder within the meaning of Section 951(b) of the Code or from which any Loan Party directly or indirectly would reasonably be expected to receive income under Sections 951 through 965 of the Code.

“Change in Control” means any of the following:

(a) the acquisition of ownership or voting control, directly or indirectly, beneficially (within the meaning of Rules 13d-3 and 13d-5 of the Securities Exchange Act of 1934, as then in effect) or of record, on or after the Closing Date, by any Person or group (within the meaning of Sections 13d and 14d of the Securities Exchange Act of 1934, as then in effect), of shares representing more than thirty-five percent (35%) of the aggregate ordinary Voting Power represented by the issued and outstanding capital stock of the Borrower;

(b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body;

(c) the Borrower shall cease to own, directly or indirectly, one hundred percent (100%) of the record and beneficial ownership of each other Loan Party; or

(d) the occurrence of a change in control, or other similar provision, as defined in the ABL Credit Agreement.

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

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

“Code” means the Internal Revenue Code of 1986, as amended from time to time, as amended

“Collateral” means all of the “Collateral” and “Mortgaged Property” or other similar term referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

“Collateral Documents” means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Mortgages, each of the mortgages, collateral assignments, Security Agreement Supplement, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12, and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Commitment” means any Term Commitment.

“Committed Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system, as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

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

“Compliance Certificate” means a certificate substantially in the form of Exhibit D.

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

“Consolidated Depreciation and Amortization Charges” means, for any period, the aggregate of all depreciation and amortization charges for fixed assets, leasehold improvements and general intangibles (specifically including goodwill) of the Borrower and its Subsidiaries for such period, as determined on a consolidated basis and in accordance with GAAP.

“Consolidated EBITDA” means, for any period, as determined on a consolidated basis, Consolidated Net Earnings for such period, plus without duplication, the aggregate amounts deducted in determining such Consolidated Net Earnings in respect of: (i) Consolidated Interest Expense, (ii) Consolidated Income Tax Expense and distributions therefor, (iii) Consolidated Depreciation and Amortization Charges, (iv) non-cash charges, expenses, losses or other items; provided that if any such non-cash charges, expenses, losses or other items represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated Net Earnings, (v) (1) unusual non-cash gains not incurred in the ordinary course of business in an amount not to exceed \$5,000,000 for the applicable period and/or (2) actual non-recurring non-cash restructuring charges in an amount not to exceed \$7,500,000 in the aggregate over all periods, (vi) non-cash foreign exchange gains and losses with respect to intercompany loans, (vii) restructuring costs, charges and related items, integration costs, costs of strategic initiatives, business optimization expenses or costs (including relating to systems design, upgrade and implementation costs), retention, recruiting, relocation, signing and stay bonuses and expenses including payments made to employees or others who are subject to non-compete agreements, facility opening, pre-opening, closing and consolidation costs, contract termination costs and severance costs, (viii) (1) pro forma adjustments, including pro forma “run rate” cost savings, operating expense reductions and other synergies (in each case, net of amounts actually realized) related to the Transactions that are reasonably identifiable (as determined by the Borrower in good faith) and projected by the Borrower in good faith to result from actions (x) that have been taken or (y) with respect to which substantial steps have been taken or that are expected to be taken (in the good faith determination of the Borrower) within 12 months after the Closing Date and/or (2) pro forma adjustments, including pro forma “run rate” cost savings, operating expense reductions, operating improvements and other synergies (in each case net of amounts actually realized) related to any Acquisition or Disposition permitted pursuant to this Agreement or related to restructuring initiatives, cost savings initiatives, new projects and other initiatives that are reasonably identifiable (as determined by the Borrower in good faith) and projected by the Borrower in good faith to result from actions that have either been taken, with respect to which substantial steps have been taken or are that are expected to be taken within 12 months after the date of consummation of such Acquisition or Disposition or the commencement of such initiative, (ix) adjustments consistent with Regulation S-X, (x) other non-recurring or one-time expenses, accruals, payments and expenses (including rationalization, legal, tax, structuring and other costs and expenses) related to the Transactions, acquisitions, investments, dividends, restricted payments, dispositions, refinancings or issuances of debt or equity or related to any amendment, negotiation, forbearance, extension, modification or waiver in respect of the documentation (including the Loan Documents) governing such transactions (in each case, whether or not consummated), (xi) costs related to implementation of operational and reporting systems and technology initiatives, provided that that the amounts added to Consolidated EBITDA pursuant to the foregoing clauses (vii) through (xi) in any such period (other than with respect to (a) stock option and other equity based compensation expenses, (b) Transaction Costs and (c) Settlement Costs) shall not exceed, in the aggregate, 25% of Consolidated EBITDA for such period (calculated before giving effect to the

adjustments set forth in clauses (vii) through (xi)), (xii) charges, losses or expenses to the extent paid for, reimbursed, indemnified or insured by a third party (or reasonably expected to be so paid or reimbursed within one (1) year after the end of such period), (xiii) proceeds of business interruption insurance to the extent not included in the calculation of Consolidated Net Earnings, (xiv) income attributable to non-controlling interest, (xv) letter of credit and other financing fees, (xvi) any non-cash increase in expenses (1) resulting from the revaluation of inventory (including any impact of changes to inventory valuation policy methods including changes in capitalization of variances) or other inventory adjustments, or any other acquisition or (2) due to purchase accounting and (xvii) earnout obligations with respect to any Acquisition or Investment paid or accrued during the applicable period. For purposes of this Agreement, Consolidated EBITDA shall be adjusted pursuant to Section 1.03(c). Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated EBITDA for each such period that includes: for the fiscal quarters ended June 30, 2020, September 30, 2020 and December 31, 2020, Consolidated EBITDA for such fiscal quarters shall be deemed to be \$4,853,000, \$14,660,000 and \$16,845,000 respectively.

“Consolidated Funded Indebtedness” means, at any date, all Indebtedness (including, but not limited to, current, long-term and Subordinated Indebtedness, if any) of the Borrower and its Subsidiaries, as determined on a consolidated basis and in accordance with GAAP; provided that in no event shall any preferred Equity Interests be included as indebtedness so long as such preferred Equity Interests does not have any mandatory redemption date, and in no event shall the Series D Preferred Stock constitute Consolidated Funded Indebtedness.

“Consolidated Income Tax Expense” means, for any period, all provisions for taxes based on the gross or net income of the Borrower and its Subsidiaries (including, without limitation, any additions to such taxes, and any penalties and interest with respect thereto), as determined on a consolidated basis and in accordance with GAAP.

“Consolidated Interest Expense” means, for any period, the interest expense of the Borrower and its Subsidiaries for such period, as determined on a consolidated basis and in accordance with GAAP.

“Consolidated Net Earnings” means, for any period, the net income (or loss) of the Borrower, its Subsidiaries, and Borrower’s equity in the net income (or loss) for such period of any Person if such Person is not a Subsidiary for such period, as determined on a consolidated basis and in accordance with GAAP; provided that Consolidated Net Earnings shall exclude the net income of any Subsidiary or Person, during such period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary or Person of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such period, except that the Borrower’s equity in any net loss of any such Subsidiary or Person for such period shall be included in determining Consolidated Net Earnings.

“Consolidated Net Leverage Ratio” means, as of any date, determined on a consolidated basis, the ratio of (a) Consolidated Funded Indebtedness (as of such date) minus the aggregate amount equal to 100% of the Unrestricted Cash and Cash Equivalents subject to control agreements (as of such date) of the Loan Parties to (b) Consolidated EBITDA for the period of four consecutive fiscal quarters of the Borrower then ended (in the case of any determination as of the last day of a fiscal quarter) or for the most recently completed four fiscal quarters of the Borrower for which financials are required to be delivered hereunder (in the case of any determination of such ratio on a pro forma basis hereunder).

“Consolidated Secured Net Leverage Ratio” means, as of any date, determined on a consolidated basis, the ratio of (a) Consolidated Funded Indebtedness (as of such date) that is secured by Liens on assets or property of the Borrower and the Subsidiaries as of such date minus the aggregate amount equal to 100% of the Unrestricted Cash and Cash Equivalents subject to control agreements (as of such date) of the Loan Parties to (b) Consolidated EBITDA (for the most recently completed four fiscal quarters of the Borrower for which financials are required to be delivered hereunder).

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

“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.

“Covered Entity” shall mean 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).

“Covered Party” shall have the meaning provided in Section 10.21.

“Credit Extension” means a Borrowing.

“Cure Amount” shall have the meaning provided in Section 8.04.

“Cure Right” shall have the meaning provided in Section 8.04.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

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

“Default” means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, unless cured or waived, would be an Event of Default.

“Default Rate” means an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum.

“Defaulting Lender” means, subject to Section 2.15(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent within two Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has other than via an Undisclosed Administration, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the

subject of a Bail-in Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.15(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower and each other Lender promptly following such determination.

“Deposit Account Control Agreement” has the meaning assigned thereto in the Security Agreement.

“Designated Jurisdiction” means any country, region or territory that is the subject of comprehensive Sanctions.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Person (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Equity Interest” means, with respect to any Person, any Equity Interest that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event: (a) matures or is mandatorily redeemable (other than redeemable only for Equity Interests of such Person that are not themselves Equity Interests described in this definition) pursuant to a sinking fund obligation or otherwise; (b) is convertible or exchangeable at the option of the holder for Indebtedness or Equity Interests described in this definition (excluding Equity Interests that are convertible or exchangeable solely at the option of the Borrower or a Subsidiary); or (c) is mandatorily redeemable or must be purchased upon the occurrence of certain events or otherwise, in whole or in part; in each case, in the case of the Borrower, on or prior to the ninety-first day following the final maturity date of the then issued Term Loans, as extended from time to time; provided that any Equity Interests that would not constitute Equity Interests described in this definition but for provisions thereof giving holders thereof the right to require such Person to purchase or redeem such Equity Interests upon the occurrence of an “asset sale” or “change of control” occurring prior to the ninety-first day following the final maturity date of the then-existing Term Loans shall not constitute Disqualified Equity Interests if any such requirement only becomes operative after payment in full of all amounts owing under this Agreement and the other Loan Documents and the termination in full of the Commitments; provided, further, that in no event will the term “Disqualified Equity Interest” include the Series D Preferred Stock. The amount of any Disqualified Equity Interests that do not have a fixed redemption, repayment or repurchase price will be calculated in accordance with the terms of such Disqualified Equity Interests as if such Disqualified Equity Interests were redeemed, repaid or repurchased on any date on which the amount of such Disqualified Equity Interests is to be determined pursuant to this Agreement; provided that if such Disqualified Equity Interests could not be required to be redeemed, repaid or repurchased at the time of such determination, the redemption, repayment or repurchase price will be the book value of such Disqualified Equity Interests as reflected in the most recent financial statements of such Person.

“Dollar” and “\$” mean lawful money of the United States.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States.

“Dutch Auction” means an auction (an “Auction”) conducted by the Borrower or one of its Subsidiaries in order to purchase Term Loans of any tranche in accordance with the following procedures or such other procedures as may be agreed to between the Auction Agent and the Borrower:

(a) *Notice Procedures.* In connection with any Auction, the Borrower shall provide notification to the Auction Agent (for distribution to the Appropriate Lenders and the Administrative Agent) of the Tranche of Term Loans that will be the subject of the Auction (an “Auction Notice”). Each Auction Notice shall be in a form reasonably acceptable to the Auction Agent and shall specify (i) the total cash value of the bid, in a minimum amount of \$5,000,000 with minimum increments of \$1,000,000 in excess thereof (the “Auction Amount”) and (ii) the discounts to par, which shall be expressed as a range of percentages (the “Discount Range”), representing the range of purchase prices (expressed as discounts to par) that could be paid in the Auction for such Term Loans at issue.

(b) *Reply Procedures.* In connection with any Auction, each applicable Lender may, in its sole discretion, participate in such Auction by providing the Auction Agent with a notice of participation (the “Return Bid”) which shall be in a form reasonably acceptable to the Auction Agent and shall specify (i) a discount to par (such discount being the “Reply Discount”) that must be expressed as a price, which must be within the Discount Range, and (ii) a principal amount of the applicable Term Loans such Lender is willing to sell, which must be in increments of \$1,000,000 or in an amount equal to such Lender’s entire remaining amount of the applicable Term Loans (the “Reply Amount”). Lenders may only submit one Return Bid per Auction. In addition to the Return Bid, each Lender wishing to participate in such Auction must execute and deliver, to be held in escrow by the Auction Agent, an assignment and acceptance agreement in a form reasonably acceptable to the Auction Agent (and shall authorize the Auction Agent to adjust the same to reflect any ratable treatment required by clause (c) below).

(c) *Acceptance Procedures.* Based on the Reply Discounts and Reply Amounts received by the Auction Agent, the Auction Agent, in consultation with the Borrower, will determine the applicable discount with respect to all Term Loans (the “Applicable Discount”) for the Auction, which shall be the highest Reply Discount for which the Borrower or its Subsidiary, as applicable, can complete the Auction at the Auction Amount; *provided that*, in the event that the Reply Amounts are insufficient to allow the Borrower or its Subsidiary, as applicable, to complete a purchase of the entire Auction Amount (any such Auction, a “Failed Auction”), the Borrower or such Subsidiary shall either, at its election, (i) withdraw the Auction or (ii) complete the Auction at an Applicable Discount equal to the lowest Reply Discount. The Borrower or its Subsidiary, as applicable, shall purchase the applicable Term Loans (or the respective portions thereof) from each applicable Lender with a Reply Discount that is equal to or greater than the Applicable Discount (“Qualifying Bids”) at the Applicable Discount; *provided that* if the aggregate proceeds required to purchase all applicable Term Loans subject to Qualifying Bids would exceed the Auction Amount for such Auction, the Borrower or its Subsidiary, as applicable, shall purchase such Term Loans at the Applicable Discount ratably based on the principal amounts of such Qualifying Bids (subject to adjustment for rounding as specified by the Auction Agent). Each participating Lender will receive notice of a Qualifying Bid as soon as reasonably practicable but in no case later than five (5) Business Days from the date the Return Bid was due.

(d) *Additional Procedures.* Once initiated by an Auction Notice, the Borrower or its Subsidiary, as applicable, may not withdraw an Auction other than a Failed Auction. Furthermore, in connection with any Auction, upon submission by a Lender of a Qualifying Bid, such Lender will be obligated to sell the entirety or its allocable portion of the Reply Amount, as the case may be, at the Applicable Discount.

“Early Opt-in Election” means, if the then-current Benchmark is USD LIBOR, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders.

“ECF Percentage” means, for any fiscal year ending on or after December 31, 2021:

(a) 50% if the Consolidated Net Leverage Ratio as of the last day of such fiscal year is greater than 3.00 to 1.00;

(b) 25% if the Consolidated Net Leverage Ratio as of the last day of such fiscal year is equal to or less than 3.00 to 1.00 but greater than 2.00 to 1.00; and

(c) 0% if the Consolidated Net Leverage Ratio as of the last day of such fiscal year is equal to or less than 2.00 to 1.00.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in clause (a) or (b) of this definition and is subject to consolidated supervision with its parent.

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

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

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

“Environment” means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and subsurface strata, and natural resources such as wetland, flora and fauna.

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, agreements or governmental restrictions relating to pollution or the protection of the Environment or human health (to the extent related to exposure to Hazardous Materials), including those relating to the manufacture, generation, handling, transport, storage, treatment, Release or threat of Release of Hazardous Materials.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

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

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or Section 4001(14) of ERISA or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by the Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in insolvency; (d) the filing of a notice of intent to terminate or the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition that constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate; (i) a failure by the Borrower or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by the Borrower or any ERISA Affiliate to make any required contribution to a Multiemployer Plan or (j) any event similar to the events set forth in subsections (a) through (i) above with respect to a Foreign Pension Plan.

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

“Eurodollar Rate” means, with respect to each Interest Period for a Eurodollar Rate Loan or for any calculation of the Base Rate in accordance with clause (iii) of the definition of Base Rate, (i) the rate per annum equal to the London interbank offered rate for deposits in Dollars appearing on the applicable Bloomberg screen (or on any successor or substitute page of such service or any successor to such service, or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 A.M. (London time) two (2) Business Days prior to the first day of such Interest Period, with a maturity equal to such Interest Period, divided by (ii) a percentage equal to 100% minus the then stated maximum rate of all reserve requirements (including any marginal, emergency, supplemental, special or other reserves and without benefit of credits for proration, exceptions or offsets that may be available from time to time) applicable to any member bank of the Federal Reserve System in respect of Eurocurrency Liabilities as defined in Regulation D (or any successor category of liabilities under Regulation D); provided that if the rate referred to in clause (i) above is not available at any such time for any reason, then the rate referred to in clause (i) shall instead be the interest rate per annum, as determined by the Administrative Agent, to be the arithmetic average of the rates per annum at which deposits in Dollars in an amount equal to the amount of such Eurodollar Rate Loan are offered by major banks in the London interbank market to the Administrative Agent at approximately 11:00 A.M. (London time), two (2) Business Days prior to the first day of such Interest Period for contracts that would be entered into at the commencement of such Interest Period for the same duration as such Interest Period.

Notwithstanding the foregoing, in no event shall the Eurodollar Rate be less than 1.00%.

“Eurodollar Rate Loan” means a Loan that bears interest at a rate determined by reference to the Eurodollar Rate (other than by reason of clause (iii) of the definition of “Base Rate”).

“Event of Default” has the meaning specified in Section 8.01.

“Excess Cash Flow” means, for any fiscal year of the Borrower, the excess (if any) of (a) Consolidated EBITDA for such fiscal year (determined without giving effect to clause (a)(viii) thereof and any adjustments thereto pursuant to Section 1.03(c)) over (b) the sum (for such fiscal year) of (i) Consolidated Interest Expense actually paid in cash by the Borrower and its Subsidiaries, (ii) scheduled principal repayments, to the extent actually made in cash, of the Term Loans pursuant to Section 2.07, (iii) all Consolidated Income Tax Expense actually paid in cash by the Borrower and its Subsidiaries, (iv) Capital Expenditures actually made by the Borrower and its Subsidiaries in cash, (v) Transaction Costs actually paid by the Borrower and its Subsidiaries in cash (vi) Settlement Costs actually paid by the Borrower and its Subsidiaries in cash, (vi) purchase price adjustment (including

reasonable fees and expenses related thereto) in connection with the sale of Borrower's Life Sciences division actually paid in cash and (vii) tax payments and customary transactions costs and expenses related to the issuance of the Series B preferred Equity Interests paid in cash; provided that in each case of clauses (b)(i) through (v) such payment was not made with proceeds of any Indebtedness, Disposition, equity issuance, Extraordinary Receipts or other proceeds that would not be included in calculating Consolidated EBITDA for the applicable fiscal year.

"Excluded Assets" means (i) any property to the extent that the grant of a security interest therein would violate applicable laws, require a consent not obtained of any Governmental Authority, or constitute a breach of or default under, or result in the termination of or require a consent not obtained under, any contract, lease, license or other agreement evidencing or giving rise to such property, or result in the invalidation thereof or provide any party thereto with a right of termination (other than to the extent that any such term would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the applicable UCC or any other applicable Law or principles of equity), except in each case with respect to any such contract, lease, license or other agreement evidencing or giving rise to such property, the provision resulting in such prohibition, breach, default, right of termination or consent was entered into in contemplation thereof or for the purposes of circumventing the requirements of the Loan Documents (ii) any permit, license, contract or lease to the extent that (and in each case only for so long as) such grant of a security interest is prohibited by any anti-assignment provision therein or the anti-assignment provisions of the UCC (other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC notwithstanding such prohibition) or any applicable laws or is prohibited by, or constitutes a breach or default under or results in the termination of or gives rise to a right on the part of the parties thereto other than the Loan Parties and their Subsidiaries to terminate such permit, license, contract or lease (or requires the consent of any party thereto other than the Loan Parties and their Subsidiaries), except in each case to the extent that (x) with respect to any such contract or lease, the provision resulting in such prohibition, breach, default, right of termination or consent was entered into in contemplation thereof or for the purposes of circumventing the requirements of the Loan Documents and (y) such anti-assignment provisions or such laws or the term in such permit, license, contract or lease providing for such prohibition, breach, default, right of termination or consent are ineffective or rendered unenforceable under the applicable anti-assignment provisions of the UCC, (iii) any property owned by a Loan Party on the date hereof or hereafter acquired that is subject to a Lien securing a purchase money or capital or finance lease obligation permitted to be incurred hereunder if (and in each case only for so long as) the contract or other agreement in which such Lien is granted (or the documentation providing for such purchase money, project financing or capital or finance lease obligation) prohibits the creation of any other Lien on such property or would give rise to a right to termination with respect thereto except to the extent that the term in such contract or other agreement providing for such prohibition is ineffective or rendered unenforceable under the applicable anti-assignment provisions of the UCC other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC notwithstanding such prohibition, (iv) (A) solely with respect to each first-tier Foreign Subsidiary that is a CFC and each Foreign Subsidiary Holding Company, voting equity securities in excess of 65% of the voting equity securities thereof and (B) any equity interests of a Subsidiary that is owned by a Subsidiary that is a CFC or a Foreign Subsidiary Holding Company, (v) any Trust Account, (vi) any intent-to-use United States trademark applications for which an amendment to allege use or statement of use has not been filed under 15 U.S.C. § 1051(c) or 15 U.S.C. § 1051(d), respectively, or if filed, has not been deemed in conformance with 15 U.S.C. § 1051(a) or examined and accepted, respectively, by the United States Patent and Trademark Office solely to the extent and during the period, if any, that, the grant of such security interest would impair the validity or enforceability of such intent-to-use United States trademark application under applicable federal law; provided, that, upon such filing and acceptance, such intent-to-use applications shall be included as Collateral, (vii) all assets of Foreign Subsidiaries, (viii) all leasehold real property, (ix) fee owned real property that does not constitute Material Real Property (other than any Mortgaged Property), (x) interests in partnerships, joint ventures and non-wholly owned subsidiaries, (xi) margin stock, (xii) security interests to the extent the same would result in adverse tax consequences (including as a result of any law or regulation in any applicable jurisdiction similar to Section 956 of the Internal Revenue Code) (in each case, other than *de minimis*) as reasonably determined by the Borrower and Required Lenders, and (xiii) those assets as to which the Borrower and the Required Lenders reasonably agree that the cost of obtaining such a security interest or perfection thereof are excessive in relation to the benefit to the Lenders of the security to be afforded thereby (including, for the avoidance of doubt, motor vehicles and other assets subject to certificates of title); provided, further, that, notwithstanding the foregoing, a security interest shall be, and is hereby, granted in (A) any property immediately upon such property ceasing to be an Excluded Asset and (B) any and all proceeds, products, substitutions and replacements of Excluded Assets to the extent such proceeds, products, substitutions and replacements do not themselves constitute Excluded Assets; provided, however, if any Excluded Asset does not constitute an Excluded Asset (as defined in the ABL Credit Agreement), it shall not constitute an Excluded Asset hereunder.

“Excluded Deposit Accounts” means any Deposit Account of a Loan Party (and all cash, Cash Equivalents and other securities or investments credited thereto or deposited therein) (a) that is a Trust Account, (b) that does not have an individual ending balance in excess of \$100,000 or in the aggregate with each other account described in this clause (b), in excess of \$500,000, or (c) to the extent that it is cash collateral for letters of credit to the extent permitted hereunder.

“Excluded Subsidiaries” means (i) any Subsidiary to the extent a Guaranty by such Subsidiary would be prohibited or restricted by law, rule or regulation, or by any restriction in any contract or constituent document existing on the Closing Date or at the time such Subsidiary becomes a Subsidiary (including any requirement to obtain the consent of any Governmental Authority or third party) solely to the extent that such prohibition or restriction was not entered into in contemplation of its financing arrangements or for the purpose of circumventing the requirements of the Loan Documents, (ii) any Subsidiary that is a Foreign Subsidiary or a Foreign Subsidiary Holding Company, (iii) any direct or indirect Subsidiary of any Foreign Subsidiary or any Foreign Subsidiary Holding Company set forth in clause (ii), (iv) any Subsidiary that is an Immaterial Subsidiary, (v) any Subsidiary where the Required Lenders and the Borrower reasonably determine that would reasonably be expected to result in adverse tax, accounting or regulatory consequences (in each case, other than *de minimis*), (vi) (h) special purpose entities (including, without limitation, entities formed for the purpose of (i) securitization facilities and (ii) purchasing, improving or financing real estate), (vii) not-for-profit subsidiaries, if any, and (viii) captive insurance companies, if any.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an ECP 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. 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” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 3.06) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or (c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e), and (d) any U.S. Federal withholding Taxes imposed under FATCA.

“Existing Credit Agreement” means that certain Second Amended and Restated Credit Agreement, dated as of December 19, 2019 (as amended prior to the Closing Date), by and between (i) the Borrower, (ii) the guarantors from time to time party thereto, (iii) the lenders from time to time party thereto and (iv) Truist Bank, as successor by merger to SunTrust Bank, as administrative agent and collateral agent.

“Existing Credit Agreement Indebtedness” means all Indebtedness evidenced by the Existing Credit Agreement and the other loan documents thereunder.

“Existing Indebtedness” means all existing Indebtedness of the Borrower and its Subsidiaries, including, without limitation, the Existing Credit Agreement Indebtedness but excluding Indebtedness permitted pursuant to Section 7.02.

“Extraordinary Receipt” means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including tax refunds, pension plan reversions, proceeds of insurance (other than proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments; provided, however, that an Extraordinary Receipt shall not include cash receipts from proceeds of insurance, condemnation awards (or payments in lieu thereof) or indemnity payments to the extent that such proceeds, awards or payments in respect of loss or damage to equipment, fixed assets or real property are applied (or in respect of which expenditures were previously incurred) to replace or repair the equipment, fixed assets or real property in respect of which such proceeds were received in accordance with the terms of Section 2.05(b)(iv).

“Facility” means the Term Facility.

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

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“Federal Funds Rate” means, for any day, the rate per annum (rounded upwards, if necessary, to the next 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with member banks of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the next succeeding Business Day or, if such rate is not so published for any Business Day, the Federal Funds Rate for such day shall be the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day on such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by the Administrative Agent.

“Fee Letter” means the letter agreement, dated February 19, 2021, among the Borrower and Oaktree.

“Financial Covenant” has the meaning specified in Section 7.14.

“Financial Officer” means any of the following officers: chief executive officer, president, chief financial officer, chief administrative officer, treasurer or controller. Unless otherwise qualified, all references to a Financial Officer in this Agreement shall refer to a Financial Officer of the Borrower.

“Financing Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as financing leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR.

“Foreign Disposition” has the meaning specified in Section 2.05(b)(viii).

“Foreign Excess Cash Flow” has the meaning specified in Section 2.05(b)(viii).

“Foreign Lender” means a Lender that is not a U.S. Person. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Pension Plan” means a pension plan required to be registered under the law of a jurisdiction other than the United States (or a state or local government thereof), that is maintained or contributed to by the Borrower or any of its Subsidiaries for their employees or former employees.

“Foreign Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision other than any political subdivision of the United States.

“Foreign Subsidiary Holding Company” means any Subsidiary of the Borrower all of the assets of which constitute the Equity Interests and/or Indebtedness of one or more CFCs and other Foreign Subsidiary Holding Companies.

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

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

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

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

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “Primary Obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the Primary Obligor so as to enable the Primary Obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided*, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“Guarantors” means, collectively, the Domestic Subsidiaries of the Borrower (other than Immaterial Subsidiaries) listed on Schedule 5.01 and each other Domestic Subsidiary of the Borrower that shall be required to execute and deliver a Guaranty or guaranty supplement pursuant to Section 6.12.

“Guaranty” means, collectively, the Guaranty made by the Guarantors in favor of the Secured Parties, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.12.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants including petroleum or petroleum distillates, natural gas, natural gas liquids, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, toxic mold, infectious or medical wastes and all other substances, wastes, chemicals, pollutants, contaminants or compounds of any nature in any form, in each case, regulated pursuant to any Environmental Law.

“IFRS” means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.

“Immaterial Subsidiary” means any Subsidiary of the Borrower that, (a) together with all other such Subsidiaries in the aggregate, (i) contributed less than 5% of the Consolidated EBITDA of the Borrower and its Subsidiaries, taken as a whole, during the most recently-ended four fiscal quarter period (taken as a single period) and (ii) as of any applicable date of determination has assets that constitute less than 5% aggregate net book value of the assets of the Borrower and its Subsidiaries, taken as a whole, (b) does not Guarantee or provide a Lien on its assets or otherwise provide credit support with respect to any Indebtedness of the Borrower or any of the Borrower’s other Subsidiaries, (c) does not own, directly or indirectly, any Equity Interests or Indebtedness of, or own or hold any Lien on any property of, a Loan Party, (d) does not own any other Subsidiaries (other than Immaterial Subsidiaries) and (e) has not been designated to be a Loan Party pursuant to Section 6.12(g) hereof.

“Impacted Loans” has the meaning assigned to such term in Section 3.03.

“Incremental Amendment” has the meaning assigned to such term in Section 2.16(h).

“Incremental Amendment Date” has the meaning assigned to such term in Section 2.16(d).

“Incremental Arranger” has the meaning assigned to such term in Section 2.16(a).

“Incremental Facility Closing Date” has the meaning assigned to such term in Section 2.16(b).

“Incremental Lenders” has the meaning assigned to such term in Section 2.16(c).

“Incremental Loan Request” has the meaning assigned to such term in Section 2.16(a).

“Incremental Term Commitments” has the meaning assigned to such term in Section 2.16(a).

“Incremental Term Lender” has the meaning assigned to such term in Section 2.16(c).

“Incremental Term Loan” has the meaning assigned to such term in Section 2.16(b).

“Incremental Term Loan Increase” has the meaning assigned to such term in Section 2.16(a).

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

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

(b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial and limited to drawn but unreimbursed letters of credit), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;

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

(d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and current liabilities in the form of expenses that are not the result of the borrowing of money or the extension of credit and that are listed on the financial statements of the Borrower as “other current liabilities”);

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

(f) all Attributable Indebtedness in respect of Financing Lease Obligations and Synthetic Lease Obligations of such Person and all Synthetic Debt of such Person;

(g) all obligations of such Person to mandatorily purchase, redeem, retire or defease any Equity Interest in such Person or any other Person or any warrant, right or option to mandatorily acquire such Equity Interest (other than an acquisition solely with such Person’s common capital stock or other Equity Interests (other than Disqualified Equity Interests)), valued, in the case of a mandatorily redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends (other than dividends payable only in such Person’s common capital stock or other Equity Interests (other than Disqualified Equity Interests));

(h) all obligations of such Person with respect to asset securitization financing programs to the extent that there is recourse against such Person or such Person is liable (contingent or otherwise) under any such program;

(i) all Guarantees of such Person in respect of any of the foregoing; and

(j) all Disqualified Equity Interests issued by such Person with the amount of Indebtedness represented by such Disqualified Equity Interests being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price or, with respect to any Subsidiary, any preferred Equity Interests (but excluding, in each case, accrued dividends, if any); provided that in no event shall any preferred Equity Interests be included as Indebtedness so long as such preferred Equity Interests do not have a mandatory redemption date applicable thereto and are not subject to any covenants.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. For the avoidance of doubt and notwithstanding anything herein to the contrary, the Series D Preferred Stock shall not constitute Indebtedness hereunder.

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

“Indemnitee” has the meaning specified in Section 10.04(b).

“Ineligible Institution” means (a) a natural person, (b) a Defaulting Lender or its Lender Parent, (c) 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, with respect to clause (c), 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 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, (d) a Loan Party or a Subsidiary or other Affiliate

of a Loan Party (excluding, however, any assignment thereto as the result of a Dutch Auction, if at all) or (e) direct operating competitors of a Loan Party or an Affiliate of any such competitor, in each case identified in writing by the Borrower to the Administrative Agent from time to time.

“Information” has the meaning specified in Section 10.07.

“Intellectual Property” means the collective reference to all rights, priorities and privileges in intellectual property, whether arising under United States, Canadian, multinational or foreign laws, including copyrights, patents, industrial designs, trademarks and all goodwill associated therewith, domain names, and trade secrets, and all rights to sue at Law or in equity for any Infringement thereof, including the right to receive all proceeds and damages therefrom.

“Intellectual Property Security Agreement” has the meaning specified in Section 4.01(a)(iv).

“Interest Payment Date” means, (a) as to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; provided, however, that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made.

“Interest Period” means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one, two, three or six months thereafter (in each case, subject to availability), as selected by the Borrower in its Committed Loan Notice; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Rate Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period pertaining to a Eurodollar Rate 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 calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the Maturity Date.

“Investment” means, as to any Person, any of the following: (a) creating, acquiring or holding any Subsidiary, (b) making or holding any investment in any stocks, bonds or securities of any kind, (c) being or becoming a party to any joint venture or other partnership, (d) making or keeping outstanding any advance or loan to any Person or assumption or acquisition of any debt of another Person, or (e) any Guarantee (other than the Guaranty). For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“IRS” means the United States Internal Revenue Service.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Junior Indebtedness” means Indebtedness incurred pursuant to Section 7.02(k) or Section 7.02(l) hereof.

“Latest Maturity Date” means, at any date of incurrence of any Indebtedness, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, including the latest maturity or expiration of any Term Loan or any applicable Commitment in respect thereof, in each case then outstanding and as extended in accordance with this Agreement from time to time.

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

“Lender” has the meaning specified in the introductory paragraph hereto.

“Lending Office” means, as to any Lender, the office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, easement, right-of-way or other encumbrance on title to real property, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” means an extension of credit by a Lender to the Borrower under Article II in the form of a Term Loan.

“Loan Documents” means, collectively, (a) this Agreement, (b) [reserved], (c) the ABL Intercreditor Agreement, (d) the Collateral Documents, (e) the Guaranty and (f) the Fee Letter.

“Loan Parties” means, collectively, the Borrower and each Guarantor.

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

“Make-Whole Amount” means the present value at the prepayment date of (i) 2.0% of the outstanding principal amount of the Term Loans so prepaid, plus (ii) all remaining scheduled interest payments due on such Term Loans through the first anniversary of the Closing Date (excluding accrued but unpaid interest to, but not including, the prepayment date), computed using a discount rate equal to the Treasury Rate (determined as of the Business Day prior to such date of prepayment) plus 50 basis points.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, liabilities (actual or contingent), operations, or condition (financial or otherwise) of the Borrower, (b) the business, assets, liabilities (actual or contingent), operations, or condition (financial or otherwise) of the Borrower and its Subsidiaries, taken as a whole, (c) the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party, or (d) the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

“Material Indebtedness Agreement” means any debt instrument, Financing Lease Obligation, guaranty, contract, commitment, agreement or other arrangement evidencing or entered into in connection with any Indebtedness of the Borrower or any Subsidiary, other than the Loans or the ABL Obligations, having a stated principal amount in excess of \$10,000,000.

“Material Intellectual Property” means any Intellectual Property of the Borrower and its Subsidiaries that is included in the Collateral and the loss of which would have a Material Adverse Effect on the business, results of operations or financial condition of the Borrower and its Subsidiaries (taken as a whole).

“Material Real Property” means any real property owned by a Loan Party in fee simple that (a) as of the Closing Date is set forth on Schedule 1.01, (b) if acquired after the Closing Date, has a fair market value of \$2,000,000 or (c) is designated by the Borrower in accordance with Section 6.12(f).

“Maturity Date” means September 22, 2026, provided that if such maturity is extended pursuant to Section 10.01, such maturity date as determined pursuant to such Section; provided, further, that in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

“Moody’s” means Moody’s Investors Service, Inc. and any successor thereto.

“Mortgaged Property” means any Material Real Property owned in fee simple by any Loan Party which real property is or is intended under the terms hereof to be subject to a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Mortgages” means deeds of trust, trust deeds, deeds to secure debt, mortgages, leasehold mortgages and leasehold deeds of trust or other equivalent document (together with related fixture filings and assignments of leases and rents) now or hereafter encumbering any Mortgaged Property of any Loan Party in favor of the Administrative Agent, on behalf of the Secured Parties, as security for any of the Obligations, each of which shall be in form and substance satisfactory to the Administrative Agent.

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

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

“Net Cash Proceeds” means:

(a) with respect to any Disposition by the Borrower or any of its Subsidiaries, or any Extraordinary Receipt received or paid to the account of the Borrower or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable and customary out-of-pocket fees and expenses incurred by the Borrower or such Subsidiary in connection with such transaction (including reasonable and customary fees of attorneys, accountants, consultants and investment advisers, reasonable and customary out-of-pocket costs associated with title insurance policies, surveys, lien and judgment searching, recording documents, and transaction and recording taxes), (C) income taxes reasonably estimated to be actually payable within two years of the date of the relevant transaction as a result of any gain recognized in connection therewith; provided that, if the amount of any estimated taxes pursuant to this subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Disposition, the aggregate amount of such excess shall constitute Net Cash Proceeds and (D) amounts held in any reserve created for escrow, holdback, indemnity or similar obligations of the Borrower or any of its Subsidiaries in connection with such Disposition (provided that (1) such amounts held in such reserves shall not exceed 10% of the gross cash proceeds received with respect to such Disposition and (2) such amounts held in such reserves shall constitute Net Cash Proceeds upon release to, or receipt by, the Borrower or any of its Subsidiaries); provided, further, that such cash or Cash Equivalents received in connection with any Disposition or Extraordinary Receipt shall only constitute Net Cash Proceeds under this clause (a) in any fiscal year to the extent that the aggregate amount of such cash and Cash Equivalents received in such fiscal year exceeds \$5,000,000; and

(b) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any of its Subsidiaries, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by the Borrower or such Subsidiary in connection therewith.

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

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

“Non-Loan Party Debt Cap” has the meaning specified in Section 7.02(d).

“Non-Loan Party Investments Cap” has the meaning specified in Section 7.03(a)(v).

“Note” means a Term Note.

“Oaktree” means Oaktree Capital Management, L.P. and its Affiliates, acting solely in its capacity as an investment adviser on behalf of certain funds and accounts and wholly-owned entities of such funds and accounts.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided that the Obligations shall exclude any Excluded Swap Obligations.

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

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Original Indebtedness” has the meaning specified in Section 7.02(g).

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

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

“Outstanding Amount” means, with respect to Term Loans, on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Term Loans.

“Participant” has the meaning specified in Section 10.06(d).

“Participant Register” has the meaning specified in Section 10.06(d).

“Patent Security Agreement” means a patent security agreement or notice of grant of security interest in patents, in each case in form and substance reasonably satisfactory to the Administrative Agent.

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

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006, as amended from time to time.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by the Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Permitted Cure Securities” means any Equity Interests (other than Disqualified Equity Interests) of the Borrower issued pursuant to the Cure Right.

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

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Borrower or any ERISA Affiliate or any such Plan to which the Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Pledged Intercompany Note” means any written promissory note made by any Subsidiary to the Borrower or a Loan Party, whether now owned or hereafter acquired by the Borrower or such Loan Party.

“Precious Metal Consignment Agreements” means, collectively, (a) the Consignment Agreement dated as of July 30, 2009, as amended, between Mitsubishi International Corporation and NN Power Solutions Holdings, LLC, successor in interest to Precision Engineered Products LLC and (b) the Consignment Agreement dated as of January 25, 2010, as amended, between Umicore Precious Metals NJ, LLC and NN Power Solutions Holdings, LLC, successor in interest to Precision Engineered Products LLC, and in each case each other agreement entered into in connection with such consignment agreements, each as may be amended, modified, restated or replaced, in each case, in a manner not adverse to the Lenders, from time to time.

“Prepayment Premium” has the meaning specified in Section 2.05(c).

“Public Lender” has the meaning specified in Section 6.02.

“QFC” shall have 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” shall have the meaning provided in Section 10.21.

“Qualified Receivables Transaction” means any transaction or series of transactions entered into by Borrower or any Subsidiary pursuant to which Borrower or such Subsidiary sells, contributes, conveys or otherwise transfers to, or grants a security interest in for the benefit of, any other Person (other than Borrower or a Subsidiary), any Receivables (whether now existing or arising in the future) of Borrower or such Subsidiary, and any related assets, including, without limitation, all collateral securing such Receivables, all contracts and all guarantees or other obligations in respect of such Receivables, proceeds of such Receivables and other assets (including contract rights) that are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving Receivables; provided that all such Qualified Receivables Transactions shall be made at fair market value (including after giving effect to any Receivables Fees); provided, further, that (a) all such Qualified Receivables Transactions shall not (x) be Guaranteed by Borrower or any Subsidiary (excluding Guarantees of obligations (other than the principal of, and interest on, Indebtedness) pursuant to representations, warranties, covenants, indemnities and performance Guarantees that are reasonably customary in an accounts receivables financings), (y) be recourse to or obligate Borrower or any Subsidiary in any way other than pursuant to representations, warranties, covenants, indemnities and performance Guarantees that are reasonably customary in accounts receivables financings, or (z) subject any property or asset of Borrower or any Subsidiary, directly or indirectly, contingently or otherwise, to the satisfaction thereof, other than pursuant to representations, warranties, covenants, indemnities and performance Guarantees reasonably customary in accounts receivables financings and other than any interest in the Receivables (whether in the form of an equity interest in such Receivables payable primarily from such Receivables) retained or acquired by Borrower or any Subsidiaries and (b) the fair market value of all Receivables sold, contributed conveyed or otherwise transferred, and all Receivables in which a security interest is granted by the Borrower or any Subsidiary, shall not exceed \$20,000,000 in the aggregate for all Qualified Receivables Transactions at any time outstanding.

“Real Estate Requirements” means, with respect to any Material Real Property, the documentation and other items of the type specified in Section 1 of Schedule 6.17.

“Receivable” means any Indebtedness and other payment obligations owed to Borrower or any Subsidiary, whether constituting an account, chattel paper, payment intangible, instrument or general intangible, in each case arising in connection with (a) the sale of goods or the rendering of service or (b) the lease, license, rental or use of equipment, facilities or software, including the obligation to pay any finance charges, fees and other charges with respect thereto.

“Receivables Fees” means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid to a Person (other than Borrower or a Subsidiary) in connection with, any Qualified Receivables Transaction.

“Recipient” means the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by the Lender in its reasonable discretion.

“Refinance” means, in respect of any security or Indebtedness, to refinance, extend, renew, refund, repay, prepay, redeem, defease or retire, or to issue a security or Indebtedness in exchange or replacement for, such security or Indebtedness in whole or in part. “Refinanced” and “Refinancing” shall have correlative meanings.

“Refinance Indebtedness” has the meaning specified in Section 7.02(g).

“Register” has the meaning specified in Section 10.06(c).

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

“Release” means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection or leaching into the Environment, or into, from or through any building, structure or facility.

“Relevant Governmental Body” means the FRB or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the FRB or the Federal Reserve Bank of New York, or any successor thereto.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Required Lenders” means, at any time, Lenders holding more than 50% of the sum of the (a) Total Outstandings and (b) aggregate unused Commitments; provided that the Term Facility held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; provided, further, that, for so long as Oaktree holds 51% of the Term Loans made on the Closing Date, Required Lenders shall include Oaktree.

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

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party, solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party and, solely for the purposes of notices given to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means with respect to the Borrower or any of its Subsidiaries, (a) any Capital Distribution (provided, that in the case of the Series D Preferred Stock, only cash dividends or distributions payable in cash shall be considered Restricted Payments) and (b) any amount paid by the Borrower or any of its Subsidiaries in repayment, redemption, retirement or repurchase, directly or indirectly, of any Subordinated Indebtedness or any Junior Indebtedness.

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

“Sanctioned Person” means any Person: (a) identified on any Sanctions-related list of designated Persons, including, without limitation, the Specially Designated Nationals and Blocked Persons List maintained by OFAC; (b) located, domiciled, organized or resident in, or the government or any agency or instrumentality of the government of, any Designated Jurisdiction; (c) owned or controlled by, or acting for or on behalf of, directly or indirectly, any Person described in the foregoing clause (a) or (b); or (d) otherwise the subject or target of Sanctions.

“Sanctions” means any economic or financial sanctions or trade embargoes imposed, administered or enforced by the U.S. government (including, without limitation, OFAC and the U.S. Department of State), the United Nations Security Council, the European Union or any member state thereof, the UK government (including, without limitation, Her Majesty’s Treasury) or other relevant sanctions authority.

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

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

“Securities Account Control Agreement” has the meaning assigned thereto in the Security Agreement.

“Security Agreement” has the meaning specified in Section 4.01(a)(iii).

“Security Agreement Supplement” has the meaning specified in the Security Agreement.

“Series D Preferred Stock” means the Series D Perpetual Preferred Stock issued or to be issued by the Company on substantially the terms set forth on Schedule 1.02.

“Settlement Costs” means the expenses, payments or other costs associated with the settlement of litigation with Corre Partners; provided that such Settlement Costs shall not exceed \$2,000,000 in the aggregate.

“SOFR” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, 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.

“Sold Account” means an Account that Borrower or a Subsidiary has sold to, or otherwise has granted a Lien on or in favor of, the purchaser pursuant to a Qualified Receivables Transaction, for which such Loan Party has received the purchase price for such Account.

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

“Subordinated” means, as applied to Indebtedness, Indebtedness that shall have been subordinated in favor of the prior payment in full of the Obligations pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity (1) of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person or (2) the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Supported QFC” shall have the meaning provided in Section 10.21.

“Swap Contract” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

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

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

“Synthetic Debt” means, with respect to any Person as of any date of determination thereof, all obligations of such Person in respect of transactions entered into by such Person that are intended to function primarily as a borrowing of funds (including any minority interest transactions that function primarily as a borrowing) but are not otherwise included in the definition of “Indebtedness” or as a liability on the consolidated balance sheet of such Person and its Subsidiaries in accordance with GAAP.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property (including sale and leaseback transactions), in each case, creating obligations that do not appear on the balance sheet of such Person but which, upon the application of any Debtor Relief Laws to such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

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

“Term Borrowings” means a borrowing consisting of simultaneous Term Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Term Lenders pursuant to Section 2.01.

“Term Commitment” means, as to each Term Lender, its obligation to make Term Loans on the Closing Date pursuant to Section 2.01 in the amount of its Commitment or as set forth in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“Term Facility” means, at any time, the sum of (a) the aggregate amount of the unused Term Commitments at such time plus (b) the aggregate principal amount of the Term Loans of all Term Lenders outstanding at such time. As of the Closing Date, the Term Facility is \$150,000,000.

“Term Lender” means, at any time, any Lender that either has an unused Term Commitment or holds Term Loans at such time, or both.

“Term Loan” means the term loans made by the Lenders to the Borrower pursuant to Section 2.01.

“Term Note” means a promissory note made by the Borrower in favor of a Term Lender (and its registered assigns) evidencing Term Loans made by such Term Lender, substantially in the form of Exhibit C.

“Term SOFR” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans.

“Total Term Loan Exposure” means, as to any Term Lender at any time, the unused Term Commitments and the aggregate principal amount of the outstanding Term Loans of such Term Lender at such time.

“Trademark Security Agreement” means a trademark security agreement or notice of grant of security interest in trademarks, in each case in form and substance reasonably satisfactory to the Administrative Agent.

“Transactions” means, collectively, (a) the entering into by the Loan Parties and their applicable Subsidiaries of the Loan Documents to which they are or are intended to be a party, (b) the refinancing of the Existing Credit Agreement Indebtedness and the termination of all commitments with respect thereto, (c) the issuance of the Series D Preferred Stock and the redemption of the Borrower’s Series B preferred Equity Interests substantially concurrently therewith, and (d) the payment of the fees and expenses incurred in connection with the consummation of the foregoing.

“Transaction Costs” means all customary and reasonable transaction fees, charges and other similar amounts related to the Transactions or any Acquisitions completed during the term of this Agreement in accordance with Section 7.03(b) (including, without limitation, any financing fees, merger and acquisition fees, legal fees and expenses, original issue discount, due diligence fees or any other fees and expenses in connection therewith), in each case to the extent paid within six (6) months of the Closing Date or the closing date of such Acquisition, as applicable.

“Treasury Rate” means, with respect to a prepayment prior to the first anniversary of the Closing Date, the yield to maturity at the time of computation of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15(519) that has become publicly available at least two (2) Business Days prior to such prepayment date (or, if such Federal Reserve Statistical Release referred to in the previous parenthetical is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such prepayment date to the first anniversary of the Closing Date; provided that if the period from such prepayment date to the first anniversary of the Closing Date is not equal to the constant maturity of the United States Treasury security for which a weekly average yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a twelve (12) month period) from the weekly average yields of United States Treasury securities for which such yields are given, except that if the period from such prepayment date to the first anniversary of the Closing Date, is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year shall be used.

“Trust Account” means any accounts or trusts used solely to hold Trust Funds.

“Trust Funds” means, to the extent segregated from other assets of the Loan Parties in a segregated account that contains amounts comprised solely and exclusively of such Trust Funds, cash, Cash Equivalents or other assets comprised solely of: (1) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Loan Party’s employees; (2) all taxes required to be collected, remitted or withheld (including federal and state withholding taxes (including the employer’s share thereof)); (3) (a) proceeds from the issuance of Indebtedness, (b) proceeds from a Disposition of assets (other than ABL Priority Collateral) and (c) proceeds of insurance and condemnation awards (and payments in lieu thereof) relating to any assets (other than ABL Priority Collateral) in each of clauses (a), (b) and (c), to the extent such cash or permitted investment is required to be deposited in an account pursuant to the documentation governing any indebtedness having a first priority lien on any such assets; and (4) any other funds that the Borrower or any of its Subsidiaries holds in trust or as an escrow or fiduciary for another person that is not a subsidiary of the Borrower.

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

“UCC” means the Uniform Commercial Code as in effect in the State of New York provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Undisclosed Administration” means in relation to a Lender or a Person that directly or indirectly controls such Lender, the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender or Person, as the case may be, is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“United States” and “U.S.” mean the United States of America.

“Unrestricted Cash and Cash Equivalents” means, with respect to the Borrower and its Subsidiaries, cash or Cash Equivalents of the Borrower and its Subsidiaries that do not appear, or would not be required to appear, as “restricted” on the financial statements of the Borrower and its Subsidiaries (unless related to the Loan Documents or the Liens created thereunder).

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

“U.S. Special Resolution Regimes” shall have the meaning provided in Section 10.21.

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

“USD LIBOR” means the London interbank offered rate for U.S. dollars.

“Voting Power” means, with respect to any Person, the exclusive ability to control, through the ownership of shares of capital stock, partnership interests, membership interests or otherwise, the election of members of the board of directors or other similar governing body of such Person. The holding of a designated percentage of Voting Power of a Person means the ownership of shares of capital stock, partnership interests, membership interests or other interests of such Person sufficient to control exclusively the election of that percentage of the members of the board of directors or similar governing body of such Person.

“Weighted Average Life to Maturity” means, when applied to any Indebtedness at any date, the number of years obtained by dividing:

(a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or other required payments of principal, including payment at final maturity, in respect of the Indebtedness, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by

(b) the then outstanding principal amount of such Indebtedness;

provided that, for purposes of determining the Weighted Average Life to Maturity of any Indebtedness, the effects of any prepayments or amortization made on such Indebtedness prior to the date of such determination will be disregarded.

“Wholly-Owned” means, with respect to a Subsidiary, that all of the Equity Interests of such Subsidiary are, directly or indirectly, owned or controlled by the Borrower and/or one or more of its Wholly-Owned Subsidiaries (except for directors’ qualifying shares or other shares required by applicable Laws to be owned by a Person other than the Borrower and/or one or more of its Wholly-Owned Subsidiaries).

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

1.02. Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law, rule or regulation shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law, rule or regulation and any reference to any law, rule or regulation shall, unless otherwise specified, refer to such law, rule or regulation as amended, modified or supplemented from time to time, and (vi) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

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

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

### 1.03. Accounting Terms.

(a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP (including the adoption of IFRS) would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

(c) Pro Forma Effect. Notwithstanding the above, the parties hereto acknowledge and agree that, for purposes of all financial calculations (other than with respect to Excess Cash Flow), if the Borrower or any Subsidiary has made any Acquisition permitted by Section 7.03 or any Disposition outside the ordinary course of business permitted by Section 7.05 during the relevant period for determining compliance with such covenants, such calculations shall be made after giving *pro forma* effect thereto, as if such Acquisition or Disposition had occurred on the first day of such period, but in the case of an Acquisition, only so long as the results of the business being acquired are supported by financial statements or other financial data reasonably acceptable to the Administrative Agent.

(d) Financing Leases. Notwithstanding anything to the contrary contained in Section 1.03 or in the definition of “Financing Lease Obligations,” any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842) (“FAS 842”), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease or finance lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2015, such lease shall not be considered a capital lease or finance lease, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

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

1.05. Times of Day; Rates. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of “Eurodollar Rate” or with respect to any comparable or successor rate thereto.

1.06. Currency Equivalents Generally. Any amount specified in this Agreement (other than in Article II, Article IX and Article X) or any of the other Loan Documents to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars, such equivalent amount thereof in the applicable currency to be determined by the Administrative Agent at such time on the basis of the Spot Rate (as defined below) for the purchase of such currency with Dollars. For purposes of this Section 1.06, the “Spot Rate” for a currency means the rate determined by the Administrative Agent to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date of such determination; provided that the Administrative Agent may obtain such spot rate from another financial institution designated by the Administrative Agent if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

1.07. Effect of Benchmark Transition Event.

(a) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then, (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date in connection with a Benchmark Transition Event, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of “Benchmark Replacement” for such Benchmark Replacement Date or in connection with an Early Opt-in Election, 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 Borrower without any amendment to this Agreement or any other Loan Document, or further action or consent of the Borrower, so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from the Borrower.

(b) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, 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 the Borrower.

(c) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement 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 (d) 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 pursuant to this Section 1.07, 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 or any selection, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from the Borrower, except, in each case, as expressly required pursuant to this Section 1.07.

(d) Unavailability of Tenor of Benchmark. 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 Term SOFR or USD LIBOR) 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.

(e) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurodollar Borrowing of, conversion to or continuation of Eurodollar Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans. 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.

1.08. 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 COMMITMENTS AND BORROWINGS

### 2.01. The Loans.

(a) Subject to the terms and conditions hereof, each Lender severally agrees to make Term Loans to the Borrower on the Closing Date in an amount not to exceed the amount of the Commitment of such Lender. The Term Loans may from time to time be Eurodollar Loans or Base Rate Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with Section 2.02. Amounts repaid on account of the Term Loans may not be reborrowed.

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

(a) Each Term Borrowing, each conversion of Term Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the Borrower's irrevocable written notice to the Administrative Agent, by a Committed Loan Notice. Each such Committed Loan Notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) one Business Day prior to the requested date of any Borrowing of Base Rate Loans. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a minimum principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof. Each Borrowing of or conversion to Base Rate Loans shall be in a minimum

principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Each such Committed Loan Notice shall specify (i) whether the Borrower is requesting a Term Borrowing, a conversion of Term Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Term Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Term Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage under the Term Facility of the applicable Term Loans and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in Section 2.02(a). In the case of a Term Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.01 and upon receipt of all request funds, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of the Administrative Agent, if any, with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

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

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect in respect of the Term Facility.

(f) [Reserved].

2.03. [Reserved].

2.04. [Reserved].

2.05. Prepayments.

(a) Optional.

Subject to Section 2.05(c), the Borrower may, upon written notice to the Administrative Agent, at any time or from time to time after the date that is ten (10) Business Days after the Closing Date, voluntarily prepay Loans in whole or in part without premium or penalty; provided that (A) such notice must be in a form acceptable to the Administrative Agent (including any form

on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent) appropriately completed and signed by a Responsible Officer and be received by the Administrative Agent not later than 11:00 a.m. (a) three (3) Business Days prior to any date of prepayment of Eurodollar Rate Loans and (b) one (1) Business Day prior to the date of prepayment of Base Rate Loans; (B) any prepayment of Eurodollar Rate Loans shall be in a principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the Term Facility). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Loan shall be accompanied by all accrued interest on the amount prepaid, together with, in the case of a Eurodollar Rate Loan, any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(a) shall be applied to the remaining amortization payments under the Term Facility in direct order of maturity, and thereafter to the next scheduled installments of principal of the Term Facility or portions thereof, and subject to Section 2.15, each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of the Term Facility.

(b) Mandatory.

(i) Commencing with the fiscal year ending December 31, 2021, within the later of (x) five (5) Business Days after financial statements have been delivered pursuant to Section 6.01(a) and the related Compliance Certificate has been delivered pursuant to Section 6.02(b) and (y) ninety-five (95) days after the end of such fiscal year, the Borrower shall prepay an aggregate principal amount of Loans equal to the excess (if any) of (A) the ECF Percentage of Excess Cash Flow for the fiscal year covered by such financial statements over (B) (1) the aggregate principal amount of Term Loans prepaid pursuant to Section 2.05(a) or 10.13 or repurchases of the Term Loans made pursuant to Section 10.06 during such fiscal year (and not previously applied by the Borrower pursuant to the following clause (2) to reduce the prepayment required by this Section 2.05(b)(i) for the preceding fiscal year) and (2) at the Borrower's election, all or any amount of Term Loans prepaid pursuant to Section 2.05(a) or 10.13 or repurchases of the Term Loans made pursuant to Section 10.06 after the end of such fiscal year and on or prior to the date of such prepayment; provided that any such prepayments were not made with proceeds of any Indebtedness, Disposition, equity issuance, Extraordinary Receipts or other proceeds that would not be included in calculating Consolidated EBITDA for the applicable fiscal year (such prepayments to be applied as set forth in clause (y) below).

(ii) If the Borrower or any of its Subsidiaries Disposes of any property (other than any Disposition of any property permitted by Section 7.05) that results in the realization by such Person of Net Cash Proceeds, the Borrower shall prepay an aggregate principal amount of Term Loans equal to 100% of such Net Cash Proceeds within ten (10) Business Days of receipt thereof by such Person (such prepayments to be applied as set forth in clause (y) below); provided, however, that, with respect to any Net Cash Proceeds realized under a Disposition described in this Section 2.05(b)(ii), at the election of the Borrower (as notified by the Borrower to the Administrative Agent within such ten (10) Business Day period), the Borrower or such Subsidiary may reinvest such Net Cash Proceeds up to an amount not to exceed \$50,000,000 during the term of the Term Facility (the "Reinvestment Amount") in Collateral used or useful in the operation of the Borrower or its Subsidiaries (or committed to be reinvested pursuant to a definitive agreement) within 12 months and, if so committed to be reinvested, so long as such reinvestment is actually completed within 18 months after such Disposition; provided further that (i) the Borrower shall not be required to reinvest such Net Cash Proceeds in Collateral to the extent such Net Cash

Proceeds result from the disposition of property that is not, and is not otherwise required to be, Collateral and instead may reinvest such proceeds in assets that do not constitute Collateral so long as such assets are used or useful in the operation of the Borrower or its Subsidiaries and (ii) the Borrower may invest up to \$10,000,000 of the Reinvestment Amount each fiscal year in non-Collateral assets so long as such assets are used or useful in the operation of the Borrower or its Subsidiaries. Notwithstanding anything in this Section 2.05(b) to the contrary, (x) 100% of the Net Cash Proceeds of any Disposition of ABL Priority Collateral shall first be offered to permanently reduce the commitments in respect of the ABL Facility on a pro rata basis among the ABL Lenders, (y) at the Borrower's option and with customary notice, any ABL Lender may elect not to accept its pro rata portion of any such mandatory prepayment and (z) any such prepayment amount so declined shall otherwise be applied in accordance with this Section 2.05(b); provided that to the extent such Net Cash Proceeds result from a Disposition of ABL Priority Collateral, upon the occurrence of the ABL Obligations Payment Date (as defined in the ABL Intercreditor Agreement), such Net Cash Proceeds shall be applied to the Obligations in accordance with this Section 2.05(b).

(iii) Upon the incurrence or issuance by the Borrower or any of its Subsidiaries of any Indebtedness (other than Indebtedness expressly permitted to be incurred or issued pursuant to Section 7.02), the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom within five (5) Business Days of receipt thereof by the Borrower or such Subsidiary (such prepayments to be applied as set forth in clause (v) below).

(iv) Upon any Extraordinary Receipt received by or paid to or for the account of the Borrower or any of its Subsidiaries, and not otherwise included in clause (ii) or (iii) of this Section 2.05(b), the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received therefrom within ten (10) Business Days of receipt thereof by the Borrower or such Subsidiary (such prepayments to be applied as set forth in clause (v) below); provided, however, that with respect to any proceeds of insurance, condemnation awards (or payments in lieu thereof) or indemnity payments, at the election of the Borrower (as notified by the Borrower to the Administrative Agent on or prior to the date of receipt of such insurance proceeds, condemnation awards or indemnity payments), and so long as no Event of Default shall have occurred and be continuing, the Borrower or such Subsidiary may apply within 180 days after the receipt of such cash proceeds to replace or repair the equipment, fixed assets or real property in respect of which such cash proceeds were received and if such Net Cash Proceeds are not so reinvested within such 180-day period but such Net Cash Proceeds are subject to a definitive agreement within such 180-day period to reinvest such Net Cash Proceeds in accordance with this Section 2.05(b)(iv) then the Borrower or such Subsidiary shall have an additional 180 days after the end of the such initial 180-day period to reinvest such Net Cash Proceeds in accordance with this Section 2.05(b)(iv); and provided, further, however, that any cash proceeds not so applied shall be promptly applied to the prepayment of the Loans as set forth in this Section 2.05(b)(iv).

(v) Each prepayment of Loans pursuant to the foregoing provisions of this Section 2.05(b) shall be applied, (1) with respect to prepayments required by clause (i), to the next scheduled installments of principal of the Term Facility and (2) with respect to prepayments required by clauses (ii) through (iv), first, to the next two principal repayment installments of the Term Facility and, thereafter, in inverse order of maturity to the remaining scheduled principal installments of the Term Facility on a *pro rata* basis; Subject to Section 2.15, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of the Term Facility.

(vi) Notwithstanding anything in this Section 2.05(b) to the contrary, the Borrower will not later than 11:00 a.m. on the date three (3) Business Days (or such later date as agreed to by the Administrative Agent) prior to the date such prepayment with respect to this Section 2.05(b), give the Administrative Agent written notice requesting that the Administrative Agent provide notice of such prepayment to each Lender, each Lender will have the right to refuse any

such prepayment by giving written notice (a “Rejection Notice”) of such refusal to the Borrower and the Administrative Agent by 11:00 a.m. one (b) Business Day prior to the date of such prepayment and (iii) the Borrower will make all such prepayments not so. Any Lender that does not decline such prepayment in writing on or prior to the date set forth above shall be deemed to have accepted such prepayment.

(vii) [Reserved].

(viii) Notwithstanding any other provisions of this Section 2.05(b) any mandatory prepayments arising under Section 2.05(b)(ii) or (iv) from the receipt of Net Cash Proceeds from any Disposition or Extraordinary Receipts by any Foreign Subsidiary (each, a “Foreign Disposition”) or arising under Section 2.05(b)(i) from Excess Cash Flow directly attributable to Foreign Subsidiaries (“Foreign Excess Cash Flow”) shall not be required to the extent that the repatriation of such Net Cash Proceeds or Foreign Excess Cash Flow would (A) give rise to adverse tax, accounting or regulatory consequences (in each case, other than de minimis) or (B) be prohibited, restricted or delayed by any requirement of applicable Laws. The Borrower hereby agreeing to use commercially reasonable efforts to cause the applicable Foreign Subsidiary to promptly file any required forms, obtain any necessary consents and take all similar actions reasonably required by the applicable local Laws to permit such repatriation.

(c) Prepayment Premium.

In the event that all or any portion of the Term Loans is repaid or prepaid as a result of any voluntary prepayment or mandatory prepayment, but excluding any prepayment made pursuant to Sections 2.05(b)(i), (b)(ii) and (b)(iv), on or prior to the third anniversary of the Closing Date, such repayments, prepayments or required assignments shall be made at (A) an amount equal to the Make-Whole Amount, if such repayment, prepayment or required assignment occurs on or prior to the first anniversary of the Closing Date, (B) 2.0% of the amount repaid or prepaid as of the date of such repayment, prepayment or required assignment, if such repayment, prepayment or required assignment occurs after the first anniversary of the Closing Date but on or prior to the second anniversary of the Closing Date and (C) 1.0% of the amount repaid or prepaid, if such repayment, prepayment or required assignment occurs after the second anniversary of the Closing Date but on or prior to the third anniversary of the Closing Date (the foregoing premiums (including the Make-Whole Amount), the “Prepayment Premium”). No Prepayment Premium will be applicable on any portion of the Term Loan repaid or prepayment, but excluding any prepayment made pursuant to Sections 2.05(b)(i), (b)(ii) and (b)(iv), after the third anniversary of the Closing Date. If the Term Loans are accelerated or otherwise become due prior to their maturity date, in each case (including upon the occurrence of a bankruptcy or insolvency event of default or the acceleration of claims by operation of law), the amount of principal of and premium on the Term Loans that becomes due and payable shall equal 100.0% of the principal amount of the Term Loans plus the Prepayment Premium in effect on the date of such acceleration or such other prior due date, as if such acceleration or other occurrence were a voluntary prepayment of the Term Loans accelerated or otherwise becoming due. Without limiting the generality of the foregoing, it is understood and agreed that if the Loans are accelerated or otherwise become due prior to the Maturity Date, in each case (including upon the occurrence of a bankruptcy or insolvency event of default or the acceleration of claims by operation of law), the Prepayment Premium applicable with respect to a voluntary prepayment of the Term Loans will also be due and payable on the date of such acceleration or such other prior due date as though the Term Loans were voluntarily prepaid as of such date and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender’s loss as a result thereof. Any Prepayment Premium payable above shall be presumed to be the liquidated damages sustained by each Lender and the Borrower agrees that it is reasonable under the circumstances currently existing. THE BORROWER EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION. The Borrower expressly agrees (to the fullest extent it may lawfully do so) that: (A) the Prepayment Premium is reasonable and is the product of an arm’s length transaction between sophisticated

business people, ably represented by counsel, (B) the Prepayment Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made, (C) there has been a course of conduct between the Lenders and the Borrower giving specific consideration in this transaction for such agreement to pay the Prepayment Premium and (D) the Borrower shall be estopped hereafter from claiming differently than as agreed to in this paragraph.

2.06. [Reserved].

2.07. Repayment of Loans.

(a) Term Loans. The Borrower shall repay to the Term Lenders the aggregate principal amount of all Term Loans outstanding in consecutive quarterly installments on the following dates in an amount equal to the amount set forth opposite such date (which amounts shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05):

<u>Date</u>	<u>Amount</u>
The last Business Day of each fiscal quarter ending prior to the Maturity Date for the Term Facility, commencing with the fiscal quarter ending June 30, 2021	0.25% of the aggregate principal amount of the aggregate Initial Term Loans on the Closing Date
Maturity Date with respect to the Term Facility	All outstanding principal amount of the Term Loans

2.08. Interest.

(a) Subject to the provisions of Section 2.08(b), (i) each Eurodollar Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate for such Facility; and (ii) each Base Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for such Facility.

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

(i) While any Event of Default exists and is continuing under Section 8.01(j), the Borrower shall pay interest on all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) Upon the request of the Required Lenders, while any Event of Default exists and is continuing (other than to the extent set forth in Sections 2.08(b)(i) and (b)(ii) above), the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) [Reserved].

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

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09. Fees.

(a) [Reserved].

(b) Other Fees.

(i) The Borrower shall pay to the Administrative Agent for its accounts fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. All such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

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

2.11. Evidence of Debt. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender, the Borrower shall execute and deliver to such Lender a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

2.12. Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 2:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 2:00 p.m. may, in the Administrative Agent's discretion, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received written notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

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

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans and to make Term Loans and to make payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 10.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, toward 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, toward payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

2.13. Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payment on account of the Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than an assignment to the Borrower or any Affiliate thereof (as to which the provisions of this Section shall apply).

The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Laws, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

2.14. [Reserved].

2.15. Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Laws:

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01 and in the definition of "Required Lender."

(ii) **Defaulting Lender Waterfall.** Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; third, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released *pro rata* in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; fourth, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; fifth, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and sixth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders *pro rata* in accordance with the Commitments. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(b) **Defaulting Lender Cure.** If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

#### 2.16. Incremental Credit Extensions.

(a) **Incremental Term Commitments.** The Borrower may at any time or from time to time after the Closing Date, by notice to the Person appointed by the Borrower to arrange the Incremental Term Loans (such Person (who may be any Person appointed by the Borrower), the "Incremental Arranger") and the Administrative Agent (an "Incremental Loan Request"), request one or more new commitments that may be of the same class as any outstanding Incremental Term Loans (a "Incremental Term Loan Increase") or a new class of term loans (collectively with any Incremental Term Loan Increase, the "Incremental Term Commitments"), whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders. The Borrower may designate any Incremental Arranger of any Incremental Term Commitments with such titles under such Incremental Term Commitments as the Borrower may deem appropriate.

(b) **Incremental Loans.** On the applicable date (each, an "Incremental Facility Closing Date") specified in any Incremental Amendment (including through any Incremental Term Loan Increase), subject to the satisfaction of the terms and conditions in this Section 2.16 and in the applicable Incremental Amendment, (A) each Incremental Term Lender of such class shall make a Loan to the Borrower (an "Incremental Term Loan") in an amount equal to its Incremental Term Commitment of such class and (B) each Incremental Term Lender of such class shall become a Lender hereunder with respect to the Incremental Term Commitment of such class and the Incremental Term Loans of such class made pursuant thereto.

(c) Incremental Loan Request. Each Incremental Loan Request from the Borrower pursuant to this Section 2.16 shall set forth the requested amount and proposed terms of the relevant Incremental Term Loans. Incremental Term Loans may be made by any existing Lender (but no existing Lender will have an obligation to make any Incremental Term Commitment) or by any Additional Lender (each such existing Lender or Additional Lender providing such Commitment or Loan, an "Incremental Term Lender," and, collectively, the "Incremental Lenders"). Notwithstanding anything to the contrary herein, prior to the incurrence or establishment of any loans or commitments under the Loan Documents, the Borrower shall offer the Term Lenders a bona fide opportunity to provide the entire amount of such Incremental Term Loans or Incremental Term Commitments on terms specified by the Borrower and, to the extent the Term Lenders decline (or fail to respond in a timely manner) to provide any amount of the Incremental Term Loans on such specified terms, then the Borrower may offer to other persons an opportunity to provide such declined amount of loans or commitments on such specified terms (but not on other terms).

(d) Effectiveness of Incremental Amendment. The Incremental Arranger shall promptly notify the applicable Lenders of the final allocation of such Incremental Term Commitments and the Incremental Amendment Date. The effectiveness of any Incremental Amendment, and the Incremental Term Commitments thereunder, shall be subject to the satisfaction on the applicable date (which shall be no earlier than the date of such Incremental Amendment) specified therein (the "Incremental Amendment Date") of each of the following conditions, together with any other conditions set forth in the Incremental Amendment:

(i) no Event of Default has occurred and is continuing on the Incremental Amendment Date;

(ii) each Incremental Term Commitment shall be in an aggregate principal amount that is not less than \$1,000,000 and shall be in an increment of \$1,000,000 (provided that such amount may be less than \$1,000,000 if such amount represents all remaining availability under the limit set forth in Section 2.16(d)(iii));

(iii) the aggregate amount of Incremental Term Loans outstanding is not to exceed an unlimited amount so long as, after giving *pro forma* effect to the making of Incremental Term Loans under such Incremental Amendment, (1) with respect to Incremental Term Loans secured by a Lien on the Collateral (including, without limitation, Indebtedness secured by the Collateral on a junior Lien basis to the Obligations), the Consolidated Secured Net Leverage Ratio is less than or equal to 3.75:1.00 and (2) with respect to Incremental Term Loans that are unsecured, the Consolidated Net Leverage Ratio is less than or equal to 3.75:1.00; and

(iv) to the extent reasonably requested by the Incremental Arranger, the Administrative Agent or Persons providing the applicable Incremental Term Loans, receipt by the Administrative Agent and the Incremental Arranger of (A) customary legal opinions, board resolutions and officers' certificates (including solvency certificates) and (B) reaffirmation agreements and/or such amendments to the documents with respect to Collateral as may be reasonably requested by the Incremental Arranger and the Administrative Agent in order to ensure that such Incremental Lenders are provided with the benefit of the applicable Loan Documents.

(e) Required Terms. The terms, provisions and documentation of the Incremental Term Loans and Incremental Term Commitments of any class shall be as agreed between the Borrower and the applicable Incremental Lenders providing such Incremental Term Commitments, and except as otherwise set forth herein, to the extent not identical to any class of Incremental Term Loans each existing on the Incremental Facility Closing Date, shall be consistent with clauses (i) through (iii) below, as applicable, and otherwise shall be (taken as a whole) no more favorable to the Incremental Lenders than those applicable to the Facility, except to the extent such terms, (I) are conformed (or added) in the Loan Documents pursuant to the related Incremental Amendment for the benefit of the Facility, as determined

solely by the Administrative Agent and the Borrower or (II) are applicable only to periods after the Maturity Date as of the Incremental Amendment Date; provided that in the case of an Incremental Term Loan Increase, the terms, provisions and documentation (other than the Incremental Amendment evidencing such increase) of such Incremental Term Loan Increase shall be identical (other than with respect to upfront fees, original issue discount or similar fees) to the applicable class of Incremental Term Loans as existing on the Incremental Facility Closing Date. In any event:

(i) the Incremental Term Loans:

(A) (I) shall rank pari passu or junior in right of payment with the Obligations under Loans that are senior in right of payment and (II) if secured, shall be secured by the Collateral and shall rank junior in right of security to the Obligations (and subject to a customary subordination agreement (if subject to payment subordination)) and shall be subject to the ABL Intercreditor Agreement,

(B) as of the Incremental Amendment Date, such Incremental Term Loans shall not have a final scheduled maturity date earlier than the Latest Maturity Date of all then outstanding Loans,

(C) as of the Incremental Amendment Date, shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Loans,

(D) shall have an Applicable Rate, and subject to clauses (e)(i)(B) and (e)(i)(C) above, amortization determined by the Borrower and the applicable Incremental Term Lenders; provided the Applicable Rate and amortization for an Incremental Term Loan Increase shall be (x) the Applicable Rate and amortization for the class being increased or (y) in the case of the Applicable Rate, higher than the Applicable Rate for the class being increased as long as the Applicable Rate for the class being increased shall be automatically increased as and to the extent necessary to eliminate such deficiency,

(E) shall have currency, original issue discount or fees determined by the Borrower and the applicable Incremental Term Loan arranger(s) and/or lender(s), and

(F) if secured, shall not be secured by Liens or any assets that do not otherwise secure the Term Facility, and if guaranteed, shall not be guaranteed by, or otherwise be obligations of, any Person that is not otherwise the Borrower or a Guarantor,

(ii) if the Incremental Arranger is not the Administrative Agent, the actions authorized to be taken by the Incremental Arranger herein shall be done in consultation with the Administrative Agent and, with respect to the preparation of any documentation necessary or appropriate to carry out the provisions of this Section 2.16 (including amendments to this Agreement and the other Loan Documents), any comments to such documentation reasonably requested by the Administrative Agent shall be reflected therein; and

(iii) The Borrower will use the net proceeds of the Incremental Term Loans for working capital, general corporate purposes and any other purposes not prohibited by this Agreement.

(f) [Reserved].

(g) [Reserved]

(h) This Section 2.16 shall supersede any provisions in Section 2.13 or 10.01 to the contrary. Any Incremental Term Loans permitted under this Section 2.16 shall be documented pursuant to a customary amendment to this Agreement (an “Incremental Amendment”).

ARTICLE III  
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01. Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party hereunder or under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Law (as determined in the good faith discretion of the Administrative Agent) requires the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below and

(ii) shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions and withholdings applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Laws, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

(i) The Borrower shall, and does hereby, indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent, or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(ii) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within ten (10) days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (y) against any Taxes attributable to such Lender’s failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (z) against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent or the Borrower in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the

relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (i).

(d) Evidence of Payments. After any payment of Taxes by the Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(i)(A), (i)(B) and (i)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), copies of duly executed and completed IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

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

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed originals of IRS Form W-8ECI;

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

(4) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner;

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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of such Lender. If any Recipient determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by the Borrower or with respect to

which the Borrower has paid additional amounts pursuant to this Section 3.01, it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Borrower, upon the request of the Recipient, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to the Borrower pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

3.02. Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03. Inability to Determine Rates. If in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof, (a) the Administrative Agent determines that (i) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or (ii) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan (in each case with respect to clause (a)(i) above, "Impacted Loans"), or (b) the Administrative Agent or the Required Lenders determine that for any reason the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Rate Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans or Interest Periods) and (y) in the event of a

determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent upon the instruction of the Required Lenders revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (a)(i) of this section, the Administrative Agent, in consultation with the Borrower and the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (a) of the first sentence of this section, (2) the Administrative Agent or the Required Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (3) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

#### 3.04. Increased Costs; Reserves on Eurodollar Rate Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e))

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of "Excluded Taxes" and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan the interest on which is determined by reference to the Eurodollar Rate (or, in the case of clause (ii) above, any Loan), or of maintaining its obligation to make any such Loan, or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender, to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Eurodollar Rate Loans. The Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency Liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided that the Borrower shall have received at least ten (10) days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice.

3.05. Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any reasonable and documented out of pocket loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

3.06. Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. Each Lender may fund any Borrowing through any Lending Office, provided that the exercise of this option shall not affect the obligation of the Borrower to repay the Borrowing in accordance with the terms of this Agreement. If any Lender requests compensation under Section 3.04, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender, or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Borrower such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, and in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Borrower may replace such Lender in accordance with Section 10.13.

3.07. Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

ARTICLE IV  
CONDITIONS PRECEDENT TO CLOSING AND BORROWING

4.01. Conditions of Closing and Initial Borrowing. The effectiveness of this Agreement and the obligation of each Lender to make its Loans on the Closing Date are subject to satisfaction of the following conditions precedent, unless waived in accordance with Section 10.01:

(a) The Administrative Agent's (or its counsel's) receipt of the following, each of which shall be originals or telecopies unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Administrative Agent and each of the Lenders:

- (i) executed counterparts of this Agreement, the ABL Intercreditor Agreement and the Guaranty;
- (ii) a Term Note executed by the Borrower in favor of each Term Lender requesting a Term Note;
- (iii) a security agreement (together with each other security agreement and security agreement supplement delivered pursuant to Section 6.12, in each case as amended, the "Security Agreement"), duly executed by each Loan Party party thereto, together with:
  - (A) subject to Section 6.17, certificates and instruments representing the Collateral consisting of Certificated Securities or Instruments (each such term as defined in the UCC) accompanied by undated stock powers, allonges or instruments of transfer executed in blank;

(B) proper UCC financing statements in form appropriate for filing under the Uniform Commercial Code of all appropriate jurisdictions that the Administrative Agent may reasonably deem necessary in order to perfect the Liens created under the Security Agreement, covering the Collateral described in the Security Agreement;

(C) certified copies of UCC, tax and judgment lien searches, or equivalent reports or searches, each of a recent date listing all effective financing statements, lien notices or comparable documents (together with copies of such financing statements and documents) that name any Loan Party as debtor and that are filed in those state and county jurisdictions in which any Loan Party is organized or maintains its principal place of business and such other searches that the Administrative Agent reasonably deems necessary or appropriate, none of which encumber the Collateral covered or intended to be covered by the Collateral Documents (other than Liens permitted under Section 7.01);

(D) subject to Section 6.17, the Deposit Account Control Agreements and the Securities Account Control Agreement, in each case as referred to in the Security Agreement and duly executed by the appropriate parties; and

(E) evidence that all other actions, recordings and filings that the Administrative Agent may deem necessary or desirable in order to perfect or protect the Liens created under the Security Agreement have been or will be taken by the Administrative Agent (or its counsel) after the Closing Date (including receipt of duly executed payoff letters, UCC-3 termination statements, evidence and endorsement of insurance policies and landlords' and bailees' waiver and consent agreements to the extent requested by the Administrative Agent in writing not later than three (3) Business Days prior to the Closing Date);

(iv) a Patent Security Agreement and Trademark Security Agreement (collectively, and together with each other intellectual property security agreement delivered pursuant to Section 6.12, in each case as amended, the "Intellectual Property Security Agreements" and each, individually, an "Intellectual Property Security Agreement"), duly executed by each Loan Party, together with evidence that all action that the Administrative Agent may reasonably deem necessary or desirable in order to perfect the Liens created under the Intellectual Property Security Agreement has been taken;

(v) subject to Section 6.17, a Mortgage in respect of each Mortgaged Property described on Schedule 4.01(a)(v);

(vi) such resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(vii) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that the Borrower and each other Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(viii) a favorable opinion of Bass, Berry & Sims PLC, counsel to the Loan Parties addressed to the Administrative Agent for the benefit of each Lender, as to such matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;

(ix) a certificate signed by a Responsible Officer of the Borrower (A) certifying that (1) each of the representations and warranties contained in Article V hereof, in each other Loan Document and in any document furnished at any time in connection with this Agreement under or in connection herewith or therewith, shall be true and correct in all material respects (or, if any such representation or warranty is by its terms qualified by concepts of materiality or reference to Material Adverse Effect, such representation or warranty shall be true and correct in all respects) on and as of the Closing Date;

(x) unaudited consolidated balance sheets and related consolidated statements of income and cash flows for the fiscal quarter ended December 31, 2020 and each fiscal quarter ended after December 31, 2020 and at least 45 days prior to the Closing Date (if any) of the Borrower and its Subsidiaries, on a consolidated basis (collectively, the "Borrower Interim Financial Statements") and the Audited Financial Statements;

(xi) a *pro forma* consolidated balance sheet as of the last day of the most recent fiscal quarter ended December 31, 2020 and related *pro forma* consolidated statements of income and cash flows of the Borrower and its Subsidiaries as of and for the most recent four fiscal quarter period ended December 31, 2020, prepared (after giving effect to the Transactions and the incurrence and repayment of Indebtedness related thereto) as if all of the Transactions occurring on the Closing Date had occurred as of the last day of such four-quarter period (in the case of such balance sheet) or at the beginning of such period (in the case of such other financial statements), in each case calculated in accordance with GAAP and Regulation S-X of the Securities Act of 1933 (the "Borrower Pro Forma Financial Statements");

(xii) the then most recent five-year forecasts prepared by management of the Borrower (after giving effect to the Transactions and the incurrence and repayment of Indebtedness related thereto) of consolidated balance sheets and statements of income or operations and cash flows of the Borrower and its Subsidiaries on a quarterly basis for the first year following the Closing Date and on an annual basis thereafter;

(xiii) a certificate of a Financial Officer of the Borrower attesting (A) to the Solvency of the Borrower and its Subsidiaries on a consolidated basis (after giving effect to the Transactions and the incurrence and repayment of Indebtedness related thereto) and (B) that the Borrower Pro Forma Financial Statements and forecasts required under this Section 4.01(a) accurately present the *pro forma* financial position of the Borrower and its Subsidiaries in accordance with GAAP and Regulation S-X of the Securities Act of 1933 (and in any event after giving effect to the Transactions and the incurrence and repayment of Indebtedness related thereto);

(xiv) evidence (including customary payoff letters) that (1) the Existing Credit Agreement has been, or concurrently with the funding of the Loans will be, repaid in full, all commitments thereunder have been, or concurrently with the funding of the Loans will be, terminated, and all Liens securing obligations thereunder have been, or substantially concurrently with the funding of the Loans will be, released and (2) the Borrower's Series B preferred Equity Interests shall have been, or concurrently with the funding of the Loans will be, redeemed or refinanced in full;

(xv) [reserved];

(xvi) a Committed Loan Notice in accordance with the requirements hereof; and

(xvii) an executed funds flow statement with respect to all Loans to be advanced on the Closing Date and all other Transactions to occur on the Closing Date.

Notwithstanding anything to the contrary in this clause (a), to the extent that any security interests in any Collateral or any deliverable related to the perfection of a security interest in any Collateral (other than (1) grants of security interests in Collateral subject to the Uniform Commercial Code (and the equivalent law or statute in the relevant foreign jurisdictions) that may be perfected by the filing of Uniform Commercial Code financing statements (and the equivalents thereof in any relevant foreign jurisdiction), (2) the delivery of stock certificates (or the equivalent thereof) evidencing certificated stock (or other Equity Interests) that is part of the Collateral and (3) the filing of Intellectual Property Security Agreements with the United States Patent and Trademark Office or the United States Copyright Office, as applicable) is not or cannot be perfected on the Closing Date after the Borrower's use of commercially reasonable efforts to do so, the perfection of security interests therein shall not constitute a condition precedent to the availability of the Loans on the Closing Date, but shall be required to be completed after the Closing Date pursuant to Section 6.17.

(b) The Borrower and each of the other Loan Parties shall have provided to the Administrative Agent and the Lenders the documentation and other information requested by the Administrative Agent or any Lender at least three (3) Business Days prior to the Closing Date in order to comply with requirements of the PATRIOT Act, applicable "know your customer" rules and Anti-Money Laundering Laws;

(c) The Borrower shall have paid (i) all fees required to be paid to the Administrative Agent on or before the Closing Date (including, without limitation, all reasonable and documented out of pocket fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent), plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such reasonable and documented out of pocket fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent) and (ii) all fees required to be paid to the Lenders on or before the Closing Date;

(d) The Securities Purchase Agreement evidencing the issuance of the Series D Preferred Stock shall have been duly executed and delivered by the parties thereto and shall be in full force and effect;

(e) Each of the representations and warranties contained in Article V hereof, in each other Loan Document and in any other document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (or, if any such representation or warranty is by its terms qualified by concepts of materiality or reference to Material Adverse Effect, such representation or warranty shall be true and correct in all respects);

(f) The ABL Loan Documents required by the terms of the ABL Credit Agreement shall have been duly executed and delivered by each Loan Party party thereto to the ABL Administrative Agent and shall be in full force and effect; and

(g) Since December 31, 2020, there has been no event or circumstance either individually or in the aggregate that has had or would reasonably be expected to have a Material Adverse Effect.

(h) A detailed calculation, in form satisfactory to the Administrative Agent, of the Consolidated Net Leverage Ratio and Consolidated Secured Net Leverage Ratio, in each case, on a *pro forma* basis after giving effect to the Transactions.

Without limiting the generality of the provisions of the last paragraph of Section 10.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

ARTICLE V  
REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Administrative Agent and the Lenders that:

5.01. Corporate Existence; Subsidiaries; Foreign Qualification. Each Loan Party and each of its Subsidiaries is duly incorporated or organized (as the case may be), validly existing and in good standing (or comparable concept in the applicable jurisdiction) under the laws of its state or jurisdiction of incorporation or organization, and is duly qualified and authorized to do business and is in good standing (or comparable concept in the applicable jurisdiction) as a foreign entity in the jurisdictions where the character of its property or its business activities makes such qualification necessary, except where a failure to so qualify, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. Each first-tier Foreign Subsidiary that is organized in Brazil or Mexico and the second-tier Foreign Subsidiary that is organized in Poland is validly existing under the laws of its jurisdiction of organization.

5.02. Corporate Authority. Each Loan Party has the corporate or organizational, as applicable, right and power and is duly authorized and empowered to enter into, execute and deliver the Loan Documents to which it is a party and to perform and observe the provisions of the Loan Documents. Each Loan Party has duly executed and delivered the Loan Documents to which it is a party. The Loan Documents to which each Loan Party is a party have been duly authorized and approved by Loan Party's board of directors or other governing body, as applicable, and are the valid and binding obligations of such Loan Party, enforceable against such Loan Party in accordance with their respective terms, subject to applicable moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law. The execution, delivery and performance of the Loan Documents do not conflict with, result in a breach in any of the provisions of, constitute a default under, or result in the creation of a Lien (other than Liens permitted under Section 7.01 hereof) upon any assets or property of any Loan Party under the provisions of, (a) such Loan Party's Organization Documents, (b) any material agreement to which any Loan Party is a party (including the ABL Loan Documents), (c) any order, injunction, writ or decree of any Governmental Authority or (d) any Law, except with respect to any conflict, breach, default or violation referred to herein, solely to the extent that such conflicts, breaches, defaults or violations, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

5.03. Governmental Authorization; Other Consents. Each Loan Party and each of their Subsidiaries:

(a) holds permits, certificates, licenses, orders, registrations, franchises, authorizations, and other approvals from any Governmental Authority necessary for the conduct of its business and is in compliance with all applicable laws relating thereto, except where the failure to do so, either individually or in the aggregate, would not have a Material Adverse Effect;

(b) is in compliance with all federal, state, local, or foreign applicable statutes, rules, regulations, and orders including, without limitation, those relating to environmental protection, occupational safety and health, and equal employment practices, except where the failure to be in compliance, either individually or in the aggregate, would not have a Material Adverse Effect;

(c) is not in violation of or in default beyond any applicable cure period under any agreement to which it is a party or by which its assets are subject or bound (including the ABL Loan Documents), except with respect to any violation or default that, either individually or in the aggregate, would not have a Material Adverse Effect; and

(d) is in material compliance with all applicable Anti-Money Laundering Laws.

5.04. Litigation and Administrative Proceedings. There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened in writing against or affecting any Loan Party or any Subsidiary (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the matters set forth on Schedule 5.04) or (ii) that involve any Loan Document or the Transactions.

5.05. Title to Assets. Each Loan Party and each of their Subsidiaries has good title to and ownership of, or a valid leasehold interest in, all material property it purports to own, which property is free and clear of all Liens, except those permitted under Section 7.01 hereof, in each case, except where the failure to have such title, interest, or right would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. As of the Closing Date, the Loan Parties and their Subsidiaries own the real property listed on Schedule 5.05 hereto.

5.06. Liens and Security Interests. On and after the Closing Date, except for Liens permitted pursuant to Section 7.01 hereof, (a) there is and will be no financing statements or similar notice of Lien outstanding covering any personal property of any Loan Party or any Subsidiary thereof; (b) there is and will be no mortgage or deed or hypothec outstanding covering any real property of any Loan Party or any Subsidiary thereof; and (c) no real or personal property of any Loan Party or any Subsidiary thereof is subject to any Lien of any kind. The Administrative Agent has a legal, valid and enforceable and, subject to the last paragraph of Section 4.01(a), (A) perfected first-priority Lien on the Collateral (subject to the priority of any Liens permitted under Section 7.01) and (B) perfected second-priority Lien on the ABL Priority Collateral (subject to the ABL Intercreditor Agreement). No Loan Party thereof has entered into any contract or agreement (other than a contract or agreement entered into in connection with the purchase or lease of fixed assets that prohibits Liens on such fixed assets) that exists on or will become effective after the Closing Date pursuant to a commitment or agreement effective as of the Closing Date that would prohibit the Administrative Agent or the Lenders from acquiring a Lien on, or a collateral assignment of, any of the property or assets of any Loan Party thereof. Each Person that is a guarantor or a borrower under the ABL Loan Documents is a Loan Party hereunder.

5.07. Tax Returns. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, all federal, state, provincial and local tax returns and other reports required by law to be filed in respect of the income, business, properties and employees of each Loan Party and each of their Subsidiaries have been filed and all taxes, assessments, fees and other governmental charges that are due and payable have been paid, except as otherwise permitted herein. The provision for taxes on the books of each Loan Party and each Subsidiary thereof is adequate for all years not closed by applicable statutes and for the current fiscal year.

5.08. Environmental Laws. Except as disclosed on Schedule 5.08 hereto (i) no Loan Party or any Subsidiary has received written notice of any claim with respect to any Environmental Liability or knows of any basis for any Environmental Liability and (ii) except with respect to any other matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, no Loan Party or any Subsidiary (A) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (B) has become subject to any Environmental Liability, (C) has received written notice of any claim with respect to any Environmental Liability or (D) has actual knowledge of any basis for any Environmental Liability.

5.09. Locations. As of the Closing Date, the Loan Parties have places of business or maintain their accounts, inventory and equipment at the locations (including third party locations) set forth on the schedules to the Security Agreement.

5.10. [Reserved].

5.11. Employee Benefits Plans. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87 or subsequent recodification thereof, as applicable) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$2,500,000 the fair market value of the assets of all such underfunded Plans.

5.12. Consents or Approvals. No consent, approval or authorization of, or filing, registration or qualification with, any Governmental Authority or any other Person is required to be obtained or completed by any Loan Party in connection with the execution, delivery or performance of any of the Loan Documents, that has not already been obtained or completed, except for (i) such as have been obtained or made and are in full force and effect, (ii) filings that are necessary to perfect Liens created pursuant to the Loan Documents, (iii) filings as may be required under the Securities Exchange Act of 1934, as amended, and applicable stock exchange rules in connection therewith, or (iv) such actions, consents and approvals the failure of which to be obtained or made would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.13. Solvency. As of the Closing Date, each Loan Party is, individually and collectively with its Subsidiaries on a consolidated basis, Solvent.

5.14. Financial Statements; No Material Adverse Effect. The Audited Financial Statements and the Borrower Interim Financial Statements furnished to the Administrative Agent and the Lenders, are true and complete, have been prepared in accordance with GAAP, and fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries as of the dates of such financial statements and the results of their operations for the periods then ending, subject to normal year-end audit adjustments and the absence of footnotes. Since the dates of such Borrower Interim Financial Statements, there has been no material adverse change in the Borrower's or any of its Subsidiary's financial condition, properties or business or any change in any Borrower's or any of its Subsidiary's accounting procedures. Since December 31, 2020, there has been no event or circumstance either individually or in the aggregate that has had or would reasonably be expected to have a Material Adverse Effect.

5.15. Regulations. No Loan Party or Subsidiary thereof is engaged principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any "margin stock" (within the meaning of Regulation U of the FRB of the United States). Neither the granting of the Loans (or any conversion thereof) nor the use of the proceeds of the Loans will violate, or be inconsistent with, the provisions of Regulation T, U or X or any other Regulation of the FRB. Following the application of the proceeds of the Loans, not more than 25% of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a consolidated basis) subject to the provisions of Section 7.01, Section 7.05 or subject to any restriction contained in any agreement or instrument between the Borrower and any Lender or Affiliate of a Lender relating to Indebtedness within the scope of Section 8.01(e) will be margin stock.

5.16. [Reserved].

5.17. Intellectual Property. Each Loan Party and each Subsidiary thereof owns, or has the right to use, all of the material patents, patent applications, industrial designs, designs, trademarks, service marks, copyrights, trade secrets, software and rights with respect to the foregoing necessary for the conduct of its business without any known conflict with the rights of others. Schedule 5.17 hereto sets forth all patents, trademarks, registered copyrights, and service marks, owned by each Loan Party as of the Closing Date.

5.18. Insurance. As of the Closing Date, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, each Loan Party and each Subsidiary thereof maintains with financially sound and reputable insurers (or is self-insured) insurance with coverage and limits as required by Law and as is customary with Persons engaged in the same businesses as the Loan Parties and their Subsidiaries. Schedule 5.18 hereto sets forth all material insurance carried by the Loan Parties and their Subsidiaries on the Closing Date.

5.19. [Reserved].

5.20. Labor Matters. As of the Closing Date, there are no strikes, lockouts or slowdowns against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened in writing.

5.21. Sanctions; Anti-Money Laundering Laws; Anti-Corruption Laws.

(a) None of the Loan Parties or any of their Subsidiaries or any of the respective directors, officers or, to the knowledge of any Loan Party, any other Related Party of any of the Loan Parties or any of their Subsidiaries: (i) is a Sanctioned Person or (ii) is or has, within the previous five (5) years, engaged in any transaction or dealing with, involving or for the benefit of any Sanctioned Person. No Loan, and no proceeds from any Loan, have been used, directly or indirectly, or lent, contributed, provided or otherwise made available to any Subsidiary, joint venture partner or other Person, to fund any activity or business with, involving or for the benefit of any Sanctioned Person or any Designated Jurisdiction, or in any other manner that would constitute or give rise to any violation by any Person (including any Person participating in the transaction, whether as Lender, Administrative Agent or otherwise) of any Sanctions.

(b) None of the Loan Parties or any of their Subsidiaries: (i) is under investigation by any Governmental Authority for, or has been charged with, or convicted of, money laundering or terrorist-related activities under any applicable Anti-Money Laundering Laws, (ii) has been assessed civil penalties under any applicable Anti-Money Laundering Laws or (iii) has had any of its funds seized or forfeited in an action under any applicable Anti-Money Laundering Laws.

(c) None of the Loan Parties or any of their Subsidiaries or any of the respective directors, officers or, to the knowledge of any Loan Party, any other Related Party of any of the Loan Parties or any of their Subsidiaries: has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds, (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977 or any other applicable Anti-Corruption Laws; or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment. No Loan, and no proceeds from any Loan, have been used, directly or indirectly, in any manner that would constitute a violation of applicable Anti-Corruption Laws.

(d) None of the Loan Parties or any of their Subsidiaries or any of the respective directors, officers or, to the knowledge of any Loan Party, any other Related Party of any of the Loan Parties or any of their Subsidiaries: is or has been, within the previous five (5) years, subject to any action, claim, charge, proceeding, litigation or judgment with regard to any actual or alleged violation of applicable Sanctions, applicable Anti-Money Laundering Laws or applicable Anti-Corruption Laws.

(e) The Loan Parties have implemented and maintain in effect policies and procedures designed to promote and achieve compliance with applicable Sanctions, applicable Anti-Money Laundering Laws and applicable Anti-Corruption Laws.

5.22. Certain Treasury Regulation Matters. The Borrower does not intend to treat the Loans and related transactions as being a “reportable” transaction (within the meaning of Treasury Regulation 1.6011-4). The Borrower acknowledges that the Administrative Agent and one or more of the Lenders may treat its Loans as part of a transaction that is subject to Treasury Regulation Section 301.6112-1 to the extent that the Borrower’s application of the proceeds of the Loans requires the same and the Administrative Agent and such Lender or Lenders, as applicable, may, in connection therewith, maintain such lists and other records as they may determine is required by such Treasury Regulation.

5.23. [Reserved].

5.24. Accurate and Complete Statements. No report, financial statement, certificate or other information furnished by or on behalf of any Loan Party or any Subsidiary to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder or any other Loan Document (as modified or supplemented by other information so furnished), when taken as a whole, contains any material misstatement of a material fact or omits to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not materially misleading; provided that (a) no representation is made with respect to general economic or industry information and (b) with respect to projected and *pro forma* financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions reasonably believed by the Borrower to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

5.25. Investment Company. No Loan Party or Subsidiary thereof is an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

5.26. Defaults. No Default exists hereunder, nor will any exist immediately after the execution and delivery hereof.

5.27. Senior Debt Status. The Obligations (a) rank at least *pari passu* in right of payment with all material senior Indebtedness of Borrower and its Subsidiaries and (b) are designated as “Senior Indebtedness,” “Designated Senior Debt” or such similar term under all instruments and documents relating to all Subordinated Indebtedness and all senior unsecured Indebtedness of such Person.

## ARTICLE VI AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations not then due), the Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.11) cause each Subsidiary to:

6.01. Financial Statements. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) within ninety-five (95) days after the end of each fiscal year of the Borrower (commencing with the fiscal year ending December 31, 2020), an annual audit report of the Borrower and its Subsidiaries for that year prepared on a consolidated basis, in accordance with GAAP, and certified by an opinion of an independent public accountant of recognized national or regional standing (or otherwise reasonably satisfactory to the Administrative Agent) that is not subject to any qualification, exception or explanatory paragraph as to “going concern” or scope of the audit (other than any “emphasis of matter” paragraph or qualification, or any exception or explanatory paragraph that is solely with respect to, or resulting solely from (i) an upcoming maturity date under any Indebtedness or (ii) any potential or actual inability to satisfy any financial covenant (including the Financial Covenant)), which report shall include balance sheets and statements of income (loss), stockholders’ equity and cash-flow for that period;

(b) within fifty (50) days after the end of each of the first three fiscal quarter periods of each fiscal year of the Borrower (commencing with the fiscal quarter ending March 31, 2021), balance sheets of the Borrower and its Subsidiaries as of the end of such period and statements of income (loss), stockholders’ equity and cash flow for the quarter and fiscal year to date periods, setting forth in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all prepared on a consolidated basis, in accordance with GAAP subject to normal year-end adjustments and the absence of footnotes, and certified by a Responsible Officer of the Borrower; and

(c) within forty-five (45) days after the end of each fiscal year of the Borrower a copy of the plan and forecast (including a projected consolidated balance sheet, income statement and cash flow statement) of the Borrower for each month of the upcoming fiscal year in form reasonably satisfactory to the Administrative Agent.

As to any information contained in materials furnished pursuant to Section 6.02(d), the Borrower shall not be separately required to furnish such information under Section 6.01(a) or (b) above, but the foregoing shall not be in derogation of the obligation of the Borrower to furnish the information and materials described in Sections 6.01(a) and (b) above at the times specified therein.

6.02. Certificates; Other Information. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) [reserved];

(b) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b) (commencing with the delivery of the financial statements for the fiscal quarter ended March 31, 2021), a duly completed Compliance Certificate signed by a Responsible Officer of the Borrower (which delivery may, unless the Administrative Agent, or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes), which Compliance Certificate shall (x) provide that no Default exists or, if a Default exists, specifying the nature and extent thereof; (y) set forth (i) any change in the identity of any of the Immaterial Subsidiaries during such period and (ii) a detailed calculation of the Consolidated Net Leverage Ratio and the Consolidated Secured Net Leverage Ratio in each case as of the last day of such period, and solely with respect to the delivery concurrently with the financial statements referred to in Section 6.01(a), a calculation of Excess Cash Flow for such fiscal year); and (z) set forth all patents, trademarks, registered copyrights, service marks, and material license agreements owned by each Loan Party or Subsidiary or to which a Loan Party or Subsidiary is a party and that is not set forth on Schedule 5.17 hereto or on any previously delivered Compliance Certificate;

(c) promptly after request therefor, copies of any detailed audit reports or management letters submitted to the board of directors (or the audit committee of the board of directors) of the Borrower by independent accountants in connection with any audit of the Borrower or any Subsidiary as the Administrative Agent may reasonably request;

(d) promptly after the same become publicly available, copies of all periodic and other reports, definitive proxy statements and other materials filed by any Loan Party with the SEC (other than any routine ministerial statements, notices, reports or other documents), or any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, or distributed by any Loan Party to its shareholders generally, as the case may be;

(e) promptly after the furnishing thereof, copies of any statement or report (other than any routine ministerial statements or reports) furnished to any holder of obligations pursuant to a Material Indebtedness Agreement of any Loan Party pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(f) [reserved];

(g) promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each written notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other material inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(h) if so requested by the Administrative Agent, not later than five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of all material notices, requests and other documents (including amendments, waivers and other modifications) so received under or pursuant to any Related Document or any Material Indebtedness Agreement and, from time to time upon request by the Administrative Agent, such information and reports regarding any Related Document or any Material Indebtedness Agreement as the Administrative Agent may reasonably request;

(i) promptly after receipt of any written notice of any investigation by a Governmental Authority or any litigation or proceeding commenced or threatened in writing against any Loan Party or any Subsidiary that (i) seeks damages in excess of \$4,000,000, (ii) seeks injunctive relief that has resulted, or, either individually or in the aggregate, would reasonably be expected to result, in a Material Adverse Effect, (iii) is asserted or instituted against any Plan, its fiduciaries or its assets that has resulted, or, either individually or in the aggregate, would reasonably be expected to result, in a Material Adverse Effect, (iv) alleges criminal misconduct by any Loan Party or any Subsidiary, (v) alleges the violation of, or seeks to impose remedies under, any Environmental Law or related Requirement of Law, or seeks to impose Environmental Liability that has resulted, or, either individually or in the aggregate, would reasonably be expected to result, in a Material Adverse Effect, (vi) asserts liability on the part of any Loan Party or any Subsidiary in excess of \$4,000,000 in respect of any tax, fee, assessment, or other governmental charge, or (vii) involves any product recall that has resulted, or, either individually or in the aggregate, would reasonably be expected to result, in a Material Adverse Effect;

(j) within forty-five (45) days after the end of each fiscal year of the Borrower, (i) a report supplementing Schedule 5.05 and Schedule 5.09, including an identification of all owned and leased real property disposed of by any Loan Party or any Subsidiary thereof during such fiscal year, a list and description (including the street address, county or other relevant jurisdiction, state, record owner, book value thereof and, in the case of leases of property, lessor, lessee, expiration date and annual rental cost thereof) of all real property acquired or leased during such fiscal year and a description of such other changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete and (ii) a report supplementing Schedules 5.01 and 5.17 containing a description of all changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete, each such report to be signed by a Responsible Officer of the Borrower and to be in a form reasonably satisfactory to the Administrative Agent;

(k) promptly after any Loan Party or any Subsidiary thereof obtains knowledge that any Loan Party or any Subsidiary thereof or any Person that owns, directly or indirectly, any Equity Interest of any Loan Party or any Subsidiary thereof, or any other holder at any time of any direct or indirect equitable, legal or beneficial interest therein is in violation or breach of any of Section 6.08(b) or 7.10, such Loan Party or Subsidiary will deliver reasonably prompt notice to the Administrative Agent and the Lenders of such violation; and

(l) promptly following any request therefor, (i) such other information regarding the operations, changes in ownership of Equity Interests, business affairs and financial condition of any Loan Party or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request, and (ii) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" rules and Anti-Money Laundering Laws, including the USA PATRIOT Act and the Beneficial Ownership Regulation.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which such materials are publicly available as posted on the Electronic Data Gathering, Analysis and Retrieval system (EDGAR); or (ii) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02; or (iii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that certain of the Lenders (each, a “Public Lender”) may have personnel who do not wish to receive material nonpublic information (for purposes of the United States Federal and state securities laws) with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons’ securities. The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (x) all such Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, means that the word “PUBLIC” shall appear prominently on the first page thereof and (y) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07).

6.03. Notices. Promptly, after a Responsible Officer of the Borrower or any of its Subsidiaries has knowledge thereof, notify the Administrative Agent and each Lender:

- (a) the occurrence of any Default within five (5) Business Days after any Loan Party’s actual knowledge thereof;
- (b) of any matter that has resulted, or, either individually or in the aggregate, would reasonably be expected to result, in a Material Adverse Effect;
- (c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Loan Parties and their Subsidiaries in an aggregate amount exceeding \$4,000,000;
- (d) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;
- (e) of the (i) occurrence of any Disposition of property or assets for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.05(b)(ii), (ii) incurrence or issuance of any Indebtedness for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.05(b)(iii), and (iii) receipt of any Extraordinary Receipt for which the Borrower is required to make a mandatory prepayment pursuant to Section 2.05(b)(iv); and
- (f) any change in the credit ratings from a credit rating agency, or the placement by a credit rating agency of any Loan Party on a “Credit Watch” or “WatchList” or any similar list, in each case with negative implications, or the cessation by a credit rating agency of, or its intent to cease, rating such Loan Party’s debt.

Each notice pursuant to Section 6.03 (other than Section 6.03(f)) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04. Payment of Taxes and Other Obligations. Pay in full (a) prior in each case to the date when penalties would attach, all material Taxes, assessments and governmental charges and levies (except only those so long as and to the extent that the same shall be contested in good faith by appropriate and timely proceedings and for which adequate provisions have been established in accordance with GAAP) for which it may be or become liable or to which any or all of its properties may be or become subject; (b) in the case of the Borrower and Domestic Subsidiaries, all of its material wage obligations to its employees in compliance with the Fair Labor Standards Act (29 U.S.C. §§ 206-207) or any comparable provisions, and, in the case of the Foreign Subsidiaries, those obligations under foreign laws with respect to employee source deductions, obligations and employer obligations to its

employees; and (c) except where failure to pay such obligations, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, all of its other obligations calling for the payment of money (except only those so long as and to the extent that the same shall be contested in good faith and for which adequate provisions have been established in accordance with GAAP) before such payment becomes overdue.

6.05. Preservation of Existence, Etc. Other than any Immaterial Subsidiary (a) preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered material patents, trademarks, trade names and service marks in accordance with the Security Agreement, the non-preservation of which, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

6.06. [Reserved]

6.07. Maintenance of Insurance.

(a) Maintain insurance upon its inventory, equipment and other personal and real property in such form, written by such companies, in such amounts, for such periods, and against such risks as customarily insured against by Persons engaged in the same or similar business and as required by applicable Laws and the Collateral Documents, with provisions for, with respect to Loan Parties, payment of all losses thereunder to the Administrative Agent and such Loan Parties as their interests may appear (with lender's loss payable, mortgagee, and additional insured endorsements, as appropriate, in favor of the Administrative Agent). Any such policies of insurance shall provide for no fewer than thirty (30) days' prior written notice of cancellation to the Administrative Agent and the Lenders except for cancellation with respect to the nonpayment of premium (which shall provide for ten (10) days' prior written notice of cancellation). The Administrative Agent is hereby authorized to act as attorney-in-fact for the Loan Parties in (after the occurrence and during the continuation of an Event of Default) obtaining, adjusting, settling and canceling such insurance and indorsing any drafts. Within ten (10) Business Days of the Administrative Agent's written request, the Borrower shall furnish to the Administrative Agent such information about the insurance of the Loan Parties and the Subsidiaries thereof (including, without limitation, copies of insurance policies of the Loan Parties and the Subsidiaries) as the Administrative Agent may from time to time reasonably request.

(b) If any portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a Special Flood Hazard Area with respect to which flood insurance has been made available under the National Flood Insurance Act of 1968 (as now or hereafter in effect or successor act thereto), then the Borrower shall, or shall cause each Loan Party to (i) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to applicable flood insurance Laws and (ii) deliver to the Administrative Agent evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent.

6.08. Compliance with Laws.

(a) Comply in all material respects with the requirements of all Laws (including, without limitation, ERISA and Environmental Laws) and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect; provided that compliance with applicable Sanctions, applicable Anti-Corruption Laws, and applicable Anti-Money Laundering Laws shall be subject to Section 6.08(b).

(b) Comply with applicable Sanctions and applicable Anti-Corruption Laws in all respects and applicable Anti-Money Laundering Laws in all material respects, and maintain policies and procedures designed to promote and achieve compliance with applicable Sanctions, applicable Anti-Corruption Laws, and applicable Anti-Money Laundering Laws.

6.09. Books and Records.

(a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of each Loan Party, as the case may be.

(b) Maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Loan Parties, as the case may be.

6.10. Inspection Rights. Upon reasonable prior notice, at any time during normal business hours, allow the Administrative Agent and the Lenders by or through any of the Administrative Agent's officers, agents, employees, attorneys or accountants to (a) examine, inspect and make extracts from any Loan Party's or any Subsidiary's books, corporate, financial and operating records and other records, including, without limitation, the tax returns of such Loan Party or such Subsidiary and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants and (b) examine and inspect any Loan Party's or Subsidiary's properties, inventory and equipment, wherever located, in each case, at the expense of the Borrower and upon reasonable advance notice to such Loan Party or Subsidiary; provided, however, that (i) if an Event of Default does not exist, such examinations and inspections shall be limited to not more than one time per any calendar year and (ii) if an Event of Default exists, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and without advance notice.

6.11. Use of Proceeds. Use the proceeds of (a) the Term Loans solely for the repayment in full of 100% of the principal amount of Existing Credit Agreement Indebtedness and associated fees and expenses on the Closing Date and (b) to the extent any portion of the Loans is remaining after giving effect to the items specified in clause (a) of this Section 6.11, for working capital and other general corporate purposes of the Borrower and its Subsidiaries (including for capital expenditures, permitted acquisitions, the repayment or refinancing of Indebtedness and the making of Investments).

6.12. Covenant to Guarantee Obligations and Give Security.

(a) Guaranties and Security Documents. Each Domestic Subsidiary (other than any Immaterial Subsidiary) created, acquired or held subsequent to the Closing Date, and each Domestic Subsidiary that at any time ceases to be an Immaterial Subsidiary (including by virtue of clause (g) of this Section 6.12), shall within forty-five (45) days (or such longer period as the Administrative Agent shall approve in its sole discretion) after such creation, acquisition, holding or cessation execute and deliver to the Administrative Agent, for the benefit of the Lenders, a Guaranty (or guaranty supplement) and the appropriate Collateral Documents, such agreements to be in form and substance acceptable to the Administrative Agent, along with any such other supporting documentation, corporate governance and authorization documents, and an opinion of counsel as may reasonably be deemed necessary or advisable by the Administrative Agent; provided that no such Guaranty or Collateral Documents shall be required from any subsidiary of the Borrower that is an Excluded Subsidiary. Notwithstanding anything herein or in the ABL Loan Documents to the contrary and subject to the Lien priorities specified within the ABL Intercreditor Agreement, (x) no Person shall become a Guarantor (as defined in the ABL Credit Agreement) under the ABL Credit Agreement if they are not a Guarantor hereunder, and (y) no Person shall grant Liens to the ABL Agent in any property of such Loan Party that constitutes Collateral (as defined in the ABL Credit Agreement) under the ABL Credit Agreement or the ABL Loan Documents if they do not grant Liens to the Administrative Agent in such property of such Loan Party that constitutes Collateral under this Agreement or the Loan Documents.

(b) Pledge of Equity Interests. Subject to Section 6.17, with respect to the creation or acquisition of a Subsidiary, the appropriate Loan Party shall within forty-five (45) days (or such longer period as the Administrative Agent shall approve in its sole discretion) after such creation or acquisition execute a Security Agreement (or a Security Agreement Supplement) and, in connection therewith, pledge all of its Equity Interests in such Subsidiary to the Administrative Agent as security for the Obligations; provided that each Loan Party will cause (i) 100% of the issued and outstanding Equity Interests of each of its Domestic Subsidiaries and (ii) 65% of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2) in each Foreign Subsidiary organized in Mexico, Brazil and Poland or Foreign Subsidiary Holding Company directly owned by the Borrower or any Domestic Subsidiary to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, pursuant to the terms and conditions of the Loan Documents or other security documents as the Administrative Agent shall reasonably request. The Borrower shall deliver to the Administrative Agent the share certificates (or other evidence of equity) evidencing any of the Equity Interests pledged pursuant to this Section 6.12(b) if such Equity Interests are certificated or so evidenced.

(c) Perfection or Registration of Interest in Foreign Equity Interests. Subject to Section 6.17, with respect to any foreign Equity Interests pledged to the Administrative Agent by the Borrower or any Domestic Subsidiary that is a Loan Party, on or after the Closing Date, the Administrative Agent shall at all times, in the reasonable discretion of the Administrative Agent or the Required Lenders, have the right to require the perfection, at Borrowers' cost, payable upon request therefor (including, without limitation, any foreign counsel, or foreign notary, filing, registration or similar, fees, costs or expenses), of the security interest in such Equity Interests in the respective foreign jurisdiction.

(d) Pledged Intercompany Notes. With respect to the creation or acquisition by a Loan Party of a Pledged Intercompany Note, the appropriate Loan Party shall pledge to the Administrative Agent, as security for the Obligations, such Pledged Intercompany Note. Such Loan Party shall promptly deliver to the Administrative Agent such Pledged Intercompany Note and an accompanying allonge if such Pledged Intercompany Note is evidenced in writing and has a stated principal amount equal to or greater than \$100,000.

(e) Collateral Generally. The Borrower shall:

(i) promptly furnish to the Administrative Agent or any Lender upon request (x) additional statements and information with respect to the Collateral, and all writings and information relating to or evidencing any of the Borrower's or any Subsidiary's accounts (including, without limitation, computer printouts or typewritten reports listing the mailing addresses of all present account debtors), and (y) any other writings and information as the Administrative Agent or such Lender may reasonably request;

(ii) promptly notify the Administrative Agent in writing upon the creation of any accounts with respect to which the account debtor is the United States or any other Governmental Authority, or any business that is located in a foreign country;

(iii) promptly notify the Administrative Agent in writing upon the creation by any Loan Party of a deposit account or securities account not listed on Schedule 5.23 hereto and, if such deposit account is owned by the Borrower or another Loan Party and is not an Excluded Account, promptly provide for the execution of a Deposit Account Control Agreement or Securities Account Control Agreement, as applicable, with respect thereto, if required by the Administrative Agent or the Required Lenders;

(iv) promptly notify the Administrative Agent in writing whenever assets of a Loan Party having a value in excess of \$250,000 are located at a location of a third party (other than another Loan Party) that is not listed on Schedule 5.09 hereto and use commercially reasonable efforts to cause to be executed any bailee's waiver, processor's waiver, consignee's waiver or similar document or notice or reserves that reasonably may be required by the Administrative Agent or the Required Lenders;

(v) promptly notify the Administrative Agent in writing of any information that the Borrower or any of its Subsidiaries has or may receive in writing with respect to the Collateral that would reasonably be expected to materially and adversely affect the value thereof or the rights of the Administrative Agent and the Lenders with respect thereto;

(vi) promptly deliver to the Administrative Agent, to hold as security for the Obligations, within ten (10) Business Days after the written request of the Administrative Agent, all certificated investment property owned by a Loan Party, in suitable form for transfer by delivery, or accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance satisfactory to the Administrative Agent, or in the event such investment property is in the possession of a securities intermediary or credited to a securities account (other than an Excluded Account), execute with the related securities intermediary an investment property control agreement over such securities account in favor of the Administrative Agent in form and substance satisfactory to the Administrative Agent;

(vii) promptly provide to the Administrative Agent, after written request therefor, a list of any patents, trademarks or copyrights that have been federally registered by the Borrower or any other Loan Party since the last list so delivered, and provide for the execution of an appropriate Intellectual Property Security Agreement; and

(viii) upon the reasonable request of the Administrative Agent, promptly take such action and promptly make, execute, and deliver all such additional and further items, deeds, assurances, instruments and any other writings as the Administrative Agent may from time to time deem necessary or appropriate, including, without limitation, chattel paper, to carry into effect the intention of this Agreement, or so as to completely vest in and ensure to the Administrative Agent and the Lenders their respective rights hereunder and in or to the Collateral.

The Borrower hereby authorizes the Administrative Agent to file UCC financing statements (or similar notice filings applicable in foreign jurisdictions) with respect to the Collateral. If certificates of title or applications for title are issued or outstanding with respect to any of the inventory or equipment of any Loan Party that constitutes Collateral, the Borrower shall (or cause such applicable Loan Party to), upon request of the Administrative Agent, (i) execute and deliver to the Administrative Agent a short form security agreement, in form and substance satisfactory to the Administrative Agent, and (ii) deliver such certificate or application to the Administrative Agent and cause the interest of the Administrative Agent to be properly noted thereon. The Borrower hereby authorizes the Administrative Agent or its respective designated agent (but without obligation by the Administrative Agent to do so) to incur reasonable expenses with respect to the foregoing (whether prior to, upon, or subsequent to any Default), and the Borrower shall promptly repay, reimburse, and indemnify the Administrative Agent and the Lenders for any and all such reasonable and documented out of pocket expenses.

(f) Property Acquired Subsequent to the Closing Date and Right to Take Additional Collateral. The Borrower shall provide the Administrative Agent with prompt written notice with respect to any Material Real Property or material personal property (other than accounts, inventory, equipment and general intangibles and other property acquired in the ordinary course of business) acquired by any Loan Party subsequent to the Closing Date. In addition to any other right that the Administrative Agent and the Lenders may have pursuant to this Agreement or otherwise, upon written request of the Administrative Agent, whenever made, the Borrower shall, and shall cause each Loan Party to, grant to the Administrative Agent, for the benefit of the Lenders, as additional security for the Obligations, a perfected Lien on any Material Real Property or personal property of each Loan Party, including, without limitation, such property acquired subsequent to the Closing Date, in which the Administrative Agent does not have a perfected first priority Lien. The Borrower agrees, (i) in the case of Material Real Property, to provide all Real Estate Requirements with respect to such Material Real Property within ninety (90) days (or such later time as may be specified by the Administrative Agent in its sole but reasonable discretion), and (ii) in all other cases, within ten (10) days after the date of a written request by the Administrative Agent, to secure all of the Obligations by delivering to the Administrative Agent security agreements, intellectual property security agreements, pledge agreements, mortgages (or deeds of trust, if applicable) or other documents, instruments or agreements or such thereof as the Administrative Agent may reasonably require. The Borrower shall pay all recordation, legal and other expenses in connection therewith.

(g) Designation of Immaterial Subsidiaries. In the event that the Immaterial Subsidiaries, when taken as a whole, (i) contribute more than 5% of the Consolidated EBITDA of the Borrower and its Subsidiaries, taken as a whole, during the most recently-ended four fiscal quarter period (taken as a single period) or (ii) as of any applicable date of determination have assets that in the aggregate constitute more than 5% aggregate net book value of the assets of the Borrower and its Subsidiaries, taken as a whole, the Borrower shall promptly designate one or more Immaterial Subsidiaries to be Loan Parties hereunder (at which time such Subsidiaries shall cease to be Immaterial Subsidiaries) such that the resulting EBITDA attributable to, and net book value of the assets held by, the remaining Immaterial Subsidiaries, when taken as a whole, shall be less than the required percentages set forth in clauses (i) and (ii) of this clause (g). Notwithstanding anything contained herein to the contrary and for the avoidance of doubt, no Subsidiary shall constitute either an Immaterial Subsidiary if such Subsidiary guarantees or provides a Lien on its assets or otherwise provide credit support with respect to any other Indebtedness of any Loan Party.

Notwithstanding the foregoing, no Loan Party shall be required to pledge or grant a Lien on any Excluded Assets.

6.13. Compliance with Environmental Laws. The Borrower and its Subsidiaries shall furnish to the Administrative Agent and the Lenders, promptly after receipt thereof, a copy of any notice the Borrower or such Subsidiary may receive from any Governmental Authority or private Person, or otherwise, that any material litigation or proceeding pertaining to any environmental, health or safety matter has been filed or is threatened against the Borrower or such Subsidiary, any real property in which the Borrower or such Subsidiary holds any interest or any past or present operation of the Borrower or such Subsidiary. Neither the Borrower nor any of its Subsidiaries shall allow the material release or material disposal of hazardous waste, solid waste or other wastes on, under or to any real property in which the Borrower or any of its Subsidiaries holds any ownership interest or performs any of its operations, in violation of or which result in material liability under any Environmental Law. As used in this Section 6.13, "litigation or proceeding" means any demand, claim, notice, suit, suit in equity action, administrative action, investigation or inquiry whether brought by any Governmental Authority or private Person, or otherwise.

6.14. Regarding Collateral. Provide the Administrative Agent and the Lenders with at least ten (10) days' prior written notice before any change its legal name, organizational structure or its state, province or other jurisdiction of organization. The Borrower shall promptly notify the Administrative Agent of (a) any change in any location where a portion of any Loan Party's assets having a value in excess of \$250,000 are maintained, and any new locations where any portion of any Loan Party's assets having a value in excess of \$250,000 are to be maintained; (b) any change in the location of the office where any Loan Party's material records pertaining to its accounts are kept; and (c) any change in the location of any Loan Party's chief executive office.

6.15. [Reserved].

6.16. Further Assurances.

(a) Promptly upon request by the Administrative Agent or the Required Lenders through the Administrative Agent, (i) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (ii) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or the Required Lenders through the Administrative Agent, may reasonably require from time to time in order to carry out the purposes of the Loan Documents.

(b) If reasonably deemed appropriate by the Administrative Agent, the Administrative Agent is hereby authorized to file new UCC financing statements (or similar notice filings applicable in foreign jurisdictions) describing the Collateral and otherwise in form and substance sufficient for recordation wherever necessary or appropriate, as determined in the Administrative Agent's sole but reasonable

discretion, to perfect or continue perfected the security interest of the Administrative Agent in the Collateral. The Borrower shall pay all filing and recording fees and taxes in connection with the filing or recordation of such UCC financing statements (or similar notice filings applicable in foreign jurisdictions) and security interests and shall promptly reimburse the Administrative Agent therefor if the Administrative Agent pays the same.

6.17. Post-Closing Matters. Execute and deliver the documents and complete the tasks set forth on Schedule 6.17, in each case within the time limits specified on such schedule.

## ARTICLE VII NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied (other than contingent indemnification obligations not then due), the Borrower shall not, nor shall it permit any Subsidiary to:

7.01. Liens. Create, incur, assume or suffer to exist (upon the happening of a contingency or otherwise) any Lien upon any of its property or assets, whether now owned or hereafter acquired; provided that this Section 7.01 shall not apply to the following:

(a) Liens for Taxes not yet due or that are being actively contested in good faith by appropriate proceedings and for which adequate reserves shall have been established in accordance with GAAP;

(b) other statutory Liens incidental to the conduct of its business or the ownership of its property and assets that (i) were not incurred in connection with the borrowing of money or the obtaining of advances or credit, and (ii) do not in the aggregate materially detract from the value of its property or assets or materially impair the use thereof in the operation of its business;

(c) Liens on property or assets of a (i) Subsidiary to secure obligations of such Subsidiary to a Loan Party and (ii) Foreign Subsidiary to secure obligations of such Foreign Subsidiary;

(d) purchase money Liens on fixed assets securing the loans and Indebtedness under Financing Lease Obligations pursuant to Section 7.02(b) hereof; provided that any such Lien is limited to the purchase price and only attaches to the property being acquired or financed thereby;

(e) any Lien of the Administrative Agent, for the benefit of the Secured Parties;

(f) the Liens existing on the Closing Date as set forth in Schedule 7.01 hereto and replacements, extensions, renewals, refundings or refinancings thereof, but only to the extent that the amount of Indebtedness secured thereby shall not be increased (except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such replacement, extension, renewal, refunding or refinancing and by an amount equal to any existing commitments unutilized thereunder) and the property covered thereby is not changed;

(g) easements, zoning restrictions, rights-of-way and similar encumbrances, defects or irregularities in title of real property imposed by law or arising in the ordinary course of business that do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary;

(h) pledges or deposits in connection with workers' compensation insurance, unemployment insurance and like matters;

(i) Liens in respect of any writ of execution, attachment, garnishment, judgment or judicial award solely to the extent not constituting an Event of Default under Section 8.01(h)(i);

(j) Liens arising solely from precautionary UCC financing statements filed with respect to any consignment agreement entered into by Borrower or any Subsidiary in the ordinary course of business;

(k) Liens on the Collateral or any portion thereof securing Indebtedness under Section 7.02(k) (subject to the ABL Intercreditor Agreement);

(l) Liens on tangible property of a Person existing at the time such Person is acquired by the Borrower or a Subsidiary pursuant to an Acquisition permitted under Section 7.03(b); provided that such Liens were not created in contemplation of such Acquisition and do not extend to any assets other than those of the Person acquired by the Borrower or such Subsidiary, and the applicable Indebtedness secured by such Lien is permitted under Section 7.02(l);

(m) other Liens securing Indebtedness permitted by Section 7.02(m) the amount of which does not exceed \$10,000,000; provided that such Liens must be junior to the Liens securing the Obligations and the ABL Obligations;

(n) other non-consensual Liens not securing Indebtedness, (i) the amount of which does not exceed \$5,000,000 in the aggregate, and (ii) the existence of which, either individually or in the aggregate, will not have a Material Adverse Effect; provided that any Lien permitted by this clause (n) is permitted only for so long as is reasonably necessary for the affected Loan Party or the affected Subsidiary, using its best efforts, to remove or eliminate such Lien and, provided, further, that any Lien not otherwise permitted by this clause (n) shall be permitted so long as such Loan Party or the affected Subsidiary shall within thirty (30) days after the filing thereof either (A) cause such Lien to be discharged, or (B) post with the Administrative Agent a bond or other security in form and amount satisfactory to the Administrative Agent in all respects and shall thereafter diligently pursue its discharge;

(o) for the avoidance of doubt, any Lien on a Sold Account;

(p) Liens existing on the Closing Date securing Indebtedness that has been repaid; provided that any Lien permitted by this clause (p) is permitted only for so long as is reasonably necessary for the affected Loan Party or the affected Subsidiary, using its best efforts, to remove, discharge or otherwise eliminate such Lien; provided, further, that in no event shall any Lien permitted by this clause (p) be permitted for more than ninety (90) days;

(q) 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;

(r) Liens of a collecting bank arising in the ordinary course of business under Section 4-210 of the UCC in effect in the relevant jurisdiction covering only the items being collected upon;

(s) Liens arising out of sale and leaseback transactions permitted hereunder;

(t) other Liens securing Indebtedness permitted by Section 7.02(f); provided that no such Lien shall extend to, or cover, any Collateral;

(u) Liens granted pursuant to the Precious Metal Consignment Agreements so long as such Lien does not secure Indebtedness;

(v) any non-consensual statutory or civil law Lien arising in the Netherlands under Netherland's General Banking Conditions (other than arising under article 26 thereof) so long as such Lien does not secure Indebtedness and arises in the ordinary course of business; and

(w) Liens on the Collateral securing Incremental Term Loans; provided that such Liens must be junior to the Liens securing the Obligations.

Neither the Borrower nor any of its Subsidiaries shall enter into any contract or agreement (other than a contract or agreement entered into in connection with the purchase or lease of fixed assets that prohibits Liens on such fixed assets) that would prohibit the Administrative Agent or the Lenders from acquiring a security interest, mortgage or other Lien on, or a collateral assignment of, any of the property or assets of the Borrower or such Subsidiary.

7.02. Indebtedness. Create, incur, assume or have outstanding any Indebtedness of any kind; provided that this Section 7.02 shall not apply to the following:

(a) the Loans and any other Obligation under this Agreement or under any other Loan Document;

(b) any loans granted to or Indebtedness under Financing Lease Obligations entered into by the Borrower or any of its Subsidiaries for the purchase or lease of fixed assets and any Refinance Indebtedness in respect thereof permitted by clause (g) below, which loans and Indebtedness under Financing Lease Obligations shall only be secured by the fixed assets being purchased or leased, so long as the aggregate principal amount of all such loans and Indebtedness under Financing Lease Obligations for the Borrower and all of its Subsidiaries shall not exceed \$20,000,000 at any time outstanding;

(c) the Indebtedness existing on the Closing Date, in addition to the other Indebtedness permitted to be incurred pursuant to this Section 7.02, as set forth in Schedule 7.02 hereto and any Refinance Indebtedness in respect thereof permitted by clause (g) below;

(d) Indebtedness of (i) any Loan Party owing to any other Loan Party, (ii) any Subsidiary that is not a Loan Party owing to any other Subsidiary that is not a Loan Party, (iii) any Loan Party to any Subsidiary that is not a Loan Party (provided that such Indebtedness is subordinate to the Loans on terms reasonably satisfactory to the Administrative Agent) and (iv) any Subsidiary that is not a Loan Party owing to any Loan Party, provided that the aggregate principal amount of all Indebtedness incurred pursuant to this clause (d)(iv) (including any outstanding amounts under the Non-Loan Party Investments Cap) shall not exceed \$15,000,000 in any fiscal year and \$50,000,000 during the term of this Agreement (this clause (d)(iv), the "Non-Loan Party Debt Cap");

(e) Incremental Term Loans permitted under Section 2.16;

(f) Indebtedness under any Swap Contract, so long as such Swap Contract shall have been entered into in the ordinary course of business and not for speculative purposes and any Refinance Indebtedness in respect thereof permitted by clause (g) below;

(g) Indebtedness that represents extensions, renewals, refinancing or replacements (such Indebtedness being so extended, renewed, refinanced or replaced being referred to herein as the "Refinance Indebtedness") of any of the Indebtedness described in clauses (b), (c), (f) and (l) hereof (such Indebtedness being referred to herein as the "Original Indebtedness"); provided that (i) such Refinance Indebtedness does not increase the principal amount or interest rate of the Original Indebtedness, (ii) any Liens securing such Refinance Indebtedness are not extended to any additional property of any Loan Party or any Subsidiary, (iii) no Loan Party or any Subsidiary that is not originally obligated with respect to repayment of such Original Indebtedness is required to become obligated with respect to such Refinance Indebtedness, (iv) such Refinance Indebtedness does not result in a shortening of the average weighted maturity of such Original Indebtedness, (v) the terms of such Refinance Indebtedness are not less favorable to the obligor thereunder than the original terms of such Original Indebtedness and (vi) if such Original Indebtedness was subordinated in right of payment or security to the Obligations or the Guarantees thereof or Liens thereof, then the terms and conditions of such Refinance Indebtedness must include terms and conditions that are at least as favorable to the Administrative Agent and the Lenders as those that were applicable to such Original Indebtedness;

(h) Indebtedness incurred in connection with the financing of insurance premiums, not to exceed \$5,000,000 at any time outstanding;

(i) contingent obligations consisting of Guarantees executed by (i) any Loan Party with respect to Indebtedness otherwise permitted by this Agreement and (ii) any Subsidiary with respect to any Indebtedness of a Subsidiary otherwise permitted by this Agreement (provided that Guarantees by the Borrower or any other Loan Party of Indebtedness of any Subsidiary that is not a Loan Party shall be subject to Section 7.02(d));

(j) Indebtedness of any Loan Party in respect of performance bonds, bid bonds, appeal bonds, surety bonds and similar obligations, in each case provided in the ordinary course of business;

(k) so long as the ABL Facility is subject to the terms and conditions of the ABL Intercreditor Agreement, Indebtedness in respect of the ABL Facility in an aggregate principal amount not to exceed the ABL Cap (as defined in the ABL Intercreditor Agreement) at any time outstanding and any permitted Refinancing (as defined in the ABL Intercreditor Agreement);

(l) Indebtedness of any Person that becomes a Subsidiary of the Borrower after the date hereof pursuant to an Acquisition permitted under Section 7.03(b) and any Refinance Indebtedness in respect thereof permitted by clause (g) hereof; provided that (i) such Indebtedness is existing at the time such Person becomes a Subsidiary of the Borrower (and is not incurred in contemplation of such Person's becoming a Subsidiary of the Borrower), (ii) no Event of Default has occurred and is continuing, (iii) after giving *pro forma* effect thereto and to the application of the proceeds thereof (but disregarding any costs constituting proceeds thereof for the purposes of netting), the Borrower and its Subsidiaries shall be in *pro forma* compliance with the Financial Covenant and (iv) the aggregate principal amount of Indebtedness outstanding in reliance on this clause (l) that is (A) secured by a Lien on the Collateral that is junior to the Liens securing the Obligations, the amount of such Indebtedness shall not exceed \$10,000,000 at any time outstanding and (B) unsecured, the amount of such Indebtedness shall not exceed \$10,000,000 at any time outstanding;

(m) other Indebtedness in an aggregate principal amount for the Borrower and all of its Subsidiaries not to exceed \$15,000,000 at any time outstanding; provided that, to the extent such Indebtedness is secured, it may only be secured by a Lien on the Collateral that is junior to the Liens securing the Obligations and subject to (i) no Event of Default has occurred and is continuing and (ii) after giving *pro forma* effect thereto (and to any Indebtedness incurred in connection therewith), the Borrower and its Subsidiaries shall be in compliance with Financial Covenant;

(n) the following that do not constitute Indebtedness, but that are listed for purposes of clarification, contingent obligations consisting of the indemnification by the Borrower or any of its Subsidiaries of (i) the officers, directors, employees and agents of the Borrower or any of its Subsidiaries, to the extent permissible under the corporation law of the jurisdiction in which such Person is organized, (ii) commercial banks, investment bankers and other independent consultants or professional advisors pursuant to agreements relating to the underwriting of the Borrower's or any of its Subsidiaries' securities or the rendering of banking or professional services to the Borrower or any of its Subsidiaries, (iii) landlords, licensors, licensees and other parties pursuant to agreements entered into in the ordinary course of business by the Borrower or any of its Subsidiaries, and (iv) other Persons under agreements relating to Acquisitions permitted under Section 7.03(b); provided that each of the foregoing is only permitted to the extent that such indemnity obligation is not incurred in connection with the borrowing of money or the extension of credit;

(o) for the avoidance of doubt, any Indebtedness under any Qualified Receivables Transaction, not to exceed \$20,000,000 at any time outstanding; and

(p) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business.

7.03. Investments and Acquisitions.

(a) Make or hold any Investments except:

(i) any endorsement of a check or other medium of payment for deposit or collection through normal banking channels or similar transaction in the normal course of business;

(ii) any investment in (A) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the U.S. (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the U.S.), in each case maturing within one year from the date of acquisition thereof, (B) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's, (C) investments in certificates of deposit, bankers' acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the U.S. or any State thereof that has a combined capital and surplus and undivided profits of not less than \$250,000,000, (D) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (A) above and entered into with a financial institution satisfying the criteria described in clause (C) above, (E) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$5,000,000,000;

(iii) the holding of each of the Subsidiaries listed on Schedule 5.01 hereto, and the creation, acquisition and holding of, and any investment in, any new Subsidiary after the Closing Date so long as such new Subsidiary shall have been created, acquired or held, and investments made, in accordance with the terms and conditions of this Agreement and pursuant to transactions otherwise permitted under this Section 7.03;

(iv) notes payable, or stock or other securities issued by Account Debtors to a Loan Party pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the ordinary course of business, consistent with past practices;

(v) Investments, including a guaranty of Indebtedness by (i) any Loan Party in any other Loan Party, (ii) any Subsidiary that is not a Loan Party in any other Subsidiary that is not a Loan Party, (iii) any Subsidiary that is not a Loan Party in any Loan Party and (iv) any Loan Party in any other Subsidiary that is not a Loan Party; provided that the aggregate principal amount of all Investments incurred pursuant to this clause (a)(v) (including any outstanding amounts under the Non-Loan Party Debt Cap) shall not exceed \$15,000,000 in any fiscal year and \$50,000,000 during the term of this Agreement (this clause (a)(v)(iv), the "Non-Loan Party Investments Cap");

(vi) investments received in connection with Dispositions permitted by Section 7.05;

(vii) any advance or loan to an officer or employee of the Borrower or any Subsidiary as an advance on commissions, travel, relocation and other similar items in the ordinary course of business, so long as all such advances and loans from the Borrower and all Subsidiaries aggregate not more than the maximum principal sum of \$1,000,000 at any time outstanding;

(viii) the holding of any Equity Interests that has been acquired pursuant to an Acquisition permitted by subsection (b) hereof;

(ix) the creation of a Subsidiary for the purpose of making an Acquisition permitted by subsection (b) hereof or the holding of any Subsidiary as a result of an Acquisition made pursuant subsection (b) hereof, so long as, in each case, if required pursuant to Section 6.12 hereof, such Subsidiary becomes a Guarantor promptly following such Acquisition;

(x) the Investments existing on the Closing Date, in addition to the other Investments permitted to be incurred pursuant to this Section 7.03, as set forth in Schedule 7.03;

(xi) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(xii) Guarantees of Indebtedness permitted pursuant to Section 7.02;

(xiii) Investments in Wuxi Weifu Autocam Precision Machinery Components Co., Ltd. (the “Wuxi Weifu JV”), so long as (A) no Default has occurred and is continuing or would result therefrom and (B) the aggregate amount of such Investments is limited to those made using reinvestment dividends or other distributions received from the Wuxi Weifu JV;

(xiv) Investments in the form of a Swap Contract, so long as such Swap Contract shall have been entered into in the ordinary course of business and not for speculative purposes;

(xv) non-cash Investments made by Borrower or any Loan Party in any Foreign Subsidiary consisting of obligations of such Foreign Subsidiary to pay Capital Distributions to the Borrower or any other Loan Party that have been declared but the payment of which has been deferred (whether or not such obligation to pay such Capital Distributions is represented by a promissory note that has been pledged to the Administrative Agent in accordance with the Collateral Documents);

(xvi) [reserved];

(xvii) other Investments constituting Acquisitions permitted by subsection (b) of this Section 7.03;

(xviii) [reserved]; and

(xix) investments constituting deposits described in Section 7.01(h) and Section 7.01(q).

For purposes of this Section 7.03(a), the amount of any Investment in Equity Interests shall be based upon the initial amount invested and shall not include any appreciation in value or return on such investment.

(b) Effect an Acquisition (other than any Acquisition permitted under Section 7.04(a), (b), (c) or (d)); provided that, so long as no Event of Default shall exist prior to or after giving *pro forma* effect thereto (and any Indebtedness incurred in connection therewith), the Borrower and its Subsidiaries may make

(i) an Acquisition so long as:

A. in the case of a merger, amalgamation or other combination including the Borrower, the Borrower shall be the surviving entity;

B. in the case of a merger, amalgamation or other combination including a Loan Party (other than the Borrower), a Loan Party shall be the surviving entity;

C. the business to be acquired shall be similar to the lines of business of the Borrower and its Subsidiaries or reasonably related and/or complementary or ancillary to such lines of business and reasonable extensions and expansions thereof;

D. the Borrower and its Subsidiaries shall be in full compliance with the Loan Documents both prior to and subsequent to the transaction;

E. such Acquisition shall not be actively opposed by the board of directors (or similar governing body) of the selling Persons or the Persons whose equity interests are to be acquired;

F. after giving *pro forma* effect to such Investment (and to any Indebtedness incurred in connection therewith), the Borrower and its Subsidiaries shall be in compliance with the Financial Covenant;

(ii) other Acquisitions constituting Investments permitted by subsection (a) of this Section 7.03.

Following any Acquisition permitted under this Section 7.03, to the extent required under the Loan Documents, the acquired Person shall take the necessary steps to become a Guarantor hereunder and to comply with the Guarantee and Collateral requirements in accordance with the Loan Documents.

7.04. Fundamental Changes. Dissolve, liquidate, merge, amalgamate or consolidate with or into any other Person, except that, if at the time thereof and immediately after giving effect thereto, no Event of Default shall have occurred and be continuing:

(a) a Domestic Subsidiary may merge, amalgamate or consolidate with or into (i) the Borrower (provided that the Borrower shall be the continuing or surviving Person), or (ii) any one or more Guarantors (provided that a Guarantor shall be the continuing or surviving Person);

(b) a Domestic Subsidiary (other than a Loan Party) may merge, amalgamate or consolidate with or into any other Domestic Subsidiary (other than a Loan Party);

(c) a Foreign Subsidiary may merge, amalgamate or consolidate with or into another Foreign Subsidiary or the Borrower or a Guarantor (provided that, in any merger, amalgamation or consolidation involving the Borrower or a Guarantor, the Borrower or Guarantor shall be the continuing or surviving Person);

(d) any Wholly-Owned Subsidiary may be dissolved or liquidated so long as such Subsidiary is not, at the time, a Loan Party or, if it is a Loan Party at such time, all assets and interests of such Subsidiary, are transferred to another Loan Party on or before the time of its dissolution or liquidation; and

(e) Acquisitions may be effected in accordance with the provisions of Section 7.03(b) hereof.

7.05. Dispositions. Make any Disposition or enter into any agreement to make any Disposition, other than in the ordinary course of business, except that:

(a) a Loan Party may sell, lease, transfer or otherwise dispose of any of its assets to any other Loan Party;

(b) the Borrower and its Subsidiaries may Dispose of any assets which are immaterial to the business of the Borrower and to the extent such Dispositions are made in the ordinary course;

(c) a Domestic Subsidiary (other than a Loan Party) may Dispose of any of its assets to the Borrower or any other Domestic Subsidiary; provided that in the case of any Disposition to a Loan Party such Disposition shall not be for more than the fair market value of the assets that are the subject of such Disposition;

(d) a Foreign Subsidiary may Dispose of any of its assets to any Loan Party; provided that such Disposition shall not be for more than the fair market value of the assets that are the subject of such Disposition;

(e) Dispositions permitted by Section 7.04;

(f) the Borrower and its Subsidiaries may sell, transfer or otherwise dispose of fixed assets in the ordinary course of business for the purpose of replacing such fixed assets; provided that any such fixed assets are replaced within one hundred eighty (180) days of such sale or other disposition with other fixed assets that have a fair market value not materially less than the fair market value of the fixed assets sold or otherwise disposed;

(g) a Foreign Subsidiary may Dispose of any of its assets to any other Foreign Subsidiary;

(h) Dispositions of Accounts in connection with the compromise, settlement or collection thereof the ordinary course of business, consistent with past practices;

(i) Dispositions not otherwise permitted under this Section 7.05 so long as (i) the consideration received for the assets to be so disposed is at least equal to the fair market value of such assets, as reasonably determined by the Board of Directors of the Borrower, and at least 75% of the consideration so received constitutes cash, (ii) the proceeds of such Disposition are applied in accordance with Section 2.05, (iii) after giving *pro forma* effect to such Disposition, the Borrower and its Subsidiaries shall be *pro forma* in compliance with the Financial Covenant and (iv) no Event of Default is occurring and continuing at the time of such Disposition or results therefrom;

(j) Dispositions of Receivables in connection with any Qualified Receivables Transaction in an amount not to exceed \$20,000,000 at any time outstanding;

(k) Dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of the Borrower or any Subsidiary;

(l) Dispositions of investments permitted by clauses (a)(i) and (a)(ii) of Section 7.03; and

(m) a Loan Party may enter into any agreement to make a Disposition otherwise permitted under this Section 7.05.

Notwithstanding the foregoing, no Loan Party shall transfer (or license on a non-exclusive basis) or otherwise dispose of any Material Intellectual Property to any Subsidiary that is not a Loan Party.

7.06. Restricted Payments. Make or commit itself to make or declare any Restricted Payment at any time, provided that:

(a) each Subsidiary may make Capital Distributions to the Borrower, any Subsidiaries of the Borrower that are Guarantors and any other Person that owns a direct Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Capital Distribution is being made;

(b) the Borrower and its Subsidiaries may make non-scheduled prepayments, repurchases or redemptions in respect of Junior Indebtedness and Subordinated Indebtedness (a "Restricted Debt Payment") so long as such Restricted Debt Payment is made (i) with proceeds of qualified Equity Interests (other than the proceeds of an equity cure) or consideration paid in qualified Equity Interests that are not otherwise applied, (ii) in connection with the Transactions and (iii) in respect of any AHYDO Catch Up Payments;

(c) the Borrower and each Subsidiary may make Restricted Payments with the proceeds received from the substantially concurrent issue of new common Equity Interests;

(d) the Borrower may declare and pay dividends with respect to its common stock payable solely in additional shares of its common stock, and, with respect to its preferred stock, and except as otherwise set forth herein, payable solely in additional shares of such preferred stock or in shares of its common stock;

(e) the Borrower and its Subsidiaries may make Restricted Payments on the Series D Preferred Stock subject to compliance with a Consolidated Net Leverage Ratio less than or equal to 2.50:1.00; provided that the Restricted Payments under this clause (e) shall not exceed 7.0% of the aggregate amount of proceeds received in respect of the Series D Preferred Stock; and

(f) the Borrower and its Subsidiaries may make Restricted Payments constituting a prepayment of Indebtedness in connection with the Refinancing of such Indebtedness permitted hereunder.

7.07. Changes in the Nature of Business. Engage in any business if, as a result thereof, the general nature of the business of the Borrower and its Subsidiaries taken as a whole would be substantially changed from the general nature of the business the Borrower and its Subsidiaries are engaged in on the Closing Date.

7.08. Transactions with Affiliates. Directly or indirectly, enter into or permit to exist any transaction (including, without limitation, the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate (other than a Loan Party) on terms that shall be less favorable to the Borrower or such Subsidiary than those that might be obtained at the time in a transaction with a non-Affiliate; provided that the foregoing shall not prohibit (1) the payment of customary and reasonable directors' fees to directors who are not employees of the Borrower or any Subsidiary or an Affiliate, (2) amounts payable pursuant to the consummation of the Transactions on the Closing Date, or (3) the declaring, or the making, of dividends and other distributions in respect of the Series D Preferred Stock.

7.09. Burdensome Agreements. Except as set forth in this Agreement and the other Loan Documents directly or indirectly, create or otherwise cause or suffer to exist or become effective any encumbrance or restriction on the ability of any Subsidiary to (a) make, directly or indirectly, any Capital Distribution to the Borrower, (b) make, directly or indirectly, loans or advances or capital contributions to the Borrower or (c) transfer, directly or indirectly, any of the properties or assets of such Subsidiary to the Borrower; except for such encumbrances or restrictions existing under or by reason of (i) applicable Law, by any Loan Document or by any ABL Loan Document to the extent not prohibited by the ABL Intercreditor Agreement, (ii) customary provisions in leases and other contracts restricting the assignment thereof, (iii) customary restrictions in agreements in connection with Qualified Receivables Transactions, consignment agreements, security agreements or mortgages permitted hereunder securing Indebtedness or Financing Lease Obligations permitted hereunder, of a Subsidiary to the extent such restrictions shall only restrict the transfer of the property subject to such security agreement, mortgage or lease, (iv) restrictions and conditions existing on the date hereof identified on Schedule 7.09 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), or (v) customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided that such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder.

7.10. Use of Proceeds. Directly or indirectly, and whether immediately, incidentally or ultimately:

(a) use the proceeds of any Borrowing, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose;

(b) use any proceeds of any Borrowing, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, to fund any activities or business with, involving or for the benefit of any Sanctioned Person or any Designated Jurisdiction, or in any other manner that would constitute or give rise to a violation by any Person (including any Person participating in the transaction, whether as Lender, Administrative Agent or otherwise) of Sanctions; or

(c) use any proceeds of any Borrowing in any manner that would constitute a violation of any applicable Anti-Corruption Laws.

7.11. **Amendments to Organization Documents.** Amend its Organization Documents to change its name or state, province or other jurisdiction of organization, or otherwise amend its Organization Documents in a manner adverse to the Lenders, without the prior written consent of the Administrative Agent which consent shall not be unreasonably withheld.

7.12. **Accounting Changes.** Make any change in (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year

7.13. **Sanctions; Anti-Corruption Laws.** (a) Directly or indirectly, use any proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person to fund any activities of or business with, involving or for the benefit of any Sanctioned Person or any Designated Jurisdiction, or in any other manner that would constitute or give rise to a violation by any Person (including any Person participating in the transaction, whether as Lender, Administrative Agent or otherwise) of Sanctions; or

(a) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the U.S. Foreign Corrupt Practices Act of 1977 or other applicable Anti-Corruption Laws, or in any other manner that would constitute a violation of any applicable Anti-Corruption Laws.

7.14. **Financial Covenant.** For the benefit of the Lenders (and the Administrative Agent on their behalf), permit the Consolidated Net Leverage Ratio of the Borrower and its Subsidiaries as of the last day of any fiscal quarter of the Borrower to exceed the Consolidated Net Leverage Ratio set forth for the applicable fiscal quarter below, which will be tested quarterly on a trailing four (4) fiscal quarter basis for the most recent four fiscal quarter period for which financial statements are required to be delivered under Article VI, as of the last day of any fiscal quarter of the Borrower (commencing with the first full fiscal quarter of the Borrower following the Closing Date) (the "**Financial Covenant**"):

<b>Fiscal Quarter</b>	<b>Consolidated Net Leverage Ratio</b>
March 31, 2021	3.75:1.00
June 30, 2021	3.75:1.00
September 30, 2021	3.75:1.00
December 31, 2021	3.75:1.00
March 31, 2022	3.75:1.00
June 30, 2022	3.50:1.00
September 30, 2022	3.25:1.00
December 31, 2022	3.00:1.00
March 31, 2023	3.00:1.00
June 30, 2023	2.75:1.00
September 30, 2023	2.75:1.00
December 31, 2023	2.50:1.00
Thereafter	2.50:1.00

7.15. Restrictions Pertaining to Certain Indebtedness.

Permit any supplement, modification or amendment in any manner of any term or condition of any Material Indebtedness Agreement, any Indebtedness set forth in Schedule 7.02 or any Indebtedness that is expressly subordinated in payment to the Obligations, except for any such amendment, modification or waiver that would not be reasonably expected to be materially adverse to the Lenders.

ARTICLE VIII  
EVENTS OF DEFAULT AND REMEDIES

8.01. Events of Default. Any of the following shall constitute an Event of Default:

(a) Payments. If (a) the interest on any Loan or any Commitment or any other fee or other amount (other than the principal of any Loan) shall not be paid in full when due and payable or within three (3) Business Days thereafter, or (b) the principal of any Loan shall not be paid in full when due and payable;

(b) Special Covenants.

(i) If any Loan Party or Subsidiary thereof shall fail or omit to perform and observe 6.03(a), 6.12 (other than clause (e) thereof), 6.16, 6.17, or any Section in Article VII hereof (subject to, in the case of the Financial Covenant, the cure right contained in Section 8.04);

(ii) [reserved];

(c) Other Covenants. If any Loan Party or Subsidiary thereof shall fail or omit to perform and observe any covenant, agreement or other provision (other than those referred to in Sections 8.01(a) or 8.01(b) hereof) contained or referred to in this Agreement or any other Loan Document that is on such Loan Party's or Subsidiary's part to be complied with, and that failure or omission shall not have been fully corrected within thirty (30) days after the earlier of (i) any Financial Officer of such Loan Party or Subsidiary, as applicable, becomes aware of the occurrence thereof, or (ii) the giving of written notice thereof to the Borrower by the Administrative Agent or the Required Lenders that the specified failure or omission is to be remedied;

(d) Representations and Warranties. If any representation, warranty or statement made in or pursuant to this Agreement or any other Loan Document or any other material information furnished by any Loan Party or Subsidiary thereof to the Administrative Agent or the Lenders, or any thereof, or any other holder of any Note, shall be false or erroneous in any material respect (or, if any such representation, warranty or statement is by its terms qualified by concepts of materiality or reference to Material Adverse Effect, such representation, warranty or statement in any respect);

(e) Cross Default. If any Loan Party or any Subsidiary shall default in (i) the payment of any amount due and owing with respect to any Material Indebtedness Agreement beyond any period of grace provided with respect thereto, (ii) the performance or observance of any other agreement, term or condition contained in any agreement under which such obligation is created, if the effect of such default is to allow the acceleration of the maturity of any Indebtedness under any Material Indebtedness Agreement or to permit the holder thereof to cause such Indebtedness to become due prior to its stated maturity or (iii) (1) prior to the date that is 60 days after the expiration of any applicable grace or cure periods set forth in the ABL Credit Agreement or (2) unless the ABL Lenders have affirmatively waived such event of default, termination event or other similar event) events of default, termination events or any other similar event under clause (d) of Article VII of the ABL Credit Agreement with respect to any Loan Party's failure to perform or observe any term, covenant or agreement contained in Sections 5.02(a), 5.03 (with respect to a Loan Party's (as defined in the ABL Credit Agreement) existence), 5.08, 5.13, 5.14 or 5.15 or in Article VI, in each case, of the ABL Credit Agreement (unless the ABL Lenders have accelerated payment of the ABL Obligations, terminated the ABL Revolving Credit Commitments and/or foreclosed upon the ABL Priority Collateral as a result of such event or events);

(f) ERISA Default. The occurrence of one or more ERISA Events that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect or result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$12,500,000 for all periods;

(g) Change in Control. If any Change in Control shall occur;

(h) Judgments. (i) A final judgment or order for the payment of money shall be rendered against any Loan Party or any Subsidiary thereof by a court of competent jurisdiction, that remains unpaid or unstayed and undischarged for a period (during which execution shall not be effectively stayed) of thirty (30) days after the date on which the right to appeal has expired and the aggregate of all such judgments, for all such Loan Parties or Subsidiaries, shall exceed \$12,500,000 (to the extent not covered by independent third-party insurance as to which the insurer is rated at least "A" by A.M. Best Company, has been notified of the potential claim and does not dispute coverage) or (ii) any one or more non-monetary final judgments or orders shall be rendered against any Loan Party or any Subsidiary thereof by a court of competent jurisdiction that have, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (1) enforcement proceedings are commenced by any creditor upon such judgment or order, or (2) there is a period of ten (10) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect;

(i) Validity of the Loan Documents.

(i) Except as permitted pursuant to this Agreement and the other Loan Documents, if any Lien granted in this Agreement or any other Loan Document in favor of the Administrative Agent shall be determined to be (i) void or invalid, or is subordinated or not otherwise given the priority contemplated by this Agreement and the Borrower has (or the appropriate Loan Party has) failed to promptly execute appropriate documents to correct such matters, or (ii) unperfected as to any material amount of Collateral (as determined by the Administrative Agent, in its reasonable discretion) and the Borrower has (or the appropriate Loan Party has) failed to promptly execute appropriate documents to correct such matters;

(ii) (A) The validity, binding effect or enforceability of any Loan Document against any Loan Party shall be contested by any Loan Party; (B) any Loan Party shall deny in writing that it has any or further liability or obligation under any Loan Document; or (C) any Loan Document shall be terminated, invalidated or set aside, or be declared ineffective or inoperative or in any way cease to give or provide to the Administrative Agent or the Lenders the benefits purported to be created thereby;

(j) Bankruptcy and Solvency. If any Loan Party or any Subsidiary thereof (other than an Immaterial Subsidiary) shall (1) except as permitted pursuant to Section 7.04 hereof, discontinue business, (2) generally not pay its debts as such debts become due, (3) make a general assignment for the benefit of creditors, (4) apply for or consent to the appointment of an interim receiver, a receiver, a receiver and manager, an interim examiner, an examiner, an administrator, sequestrator, monitor, a custodian, a trustee, an interim trustee or liquidator of all or a substantial part of its assets or of such Person, (5) be adjudicated a debtor or insolvent or have entered against it an order for relief under any Debtor Relief Law, whether or not foreign, federal, state or provincial, in any applicable jurisdiction, now or hereafter existing, as any of the foregoing may be amended from time to time, or other applicable statute for jurisdictions outside of the United States, as the case may be, (6) file a voluntary petition in bankruptcy, or file a petition for the appointment of an interim examiner or examiner, or file a proposal or notice of intention to file a proposal or have an involuntary proceeding filed against it and the same shall continue undismissed for a period of sixty (60) days from commencement of such proceeding or case, or file a petition or an answer or an application or a proposal seeking reorganization or an arrangement with creditors or seeking to take advantage of any other law (whether federal, provincial or state, or, if applicable, other jurisdiction) relating

to relief of debtors, or admit (by answer, by default or otherwise) the material allegations of a petition filed against it in any bankruptcy, reorganization, insolvency or other proceeding (whether federal, provincial or state, or, if applicable, other jurisdiction) relating to relief of debtors, (7) suffer or permit to continue unstayed and in effect for sixty (60) consecutive days any judgment, decree or order entered by a court of competent jurisdiction, that approves a petition or an application or a proposal seeking its reorganization or appoints an interim receiver, a receiver and manager, an interim examiner, an examiner, an administrator, custodian, trustee, interim trustee or liquidator of all or a substantial part of its assets, or of such Person, (8) have an administrative receiver, receiver or examiner appointed over the whole or substantially the whole of its assets, or of such Person, (9) take, or omit to take, any action in order thereby to effect any of the foregoing assets, the value of which is less than its liabilities (taking into account prospective and contingent liabilities), or (10) have a moratorium declared in respect of any of its Indebtedness, or any analogous procedure or step is taken in any jurisdiction; or

(k) **Senior Debt Status.** The Obligations of each Loan Party under this Agreement and each of the other Loan Documents shall fail to (i) rank at least *pari passu* in right of payment with the other material senior Indebtedness of the Loan Parties or (ii) be designated as “Senior Indebtedness,” “Designated Senior Debt” or such similar term under all instruments and documents relating to all Subordinated Indebtedness and all senior unsecured Indebtedness of such Person.

8.02. **Remedies upon Event of Default.** If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

- (a) declare the commitment of each Lender to make Loans to be terminated, whereupon such commitments and obligation shall be terminated;
- (b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and
- (c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents;

provided, however, that upon the occurrence of an Event of Default described in Section 8.01(j), the obligation of each Lender to make Loans shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable.

8.03. **Application of Funds.** After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.15 and 2.16, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including reasonable and documented out of pocket fees, charges and disbursements of outside counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders (including reasonable and documented out of pocket fees, charges and disbursements of counsel to the Lenders) arising under the Loan Documents and amounts payable under Article III, ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations arising under the Loan Documents, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

8.04. Cure Right. Notwithstanding anything to the contrary contained in this Article VIII, in the event that the Borrower fails (or, but for the operation of this paragraph, would fail) to comply with the requirements of Financial Covenant, from the last day of the applicable fiscal quarter until the expiration of the 15<sup>th</sup> Business Day subsequent to the date the Compliance Certificate for such fiscal quarter calculating such Financial Covenant is required to be delivered pursuant to Section 6.02(b) (the "Cure Period"), the Borrower shall have the right to issue Permitted Cure Securities (including for the avoidance of doubt additional shares of Series D Preferred Stock) for cash (the "Cure Right"), and upon the receipt by the Borrower of such cash (the "Cure Amount"), pursuant to the exercise of the Cure Right, the Financial Covenant shall be recalculated giving effect to a pro forma adjustment by which Consolidated EBITDA shall be increased with respect to such applicable fiscal quarter and any four-quarter period that contains such fiscal quarter, solely for the purpose of measuring the Financial Covenant and not for any other purpose under this Agreement, by an amount equal to the Cure Amount; provided, that (i) in each four consecutive fiscal quarter period there shall be at least two fiscal quarters in which a Cure Right is not exercised, (ii) a Cure Right shall not be exercised more than five times during the term of this Agreement, (iii) for purposes of this Article VIII, the Cure Amount shall be not be given effect in an amount greater than the amount required for purposes of complying with the Financial Covenant, and (iv) there shall be no pro forma reduction in Indebtedness with the proceeds of the exercise of the Cure Right for determining compliance with the Financial Covenant for the fiscal quarter in respect of which such Cure Right is exercised (either directly through prepayment or indirectly as a result of the netting of Unrestricted Cash and Cash Equivalents) (other than, to the extent such Cure Amount is actually utilized as a prepayment, such reduction in Indebtedness will be taken into account in the fiscal periods ending after such fiscal quarter). If, after giving effect to the adjustments in this paragraph, the Borrower shall then be in compliance with the requirements of the Financial Covenant, the Borrower shall be deemed to have satisfied the requirements of the Financial Covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable breach or Default with respect to the Financial Covenant that would have occurred but for this paragraph shall be deemed cured for the purposes of this Agreement. During the Cure Period set forth in this Section 8.04, upon receipt by the Administrative Agent of written notice from the Borrower that it intends to exercise its Cure Right pursuant to this Section 8.04 for such period, any resultant Event of Default or potential Event of Default that arises solely as a result of non-compliance with Section 7.14 shall be deemed retroactively to have not occurred, and the Lenders shall not be permitted to accelerate the Loans or any other Obligations held by them and the Administrative Agent and the Lenders shall not be permitted to exercise remedies against the Collateral, in each case to the extent such acceleration or such exercise of remedies is based solely on a failure to comply with the requirements of Section 7.14 for such period, unless and until such Cure Period shall have passed without the Borrower exercising its Cure Right for such fiscal period prior to the expiration of such Cure Period.

#### ARTICLE IX ADMINISTRATIVE AGENT

##### 9.01. Appointment of the Administrative Agent.

(a) Each Lender irrevocably appoints Oaktree Fund Administration, LLC as the Administrative Agent and authorizes it to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent under this Agreement and the other Loan Documents, together with all such actions and powers that are reasonably incidental thereto. The Administrative Agent may perform any of its duties hereunder or under the other Loan Documents by or through any one or more sub-agents or attorneys-in-fact appointed by the Administrative Agent. The Administrative Agent and any such sub-agent or attorney-in-fact may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions set forth in this Article shall apply to any such sub-agent, attorney-in-fact or Related Party and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

9.02. Nature of Duties of the Administrative Agent. The Administrative Agent shall not have any duties or obligations except those expressly set forth in this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or an Event of Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except those discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.02), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and (c) except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by the Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it, its sub-agents or its attorneys-in-fact with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 10.02) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents or attorneys-in-fact selected by it with reasonable care. The Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof (which notice shall include an express reference to such event being a “Default” or “Event of Default” hereunder) is given to the Administrative Agent by the Borrower or any 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 any Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements, or other terms and conditions set forth in any Loan Document, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent. The Administrative Agent may consult with legal counsel (including counsel for the Borrower) concerning all matters pertaining to such duties.

9.03. Lack of Reliance on the Administrative Agent. Each of the Lenders acknowledges that it has, independently and without reliance upon the Administrative Agent 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 of the Lenders also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, continue to make its own decisions in taking or not taking any action under or based on this Agreement, any related agreement or any document furnished hereunder or thereunder.

9.04. Certain Rights of the Administrative Agent. If the Administrative Agent shall request instructions from the Required Lenders with respect to any action or actions (including the failure to act) in connection with this Agreement, the Administrative Agent shall be entitled to refrain from such act or taking such act unless and until it

shall have received instructions from such Lenders, and the Administrative Agent shall not incur liability to any Person by reason of so refraining. Without limiting the foregoing, no Lender shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting hereunder in accordance with the instructions of the Required Lenders where required by the terms of this Agreement.

9.05. Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, posting or other distribution) believed by it to be genuine and to have been signed, sent or made by the proper Person. The Administrative Agent may also 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 (including counsel for the Borrower), independent public 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 such counsel, accountants or experts.

9.06. The Administrative Agent in its Individual Capacity. The Person serving as the Administrative Agent shall have the same rights and powers under this Agreement and any other Loan Document in its capacity as a Lender as any other Lender and may exercise or refrain from exercising the same as though it were not the Administrative Agent; and the terms "Lenders," "Required Lenders," or any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity. The Person acting as the Administrative Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of business with the Borrower or any Subsidiary or Affiliate of the Borrower as if it were not the Administrative Agent hereunder.

9.07. Successor Administrative Agent.

(a) The Administrative Agent may resign at any time by giving notice thereof to the Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent, subject to approval by the Borrower provided that no Default or Event of Default shall exist at such time. If no successor Administrative Agent shall have been so appointed, and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent that shall be a commercial bank organized under the laws of the United States or any state thereof or a bank that maintains an office in the United States and has a combined capital and surplus of at least \$500,000,000.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor.

(c) Upon the acceptance of its appointment as the Administrative Agent hereunder by a successor, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring or removed Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. If, within forty five (45) days after written notice is given of the retiring or removed Administrative Agent shall be discharged from its duties and obligations under this Agreement Administrative Agent's resignation or the removal of the Administrative Agent under this Section, no successor Administrative Agent shall have been appointed and shall have accepted such appointment, then on such 45th day (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations under this Agreement Administrative Agent's resignation shall become effective, (ii) the retiring or removed Administrative Agent shall be discharged from its duties and obligations under this Agreement Administrative Agent shall thereupon be discharged from its duties and obligations under the Loan Documents and (iii) the Required Lenders shall thereafter perform all duties of the retiring or removed Administrative Agent shall be discharged from its duties and obligations under this Agreement Administrative Agent under the Loan Documents until such time as the Required Lenders appoint a

successor Administrative Agent as provided above. After any retiring Administrative Agent's resignation hereunder, the provisions of this Article shall continue in effect for the benefit of such retiring or removed Administrative Agent and its representatives and agents in respect of any actions taken or not taken by any of them while it was serving as the Administrative Agent.

9.08. Withholding Tax. In addition to and without limiting the application of Section 3.01, to the extent required by any applicable law, the Administrative Agent may withhold from any amounts paid to or for the account of any Lender an amount equivalent to any applicable withholding tax. If the IRS or any authority of the United States or any other jurisdiction asserts a claim that the Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Lender (because the appropriate form was not delivered or was not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances that rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason), such Lender shall indemnify the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower and without limiting the obligation of the Borrower to do so) fully for all amounts paid, directly or indirectly, by the Administrative Agent as tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs and any out of pocket expenses.

9.09. The Administrative Agent May File Proofs of Claim; Credit Bidding.

(a) In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and its agents and counsel and all other amounts due the Lenders and the Administrative Agent under Section 10.04) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same.

(b) Any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Section 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu

of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Laws. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (i) of Section 10.01 of this Agreement, (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle *pro rata* by the Lenders, as a result of which each of the Lenders shall be deemed to have received a *pro rata* portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders *pro rata* and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

9.10. Authorization to Execute Other Loan Documents. Each Lender hereby authorizes the Administrative Agent to execute on behalf of all Lenders all Loan Documents (including, without limitation, the Collateral Documents, any subordination agreements and any intercreditor agreements) other than this Agreement.

9.11. Collateral and Guaranty Matters. The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion:

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than contingent indemnification obligations), (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document to a Person that is not a Loan Party, (iii) that constitutes Excluded Assets, (iv) if approved, authorized or ratified in writing in accordance with Section 10.01 or (v) if the property subject to such Lien is owned by a Guarantor, upon the release of such Guarantor from its obligations under the Guaranty pursuant to clause (d) below;

(b) to release any Loan Party from its obligations under the applicable Collateral Documents if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents;

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(d); and

(d) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary or as a result of a transaction permitted hereunder; provided that no such release shall occur if such Guarantor continues to be a guarantor in respect of any Indebtedness of the Borrower or any of its Subsidiaries.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release its interest in particular types or items of property, or to release any Loan Party from its obligations under the applicable Collateral Documents pursuant to this Section. In each case as specified in this Section, the Administrative Agent will promptly upon the request of the Borrower (and each Lender irrevocably authorizes the Administrative Agent to), at the Borrower's expense, to execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the Liens granted under the applicable Collateral Documents, or to release such Loan Party from its obligations under the Guaranty and the applicable Collateral Documents, in each case in accordance with the terms of the Loan Documents and this Section 9.11.

9.12. [Reserved].

9.13. Right to Realize on Collateral and Enforce Guarantee. Anything contained in any of the Loan Documents to the contrary notwithstanding, the Borrower, the Administrative Agent and each Lender hereby agree that (i) no Lender shall have any right individually to realize upon any of the Collateral or to enforce the Collateral Documents, it being understood and agreed that all powers, rights and remedies hereunder and under the Collateral Documents may be exercised solely by the Administrative Agent, and (ii) in the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or other disposition, the Administrative Agent or any Lender may be the purchaser or licensor of any or all of such Collateral at any such sale or other disposition and the Administrative Agent, as agent for and representative of the Lenders (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing), shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by the Administrative Agent at such sale or other disposition.

#### ARTICLE X MISCELLANEOUS

10.01. Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:

(a) in the case of the initial Credit Extension, waive any condition set forth in Section 4.01 (other than Section 4.01(c)(i)) without the written consent of each Lender;

(b) [reserved];

(c) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(d) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under such other Loan Document without the written consent of each such Lender entitled to such payment;

(e) reduce the principal of, or the rate of interest specified herein on, any Loan, or (subject to clause (ii) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such amount;

provided that only the consent of the Required Lenders shall be necessary (i) to amend the definition of “Default Rate” and (ii) to waive any obligation of the Borrower to pay interest on the Loans at the Default Rate;

(f) change (i) Section 8.03 in a manner that would alter the *pro rata* sharing of payments required thereby without the written consent of each Lender directly affected thereby or (ii) the order of application of any prepayment of Loans from the application thereof set forth in the applicable provisions of Section 2.05(b) in any manner that materially and adversely affects the Lenders without the written consent of the Required Lenders;

(g) change any provision of this Section or reduce the percentages specified in (or alter the method of calculation thereof) the definition of any of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender directly affected thereby;

(h) except as set forth in Section 9.11, release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(i) release all or substantially all of the value of the Guaranty, without the written consent of each Lender, except to the extent the release of any Subsidiary from the Guaranty is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

(j) subordinate the Obligations in right of payment or subordinate the Liens on the Collateral, in each case, to any other Indebtedness or any Lien securing any other Indebtedness, without the written consent of each Lender; or

(k) impose any greater restriction on the ability of any Lender under the Term Facility to assign any of its rights or obligations hereunder without the written consent of the Required Lenders;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document and (ii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent that by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding any provision herein to the contrary, this Agreement may be amended to extend the Maturity Date of the Term Facility with respect to Lenders that agree to such extension with respect to their Term Loans with the written consent of each such approving Lender, the Administrative Agent and the Borrower (and no other Lender) and, in connection therewith and pursuant to a written offer from the Borrower to extend such Maturity Date may provide for different rates of interest and fees under the Term Facility with respect to the portion thereof with a Maturity Date so extended and may provide for other covenants and terms that apply solely to any period after the latest stated maturity date (including, without limitation, the Maturity Date) existing on the effective date of such amendment; provided that in each such case, (x) no Lender shall be obligated to participate in any such extension and (y) any such proposed extension of the Maturity Date with respect to the Term Facility shall have been offered to each Lender with Loans or Commitments under the Term Facility proposed to be extended, and if the consents of such Lenders exceed the portion of Commitments and Loans the Borrower wishes to extend, such consents shall be accepted on a *pro rata* basis among the applicable consenting Lenders; provided that any such

offer may, at the Borrower's option, be made to the Lenders in respect of any tranche or tranches of Term Loans without being made to any other tranche of Term Loans, as the case may be. In connection with any extensions effected pursuant to this paragraph, the Loan Parties shall take any actions reasonably required by the Administrative Agent to ensure and/or demonstrate that the Lien and security interests granted by the Collateral Documents continue to be perfected under the UCC or otherwise after giving effect to such extension (including any actions requested in connection with any existing Mortgages or any title policies related thereto).

Notwithstanding anything to the contrary contained in this Section 10.01, (x) Collateral Documents (including any additional Collateral Documents executed pursuant to Section 6.12 after the Closing Date) and related documents executed by the Loan Parties in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and may be amended, supplemented and waived with the consent of the Administrative Agent and the Borrower without the need to obtain the consent of any other Person if such amendment, supplement or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities, omissions, mistakes or defects or (iii) to cause such Collateral Document or other document to be consistent with this Agreement and the other Loan Documents and (y) if following the Closing Date, the Administrative Agent and the Borrower shall have jointly identified an ambiguity, inconsistency, obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Loan Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Documents if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof.

#### 10.02. Notices; Effectiveness; Electronic Communications.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows: if to the Borrower or the Administrative Agent to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and

identifying the website address therefor; provided that, for both clauses (i) and (ii), if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) [Reserved].

(d) Change of Address, Etc. Each of the Borrower and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.

(e) Reliance by Administrative Agent and Lenders. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic Committed Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all reasonable and documented out of pocket losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower, unless such losses, costs, expenses or liabilities are the result of the gross negligence or willful misconduct of the Administrative Agent or the Lenders. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

10.03. No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), or (c) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b) and (c) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

10.04. Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrower shall pay (i) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and

documented fees, charges and disbursements of outside counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or any Lender.

(b) Indemnification by the Borrower. The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnatee") against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable and documented out of pocket fees, charges and disbursements of any outside counsel for any Indemnatee) incurred by any Indemnatee or asserted against any Indemnatee by any Person (including the Borrower or any other Loan Party) other than such Indemnatee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any actual or alleged presence or Release of Hazardous Materials at, on, under or emanating from any property owned, leased or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee. Without limiting the provisions of Section 3.01(c), this Section 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under subsection (a) or (b) of this Section 10.04 to be paid by it to the Administrative Agent (or any sub-agent thereof) or any Related Party, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Term Loan Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided, further, that, the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent). The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnatee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnatee referred to in subsection (b) above shall be liable for any damages arising from the use by others of any information or other materials distributed to such party by such Indemnatee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section and the indemnity provision of Section 10.02(e) shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05. Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

#### 10.06. Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of Section 10.06(b), (ii) by way of participation in accordance with the provisions of Section 10.06(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.06(e) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees, provided such assignee is not an Ineligible Institution, all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans at the time owing to it); provided that any such assignment shall be subject to the following conditions:

##### (i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under the Term Facility and/or the Loans at the time owing to it (in each case with respect to any Facility) or contemporaneous assignments to related Approved Funds that equal at least the amount specified in subsection (b)(i)(B) of this Section 10.06 in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section 10.06, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to

such assignment is delivered to the Administrative Agent shall not be less than \$1,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned or (B) prohibit any Lender from assigning all or a portion of its rights and obligations among any separate revolving credit or term loan facilities provided pursuant to the last paragraph of Section 10.01 on a non-*pro rata* basis;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section 10.06 and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment; (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund, or (3) such assignment is made in connection with the primary syndication of the credit facility provided herein and during the ninety (90) day period following the Closing Date; provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (i) any unfunded Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the Term Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) any Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500 and information and documentation reasonably requested by the Administrative Agent for purposes of compliance with applicable "know your customer" rules and Anti-Money Laundering Laws, including the USA PATRIOT Act and the Beneficial Ownership Regulation; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person. Notwithstanding the foregoing, any Lender may assign all or any portion of its Term Loans hereunder to the Borrower, but only if:

(A) such assignment is made pursuant to a Dutch Auction open to all Lenders holding Term Loans on a pro rata basis or  
(B) such assignment is made as an open market purchase on a non-*pro rata* basis;

(B) no Event of Default shall have occurred and be continuing or would result therefrom;

(C) upon the effectiveness of such assignment, such Term Loans will be deemed to be automatically and permanently cancelled;

(D) no proceeds of ABL Revolving Loans shall be used by the Borrower to fund the consideration for such assignment.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable *pro rata* share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full *pro rata* share of all Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Laws without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section 10.06, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section 10.06.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior written notice.

(d) Participations. Any Lender may at any time, without the consent of, but with notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than an Ineligible Institution) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower,

the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section 10.06 (it being understood that the documentation required under Section 3.01(e) shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section 10.06; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 10.13 as if it were an assignee under subsection (b) of this Section 10.06 and (B) shall not be entitled to receive any greater payment under Section 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b) of the United States Proposed Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

Notwithstanding anything to the contrary contained in this Agreement, (a) the Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Ineligible Institutions and (b) the Borrower (on behalf of itself and the other Loan Parties) and the Lenders acknowledge and agree that the Administrative Agent shall have no responsibility or obligation to determine whether any Lender or potential Lender is an Ineligible Institution and that the Administrative Agent shall have no liability with respect to any assignment or participation made to an Ineligible Institution.

(e) Certain Pledges. Any Lender may, without the consent of the Borrower or Administrative Agent, at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or central bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

10.07. Treatment of Certain Information; Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over

such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 10.13 or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers of other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section or (B) becomes available to the Administrative Agent, any Lender or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower.

For purposes of this Section, “Information” means all information received from the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary, provided that, in the case of information received from the Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

EACH OF THE ADMINISTRATIVE AGENT AND THE LENDERS ACKNOWLEDGE THAT (A) THE INFORMATION MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER OR A SUBSIDIARY, AS THE CASE MAY BE, (B) IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND (C) IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH APPLICABLE LAWS, INCLUDING UNITED STATES FEDERAL AND STATE SECURITIES LAWS.

10.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable Laws, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch or office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.15 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section 10.08 are in addition to other rights and remedies (including other rights of setoff) that such Lender or their respective Affiliates may have. Each Lender agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09. Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest and other loan charges paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Laws (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Laws, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, and the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g., “pdf” or “tif”) shall be effective as delivery of a manually executed counterpart of this Agreement.

10.11. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

10.12. Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.13. Replacement of Lenders. If the Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts, including any amount payable under Section 2.05(c));

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of an assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

10.14. Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ANY AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW

10.15. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i)(A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent and the Lenders, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii)(A) the Administrative Agent and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) neither the Administrative Agent nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Lenders, and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and neither the Administrative Agent nor any Lender has any obligation to disclose any of such interests to the Borrower or its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17. Electronic Execution of Assignments and Certain Other Documents. The words "execution," "execute," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement, the other Loan Documents and the transactions contemplated hereby and thereby (including without limitation Assignment and Assumptions, amendments or other Committed Loan Notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, 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; provided that notwithstanding anything contained herein to the contrary, neither the Administrative Agent nor any Lender is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent or such Lender, as applicable, pursuant to procedures approved by it; and provided, further, without limiting the foregoing, upon the request of any party, any electronic signature shall be promptly followed by such manually executed counterpart.

10.18. USA PATRIOT Act. Each Lender that is subject to the PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which

information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the PATRIOT Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” rules and Anti-Money Laundering Laws, including the PATRIOT Act.

10.19. Inconsistencies with Other Documents. In the event there is a conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall control; provided that any provision of the Collateral Documents that imposes additional burdens on the Borrower or any of its Subsidiaries or further restricts the rights of the Borrower or any of its Subsidiaries or gives the Administrative Agent or Lenders additional rights shall not be deemed to be in conflict or inconsistent with this Agreement and shall be given full force and effect.

10.20. Acknowledgment 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 that 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 undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

10.21. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “QFC Credit Support,” and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States). 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.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the day and year first above written.

**BORROWER:**

**NN, Inc.**

By: /s/ Thomas D. DeByle

Name: Thomas H. DeByle

Title: Senior Vice President and  
Chief Financial Officer

[Signature Page to Term Loan Credit Agreement]

**ADMINISTRATIVE AGENT:**

**OAKTREE FUND ADMINISTRATION, LLC,**  
as Administrative Agent

By: Oaktree Capital Management, L.P.  
Its: Managing Member

By: /s/ Mary Gallegly  
Name: Mary Gallegly  
Title: Senior Vice President

By: /s/ Raghav Khanna  
Name: Raghav Khanna  
Title: Managing Director

[Signature Page to Term Loan Credit Agreement]

**Oaktree Gilead Investment Fund AIF  
(Delaware), L.P.**

By: Oaktree Fund AIF Series, L.P. – Series T  
Its: General Partner

By: Oaktree Fund GP AIF, LLC  
Its: Managing Member

By: Oaktree Fund GP III, L.P.  
Its: Managing Member

By: /s/ Mary Gallegly  
Name: Mary Gallegly  
Title: Authorized Signatory

By: /s/ Raghav Khanna  
Name: Raghav Khanna  
Title: Authorized Signatory

[Signature Page to Term Loan Credit Agreement]

**Oaktree Global Credit Plus Fund AIF, L.P.**

By: Oaktree Fund GP IIA, LLC  
Its: General Partner

By: Oaktree Fund GP II, L.P.  
Its: Managing Member

By: /s/ Mary Gallegly  
Name: Mary Gallegly  
Title: Authorized Signatory

By: /s/ Raghav Khanna  
Name: Raghav Khanna  
Title: Authorized Signatory

[Signature Page to Term Loan Credit Agreement]

**Oaktree Huntington-GCF Investment Fund  
(Direct Lending AIF), L.P.**

By: Oaktree Huntington-GCF Investment Fund  
(Direct Lending AIF) GP, L.P.  
Its: General Partner

By: Oaktree Huntington-GCF Investment Fund  
(Direct Lending AIF) GP, LLC  
Its: General Partner

By: Oaktree Fund GP III, L.P.  
Its: Managing Member

By: /s/ Mary Gallegly  
Name: Mary Gallegly  
Title: Authorized Signatory

By: /s/ Raghav Khanna  
Name: Raghav Khanna  
Title: Authorized Signatory

[Signature Page to Term Loan Credit Agreement]

**Oaktree Strategic Income II, Inc.**

By: Oaktree Fund Advisors, LLC  
Its: Investment Advisor

By: /s/ Mary Gallegly

Name: Mary Gallegly  
Title: Senior Vice President

By: /s/ Raghav Khanna

Name: Raghav Khanna  
Title: Managing Director

**OSI 2 Senior Lending SPV, LLC**

By: Oaktree Strategic Income II, Inc.  
Its: Managing Member

By: Oaktree Fund Advisors, LLC  
Its: Investment Manager

By: /s/ Mary Gallegly

Name: Mary Gallegly  
Title: Senior Vice President

By: /s/ Raghav Khanna

Name: Raghav Khanna  
Title: Managing Director

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**Exelon Strategic Credit Holdings, LLC**

By: Oaktree Capital Management, L.P.,  
Its: Manager

By: /s/ Mary Gallegly

Name: Mary Gallegly  
Title: Senior Vice President

By: /s/ Raghav Khanna

Name: Raghav Khanna  
Title: Managing Director

**Oaktree-NGP Strategic Credit, LLC**

By: Oaktree Capital Management, L.P.,  
Its: Manager

By: /s/ Mary Gallegly

Name: Mary Gallegly  
Title: Senior Vice President

By: /s/ Raghav Khanna

Name: Raghav Khanna  
Title: Managing Director

**Oaktree-Forrest Multi-Strategy, LLC [*– Series A*]**

By: Oaktree Capital Management, L.P.  
Its: Manager

By: /s/ Mary Gallegly

Name: Mary Gallegly  
Title: Senior Vice President

By: /s/ Raghav Khanna

Name: Raghav Khanna  
Title: Managing Director

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**Oaktree-TBMR Strategic Credit Fund C, LLC**

By: Oaktree Capital Management, L.P.  
Its: Manager

By: /s/ Mary Gallegly  
Name: Mary Gallegly  
Title: Senior Vice President

By: /s/ Raghav Khanna  
Name: Raghav Khanna  
Title: Managing Director

**Oaktree-TBMR Strategic Credit Fund E, LLC**

By: Oaktree Capital Management, L.P.  
Its: Manager

By: /s/ Mary Gallegly  
Name: Mary Gallegly  
Title: Senior Vice President

By: /s/ Raghav Khanna  
Name: Raghav Khanna  
Title: Managing Director

**Oaktree-TBMR Strategic Credit Fund G, LLC**

By: Oaktree Capital Management, L.P.  
Its: Manager

By: /s/ Mary Gallegly  
Name: Mary Gallegly  
Title: Senior Vice President

By: /s/ Raghav Khanna  
Name: Raghav Khanna  
Title: Managing Director

[Signature Page to Term Loan Credit Agreement]

**Oaktree-Minn Strategic Credit, LLC**

By: Oaktree Capital Management, L.P.  
Its: Manager

By: /s/ Mary Gallegly

Name: Mary Gallegly  
Title: Senior Vice President

By: /s/ Raghav Khanna

Name: Raghav Khanna  
Title: Managing Director

**INPRS Strategic Credit Holdings, LLC**

By: Oaktree Capital Management, L.P.,  
Its: Manager

By: /s/ Mary Gallegly

Name: Mary Gallegly  
Title: Senior Vice President

By: /s/ Raghav Khanna

Name: Raghav Khanna  
Title: Managing Director

**Oaktree-TCDRS Strategic Credit, LLC**

By: Oaktree Capital Management, L.P.  
Its: Manager

By: /s/ Mary Gallegly

Name: Mary Gallegly  
Title: Senior Vice President

By: /s/ Raghav Khanna

Name: Raghav Khanna  
Title: Managing Director

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**Oaktree-TSE 16 Strategic Credit, LLC**

By: Oaktree Capital Management, L.P.,  
Its: Manager

By: /s/ Mary Gallegly

Name: Mary Gallegly

Title: Senior Vice President

By: /s/ Raghav Khanna

Name: Raghav Khanna

Title: Managing Director

[Signature Page to Term Loan Credit Agreement]

**Oaktree Specialty Lending Corporation**

By: Oaktree Fund Advisors, LLC  
Its: Investment Adviser

By: /s/ Mary Gallegly  
Name: Mary Gallegly  
Title: Senior Vice President

By: /s/ Raghav Khanna  
Name: Raghav Khanna  
Title: Managing Director

[Signature Page to Term Loan Credit Agreement]

CREDIT AGREEMENT

dated as of

March 22, 2021

among

**NN, INC.**,  
as Borrower

The Lenders Party Hereto

and

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

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JPMORGAN CHASE BANK, N.A.,  
as Sole Bookrunner and Sole Lead Arranger

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Exhibit E-4	-- U.S. Tax Certificate (For Foreign that <u>are</u> Partnerships for U.S. Federal Income Tax Purposes)

CREDIT AGREEMENT dated as of March 22, 2021 (as it may be amended or modified from time to time, this “Agreement”) among **NN, INC.**, a Delaware corporation (the “Company”), the other Loan Parties party hereto, the Lenders party hereto, and JPMORGAN CHASE BANK, N.A., as Administrative Agent.

The parties hereto agree as follows:

## ARTICLE I

### Definitions

SECTION 1.01 Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

“ABL Priority Collateral” is as defined in the Intercreditor Agreement.

“ABR”, when used in reference to (a) a rate of interest, refers to the Alternate Base Rate, and (b) any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Alternate Base Rate.

“Acceptable Appraiser” means (i) Hilco Valuation Services, B. Riley Advisory Services, Gordon Brothers, and Tiger Group, and (ii) any other experienced and reputable appraiser reasonably acceptable to the Administrative Agent in consultation with the Company.

“Account” has the meaning assigned to such term in the Security Agreement.

“Account Debtor” means any Person obligated on an Account.

“Acquisition” means any transaction, or any series of related transactions, consummated on or after the Effective Date, by which any Loan Party (a) acquires any going-concern business or all or substantially all of the assets of any Person, whether through purchase of assets, merger or otherwise or (b) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the Equity Interests of a Person that has ordinary voting power for the election of directors or other similar management personnel of a Person (other than Equity Interests having such power only by reason of the happening of a contingency) or a majority of the outstanding Equity Interests of a Person.

“Adjusted LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period or for any ABR Borrowing, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“Administrative Agent” means JPMorgan Chase Bank, N.A., in its capacity as administrative agent for the Lenders hereunder.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

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

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

“Agent-Related Person” has the meaning assigned to it in Section 9.03(d).

“Aggregate Credit Exposure” means, at any time, the aggregate Credit Exposure of all the Lenders at such time.

“Aggregate Revolving Commitment” means, at any time, the aggregate of the Revolving Commitments of all of the Lenders, as increased or reduced from time to time pursuant to the terms and conditions hereof. As of the Effective Date, the Aggregate Revolving Commitment is \$50,000,000.

“Aggregate Revolving Exposure” means, at any time, the aggregate Revolving Exposure of all the Lenders at such time.

“AHYDO Catch-up Payment” means, with respect to Indebtedness that would constitute an applicable high yield debt obligation pursuant to Section 163(i) of the Code but for such AHYDO Catch-Up Payment and solely with respect to any associated interest payment date occurring after the fifth anniversary of the issuance of such Indebtedness, and each interest payment date thereafter, excluding the interest payment date that falls on the maturity date of such Indebtedness, the amount of payment required for such Indebtedness not to be treated as having a “significant original issue discount” within the meaning of Section 163(i)(2) of the Code.

“ALTA” means the American Land Title Association.

“Alternate Base Rate” means, 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  $\frac{1}{2}$  of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period on 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 LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.14 (for the avoidance of doubt, only until the Benchmark Replacement has been determined pursuant to Section 2.14(c)), then the Alternate Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as determined pursuant to the foregoing would be less than 1.50%, such rate shall be deemed to be 1.50% for purposes of this Agreement.

“Ancillary Document” has the meaning assigned to it in Section 9.06(b).

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act.

“Applicable Parties” has the meaning assigned to it in Section 8.03(c).

“Applicable Percentage” means, with respect to any Lender, (a) with respect to Revolving Loans, LC Exposure, Overadvances or Swingline Loans, a percentage equal to a fraction the numerator of which is such Lender’s Revolving Commitment and the denominator of which is the Aggregate Revolving Commitment (provided that, if the Revolving Commitments have terminated or expired, the Applicable Percentages shall be determined based upon such Lender’s share of the Aggregate Revolving Exposure at that time) and (b) with respect to Protective Advances or with respect to the Aggregate Credit Exposure, a percentage based upon its share of the Aggregate Credit Exposure (with the Swingline Exposure of each Lender calculated assuming that all of the Lenders have funded their participations in all Swingline Loans outstanding at such time) and the unused Commitments; provided that, in accordance with Section 2.20, so long as any Lender shall be a Defaulting Lender, such Defaulting Lender’s Commitment shall be disregarded in the calculations under clauses (a) and (c) above.

“Applicable Rate” means, for any day, with respect to any Loan, or with respect to the commitment fees payable hereunder, as the case may be, the applicable rate per annum set forth below under the caption “Revolver ABR Spread” or “Revolver Eurodollar Spread”, as the case may be, based upon the Average Quarterly Availability during the most recently ended fiscal quarter of the Company; provided that the “Applicable Rate” shall be the applicable rates per annum set forth below in Category 1 during the period from the Effective Date to, and including, the last day of the fiscal quarter of the Company ending on or about March 31, 2021:

<u>Category</u>	<u>Average Quarterly Availability</u>	<u>Revolver ABR Spread</u>	<u>Revolver Eurodollar Spread</u>
1	<u>Category 1</u> > 50% of the Aggregate Revolving Commitment	0.75%	1.75%
2	<u>Category 2</u> £ 50% of the Aggregate Revolving Commitment	1.00%	2.00%

For purposes of the foregoing, each change in the Applicable Rate resulting from a change in Average Quarterly Availability shall be effective during the period commencing on and including the first day of each fiscal quarter of the Company and ending on the last day of such fiscal quarter, it being understood and agreed that, for purposes of determining the Applicable Rate on the first day of any fiscal quarter of the Company, the Average Quarterly Availability during the most recently ended fiscal quarter of the Company shall be used. Notwithstanding the foregoing, the Average Quarterly Availability shall be deemed to be in Category 2 at the option of

the Administrative Agent or at the request of the Required Lenders if the Borrower fails to deliver any Borrowing Base Certificate or related information required to be delivered by them pursuant to Section 5.01, during the period from the expiration of the time for delivery thereof until each such Borrowing Base Certificate and related information is so delivered.

If at any time the Administrative Agent determines that any Borrowing Base Certificate or related information based on which Availability and/or such Average Quarterly Availability and the corresponding Applicable Rate was determined, as applicable, was incorrect (whether based on a restatement, fraud or otherwise), the Borrower shall be required to retroactively pay any additional amount that the Borrower would have been required to pay if such Borrowing Base Certificate or related information based upon which Availability and/or such Average Quarterly Availability was determined had been accurate at the time it was delivered.

“Approved Electronic Platform” has the meaning assigned to it in Section 8.03(a).

“Approved Fund” has the meaning assigned to such term in Section 9.04.

“Arranger” means JPMorgan Chase Bank, N.A. in its capacity as sole bookrunner and sole lead arranger hereunder.

“Assignment and Assumption” means an assignment and assumption agreement entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form (including electronic records generated by the use of an electronic platform) approved by the Administrative Agent.

“Availability” means, at any time, an amount equal to (a) the lesser of (i) the Aggregate Revolving Commitment and (ii) the Borrowing Base *minus* (b) the Aggregate Revolving Exposure (calculated, with respect to any Defaulting Lender, as if such Defaulting Lender had funded its Applicable Percentage of all outstanding Borrowings).

“Availability Period” means the period from and including the Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

“Availability Triggering Covenant Event” at any time in which Availability is less than 12.5% of the Aggregate Revolving Commitment or an Event of Default has occurred and is continuing

“Availability Triggering Covenant Event Period” means the period commencing on an Availability Triggering Covenant Event until the first day immediately succeeding the last day of the fiscal quarter that includes the 30th consecutive day on which the Availability remains in excess of 12.5% of the Aggregate Revolving Commitment, so long as no Default shall have occurred and be continuing.

“Availability Triggering Financial Statement Event” at any time in which Availability is less than 15% of the Aggregate Revolving Commitment or an Event of Default has occurred and is continuing

“Availability Triggering Financial Statement Event Period” means the period commencing on an Availability Triggering Financial Statement Event until the first day immediately succeeding the last day of the fiscal quarter that includes the 30th consecutive day on which the Availability remains in excess of 15% of the Aggregate Revolving Commitment, so long as no Default shall have occurred and be continuing.

“Available Revolving Commitment” means, at any time, the Aggregate Revolving Commitment *minus* the Aggregate Revolving Exposure (calculated, with respect to any Defaulting Lender, as if such Defaulting Lender had funded its Applicable Percentage of all outstanding Borrowings).

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period 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 (g) of Section 2.14.

“Average Quarterly Availability” means, for any fiscal quarter of the Company, an amount equal to the average daily Availability during such fiscal quarter, as determined by the Administrative Agent’s system of records; provided, that in order to determine Availability on any day for purposes of this definition, the Borrowing Base for such day shall be determined by reference to the most recent Base Certificate delivered to the Administrative Agent pursuant to Section 5.01 as of such day.

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

“Bail-In Legislation” means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time that 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).

“Banking Services” means each and any of the following bank services provided to any Loan Party or its Subsidiaries by JPMCB or any of its Affiliates: (a) credit cards for commercial customers (including, without limitation, “commercial credit cards” and purchasing cards), (b) stored value cards, (c) merchant processing services, and (d) treasury management services (including, without limitation, controlled disbursement, automated clearinghouse transactions, return items, any direct debit scheme or arrangement, overdrafts, cash pooling services, and interstate depository network services).

“Banking Services Obligations” means any and all obligations of the Loan Parties and their Subsidiaries, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor) in connection with Banking Services.

“Banking Services Reserves” means all Reserves that the Administrative Agent from time to time establishes in its Permitted Discretion for Banking Services then provided or outstanding.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy”, as now and hereafter in effect, or any successor statute.

“Bankruptcy Event” means, with respect to any Person, when such Person becomes the subject of a voluntary or involuntary 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, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment or has had any order for relief in such proceeding entered in respect thereof, 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, unless such ownership interest results in or provides such Person with immunity from the jurisdiction of courts within the U.S. or from the enforcement of judgments or writs of attachment on its assets or permits such Person (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Benchmark” means, initially, LIBO Rate; provided that if a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to LIBO Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (c) or clause (d) of Section 2.14.

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

(1) the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;

(2) the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;

(3) 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 dollar-denominated syndicated credit facilities at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is 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; provided further that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, upon the occurrence of a Term SOFR Transition Event, and the delivery of a Term SOFR Notice, on the applicable Benchmark Replacement Date the “Benchmark Replacement” shall revert to and shall be deemed to be the sum of (a) Term SOFR and (b) the related Benchmark Replacement Adjustment, as set forth in clause (1) of this definition (subject to the first proviso above).

If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) 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” means, 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:

(1) for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Administrative Agent:

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(2) for purposes of clause (3) of the definition of “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 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 dollar-denominated syndicated credit facilities;

provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Administrative Agent in its reasonable discretion.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “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 decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of such Benchmark Replacement 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 determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the 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);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein;

(3) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the date a Term SOFR Notice is provided to the Lenders and the Borrower pursuant to Section 2.14(d); or

(4) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

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” means the occurrence of one or more of the following events with respect to the 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, 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), 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 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” means 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 the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14 and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.14.

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

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in 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”.

“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.

“Blocking Regulation” has the meaning assigned to it in Section 3.21.

“Borrower” means the Company.

“Borrowing” means (a) Revolving Borrowing, (b) a Swingline Loan, (c) a Protective Advance and (d) an Overadvance.

“Borrowing Base” means, at any time, the sum of (a) 85% of the Loan Parties’ Eligible Accounts at such time, *plus* (b) the lesser of (i) 60% of the Loan Parties’ Eligible Inventory, at such time, valued at Cost and (ii) the product of 85% *multiplied by* the Net Orderly Liquidation Value percentage identified in the most recent inventory appraisal ordered by the Administrative Agent *multiplied by* the Loan Parties’ Eligible Inventory, valued at Cost, *plus* (c) the lesser of (i) 60% of the Loan Parties’ Eligible In-Transit Inventory, at such time, valued at Cost and (ii) the product of 85% *multiplied by* the Net Orderly Liquidation Value percentage identified in the most recent inventory appraisal ordered by the Administrative Agent *multiplied by* the Loan Parties’ Eligible In-Transit Inventory, valued at Cost; provided that the aggregate amount added under this clause (c) shall not exceed \$5,000,000, *minus* (d) Reserves. The Administrative Agent may, in its Permitted Discretion and otherwise subject to the terms of this Agreement, reduce the advance rates set forth above, adjust Reserves or reduce one or more of the other elements used in computing the Borrowing Base.

“Borrowing Base Certificate” means a certificate, signed and certified as accurate and complete by a Financial Officer of the Borrower, in substantially the form of Exhibit B or another form that is acceptable to the Administrative Agent in its sole discretion.

“Borrowing Request” means a request by the Borrower for a Revolving Borrowing in accordance with Section 2.03.

“Burdensome Restrictions” means any consensual encumbrance or restriction of the type described in clause (a) or (b) of Section 6.10.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; *provided* that, when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for general business in London.

“Capital Distribution” means a payment made, liability incurred or other consideration given by the Borrower or any of its Subsidiaries, for the purchase, acquisition, redemption, repurchase, payment, defeasance, cancellation, termination or retirement of any capital stock or

other Equity Interest of the Borrower or such Subsidiary, as applicable, or as a dividend, return of capital or other distribution (other than any stock dividend, stock split or other equity distribution payable only in its common capital stock or other Equity Interests (other than Disqualified Equity Interests)) in respect of the Borrower's or such Subsidiary's (as the case may be) capital stock or other Equity Interest.

“Capital Expenditures” means, without duplication, any expenditure or commitment to expend money for any purchase or other acquisition of any asset that would be classified as a fixed or capital asset on a consolidated balance sheet of the Company and its Subsidiaries prepared in accordance with GAAP.

“Cash Dominion” has the meaning assigned to it in Section 5.13.

“CFC” means a “controlled foreign corporation” within the meaning of Section 957 of the Code in which any Loan Party is a United States shareholder within the meaning of Section 951(b) of the Code or from which any Loan Party directly or indirectly would reasonably be expected to receive income under Sections 951 through 965 of the Code.

“Change in Control” means (a) the acquisition of ownership, directly or indirectly, beneficially (within the meaning of Rules 13d-3 and 13d-5 of the Securities Exchange Act of 1934, as then in effect) or of record, on or after the Effective Date by any Person or group (within the meaning of Rules 13d-3 and 13d-5 of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof) of Equity Interests representing more than 35% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Company; (b) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Company cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; (c) the Company shall cease to own, free and clear of all Liens or other encumbrances (other than Permitted Borrowing Base Liens), at least 100% of the outstanding voting Equity Interests of the other Loan Parties on a fully diluted basis or (d) a “Change in Control” or comparable term as defined in the Term Loan Credit Agreement or in the documentation relating to any Material Indebtedness shall have occurred.

“Change in Law” means the occurrence after the date of this Agreement of any of the following: (a) the adoption of or taking effect of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority; or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender's or the Issuing Bank's holding company, if any) with any request, guideline, requirement or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests,

rules, guidelines, requirements or directives thereunder or issued in connection therewith or in the implementation thereof, and (y) all requests, rules, guidelines, requirements or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted, issued or implemented.

"Charges" has the meaning assigned to such term in Section 9.17.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans, Swingline Loans or Protective Advances or Overadvances.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means any and all property owned, leased or operated by a Person covered by the Collateral Documents (including, without limitation, the Mortgaged Property) and any and all other property of any Loan Party, now existing or hereafter acquired, that may at any time be, become or be intended to be, subject to a security interest or Lien in favor of the Administrative Agent, on behalf of itself and the Lenders and other Secured Parties, to secure the Secured Obligations.

"Collateral Access Agreement" means any landlord waiver or other agreement, in form and substance satisfactory to the Administrative Agent, between the Administrative Agent and any third party (including any bailee, consignee, customs broker, or other similar Person) in possession of any Collateral or any landlord of any real property where any Collateral is located, as such landlord waiver or other agreement may be amended, restated, supplemented or otherwise modified from time to time.

"Collateral Documents" means, collectively, the Security Agreement, the Mortgages and any other agreements, instruments and documents executed in connection with this Agreement that are intended to create, perfect or evidence Liens to secure the Secured Obligations, including, without limitation, all other security agreements, pledge agreements, mortgages, deeds of trust, loan agreements, notes, guarantees, subordination agreements, pledges, powers of attorney, consents, assignments, contracts, fee letters, notices, landlord and bailee waivers financing statements and all other written matter whether theretofore, now or hereafter executed by any Loan Party and delivered to the Administrative Agent.

"Collection Account" has the meaning assigned to such term in the Security Agreement.

"Commercial LC Exposure" means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding commercial Letters of Credit *plus* (b) the aggregate amount of all LC Disbursements relating to commercial Letters of Credit that have not yet been reimbursed by or on behalf of the Borrower. The Commercial LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate Commercial LC Exposure at such time.

“Commitment” means, with respect to each Lender, the sum of such Lender’s Revolving Commitment, together with the commitment of such Lender to acquire participations in Protective Advances hereunder. The initial amount of each Lender’s Commitment is set forth on the Commitment Schedule, or in the Assignment and Assumption or other documentation or record (as such term is defined in Section 9-102(a)(70) of the New York Uniform Commercial Code) as provided in Section 9.04(b)(ii)(C), pursuant to which such Lender shall have assumed its Commitment, as applicable.

“Commitment Schedule” means the Schedule attached hereto identified as such.

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

“Communications” has the meaning assigned to such term in Section 8.03(c).

“Company” has the meaning assigned to such term in the preamble to this Agreement.

“Compliance Certificate” means a certificate of a Financial Officer of the Borrower in substantially the form of Exhibit C.

“Concentration Account” means the deposit account maintained with the Administrative Agent or an Affiliate of the Administrative Agent that serves as the main concentration account of the Loan Parties.

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

“Consolidated Cash Balance” shall mean at any time, (a) the aggregate amount of cash, marketable securities, treasury bonds and bills, certificates of deposit, investments in money market funds, commercial paper and Permitted Investments, in each case, held or owned by, credited to the account of or would otherwise be required to be reflected as an asset on the balance sheet of the Borrower and its Subsidiaries less (b) the sum of (i) any restricted cash or Permitted Investments to pay royalty obligations, working interest obligations, suspense payments, severance taxes, payroll, payroll taxes, other taxes, employee wage and benefit payments and trust and fiduciary obligations or other obligations of the Borrower or any Subsidiary to third parties and for which the Borrower or such Subsidiary has issued checks or has initiated wires or ACH transfers (or, in the Borrower’s discretion, will issue checks or initiate wires or ACH transfers within five (5) Business Days), (ii) other amounts for which the Borrower or such Subsidiary has issued checks or has initiated wires or ACH transfers but have not yet been subtracted from the balance in the relevant account of the Borrower or such Subsidiary and (iii) while and to the extent refundable, any cash or Permitted Investments of the Borrower or any Subsidiaries constituting purchase price deposits held in escrow pursuant to a binding and enforceable purchase and sale agreement with a third party containing customary provisions regarding the payment and refunding of such deposits.

“Consolidated Depreciation and Amortization Charges” means, for any period, the aggregate of all depreciation and amortization charges for fixed assets, leasehold improvements and general intangibles (specifically including goodwill) of the Borrower and its Subsidiaries for such period, as determined on a consolidated basis and in accordance with GAAP.

“Consolidated EBITDA” means, for any period, as determined on a consolidated basis, Consolidated Net Earnings for such period, plus (a) without duplication, the aggregate amounts deducted in determining such Consolidated Net Earnings in respect of: (i) Consolidated Interest Expense, (ii) Consolidated Income Tax Expense and distributions therefor, (iii) Consolidated Depreciation and Amortization Charges, (iv) non-cash charges, expenses, losses or other items; provided that if any such non-cash charges, expenses, losses or other items represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated Net Earnings, (v) (1) unusual non-cash gains not incurred in the ordinary course of business in an amount not to exceed \$5,000,000 for the applicable period and/or (2) actual non-recurring non-cash restructuring charges in an amount not to exceed \$7,500,000 in the aggregate over all periods, (vi) non-cash foreign exchange gains and losses with respect to intercompany loans, (vii) restructuring costs, charges and related items, integration costs, costs of strategic initiatives, business optimization expenses or costs (including relating to systems design, upgrade and implementation costs), retention, recruiting, relocation, signing and stay bonuses and expenses including payments made to employees or others who are subject to non-compete agreements, facility opening, pre-opening, closing and consolidation costs, contract termination costs and severance costs, (viii) (1) pro forma adjustments, including pro forma “run rate” cost savings, operating expense reductions and other synergies (in each case, net of amounts actually realized) related to the Transactions that are factually supportable and reasonably identifiable (as determined by the Borrower in good faith) and projected by the Borrower in good faith to result from actions (x) that have been taken or (y) with respect to which substantial steps have been taken or that are expected to be taken (in the good faith determination of the Borrower) within 12 months after the Effective Date and that are reasonably anticipated by a Financial Officer of the Borrower to be realized within such 12 month period, and/or (2) pro forma adjustments, including pro forma “run rate” cost savings, operating expense reductions, operating improvements and other synergies (in each case net of amounts actually realized) related to any Acquisition or Disposition permitted pursuant to Section 6.04 or Section 6.05 or related to restructuring initiatives, cost savings initiatives, new projects and other initiatives that are factually supportable and reasonably identifiable (as determined by the Borrower in good faith) and projected by the Borrower in good faith to result from actions that have either been taken, with respect to which substantial steps have been taken or are that are expected to be taken within 12 months after the date of consummation of such Acquisition or Disposition or the commencement of such initiative and that are reasonably anticipated by a Financial Officer of the Borrower to be realized within such 12 month period, (ix) adjustments consistent with Regulation S-X, (x) other non-recurring or one-time expenses, accruals, payments and expenses (including rationalization, legal, tax, structuring and other costs and expenses) related to the Transactions, acquisitions, investments, dividends, restricted payments, dispositions, refinancings or issuances of debt or equity or related to any amendment, negotiation, forbearance, extension, modification or waiver in respect of the documentation (including the Loan Documents) governing such transactions (in each case, whether or not consummated), (xi) costs related to implementation of operational and reporting systems and technology initiatives, provided that that the amounts added to Consolidated EBITDA pursuant to the foregoing clauses (vii) through (xi) in any such period (other than with respect to (a) stock option and other equity based compensation expenses, (b) Transaction Costs and (c) Settlement Costs) shall not exceed, in the aggregate, 25% of Consolidated EBITDA for such period (calculated before giving effect to the adjustments set forth in clauses (vii) through (xi)), (xii) charges, losses or expenses to the extent paid for, reimbursed, indemnified or insured

by a third party (or reasonably expected to be so paid or reimbursed within one (1) year after the end of such period) (and a deduction for any amount so added back to the extent not so paid or reimbursed within one (1) year after the end of such period), (xiii) proceeds of business interruption insurance to the extent not included in the calculation of Consolidated Net Earnings, (xiv) minority interest expense to the extent deducted and note added back in such period in calculating Consolidated Net Earnings, (xv) letter of credit and other financing fees, (xvi) any non-cash increase in expenses (1) resulting from the revaluation of inventory (including any impact of changes to inventory valuation policy methods including changes in capitalization of variances) or other inventory adjustments, or any other acquisition or (2) due to purchase accounting and (xvii) earnout obligations with respect to any Acquisition or Investment paid or accrued during the applicable period to the extent otherwise permitted hereunder; provided, that, notwithstanding the foregoing, in no event shall adjustments for the write-down or write-off of accounts receivable or inventory be permitted pursuant to this definition *minus* (b) without duplication, the aggregate amounts included in determining such Consolidated Net Earnings in respect of: (i) unusual non-cash gains not incurred in the ordinary course of business and (ii) foreign exchange gains as reported in "Other Income" according to GAAP and the positive impact to Consolidated EBITDA resulting from converting foreign currency-based income to dollar-based income. For purposes of this Agreement, Consolidated EBITDA shall be adjusted pursuant to Section 1.03(c). Notwithstanding anything to the contrary contained herein, for purposes of determining Consolidated EBITDA for each such period that includes: for the fiscal quarters ended June 30, 2020, September 30, 2020 and December 31, 2020, Consolidated EBITDA for such fiscal quarters shall be deemed to be \$3,926,468, \$13,524,610 and \$15,012,049 respectively.

"Consolidated Income Tax Expense" means, for any period, all provisions for taxes based on the gross or net income of the Borrower and its Subsidiaries (including, without limitation, any additions to such taxes, and any penalties and interest with respect thereto), as determined on a consolidated basis and in accordance with GAAP.

"Consolidated Interest Expense" means, for any period, the interest expense of the Borrower and its Subsidiaries for such period, as determined on a consolidated basis and in accordance with GAAP.

"Consolidated Net Earnings" means, for any period, the net income (or loss) of the Borrower and its Subsidiaries for such period, as determined on a consolidated basis and in accordance with GAAP; provided that Consolidated Net Earnings shall exclude (a) extraordinary gains and extraordinary losses (which includes for the avoidance of doubt, impairment charges or write offs with respect to goodwill and other intangible assets) for such period, (b) the net income of any Subsidiary during such period to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such period, except that the Borrower's equity in any net loss of any such Subsidiary for such period shall be included in determining Consolidated Net Earnings, and (c) any income (or loss) for such period of any Person if such Person is not a Subsidiary, except that the Borrower's equity in the net income of any such Person for such period shall be included in Consolidated Net Earnings up to the aggregate amount of cash actually distributed by such Person from its net income during such period to the Borrower or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to the Borrower as described in clause (b) of this proviso).

“Consolidated Net Leverage Ratio” means, as of any date, determined on a consolidated basis, the ratio of (a) Consolidated Funded Indebtedness (as of such date) minus the aggregate amount equal to 100% of the Unrestricted Cash and Cash Equivalents of the Loan Parties subject to control agreements (as of such date) in favor of the Administrative Agent to (b) Consolidated EBITDA for the period of four consecutive fiscal quarters of the Borrower then ended (in the case of any determination as of the last day of a fiscal quarter) or for the most recently completed four fiscal quarters of the Borrower for which financials are required to be delivered hereunder (in the case of any determination of such ratio on a pro forma basis hereunder).

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

“Control Agreement” means an agreement, in form and substance satisfactory to the Lender, among the Loan Parties, a bank, financial institution, securities intermediary or other Person holding the Loan Parties’ funds or maintaining a deposit account or securities account for the Loan Parties, and the Administrative Agent, with respect to collection and control of all deposits, balances, securities and other assets held in a deposit account or securities account maintained by any Loan Party with such bank, financial institution, securities intermediary or other Person.

“Controlled Disbursement Account” means the following account: JPMorgan Chase account #157956118, and any replacement or additional accounts of the Borrower maintained with the Administrative Agent as a zero balance, cash management account pursuant to and under any agreement between the Borrower and the Administrative Agent, as modified and amended from time to time, and through which all disbursements of the Borrower, any other Loan Party and any designated Subsidiary of the Borrower are made and settled on a daily basis with no uninvested balance remaining overnight.

“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.

“Cost” means, as determined by Administrative Agent in good faith, with respect to Inventory, the lower of (a) cost computed on a first-in first-out basis in accordance with GAAP or (b) market value.

“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).

“Covered Party” has the meaning assigned to it in Section 9.21.

“Credit Exposure” means, as to any Lender at any time, the sum of such Lender’s Revolving Exposure at such time.

“Credit Party” means the Administrative Agent, the Issuing Bank, the Swingline Lender or any other Lender.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may establish another convention in its reasonable discretion.

“Default” means any event or condition that constitutes an Event of Default or that upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“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.

“Defaulting Lender” means 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 Swingline Loans or (iii) pay over to any Credit Party any other amount required to be 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 Default, if any) has not been satisfied; (b) has notified the Borrower or any Credit 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 a Credit Party, 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 as of the date of certification) to fund prospective Loans and participations in then outstanding Letters of Credit and Swingline Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon such Credit Party’s receipt of such certification in form and substance satisfactory to it and the Administrative Agent, or (d) has become the subject of (i) a Bankruptcy Event or (ii) a Bail-In Action.

“Deficiency Funding Date” has the meaning assigned to such term in Section 2.05(a).

“Deposit Account” means any deposit account (as defined in Article 9 of the UCC) held by any Loan Party.

“Disclosed Matters” means the actions, suits, proceedings and environmental matters disclosed in Schedule 3.06.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (in one transaction or in a series of transactions and whether effected pursuant to a Division or otherwise) of any property by any Person (including any sale and leaseback transaction and any issuance of Equity Interests by a Subsidiary of such Person), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Equity Interest” means, with respect to any Person, any Equity Interest that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable at the option of the holder) or upon the happening of any event: (a) matures or is mandatorily redeemable (other than redeemable only for Equity Interests of such Person that are not themselves Equity Interests described in this definition) pursuant to a sinking fund obligation or otherwise; (b) is convertible or exchangeable at the option of the holder for Indebtedness or Equity Interests described in this definition (excluding Equity Interests that are convertible or exchangeable solely at the option of the Borrower or a Subsidiary); or (c) is mandatorily redeemable or must be purchased upon the occurrence of certain events or otherwise, in whole or in part; in each case, on or prior to the ninety-first day following the final maturity date of the then issued Loans or existing Commitments, as extended from time to time; provided that any Equity Interests that would not constitute Equity Interests described in this definition but for provisions thereof giving holders thereof the right to require such Person to purchase or redeem such Equity Interests upon the occurrence of an “asset sale” or “change of control” occurring prior to the ninety-first day following the final maturity date of the then-existing Loans or Commitments shall not constitute Disqualified Equity Interests if any such requirement only becomes operative after Payment in Full of the Obligations. The amount of any Disqualified Equity Interests that do not have a fixed redemption, repayment or repurchase price will be calculated in accordance with the terms of such Disqualified Equity Interests as if such Disqualified Equity Interests were redeemed, repaid or repurchased on any date on which the amount of such Disqualified Equity Interests is to be determined pursuant to this Agreement; provided that if such Disqualified Equity Interests could not be required to be redeemed, repaid or repurchased at the time of such determination, the redemption, repayment or repurchase price will be the book value of such Disqualified Equity Interests as reflected in the most recent financial statements of such Person.

“Dividing Person” has the meaning assigned to it in the definition of “Division.”

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

“Division Successor” means any Person that, upon the consummation of a Division of a Dividing Person, holds all or any portion of the assets, liabilities and/or obligations previously held by such Dividing Person immediately prior to the consummation of such Division. A Dividing Person that retains any of its assets, liabilities and/or obligations after a Division shall be deemed a Division Successor upon the occurrence of such Division.

“Document” has the meaning assigned to such term in the Security Agreement.

“dollars” or “\$” refers to lawful money of the U.S.

“Domestic Subsidiary” means a Subsidiary organized under the laws of a jurisdiction located in the U.S.

“Early Opt-in Election” means, if the then-current Benchmark is LIBO Rate, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from LIBO Rate and the provision by the Administrative Agent of written notice of such election to the Lenders.

“Early Pay Program” means (i) as of the Effective Date, the programs set forth on Schedule 1.01 and (ii) a program developed by customer(s) of the Loan Parties and approved by the Administrative Agent in its Permitted Discretion whereby Accounts owing by such customer(s) to the Loan Parties are approved by such customer(s) for participation in such program and such approved Account are then purchased by a Supplier Financing Intermediary with payment for such purchase remitted to the applicable Loan Party.

“Early Pay Program Accounts” means Accounts participating in an Early Pay Program.

“ECP” means an “eligible contract participant” as defined in Section 1(a)(18) of the Commodity Exchange Act or any regulations promulgated thereunder and the applicable rules issued by the Commodity Futures Trading Commission and/or the SEC.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

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

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

“Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“Electronic Signature” means 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” means any electronic system, including e-mail, e-fax, web portal access for the Borrower and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Administrative Agent or any Issuing Bank and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

“Eligible Accounts” means, at any time, the Accounts of a Loan Party which the Administrative Agent determines in its Permitted Discretion are eligible as the basis for the extension of Revolving Loans and Swingline Loans and the issuance of Letters of Credit. Without limiting the Administrative Agent’s discretion provided herein, Eligible Accounts shall not include any Account of a Loan Party:

(a) that is not subject to a first priority (subject to Permitted Borrowing Base Liens) perfected security interest in favor of the Administrative Agent;

(b) that is subject to any Lien other than (i) a Lien in favor of the Administrative Agent and (ii) a Permitted Borrowing Base Lien;

(c) (i) with respect to which the scheduled due date is more than 90 days (or 120 days solely with respect to Accounts owing by Extended Terms Account Debtors that do not constitute more than \$5,000,000 of Eligible Accounts (“Extended Terms Accounts”)) after the date of the original invoice therefor, (ii) which is unpaid more than 90 days (or 120 days with respect to Extended Terms Accounts) after the date of the original invoice therefor or more than 60 days after the original due date therefor (“Overage”) (when calculating the amount under this clause (ii), for the same Account Debtor, the Administrative Agent shall include the net amount of such Overage and add back any credits, but only to the extent that such credits do not exceed the total gross receivables from such Account Debtor), or (iii) which has been written off the books of such Borrower or otherwise designated as uncollectible;

(d) that is owing by an Account Debtor for which more than 50% of the Accounts owing from such Account Debtor and its Affiliates are ineligible pursuant to clause (c) above;

(e) that is owing by an Account Debtor to the extent the aggregate amount of Accounts owing from such Account Debtor and its Affiliates to all Loan Parties exceeds 20% of the aggregate amount of Eligible Accounts of all Loan Parties;

(f) that does not satisfy or comply with a covenant, representation or warranty in any material respect contained in this Agreement or the applicable Security Documents as to such Account;

(g) that (i) does not arise from the sale of goods or performance of services in the ordinary course of business, (ii) is not evidenced by an invoice or other documentation reasonably satisfactory to the Administrative Agent which has been sent to the Account Debtor, (iii) represents a progress billing consisting of an invoice for goods sold or used or services rendered pursuant to a contract under which the Account Debtor's obligation to pay that invoice is subject to a Loan Party's completion of further performance under such contract or is subject to the equitable lien of a surety bond issuer, (iv) is contingent upon such Loan Party's completion of any further performance, (v) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery or any other repurchase or return basis or (vi) relates to payments of interest, *provided*, that ineligibility shall be limited to the extent thereof;

(h) for which the goods giving rise to such Account have not been shipped to the Account Debtor or for which the services giving rise to such Account have not been performed by such Loan Party or if such Account was invoiced more than once;

(i) with respect to which any check or other instrument of payment has been returned uncollected for any reason;

(j) that is owed by an Account Debtor that has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) had possession of all or a material part of its property taken by any receiver, custodian, trustee or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws (other than post-petition accounts payable of an Account Debtor that is a debtor-in-possession under the Bankruptcy Code and reasonably acceptable to the Administrative Agent), (iv) admitted in writing its inability, or is generally unable to, pay its debts as they become due, (v) become insolvent, or (vi) ceased operation of its business;

(k) that is owed by any Account Debtor that has sold all or substantially all of its assets;

(l) that is owed by an Account Debtor that (i) does not maintain its chief executive office in the U.S. or Canada or (ii) is not organized under applicable law of the U.S., any state of the U.S., or the District of Columbia, Canada, or any province of Canada unless, in any such case, such Account is backed by a Letter of Credit acceptable to the Administrative Agent that is in the possession of, and is directly drawable by, the Administrative Agent;

(m) that is owed in any currency other than U.S. dollars;

(n) that is owed by (i) any government (or any department, agency, public corporation, or instrumentality thereof) of any country other than the U.S. unless such Account is backed by a Letter of Credit acceptable to the Administrative Agent that is in the possession of, and is directly drawable by, the Administrative Agent, or (ii) any government of the U.S., or any department, agency, public corporation, or instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 *et seq.* and 41 U.S.C. § 15 *et seq.*), and any other steps necessary to perfect the Lien of the Administrative Agent in such Account have been complied with to the Administrative Agent's reasonable satisfaction;

(o) that is owed by any Affiliate of any Loan Party or any employee, officer, director, or agent of any Loan Party or any of its Affiliates;

(p) all Transferred Accounts;

(q) that is owed by an Account Debtor or any Affiliate of such Account Debtor to which any Loan Party is indebted, but only to the extent of such indebtedness, or is subject to any security, deposit, progress payment, retainage or other similar advance made by or for the benefit of an Account Debtor, in each case to the extent thereof;

(r) that is subject to any counterclaim, deduction, defense, setoff or dispute but only to the extent of any such counterclaim, deduction, defense, setoff or dispute;

(s) that is evidenced by any promissory note, chattel paper or instrument;

(t) that is owed by an Account Debtor (i) located in any jurisdiction that requires filing of a "Notice of Business Activities Report" or other similar report in order to permit such Loan Party to seek judicial enforcement in such jurisdiction of payment of such Account, unless such Loan Party (A) has filed such report, (B) is qualified to do business in such jurisdiction or (C) is qualified to do business in such jurisdiction and is exempt from filing such report and has provided the Administrative Agent with satisfactory evidence thereof or (ii) that is a Sanctioned Person;

(u) with respect to which such Loan Party has made any agreement with the Account Debtor for any reduction thereof (but only to the extent of such reduction), other than (i) discounts and adjustments given in the ordinary course of business and (ii) any Account that was partially paid and such Loan Party created a new receivable for the unpaid portion of such Account;

(v) that does not comply in all material respects with the requirements of all applicable laws and regulations, whether Federal, state or local, including without limitation the Federal Consumer Credit Protection Act, the Federal Truth in Lending Act and Regulation Z of the Board;

(w) that is for goods that have been sold under a purchase order or pursuant to the terms of a contract or other agreement or understanding (written or oral) that indicates or purports that any Person other than such Loan Party has or has had an ownership interest in such goods, or that indicates any party other than such Loan Party as payee or remittance party; or

(x) that was created on cash on delivery terms.

The change to the eligibility criteria (or the Administrative Agent's decision not to include an Account as an Eligible Account) will be limited to the exercise by the Administrative Agent of its Permitted Discretion, upon at least three Business Days' prior written notice to the Borrower; *provided* that after such written notice and prior to the lapse of such three Business Day period, any testing of the borrowing condition in Section 4.02(c) (or any other determination of Availability) shall require such condition to be met assuming such removal of an Account or change in the eligibility criteria has been included in the determination of the Borrowing Base.

During such three Business Day period, the Administrative Agent shall use commercially reasonable efforts to endeavor, if requested, to discuss any such new removal or changes with the Borrower and the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such new removal or changes no longer exists or exists in a manner and to the extent reasonably satisfactory to the Administrative Agent. In the event that an Account of a Loan Party that was previously an Eligible Account ceases to be an Eligible Account hereunder, such Loan Party or the Borrower shall notify the Administrative Agent thereof on and at the time of submission to the Administrative Agent of the next Borrowing Base Certificate.

“Eligible In-Transit Inventory” shall mean Inventory owned by a Loan Party that meets all of the criteria of “Eligible Inventory” other than clauses (g), (h) or (i) thereof. In addition, no Inventory shall be Eligible In-Transit Inventory unless (a) such Inventory is insured in accordance with the provisions of this Agreement and the other Loan Documents, in any event including general casualty insurance and to the extent applicable, marine cargo insurance and such insurance must expressly cover inventory in transit in form and substance reasonably satisfactory to the Administrative Agent; (b) such Inventory has been identified to the applicable sales contract and title has passed to the applicable Loan Party; (c) such Inventory is not sold by a vendor that has a right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against the Inventory; (d) such Inventory is subject to the appropriate documentation such as delivery of customs broker, freight forwarder agreements, negotiable bill of lading or other shipping documents in a form and substance reasonably acceptable to the Administrative Agent (which documents shall be made available to the Administrative Agent for its inspection); (e) such Inventory is shipped by a common carrier that is not affiliated with the vendor and has not been acquired from a Person that is (1) currently the subject or target of any Sanctions or (2) a Sanctioned Person; (f) the Administrative Agent shall have received a collateral access agreement in form and substance reasonably satisfactory to the Administrative Agent and executed by the applicable customers broker, freight forwarder or carrier of such Inventory; (g) the Administrative Agent shall have received, if requested, an inspection certificate in form and substance satisfactory to the Administrative Agent from the applicable Loan Party or its agent at the point of origin of such shipment; (h) (x) the negotiable bill of lading shall be issued in the name of the applicable Loan Party and shall show the Administrative Agent (or, with the consent of the Administrative Agent in its Permitted Discretion, the applicable Loan Party) as consignee and (y) the Administrative Agent shall have received, if requested, a bailee agreement in form and substance satisfactory to the Administrative Agent and executed by the applicable customers broker, freight forwarder or carrier of such Inventory that holds the negotiable bill of lading as agent for the Administrative Agent; and (i) if a commercial Letter of Credit has been issued in payment of such Inventory, such commercial Letter of Credit shall require presentation of the following documents for payment, each in form and substance satisfactory to the Administrative Agent: (v) an inspection certificate from the applicable Loan Party or its agent at the point of origin of such shipment, (w) a commercial invoice with respect to the purchase order(s) against which the Inventory are being delivered, (x) a packing list with respect to such Inventory, (y) a negotiable bill of lading issued by a shipper approved by the Administrative Agent in its reasonable discretion with respect to the finished goods being shipped, which negotiable bill of lading shall be issued in the name of the applicable Loan Party and shall show the Administrative Agent (or, with the consent of the Administrative Agent in its Permitted Discretion, the applicable Loan Party) as consignee, and (z) a certificate of origin for such Inventory.

“**Eligible Inventory**” means, at any time, the Inventory of a Loan Party which the Administrative Agent determines in its Permitted Discretion is eligible as the basis for the extension of Revolving Loans and Swingline Loans and the issuance of Letters of Credit. Without limiting the Administrative Agent’s discretion provided herein, Eligible Inventory of a Loan Party shall not include any Inventory:

(a) that is not subject to a first priority (subject to Permitted Borrowing Base Liens) perfected Lien in favor of the Administrative Agent;

(b) that is subject to any Lien other than (i) a Lien in favor of the Administrative Agent and (ii) Permitted Borrowing Base Liens;

(c) that is, as determined by Administrative Agent in good faith upon advance written notice to the Borrower, slow moving, obsolete, unmerchantable, defective, used, substandard or unfit for sale;

(d) does not satisfy or comply with a covenant, representation or warranties in any material respect contained in this Agreement or the applicable Security Documents;

(e) that is not 100% legally owned only by one or more of the Borrower or any Subsidiary of the Borrower that is a Guarantor;

(f) that constitutes spare or replacement parts, subassemblies, packaging and shipping material, manufacturing supplies, samples, prototypes, displays or display items, bill-and-hold or ship-in-place goods, goods that are returned or marked for return, repossessed goods, defective or damaged goods, goods held on consignment, or goods that are not of a type held for sale in the ordinary course of business;

(g) that is not (A) located in the U.S. or (B) in transit within the United States with a common carrier from vendors and suppliers;

(h) that is located in any location leased by a Loan Party unless (A) (i) the lessor has delivered to the Administrative Agent a Collateral Access Agreement, (ii) the Administrative Agent has given its express prior written consent thereto or (iii) a Reserve for rent, charges and other amounts due or to become due with respect to such facility has been established by the Administrative Agent in its Permitted Discretion and (B) at least \$250,000 of Inventory of the Loan Parties is located at such location; it being understood that in each case, upon the delivery by the lessor to the Administrative Agent of a Collateral Access Agreement for such location, such Reserve for rent, charges and other amounts due or to become due with respect to such facility will no longer apply;

(i) that is located in any third party warehouse or is in the possession of a bailee (other than a third party processor) and is not evidenced by a Document, unless (A) (i) such warehouseman or bailee has delivered to the Administrative Agent a Collateral Access Agreement and such other documentation as the Administrative Agent may require, (ii) the Administrative Agent has given its express prior written consent thereto or (iii) an appropriate Reserve has been established by the Administrative Agent in its Permitted Discretion and (B) at least \$250,000 of Inventory of the Loan Parties is located at such third party warehouse or in possession of such bailee; it being understood that in each case, upon the delivery by the lessor to the Administrative Agent of a Collateral Access Agreement for such location, such Reserve for rent, charges and other amounts due or to become due with respect to such facility will no longer apply;

(j) that is being processed offsite at a third party location or outside processor, or is in-transit to or from such third party location or outside processor;

(k) that is a discontinued product or component thereof;

(l) that is the subject of a consignment by such Loan Party as consignor;

(m) that is perishable;

(n) that contains or bears any intellectual property rights licensed to such Loan Party by any Person other than a Loan Party unless the Administrative Agent is reasonably satisfied that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement relating thereto;

(o) that is not reflected in a current perpetual inventory report of such Loan Party (unless such Inventory is reflected in a report to the Administrative Agent as "in transit" Inventory);

(p) for which reclamation rights have been asserted by the seller; or

(q) that has been acquired from a Sanctioned Person.

The change to the eligibility criteria (or the Administrative Agent's decision not to include Inventory as Eligible Inventory) will be limited to the exercise by the Administrative Agent of its Permitted Discretion, upon at least three Business Days' prior written notice to the Borrower; *provided* that after such written notice and prior to the lapse of such three Business Day period, any testing of the borrowing condition in Section 4.02(c) (or any other determination of Availability) shall require such condition to be met assuming such removal of Inventory or change in the eligibility criteria has been included in the determination of the Borrowing Base. During such three Business Day period, the Administrative Agent shall use commercially reasonable efforts to endeavor, if requested, to discuss any such new removal or changes with the Borrower and the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such new removal or changes no longer exists or exists in a manner and to the extent reasonably satisfactory to the Administrative Agent. In the event that Inventory of a Loan Party that was previously Eligible Inventory ceases to be Eligible Inventory hereunder, such Loan Party or the Borrower shall notify the Administrative Agent thereof on and at the time of submission to the Administrative Agent of the next Borrowing Base Certificate.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to (a) the environment, (b) preservation or reclamation of natural resources, (c) the management, Release or threatened Release of any Hazardous Material or (d) health and safety matters.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) any violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) any exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any of the foregoing, but excluding any debt securities convertible into any of the foregoing.

“ERISA” means the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time, and any final regulations and the rulings issued thereunder.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or Section 4001(14) of ERISA or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the failure to satisfy the “minimum funding standard” (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal of the Borrower or any ERISA Affiliate from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition upon the Borrower or any ERISA Affiliate of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, in critical status or in reorganization, within the meaning of Title IV of ERISA.

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

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bears interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning assigned to such term in Article VII.

“Excluded Assets” means (i) any property to the extent that the grant of a security interest therein would violate applicable laws, require a consent not obtained of any Governmental Authority, or constitute a breach of or default under, or result in the termination of or require a consent not obtained under, any contract, lease, license or other agreement evidencing or giving rise to such property, or result in the invalidation thereof or provide any party thereto with a right of termination (other than to the extent that any such term would be rendered ineffective pursuant to Section 9-406, 9-407, 9-408 or 9-409 of the applicable UCC or any other applicable Law or principles of equity), except in each case with respect to any such contract, lease, license or other agreement evidencing or giving rise to such property, the provision resulting in such prohibition, breach, default, right of termination or consent was entered into in contemplation thereof or for the purposes of circumventing the requirements of the Loan Documents (ii) any permit, license, contract or lease to the extent that (and in each case only for so long as) such grant of a security interest is prohibited by any anti-assignment provision therein or any applicable laws or is prohibited by, or constitutes a breach or default under or results in the termination of or gives rise to a right on the part of the parties thereto other than the Loan Parties and their Subsidiaries to terminate such permit, license, contract or lease (or requires the consent of any party thereto other than the Loan Parties and their Subsidiaries), except in each case to the extent that (x) with respect to any such contract or lease, the provision resulting in such prohibition, breach, default, right of termination or consent was entered into in contemplation thereof or for the purposes of circumventing the requirements of the Loan Documents and (y) such anti-assignment provisions or such laws or the term in such permit, license, contract or lease providing for such prohibition, breach, default, right of termination or consent are ineffective or rendered unenforceable under the applicable anti-assignment provisions of the UCC, (iii) any property owned by a Loan Party on the date hereof or hereafter acquired that is subject to a Lien securing a purchase money or capital or finance lease obligation permitted to be incurred hereunder if (and in each case only for so long as) the contract or other agreement in which such Lien is granted (or the documentation providing for such purchase money, project financing or capital or finance lease obligation) prohibits the creation of any other Lien on such property or would give rise to a right to termination with respect thereto, except to the extent that the term in such contract or other agreement providing for such prohibition is ineffective or rendered unenforceable under the applicable anti-assignment provisions of the UCC, (iv) (A) solely with respect to each first-tier Foreign Subsidiary that is a CFC and each Foreign Subsidiary Holding Company, voting equity securities in excess of 65% of the voting equity securities thereof and (B) any equity interests of a Subsidiary that is owned by a Subsidiary that is a CFC or a Foreign Subsidiary Holding Company, (v) any Excluded Deposit Account described in clause (a) of the definition thereof, (vi) any intent-to-use United States trademark applications for which an amendment to allege use or statement of use has not been filed under 15 U.S.C. § 1051(c) or 15 U.S.C. § 1051(d), respectively, or if filed, has not been deemed in conformance with 15 U.S.C. § 1051(a) or examined and accepted, respectively, by the United States Patent and Trademark Office solely to the extent and during the period, if any, that, the grant of such security interest would impair the validity or enforceability of such intent-to-use United States trademark application under applicable federal law; provided, that, upon such filing

and acceptance, such intent-to-use applications shall be included as Collateral, (vii) all assets of Excluded Subsidiaries, (viii) all leasehold real property, (ix) fee owned real property that does not constitute Material Real Property, (x) interests in joint ventures and non-wholly owned subsidiaries, in each case, solely to the extent a Guarantee of the Obligations by such person is not permitted under its Organization Documents (other than to the extent such Organization Documents (or any provision therein) was entered into for the purpose of circumventing any requirement of the Loan Documents) (xi) margin stock, (xii) security interests to the extent the same would result in materially adverse tax consequences as reasonably determined by the Administrative Agent and the Borrower, and (xiii) those assets as to which the Administrative Agent and the Borrower reasonably agree that the cost of obtaining such a security interest or perfection thereof are excessive in relation to the benefit to the Lenders of the security to be afforded thereby; provided, further, that, notwithstanding the foregoing, a security interest shall be, and is hereby, granted in (A) any property immediately upon such property ceasing to be an Excluded Asset and (B) any and all proceeds, products, substitutions and replacements of Excluded Assets to the extent such proceeds, products, substitutions and replacements do not themselves constitute Excluded Assets; provided, however, if any Excluded Asset does not constitute an Excluded Asset (as defined in the Term Loan Credit Agreement), it shall not constitute an Excluded Asset hereunder.

“Excluded Deposit Accounts” means any Deposit Account of a Loan Party (and all cash, Cash Equivalents and other securities or investments credited thereto or deposited therein) (a) that is a Trust Account, (b) that does not have an individual ending balance in excess of \$100,000 or in the aggregate with each other account described in this clause (b), in excess of \$500,000, or (c) to the extent that it is cash collateral for letters of credit (other than Letters of Credit) to the extent permitted hereunder.

“Excluded Subsidiaries” means (i) any Subsidiary to the extent a Guaranty by such Subsidiary would be prohibited or restricted by law or by any restriction in any contract existing on the Effective Date or at the time such Subsidiary becomes a Subsidiary (including any requirement to obtain the consent of any Governmental Authority or third party) solely to the extent that such prohibition or restriction was not entered into in contemplation of its financing arrangements or for the purpose of circumventing the requirements of the Loan Documents, (ii) any Subsidiary that is a Foreign Subsidiary or a Foreign Subsidiary Holding Company, (iii) any direct or indirect Subsidiary of any Foreign Subsidiary or any Foreign Subsidiary Holding Company set forth in clause (ii), (iv) any Subsidiary that is an Immaterial Subsidiary, and (v) any Subsidiary where the Administrative Agent and the Borrower agree that the cost (including any adverse tax consequences) of obtaining a Guarantee by such Subsidiary would be excessive in light of the practical benefit to the Lenders afforded thereby.

“Excluded Swap Obligation” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an ECP 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. 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” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes; (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan, Letter of Credit or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan, Letter of Credit or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.19(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender acquired the applicable interest in a Loan, Letter of Credit or Commitment or to such Lender immediately before it changed its lending office; (c) Taxes attributable to such Recipient’s failure to comply with Section 2.17(f); and (d) any withholding Taxes imposed under FATCA.

“Existing Credit Agreement” means that certain Amended and Restated Credit Agreement, dated as of December 19, 2019, by and among the Borrower, the other loan parties party thereto, Truist Bank, as successor by merger to SunTrust Bank, and the lenders party thereto, as amended, restated, amended and restated, supplemented, or otherwise modified prior to the date of this Agreement.

“Extended Terms Account Debtor” means any Account Debtor that has been provided terms for payment greater than 90 days past the original invoice date, but not to exceed 120 days past the original invoice date.

“Extended Terms Accounts” has the meaning assigned to such term in the definition of “Eligible Accounts”.

“Extenuating Circumstance” means any period during which the Administrative Agent has determined in its sole discretion (a) that due to unforeseen and/or nonrecurring circumstances, it is impractical and/or not feasible to submit or receive a Borrowing Request or Interest Election Request by email or fax or through Electronic System, and (b) to accept a Borrowing Request or Interest Election Request telephonically.

“Extraordinary Receipt” means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including tax refunds, pension plan reversions, proceeds of insurance (including, for the avoidance of doubt, proceeds of casualty or any taking under power of eminent domain, but excluding proceeds of business interruption insurance to the extent such proceeds constitute compensation for lost earnings), condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments; provided, however, that an Extraordinary Receipt shall not include cash receipts from proceeds of insurance,

condemnation awards (or payments in lieu thereof) or indemnity payments to the extent that such proceeds, awards or payments in respect of loss or damage to equipment, fixed assets or real property are applied (or in respect of which expenditures were previously incurred) to replace or repair the equipment, fixed assets or real property in respect of which such proceeds were received in accordance with the terms of Section 2.11(d).

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

“Federal Funds Effective Rate” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions (as determined in such manner as shall be set forth on the NYFRB’s Website from time to time) and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, provided that, if the Federal Funds Effective Rate as so determined would be less than 0.00%, such rate shall be deemed to be 0.00% for the purposes of this Agreement.

“Federal Reserve Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Financial Officer” means any of the following officers: chief executive officer, president, chief financial officer, chief administrative officer, treasurer or controller. Unless otherwise qualified, all references to a Financial Officer in this Agreement shall refer to a Financial Officer of the Borrower.

“Financing Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as financing leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Fixed Charge Coverage Ratio” means, at any date, the ratio of (a) Consolidated EBITDA *minus* Unfinanced Capital Expenditures to (b) Fixed Charges, all calculated for the period of twelve consecutive calendar months ended on such date (or, if such date is not the last day of a calendar month, ended on the last day of the calendar month most recently ended prior to such date). For purposes of this Agreement, Fixed Charges of the any type described in clauses (a), (b), (c) and (e) of the definition of “Fixed Charges” for all periods through the period ending on March 31, 2022 shall be deemed to equal (x) the amount of Fixed Charges incurred from and after the Effective Date through and including the last day of such period multiplied by (y)(A) 365 divided by (B) the number of calendar days from and including the Effective Date through and including the last date of such period.

“Fixed Charges” means, for any period, without duplication, (a) Consolidated Interest Expense, *plus* (b) voluntary prepayments and scheduled principal payments on Indebtedness for borrowed money (excluding intercompany Indebtedness) actually made calculated as if voluntary prepayments had been applied pro rata against all remaining scheduled installments, *plus* (c) expenses for taxes paid in cash, *plus* (d) Restricted Payments paid in cash, *plus* (e) Financing Lease Obligation payments, all calculated for the Company and its Subsidiaries on a consolidated basis in accordance with GAAP.

“Flood Laws” has the meaning assigned to such term in Section 8.10.

“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to LIBO Rate.

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

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

“Foreign Subsidiary Holding Company” means any Subsidiary of Company all of the assets of which constitute the Equity Interests and/or Indebtedness of one or more CFCs and other Foreign Subsidiary Holding Companies.

“Funding Account” has the meaning assigned to such term in Section 4.01(h).

“GAAP” means generally accepted accounting principles in the U.S.

“Governmental Authority” means the government of the U.S., any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

“Guaranteed Obligations” has the meaning assigned to such term in Section 10.01.

“Guarantors” means all Guarantors who have delivered a Loan Guaranty, and the term “Guarantor” means each or any one of them individually.

“Hazardous Materials” means: (a) any substance, material, or waste that is included within the definitions of “hazardous substances,” “hazardous materials,” “hazardous waste,” “toxic substances,” “toxic materials,” “toxic waste,” or words of similar import in any Environmental Law; (b) those substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) (40 C.F.R. Part 302 and amendments thereto); and (c) any substance, material, or waste that is petroleum, petroleum-related, or a petroleum by-product, asbestos or asbestos-containing material, polychlorinated biphenyls, flammable, explosive, radioactive, freon gas, radon, or a pesticide, herbicide, or any other agricultural chemical.

“IBA” has the meaning assigned to such term in Section 1.05.

“Immaterial Subsidiary” means any Subsidiary of the Borrower that, (a) together with all other such Subsidiaries in the aggregate, (i) contributed less than 5% of the Consolidated EBITDA of the Borrower and its Subsidiaries, taken as a whole, during the most recently-ended four fiscal quarter period (taken as a single period) and (ii) as of any applicable date of determination has assets that constitute less than 5% aggregate net book value of the assets of the Borrower and its Subsidiaries, taken as a whole, (b) does not Guarantee or provide a Lien on its assets or otherwise provide credit support with respect to any Indebtedness of the Borrower or any of the Borrower’s other Subsidiaries, (c) does not own, directly or indirectly, any Equity Interests or Indebtedness of, or own or hold any Lien on any property of, a Loan Party, (d) does not own any other Subsidiaries (other than Immaterial Subsidiaries) and (e) has not been designated to be a Loan Party pursuant to Section 5.14(g) hereof.

“Impacted Interest Period” has the meaning assigned to such term in the definition of “LIBO Rate”.

“Indebtedness” of any Person means, without duplication, whether or not included as indebtedness or liabilities in accordance with GAAP, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guarantees by such Person of Indebtedness of others, (h) all Financing Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all obligations, contingent or otherwise, of such Person in respect

of bankers' acceptances, (k) obligations under any earn-out (which for all purposes of this Agreement shall be valued at the maximum potential amount payable with respect to such earn-out), (l) any other Off-Balance Sheet Liability, (m) obligations, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (i) any and all Swap Agreements, and (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction and (n) all Disqualified Equity Interests issued by such Person with the amount of Indebtedness represented by such Disqualified Equity Interests being equal to the greater of its voluntary or involuntary liquidation preference and its maximum fixed repurchase price or, with respect to any Subsidiary, any preferred Equity Interests (but excluding, in each case, accrued dividends, if any); provided that in no event shall any preferred Equity Interests be included as Indebtedness so long as such preferred Equity Interests do not have a mandatory redemption date applicable thereto and are not subject to any covenants. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

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

"Indemnitee" has the meaning assigned to such term in Section 9.03(c).

"Ineligible Institution" has the meaning assigned to such term in Section 9.04(b).

"Information" has the meaning assigned to such term in Section 9.12.

"Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of the date hereof, between the Administrative Agent and the Term Loan Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Interest Election Request" means a request by the Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.08.

"Interest Payment Date" means (a) with respect to any ABR Loan (other than a Swingline Loan), the first Business Day of each calendar quarter and the Maturity Date, (b) with respect to any Eurodollar Loan, the last day of each Interest Period applicable to the Borrowing of which such Loan is a part (and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period) and the Maturity Date, and (c) with respect to any Swingline Loan, the day that such Swingline Loan is required to be repaid and the Maturity Date.

“Interest Period” means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Eurodollar Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the Borrower may elect; provided, that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (b) any Interest Period that commences 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 of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Interpolated Rate” means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period (for which the LIBO Screen Rate is available) that is shorter than the Impacted Interest Period and (b) the LIBO Screen Rate for the shortest period (for which the LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time; provided, that if any Interpolated Rate shall be less than 0.00%, such rate shall be deemed to be 0.00% for purposes of this Agreement.

“Inventory” has the meaning assigned to such term in the Security Agreement.

“IRS” means the United States Internal Revenue Service.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Issuing Bank” means, individually and collectively, each of JPMCB, in its capacity as the issuer of Letters of Credit hereunder and any other Revolving Lender from time to time designated by the Borrower as an Issuing Bank, with the consent of such Revolving Lender and the Administrative Agent, and their respective successors in such capacity as provided in Section 2.06(i). Any Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by its Affiliates, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate (it being agreed that such Issuing Bank shall, or shall cause such Affiliate to, comply with the requirements of Section 2.06 with respect to such Letters of Credit). At any time there is more than one Issuing Bank, all singular references to the Issuing Bank shall mean any Issuing Bank, either Issuing Bank, each Issuing Bank, the Issuing Bank that has issued the applicable Letter of Credit, or both (or all) Issuing Banks, as the context may require.

“Issuing Bank Sublimit” means, as of the Effective Date, (a) \$30,000,000, in the case of JPMCB and (b) such amount as shall be designated to the Administrative Agent and the Borrower in writing by an Issuing Bank; provided, that if the Aggregate Revolving Commitment is reduced below \$30,000,000, the Issuing Bank Sublimit shall automatically (without any further action) be reduced on a dollar-for-dollar basis by the amount the Aggregate Revolving Commitment is reduced below \$30,000,000.

“Joinder Agreement” means a Joinder Agreement in substantially the form of Exhibit D.

“JPMCB” means JPMorgan Chase Bank, N.A., a national banking association, in its individual capacity, and its successors.

“LCA Election” has the meaning assigned to such term in Section 1.09.

“LCA Test Date” has the meaning assigned to such term in Section 1.09.

“LC Collateral Account” has the meaning assigned to such term in Section 2.06(j).

“LC Disbursement” means any payment made by an Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of the Commercial LC Exposure and the Standby LC Exposure at such time. The LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate LC Exposure at such time.

“Lender Parent” means, with respect to any Lender, any Person as to which such Lender is, directly or indirectly, a subsidiary.

“Lender-Related Person” has the meaning assigned to such term in Section 9.03(b).

“Lenders” means the Persons listed on the Commitment Schedule and any other Person that shall have become a Lender hereunder pursuant to Section 2.09 or an Assignment and Assumption or otherwise, other than any such Person that ceases to be a Lender hereunder pursuant to an Assignment and Assumption or otherwise. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender and the Issuing Bank.

“Letters of Credit” means the letters of credit issued pursuant to this Agreement, and the term “Letter of Credit” means any one of them or each of them singularly, as the context may require.

“Letter of Credit Agreement” has the meaning assigned to it in Section 2.06(b).

“Liabilities” means any losses, claims (including intraparty claims), demands, damages or liabilities of any kind.

“LIBO Rate” means, with respect to any Eurodollar Borrowing for any applicable Interest Period or for any ABR Borrowing, the LIBO Screen Rate at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period; provided that, if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “Impacted Interest Period”), then the LIBO Rate shall be the Interpolated Rate, subject to Section 2.14 in the event that the Administrative Agent shall conclude that it shall not be possible to determine such Interpolated Rate (which conclusion shall be conclusive and binding absent manifest error).

Notwithstanding the above, to the extent that "LIBO Rate" or "Adjusted LIBO Rate" is used in connection with an ABR Borrowing, such rate shall be determined as modified by the definition of Alternate Base Rate.

"LIBO Screen Rate" means, for any day and time, with respect to any Eurodollar Borrowing for any Interest Period or for any ABR Borrowing, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for Dollars) for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a 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 from time to time as selected by the Administrative Agent in its reasonable discretion); provided that if the LIBO Screen Rate as so determined would be less than 0.50% per annum, such rate shall be deemed to 0.50% per annum for the purposes of this Agreement.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Limited Condition Acquisition" means any acquisition permitted under Section 6.04, including by way of merger, by the Borrower or one or more Subsidiaries whose consummation is not conditioned on the availability of, or on obtaining, third party financing; provided, that, if any such acquisition is not consummated within 90 days (or such later date acceptable to the Administrative Agent in its sole discretion) following the date of execution of the definitive documentation evidencing such acquisition, then such acquisition shall on that date cease to be a Limited Condition Acquisition..

"Loan Documents" means, collectively, this Agreement, any promissory notes issued pursuant to this Agreement, any Letter of Credit Agreement, the Collateral Documents, each Compliance Certificate, the Loan Guaranty, the Intercreditor Agreement and all other agreements, instruments, documents and certificates executed and delivered to, or in favor of, the Administrative Agent or any Lender and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements, letter of credit applications and any agreements between the Borrower and the Issuing Bank regarding the Issuing Bank's Issuing Bank Sublimit or the respective rights and obligations between the Borrower and the Issuing Bank in connection with the issuance by the Issuing Bank of Letters of Credit, and all other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with this Agreement or the transactions contemplated hereby. Any reference in this Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to this Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

“Loan Guaranty” means Article X of this Agreement.

“Loan Parties” means, collectively, the Borrower, the Borrower’s Domestic Subsidiaries (other than Excluded Subsidiaries) and any other Person who becomes a party to this Agreement pursuant to a Joinder Agreement and their respective successors and assigns, and the term “Loan Party” shall mean any one of them or all of them individually, as the context may require.

“Loans” means the loans and advances made by the Lenders pursuant to this Agreement, including Swingline Loans, Overadvances and Protective Advances.

“Lock Box” has the meaning assigned to such term in the Security Agreement.

“Lock Box Agreement” has the meaning assigned to such term in the Security Agreement.

“Margin Stock” means margin stock within the meaning of Regulations T, U and X, as applicable.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, liabilities (actual or contingent) operations, prospects or condition, financial or otherwise, of the Company, (b) the business, assets, liabilities (actual or contingent) operations, prospects or condition, financial or otherwise, of the Company and its Subsidiaries taken as a whole, (c) the ability of any Loan Party to perform any of its Obligations, (d) the Collateral, or the Administrative Agent’s Liens (on behalf of itself and other Secured Parties) on the Collateral or the priority of such Liens, or (e) the rights of or benefits available to the Administrative Agent, the Issuing Bank or the Lenders under any of the Loan Documents.

“Material Indebtedness” means Indebtedness (other than (a) the Loans and Letters of Credit and (b) Series D Preferred Stock), or obligations in respect of one or more Swap Agreements, of any one or more of the Company and its Subsidiaries in an aggregate principal amount exceeding \$15,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Swap Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Swap Agreement were terminated at such time.

“Material Intellectual Property” means any Intellectual Property of the Borrower and its Subsidiaries that is included in the Collateral and the loss of which would have a Material Adverse Effect on the business, results of operations or financial condition of the Borrower and its Subsidiaries (taken as a whole).

“Material Real Property” means any real property owned by a Loan Party in fee simple that (a) as of the Effective Date is set forth on Schedule 1.02, (b) if acquired after the Effective Date, has a fair market value of \$2,000,000 or (c) is designated by the Borrower in accordance with Section 5.14(f).

“Maturity Date” means the earlier to occur of (a) March 22, 2026 or any earlier date on which the Commitments are reduced to zero or otherwise terminated pursuant to the terms hereof and (b) the date that is ninety-one (91) days prior to the Term Loan Maturity Date.

“Maximum Rate” has the meaning assigned to such term in Section 9.17.

“Moody’s” means Moody’s Investors Service, Inc.

“Mortgage” means any mortgage, deed of trust or other agreement which conveys or evidences a Lien in favor of the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, now or hereafter encumbering any Mortgaged Property of a Loan Party, including any amendment, restatement, modification or supplement thereto, each of which shall be in form and substance reasonably satisfactory to the Administrative Agent.

“Mortgaged Property” means any Material Real Property owned in fee simple by any Loan Party which real property is or is intended under the terms hereof to be subject to a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Orderly Liquidation Value” means, with respect to Inventory of any Person, the orderly liquidation value thereof as determined in a manner acceptable to the Administrative Agent in its Permitted Discretion by an Acceptable Appraiser, net of all costs of liquidation thereof.

“Net Proceeds” means, with respect to any event, (a) the cash proceeds received in respect of such event including (i) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (ii) in the case of a casualty, insurance proceeds and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, minus (b) the sum of (i) all reasonable fees and out-of-pocket expenses paid to third parties (other than Affiliates) in connection with such event, (ii) in the case of a Disposition of an asset (including pursuant to a sale and leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) secured by such asset or otherwise subject to mandatory prepayment as a result of such event and (iii) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established to fund contingent liabilities reasonably estimated to be payable (provided that (1) such amounts held in such reserves shall not exceed 10% of the gross cash proceeds received with respect to a Disposition or other event and (2) such amounts held in such reserves shall constitute Net Proceeds upon release to, or receipt by, the Borrower or any of its Subsidiaries), in each case during the year that such event occurred or the next succeeding year and that are directly attributable to such event (as determined reasonably and in good faith by a Financial Officer of the Borrower); provided, that the cash proceeds received in connection with any Disposition or Extraordinary Receipt shall only constitute Net Proceeds under this definition in any fiscal year to the extent that the aggregate amount of such cash proceeds received in such fiscal year exceeds \$5,000,000.

“Non-Consenting Lender” has the meaning assigned to such term in Section 9.02(d).

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

“NYFRB Rate” means, 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 by the Administrative Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined would be less than 0.00%, such rate shall be deemed to be 0.00% for purposes of this Agreement.

“NYFRB’s Website” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“Obligated Party” has the meaning assigned to such term in Section 10.02.

“Obligations” means all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of any of the Loan Parties to any of the Lenders, the Administrative Agent, the Issuing Bank or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Loan Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof; provided that the Obligations shall exclude any Excluded Swap Obligations.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Off-Balance Sheet Liability” of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability or obligation under any so-called “synthetic lease” transaction entered into by such Person, or (c) any indebtedness, liability or obligation arising with respect to any other transaction that is the functional equivalent of or takes the place of borrowing but that does not constitute a liability on the balance sheet of such Person (other than operating leases).

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such 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, engaged in any other transaction pursuant to, or enforced, any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit or any Loan Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.19).

“Overadvance” has the meaning assigned to such term in Section 2.05(c).

“Overnight Bank Funding Rate” means, 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 NYFRB’s Website from time to time) and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Paid in Full” or “Payment in Full” means, (a) the indefeasible payment in full in cash of all outstanding Loans and LC Disbursements, together with accrued and unpaid interest thereon, (b) the termination, expiration, or cancellation and return of all outstanding Letters of Credit (or alternatively, with respect to each such Letter of Credit, the furnishing to the Administrative Agent of a cash deposit, or at the discretion of the Administrative Agent a backup standby letter of credit satisfactory to the Administrative Agent and the Issuing Bank, in an amount equal to 105% of the LC Exposure as of the date of such payment), (c) the indefeasible payment in full in cash of the accrued and unpaid fees, (d) the indefeasible payment in full in cash of all reimbursable expenses and other Secured Obligations (other than Obligations in respect of (i) Specified Hedge Agreements and Cash Management Obligations that are not then due and payable and in connection with such Payment in Full are subject to arrangements satisfactory to the Administrative Agent in its sole discretion and (ii) Unliquidated Obligations for which no claim has been made and other obligations expressly stated to survive such payment and termination of this Agreement), together with accrued and unpaid interest thereon, (e) the termination of all Commitments, and (f) the termination of the Swap Agreement Obligations and the Banking Services Obligations or entering into other arrangements satisfactory to the Secured Parties counterparties thereto.

“Participant” has the meaning assigned to such term in Section 9.04(c).

“Participant Register” has the meaning assigned to such term in Section 9.04(c).

“Payment Condition” shall be deemed to be satisfied in connection with a Restricted Payment, investment, Permitted Acquisition, or other particular action as to which the satisfaction of the Payment Conditions is being determined if, after giving effect to the taking of such action:

(a) no Default has occurred and is continuing or would result immediately after giving effect to such Restricted Payment, investment, or Permitted Acquisition;

(b) immediately after giving effect to and at all times during the 30-day period immediately prior to such Restricted Payment, investment, Permitted Acquisition, or other particular action, the Loan Parties shall have (i) (A) Availability calculated on a pro forma basis after giving effect to such Restricted Payment, investment, Permitted Acquisition or other particular action of not less than 20% of the Revolving Commitment, and (B) a Fixed Charge Coverage Ratio for the trailing four fiscal quarters calculated on a pro forma basis after giving effect to such Restricted Payment, investment, Permitted Acquisition or other particular action of not less than 1.00 to 1.00 or (ii) Availability calculated on a pro forma basis after giving effect to such Restricted Payment, investment, Permitted Acquisition or other particular action of not less than 30% of the Revolving Commitment; and

(c) the Borrower shall have delivered to the Administrative Agent a certificate in form and substance reasonably satisfactory to the Administrative Agent certifying as to the items described in (a) and (b) above and attaching calculations for item (b).

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

“Permitted Acquisition” means any Acquisition by any Loan Party in a transaction that satisfies each of the following requirements:

(a) such Acquisition is not a hostile or contested acquisition;

(b) the business acquired in connection with such Acquisition is not engaged, directly or indirectly, in any line of business other than the businesses in which the Loan Parties are engaged on the Effective Date and any business activities that are substantially similar, reasonably related or incidental thereto and reasonable expansions and extensions thereof;

(c) both before and after giving effect to such Acquisition and the Loans (if any) requested to be made in connection therewith, each of the representations and warranties in the Loan Documents is true and correct in all material respects (except any such representation or warranty that relates to a specified prior date) and the Payment Conditions are satisfied;

(d) if the aggregate consideration is greater than or equal to \$10,000,000 as soon as available, but not less than five (5) Business Days prior to such Acquisition, the Borrower has provided the Administrative Agent (i) notice of such Acquisition and (ii) a copy of all business and financial information reasonably requested by the Administrative Agent including pro forma financial statements, statements of cash flow, and Availability projections;

(e) if the Accounts and Inventory acquired in connection with such Acquisition are proposed to be included in the determination of the Borrowing Base, the Administrative Agent shall have conducted an appraisal and field examination of such Accounts and Inventory prior to their inclusion in the determination of the Borrowing Base (which, for the avoidance of doubt, such appraisals may be conducted subsequent to the consummation of such Permitted Acquisition if agreed to by the Administrative Agent in its Permitted Discretion; provided, however, such

Accounts and Inventory acquired in connection with such Acquisition shall not be included in the determination of the Borrowing Base until the appraisal and field examination of such Accounts and Inventory have been completed and such Acquisition has been consummated), the results of which shall be satisfactory to the Administrative Agent;

(f) the total consideration (including the maximum potential total amount of all deferred payment obligations (including earn-outs) and Indebtedness assumed or incurred) for all Acquisitions by Foreign Subsidiaries, Acquisitions of Persons or Equity Interests of Persons that do not become Loan Parties (including by way of merger into a Loan Party) and Acquisitions of assets that are not included in the Collateral, shall not exceed \$10,000,000 during the term of this Agreement and the Borrower shall have delivered evidence demonstrating that after giving pro forma effect to each such Acquisition described in this clause (f) and to any Indebtedness incurred, assumed or acquired in connection therewith), the Borrower and its Subsidiaries shall be in compliance with the maximum permitted Consolidated Net Leverage Ratio set forth in Section 7.14 of the Term Loan Credit Agreement (as in effect on the Effective Date or as amended with the consent of the Administrative Agent).

(g) if such Acquisition is an acquisition of Equity Interests, such Acquisition will not result in any violation of Regulation U;

(h) if such Acquisition involves a merger or a consolidation involving the Borrower or any other Loan Party, the Borrower or such Loan Party, as applicable, shall be the surviving entity;

(i) no Loan Party shall, as a result of or in connection with any such Acquisition, assume or incur any direct or contingent liabilities (whether relating to environmental, tax, litigation, or other matters) that would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(j) in connection with an Acquisition of the Equity Interests of any Person, all Liens on property of such Person shall be terminated unless permitted under Section 6.02, and in connection with an Acquisition of the assets of any Person, all Liens on such assets shall be terminated unless permitted under Section 6.02;

(k) the Borrower shall have delivered to the Administrative Agent the final executed material documentation relating to such Acquisition within three (3) days following the consummation thereof; and

(l) all conditions required to consummate an "Acquisition" (as defined in the Term Loan Credit Agreement) permitted under Section 7.03(b) of Term Loan Credit Agreement shall be satisfied.

"Permitted Borrowing Base Liens" means Liens permitted under clauses (a), (b) and (f) of the definition of "Permitted Encumbrances" and Section 6.02(h).

"Permitted Discretion" means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

"Permitted Encumbrances" means:

- (a) Liens imposed by law for Taxes that are not yet due or are being contested in compliance with Section 5.04;
- (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 sixty (60) days or are being contested in compliance with Section 5.04;
- (c) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other like matters;
- (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;
- (e) judgment Liens in respect of judgments that do not constitute an Event of Default under clause (k) of Article VII; and
- (f) easements, zoning restrictions, rights-of-way and similar encumbrances, defects or irregularities in title of real property imposed by law or arising in the ordinary course of business that do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness, except with respect to clause (e) above.

"Permitted Investments" means:

- (a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the U.S. (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the U.S.), in each case maturing within one year from the date of acquisition thereof;
- (b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;
- (c) investments in certificates of deposit, bankers' acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the U.S. or any State thereof that has a combined capital and surplus and undivided profits of not less than \$250,000,000;
- (d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above;

(e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least \$5,000,000,000;

(f) any endorsement of a check of other medium of payment for deposit or collection through normal banking channels or similar transaction in the normal course of business.

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

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Plan Asset Regulations” means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

“Precious Metal Consignment Agreements” means, collectively, (a) the Consignment Agreement dated as of July 30, 2009, between Mitsubishi International Corporation and Precision Engineered Products LLC and (b) the Consignment Agreement dated as of January 25, 2010, between Umicore Precious Metals NJ, LLC and Precision Engineered Products LLC, and in each case each other agreement entered into in connection with such consignment agreements, each as may be amended, modified, restated or replaced, in each case, in a manner not adverse to the Lenders, from time to time.

“Prepayment Event” means:

(a) any Disposition (including pursuant to a sale and leaseback transaction) of any property or asset of any Loan Party or any Subsidiary that is made pursuant to Section 6.05(g); or

(b) [reserved]; or

(c) the incurrence by any Loan Party or any Subsidiary of any Indebtedness, other than Indebtedness permitted under Section 6.01.

“Prime Rate” means 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.

“Proceeding” means any claim, litigation, investigation, action, suit, arbitration or administrative, judicial or regulatory action or proceeding in any jurisdiction.

“Projections” has the meaning assigned to such term in Section 5.01(f).

“Protective Advance” has the meaning assigned to such term in Section 2.04.

“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 Company or its Controlling Person or any of its Subsidiaries while in possession of the financial statements provided by the Company 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 it in Section 9.21.

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant Loan Guaranty or grant of the relevant security interest becomes or would become effective with respect to such Swap Obligation or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Real Estate Requirements” means, with respect to any Material Real Property, receipt by the Administrative Agent of the following, in form and substance reasonably satisfactory to the Administrative Agent:

(i) a Mortgage on such property;

(ii) evidence that a counterpart of the Mortgage has been recorded in the place necessary, in the Administrative Agent’s judgment, to create a valid and enforceable first priority Lien in favor of the Administrative Agent for the benefit of itself, the Lenders and the other Secured Parties;

(iii) ALTA or other mortgagee’s title policy;

(iv) if required in order to obtain a customary survey endorsement available in the applicable jurisdiction of the property, an ALTA survey prepared and certified to the Administrative Agent by a surveyor acceptable to the Administrative Agent;

(v) if requested by Administrative Agent, an opinion of counsel in the state in which such parcel of real property is located in form and substance and from counsel reasonably satisfactory to the Administrative Agent;

(vi) if any such parcel of real property is determined by the Administrative Agent to be in a “Special Flood Hazard Area” as designated on maps prepared by the Federal Emergency Management Agency, a flood notification form signed by the Borrower Representative and evidence that flood insurance is in place for the building and contents, all in form, substance and amount satisfactory to the Administrative Agent;

(vii) [reserved];

(viii) if requested by the Administrative Agent, an environmental assessment of the real property prepared by an environmental engineer reasonably acceptable to the Administrative Agent, and accompanied by such reports, certificates, studies or data as the Administrative Agent may reasonably require, all in form and substance satisfactory to the Administrative Agent; and

(ix) such other information, documentation, and certifications as may be reasonably required by the Administrative Agent.

“Recipient” means, as applicable, (a) the Administrative Agent, (b) any Lender and (c) any Issuing Bank, or any combination thereof (as the context requires).

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is LIBO Rate, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not LIBO Rate, the time determined by the Administrative Agent in its reasonable discretion.

“Refinance Indebtedness” has the meaning assigned to such term in Section 6.01(f).

“Register” has the meaning assigned to such term in Section 9.04(b).

“Regulation D” means Regulation D of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation T” means Regulation T of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation U” means Regulation U of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Regulation X” means Regulation X of the Federal Reserve Board, as in effect from time to time and all official rulings and interpretations thereunder or thereof.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, partners, members, trustees, employees, agents, administrators, managers, representatives and advisors of such Person and such Person’s Affiliates.

“Release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing or dumping of any substance into the environment.

“Relevant Governmental Body” means the Federal Reserve Board or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board or the NYFRB or any successor thereto.

“Report” means reports prepared by the Administrative Agent or another Person showing the results of appraisals, field examinations or audits pertaining to the assets of the Loan Parties from information furnished by or on behalf of the Borrower, after the Administrative Agent has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by the Administrative Agent.

“Required Lenders” means, subject to Section 2.20, (a) at any time prior to the earlier of the Loans becoming due and payable pursuant to Article VII or the Commitments terminating or expiring, Lenders having Credit Exposures and Unfunded Commitments representing more than 50% of the sum of the Aggregate Credit Exposure and Unfunded Commitments at such time; and (b) for all purposes after the Loans become due and payable pursuant to Article VII or the Commitments expire or terminate, Lenders having Credit Exposures representing more than 50% of the Aggregate Credit Exposure at such time; provided that, in any case, as long as there are only two Lenders, Required Lenders shall mean both Lenders; provided, further, that, in the case of clauses (a) and (b) above, the Credit Exposure of any Lender that is a Swingline Lender shall be deemed to exclude any amount of its Swingline Exposure in excess of its Applicable Percentage of all outstanding Swingline Loans, adjusted to give effect to any reallocation under Section 2.20 of the Swingline Exposures of Defaulting Lenders in effect at such time, and the Unfunded Commitment of such Lender shall be determined on the basis of its Revolving Exposure excluding such excess amount.

“Requirement of Law” means, with respect to any Person, (a) the Organization Documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), 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.

“Reserves” means without duplication of any other reserves or items that are otherwise addressed or excluded through eligibility criteria, any and all reserves (including, without limitation, an availability reserve, reserves for accrued and unpaid interest on the Secured Obligations, Banking Services Reserves, volatility reserves, reserves for rent at locations leased by any Loan Party and for consignee’s, warehousemen’s and bailee’s charges, reserves for dilution of Accounts, reserves for Inventory shrinkage, reserves for customs charges and shipping charges related to any Inventory in transit, reserves for Swap Agreement Obligations, reserves for contingent liabilities of any Loan Party, reserves for uninsured losses of any Loan Party, reserves for uninsured, underinsured, un-indemnified or under-indemnified liabilities or potential liabilities with respect to any litigation and reserves for taxes, fees, assessments, and other governmental charges) with respect to the Collateral or any Loan Party that the Administrative Agent from time to time (x) deems necessary, in its Permitted Discretion, in order to ensure that the Borrower can satisfy the Obligations and (y) determines in its Permitted Discretion as being appropriate to reflect:

(1) the impediments to the Administrative Agent's ability to realize upon the Collateral included in the Borrowing Base in accordance with the Loan Documents;

(2) claims and liabilities that will need to be satisfied, or will dilute the amounts received by holders of Loans, in connection with the realization upon such Collateral or;

(3) criteria, events, conditions, contingencies or risks that adversely affect any component of the Borrowing Base, the Collateral included therein or the validity or enforceability of the Loan Documents or any material remedies of the Administrative Agent, the Collateral Agent, each Issuing Bank and each Lender under the Loan Documents with respect to such Collateral.

The establishment or increase of any Reserve will be limited to the exercise by the Administrative Agent of its Permitted Discretion, upon at least three Business Days' prior written notice to the Borrower; *provided* that after such written notice and prior to the lapse of such three Business Day period, any testing of the borrowing condition in Section 4.02(c) (or any other determination of Availability) shall require such condition to be met assuming such proposed Reserve has been implemented. During such three Business Day period, the Administrative Agent shall use commercially reasonable efforts to endeavor, if requested, to discuss any such new or modified Reserve with the Borrower and the Borrower may take such action as may be required so that the event, condition or matter that is the basis for such new or modified Reserve no longer exists or exists in a manner that would result in the establishment of a lower Reserve or result in a lesser change, in each case, in a manner and to the extent reasonably satisfactory to the Administrative Agent. As it relates to the establishment, adjustment or imposition of new Reserves exercise of Permitted Discretion will require that the contributing factors to the imposition of any Reserve will not duplicate the exclusionary criteria set forth in definitions of "Eligible Accounts", "Eligible Inventory", or "Qualified Cash" as applicable (and vice versa).

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

"Responsible Officer" means the president, Financial Officer or other executive officer of the Borrower.

"Restricted Payment" means any dividend (including any Capital Distribution) or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Company or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests or any option, warrant or other right to acquire any such Equity Interests; *provided*, that, dividends or distributions to the holders of the Series D Preferred Stock payable solely in the Equity Interests (and not in cash or any other property) of the Borrower or as an increase to a liquidation preference, in each case, shall not be considered Restricted Payments.

"Reuters" means, as applicable, Thomson Reuters Corp, Refinitiv, or any successor thereto.

“Revolving Borrowing” means Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect.

“Revolving Commitment” means, with respect to each Lender, the amount set forth on the Commitment Schedule opposite such Lender’s name, or in the Assignment and Assumption or other documentation or record (as such term is defined in Section 9-102(a)(70) of the New York Uniform Commercial Code) as provided in Section 9.04(b)(ii)(C) pursuant to which such Lender shall have assumed its Revolving Commitment, as applicable, as such Revolving Commitment may be reduced or increased from time to time pursuant to (a) Section 2.09 and (b) assignments by or to such Lender pursuant to Section 9.04; provided, that at no time shall the Revolving Exposure of any Lender exceed its Revolving Commitment. The initial aggregate amount of the Lenders’ Revolving Commitment is \$50,000,000.

“Revolving Exposure” means, with respect to any Lender at any time, the sum, without duplication, of (a) the outstanding principal amount of such Lender’s Revolving Loans, its LC Exposure and its Swingline Exposure at such time, plus (b) an amount equal to its Applicable Percentage of the aggregate principal amount of Protective Advances outstanding at such time, plus (c) an amount equal to its Applicable Percentage of the aggregate principal amount of Overadvances outstanding at such time.

“Revolving Lender” means, as of any date of determination, a Lender with a Revolving Commitment or, if the Revolving Commitments have terminated or expired, a Lender with Revolving Exposure.

“Revolving Loan” means a Loan made pursuant to Section 2.01(a).

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

“Sale and Leaseback Transaction” has the meaning assigned to such term in Section 6.06.

“Sanctioned Country” means, at any time, a country, region or territory that is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

“Sanctioned Person” means, 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, the U.S. Department of State, the United Nations Security Council, the European Union, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“Sanctions” means all 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, any European Union member state, Her Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“SEC” means the Securities and Exchange Commission of the U.S.

“Secured Obligations” means all Obligations, together with all (a) Banking Services Obligations and (b) Swap Agreement Obligations owing to one or more Lenders or their respective Affiliates; provided, however, that the definition of “Secured Obligations” shall not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, as applicable) any Excluded Swap Obligations of such Guarantor for purposes of determining any obligations of any Guarantor.

“Secured Parties” means (a) the Administrative Agent, (b) the Lenders, (c) each Issuing Bank, (d) each provider of Banking Services, to the extent the Banking Services Obligations in respect thereof constitute Secured Obligations, (e) each counterparty to any Swap Agreement, to the extent the obligations thereunder constitute Secured Obligations, (f) the beneficiaries of each indemnification obligation undertaken by any Loan Party under any Loan Document, and (g) the successors and assigns of each of the foregoing.

“Security Agreement” means that certain Pledge and Security Agreement (including any and all supplements thereto), dated as of the date hereof, among the Loan Parties and the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, and any other pledge or security agreement entered into, after the date of this Agreement by any other Loan Party (as required by this Agreement or any other Loan Document) or any other Person for the benefit of the Administrative Agent and the other Secured Parties, as the same may be amended, restated, supplemented or otherwise modified from time to time.

“Series D Preferred Stock” means (a) the Series D Perpetual Preferred Stock issued or to be issued on or about the Closing Date by the Company on substantially the terms set forth on Schedule 1.03 and (b) thereafter, any Series D Perpetual Preferred Stock issued by the Company on terms that are substantially similar (taken as a whole) to the terms set forth on Schedule 1.03.

“Settlement Costs” means the expenses, payments or other costs associated with the settlement of litigation with Corre Partners; provided that such Settlement Costs shall not exceed \$2,000,000 in the aggregate.

“SOFR” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day.

“SOFR Administrator” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means 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.

“Sold Account” means an Account that Borrower or a Subsidiary has sold to, or otherwise has granted a Lien on or in favor of, a Supplier Financing Intermediary pursuant to a Supplier Financing Agreement, for which such Loan Party has received the purchase price for such Account and which transaction is otherwise permitted by Section 6.01(n).

“Specified Event of Default” means any Event of Default under subsection (a), (b) (solely with respect to payments of interest and fees), (h) or (i) of Article VII..

“Specified Transaction” means any Investment, disposition, incurrence or repayment of Indebtedness, or Restricted Payment, in each case, that is otherwise permitted hereunder.

“Standby LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all standby Letters of Credit outstanding at such time *plus* (b) the aggregate amount of all LC Disbursements relating to standby Letters of Credit that have not yet been reimbursed by or on behalf of the Borrower at such time. The Standby LC Exposure of any Revolving Lender at any time shall be its Applicable Percentage of the aggregate Standby LC Exposure at such time.

“Statements” has the meaning assigned to such term in Section 2.18(f).

“Statutory Reserve Rate” means 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) established by the Federal Reserve Board to which the Administrative Agent is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D). Such reserve percentages shall include those imposed pursuant to Regulation D of the Board. Eurodollar 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 of the Board 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.

“Subordinated Indebtedness” of a Person means any Indebtedness of such Person the payment of which is subordinated to payment of the Secured Obligations to the written satisfaction of the Administrative Agent.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent and/or one or more subsidiaries of the parent.

“Subsidiary” means any direct or indirect subsidiary of the Company or a Loan Party, as applicable.

“Supermajority Revolving Lenders” means, at any time, Lenders (other than Defaulting Lenders) having Revolving Exposures and unused Revolving Commitments representing at least 66.667% of the sum of the Aggregate Revolving Exposure and unused Revolving Commitments at such time.

“Supplier Financing Intermediary” has the meaning assigned to such term in the definition of “Supplier Financing Agreement”.

“Supplier Financing Agreement” means any receivables purchase agreement, supplier financing agreement or similar arrangement between (x) a supplier financing counterparty on the Effective Date (each an “Existing Supplier Financing Intermediary.”) with respect to Accounts owing to a Loan Party by (i) those Account Debtors participating in Supplier Financing Agreements on the Effective Date and previously disclosed to the Administrative Agent in writing or (ii) any other Account Debtor approved in writing by the Administrative Agent in its Permitted Discretion or (y) a supplier financing counterparty reasonably acceptable to the Administrative Agent (each an “Approved Supplier Financing Intermediary.” and with each Existing Supplier Financing Intermediary, each a “Supplier Financing Intermediary.”) with respect to Accounts owing to a Loan Party by an Account Debtor that is satisfactory to the Administrative Agent in its Permitted Discretion, pursuant to which such Loan Party sells Accounts to a Supplier Financing Intermediary and which agreement or arrangement, as applicable, is reasonably satisfactory, in form and substance, to the Administrative Agent.

“Supported QFC” has the meaning assigned to it in Section 9.21.

“Swap Agreement” means any agreement with respect to any swap, forward, spot, future, credit default 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 the Borrower or the Subsidiaries shall be a Swap Agreement.

“Swap Agreement Obligations” means any and all obligations of the Loan Parties, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions thereof), under (a) any and all Swap Agreements permitted hereunder with a Lender or an Affiliate of a Lender, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Swap Agreement transaction permitted hereunder with a Lender or an Affiliate of a Lender.

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

“Swingline Commitment” means the amount set forth opposite JPMCB’s name on the Commitment Schedule as Swingline Commitment.

“Swingline Exposure” means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Revolving Lender at any time shall be the sum of (a) its Applicable Percentage of the aggregate principal amount of all Swingline Loans outstanding at such time (excluding, in the case of any Lender that is a Swingline Lender, Swingline Loans made by it that are outstanding at such time to the extent that the other Lenders shall not have funded their participations in such Swingline Loans), adjusted to give effect to any reallocation under Section 2.20 of the Swingline Exposure of Defaulting Lenders in effect at such time, and (b) in the case of any Revolving Lender that is the Swingline Lender, the aggregate principal amount of all Swingline Loans made by such Revolving Lender outstanding at such time, less the amount of participations funded by the other Lenders in such Swingline Loans.

“Swingline Lender” means JPMCB, in its capacity as lender of Swingline Loans hereunder. Any consent required of the Administrative Agent or the Issuing Bank shall be deemed to be required of the Swingline Lender and any consent given by JPMCB in its capacity as Administrative Agent or Issuing Bank shall be deemed given by JPMCB in its capacity as Swingline Lender.

“Swingline Loan” means a Loan made pursuant to Section 2.05.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services, use or sales taxes, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Term Debt” means any Indebtedness arising under the Term Loan Documents

“Term Loan Agent” means Oaktree Fund Administration, LLC or any successor thereof as permitted by the Term Loan Credit Agreement and the Intercreditor Agreement.

“Term Loan Credit Agreement” means that certain Term Loan Credit Agreement, dated as of the date hereof, by and among the Loan Parties party thereto, the lenders party thereto from time to time and the Term Loan Agent, as such agreement may be amended, restated, supplemented or otherwise modified from time to time as permitted by the Intercreditor Agreement.

“Term Loan Documents” means the Term Loan Credit Agreement and the other “Loan Documents” as defined in the Term Loan Credit Agreement together with any other instruments or agreement entered into, now or in the future, by any Loan Party evidencing or in connection with the Term Debt, in each case in form and substance reasonably acceptable to the Administrative Agent and as amended, restated, supplemented or otherwise modified pursuant to the terms of the Intercreditor Agreement.

“Term Loan Lenders” means the lender or group of lenders identified in the Term Loan Credit Agreement.

“Term Loan Maturity Date” means the “Maturity Date” as defined in the Term Loan Credit Agreement.

“Term Loan Priority Collateral” is as defined in the Intercreditor Agreement.

“Term SOFR” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Term SOFR Notice” means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

“Term SOFR Transition Event” means the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in a Benchmark Replacement in accordance with Section 2.14 that is not Term SOFR.

“Transaction Costs” means all customary and reasonable transaction fees, charges and other similar amounts related to the Transactions or any Acquisitions completed during the term of this Agreement in accordance with Section 6.04 (including, without limitation, any financing fees, merger and acquisition fees, legal fees and expenses, due diligence fees or any other fees and expenses in connection therewith), in each case to the extent paid within six (6) months of the Effective Date or the closing date of such Acquisition, as applicable.

“Transactions” means the execution, delivery and performance by the Borrower of this Agreement and the other Loan Documents, the borrowing of Loans and other credit extensions, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

“Transferred Accounts” means, with respect to any Account Debtor participating in an Early Pay Program pursuant to a Supplier Financing Agreement, 100% of the Accounts of such Account Debtor owing to the Loan Parties.

“Trust Account” means any accounts or trusts used solely to hold Trust Funds.

“Trust Funds” means, to the extent segregated from other assets of the Loan Parties in a segregated account that contains amounts comprised solely of:

(1) funds used for payroll and payroll taxes and other employee benefit payments to or for the benefit of such Loan Party’s employees not to exceed an amount equal to the amount needed to satisfy such obligations for the next upcoming payroll / benefit period; and

(2) any other funds that the Borrower or any of the Subsidiaries holds in trust or as an escrow or fiduciary for another person that is not a Subsidiary or an Affiliate of the Borrower pursuant to a transaction otherwise permitted hereunder.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the ABR.

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of New York or in any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

“UK Financial Institutions” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“Unfinanced Capital Expenditures” means, for any period, Capital Expenditures made during such period that were paid in cash during such period and that were not financed from the proceeds of any Indebtedness (it being understood and agreed that, to the extent any Capital Expenditures are financed with Revolving Loans, such Capital Expenditures shall be deemed Unfinanced Capital Expenditures).

“Unfunded Commitment” means, with respect to each Lender, the Revolving Commitment of such Lender *less* its Revolving Exposure.

“Unliquidated Obligations” means, at any time, any Secured Obligations (or portion thereof) that are contingent in nature or unliquidated at such time, including any Secured Obligation that is: (a) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it; (b) any other obligation (including any guarantee) that is contingent in nature at such time; or (c) an obligation to provide collateral to secure any of the foregoing types of obligations.

“Unrestricted Cash and Cash Equivalents” means, with respect to the Borrower and its Subsidiaries, cash or Permitted Investments of the Borrower and its Subsidiaries that do not appear, or would not be required to appear, as “restricted” on the financial statements of the Borrower and its Subsidiaries (unless related to the Loan Documents, the Term Loan Documents or the Liens created thereunder).

“U.S.” means the United States of America.

“U.S. Person” means a “United States person” within the meaning of Section 7701(a)(30) of the Code.

“U.S. Special Resolution Regime” has the meaning assigned to it in Section 9.21.

“U.S. Tax Compliance Certificate” has the meaning assigned to such term in Section 2.17(f)(ii)(B)(3).

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001.

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

“Write-Down and Conversion Powers” means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

SECTION 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Eurodollar Loan”) or by Class and Type (e.g., a “Eurodollar Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Eurodollar Borrowing”) or by Class and Type (e.g., a “Eurodollar Revolving Borrowing”).

SECTION 1.03 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “law” shall be construed as referring to all statutes, rules, regulations, codes and other laws (including official rulings and interpretations thereunder having the force of law or with which affected Persons customarily comply) and all judgments, orders and decrees of all Governmental Authorities. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth herein), (b) any definition of or reference to any statute, rule or regulation shall be construed as referring thereto as from time to time amended, supplemented or otherwise modified (including by succession of comparable successor laws), (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns (subject to any restrictions on assignments set forth herein) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof, (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (f) any reference in any definition to the phrase “at any time” or “for any period” shall refer to the same time or period for all calculations or determinations within such definition, and (g) 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 1.04 Accounting Terms; GAAP. (a) 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 after the date hereof there occurs any change in GAAP or in the application thereof on the operation of any provision hereof and the Borrower notifies the Administrative Agent that it requests an amendment to any provision hereof to eliminate the effect of such change in GAAP or in the application thereof (or if the Administrative Agent notifies the Borrower 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 until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made (i) without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Loan Party, the Company or any Subsidiary at “fair value”, as defined therein and (ii) without giving effect to any treatment of Indebtedness under Financial Accounting Standards Board Accounting Standards Codification 470-20 or 2105-03 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof.

(b) Notwithstanding anything to the contrary contained in Section 1.04(a) or in the definition of “Financing Lease Obligations,” any change in accounting for leases pursuant to GAAP resulting from the adoption of Financial Accounting Standards Board Accounting Standards Update No. 2016-02, Leases (Topic 842) (“FAS 842”), to the extent such adoption would require treating any lease (or similar arrangement conveying the right to use) as a capital lease or finance lease where such lease (or similar arrangement) would not have been required to be so treated under GAAP as in effect on December 31, 2015, such lease shall not be considered a capital lease or finance lease, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

(c) Notwithstanding the above, the parties hereto acknowledge and agree that, for purposes of all financial calculations, if the Borrower or any Subsidiary has made any Acquisition permitted by Section 6.04 or any Disposition outside the ordinary course of business permitted by Section 6.05 during the relevant period for determining compliance with such covenants, such calculations shall be made after giving pro forma effect thereto, as if such Acquisition or Disposition had occurred on the first day of such period, but in the case of an Acquisition, only so long as the results of the business being acquired are supported by financial statements or other financial data reasonably acceptable to the Administrative Agent.

**SECTION 1.05 Interest Rates; LIBOR Notifications.** The interest rate on Eurodollar Loans is determined by reference to the LIBO Rate, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the “IBA”) for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurodollar Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the London interbank offered rate. Upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, Section 2.14(c) and (d) provide the mechanism for determining an alternative rate of interest. The Administrative Agent will promptly notify the Borrower, pursuant to Section 2.14(f), of any change to the reference rate upon which the interest rate on Eurodollar Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of “LIBO Rate” or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (a) any such alternative, successor or replacement rate implemented pursuant to Section 2.14(c) or (d), whether upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, and (b) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.14(e)), 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 LIBO Rate or have the same volume or liquidity as did the London interbank offered rate prior to its discontinuance or unavailability.

**SECTION 1.06 Status of Obligations.** In the event that the Borrower or any other Loan Party shall at any time issue or have outstanding any Subordinated Indebtedness, the Borrower shall take or cause such other Loan Party to take all such actions as shall be necessary to cause the Secured Obligations to constitute senior indebtedness (however denominated) in respect of such Subordinated Indebtedness and to enable the Administrative Agent and the Lenders to have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness. Without limiting the foregoing, the Secured Obligations are hereby designated as “senior indebtedness” and as “designated senior indebtedness” and words of similar import under and in respect of any indenture or other agreement or instrument under which such Subordinated Indebtedness is outstanding and are further given all such other designations as shall be required under the terms of any such Subordinated Indebtedness in order that the Lenders may have and exercise any payment blockage or other remedies available or potentially available to holders of senior indebtedness under the terms of such Subordinated Indebtedness.

**SECTION 1.07 Letters of Credit.** 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. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Article 29(a) of the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the applicable time) or Rule 3.13 or Rule 3.14 of the International Standby Practices, International Chamber of Commerce Publication No. 590 (or such later version thereof as may be in effect at the applicable time) or similar terms of the Letter of Credit itself, or if compliant documents have been presented but not yet honored, such Letter of Credit shall be deemed to be “outstanding” and “undrawn” in the amount so remaining available to be paid, and the obligations of the Borrower and each Lender shall remain in full force and effect until the Issuing Bank and the Lenders shall have no further obligations to make any payments or disbursements under any circumstances with respect to any Letter of Credit.

SECTION 1.08 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.

SECTION 1.09 Certain Calculations and Tests.

(a) Notwithstanding anything in this Agreement or any Loan Document to the contrary, in connection with the consummation of a Limited Condition Acquisition, when:

- (i) determining compliance with any provision of this Agreement that requires the calculation of the Consolidated Net Leverage Ratio;
- (ii) determining compliance with representations, warranties, Defaults or Events of Default;
- (iii) determining compliance with the Payment Conditions (subject to the last sentence of clause (2) below) for an Acquisition for similar Investment; and
- (iv) testing availability under baskets set forth in this agreement (including baskets measured as a percentage of Consolidated EBITDA);

(b) the date of determination of whether any such action is permitted hereunder shall, at the option of the Borrower (the Borrower’s election to exercise such option in connection with any Limited Condition Acquisition, an “LCA Election”), be deemed to be the date the definitive agreements for such Limited Condition Acquisition are entered into (the “LCA Test Date”) and if, after such ratios and other provisions are measured on a pro forma basis after giving effect to such Limited Condition Acquisition and the other Specified Transactions to be entered into in connection therewith as if they occurred at the beginning of the four consecutive fiscal quarter period being used to calculate such financial ratio ending prior to the LCA Test Date, the Borrower could have taken such action on the relevant LCA Test Date in compliance with such ratios and provisions, such provisions shall be deemed to have been complied with. For the avoidance of

doubt, (x) if any of such ratios are exceeded as a result of fluctuations in such ratio (including due to fluctuations in Consolidated EBITDA of the Borrower) at or prior to the consummation of the relevant Limited Condition Acquisition, such ratios and other provisions will not be deemed to have been exceeded or unsatisfied as a result of such fluctuations solely for purposes of determining whether the Limited Condition Acquisition is permitted hereunder and (y) such ratios and other provisions shall not be tested at the time of consummation of such Limited Condition Acquisition or related Specified Transactions. If the Borrower has made an LCA Election for any Limited Condition Acquisition, then in connection with any subsequent calculation of any ratio or basket availability with respect to any other Specified Transaction on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated or the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be calculated on a pro forma basis assuming that both that such Limited Condition Acquisition and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) (x) have been consummated and (y) have not been consummated. For the avoidance of doubt, notwithstanding the foregoing, (i) the conditions for the making of any extension of credit under the Revolving Facility in Section 4.01(4) shall not be subject to the LCA Election and shall be tested at the times otherwise set forth herein without regard to the LCA Election, (ii) determinations based on the Borrowing Base and/or Availability shall not be subject to the LCA Election and shall be tested at the times otherwise set forth herein without regard to the LCA Election and (iii) no Specified Event of Default shall be continuing on the date any Limited Condition Acquisition is consummated or would result therefrom.

## ARTICLE II

### The Credits

SECTION 2.01 Commitments. Subject to the terms and conditions set forth herein, each Lender severally (and not jointly) agrees to make Revolving Loans in dollars to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result (after giving effect to any application of proceeds of such Borrowing pursuant to Section 2.10(a)) in (i) such Lender's Revolving Exposure exceeding such Lender's Revolving Commitment or (ii) the Aggregate Revolving Exposure exceeding the lesser of (x) the Aggregate Revolving Commitment and (y) the Borrowing Base, subject to the Administrative Agent's authority, in its sole discretion, to make Protective Advances and Overadvances pursuant to the terms of Sections 2.04 and 2.05. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Revolving Loans.

SECTION 2.02 Loans and Borrowings. (a) Each Loan (other than a Swingline Loan) shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class. 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 Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required. Any Protective Advance, any Overadvance and any Swingline Loan shall be made in accordance with the procedures set forth in Sections 2.04 and 2.05.

(b) Subject to Section 2.14, each Revolving Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Swingline Loan shall be an ABR Loan. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan (and in the case of an Affiliate, the provisions of Sections 2.14, 2.15, 2.16 and 2.17 shall apply to such Affiliate to the same extent as to such Lender); provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$250,000 and not less than \$250,000; provided that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Aggregate Revolving Commitment or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e). Each Swingline Loan shall be in an amount that is an integral multiple of \$100,000 and not less than \$100,000. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of 5 Eurodollar Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03 Requests for Revolving Borrowings. To request a Revolving Borrowing, the Borrower shall notify the Administrative Agent of such request either in writing (delivered by hand or fax) by delivering a Borrowing Request signed by a Responsible Officer of the Borrower or through Electronic System if arrangements for doing so have been approved by the Administrative Agent (or if an Extenuating Circumstance shall exist, by telephone) not later than (a) in the case of a Eurodollar Borrowing, 11:00 a.m., New York City time, three (3) Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, 2:00 p.m., New York City time, on the date of the proposed Borrowing; provided that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 10:00 a.m., New York City time, on the date of such proposed Borrowing. Each such Borrowing Request shall be irrevocable and each such telephonic Borrowing Request, if permitted, shall be confirmed immediately upon the cessation of the Extenuating Circumstance by hand delivery, facsimile or a communication through Electronic System to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by a Responsible Officer of the Borrower. Each such written (or if permitted, telephonic) Borrowing Request shall specify the following information in compliance with Section 2.02:

- (i) the name of the Borrower;
- (ii) the aggregate amount of the requested Revolving Borrowing and a breakdown of the separate wires comprising such Borrowing;
- (iii) the date of such Revolving Borrowing, which shall be a Business Day;

(iv) whether such Revolving Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(v) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period."

If no election as to the Type of Revolving Borrowing is specified, then the requested Revolving Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Revolving Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

**SECTION 2.04 Protective Advances.** (a) Upon the occurrence and during the continuance of an Event of Default and subject to the limitations set forth below, the Administrative Agent is authorized by the Borrower and the Lenders, from time to time in the Administrative Agent's Permitted Discretion (but shall have absolutely no obligation to), to make Loans to the Borrower, on behalf of all Lenders, which the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (iii) to pay any other amount chargeable to or required to be paid by the Borrower pursuant to the terms of this Agreement, including payments of reimbursable expenses (including costs, fees, and expenses as described in Section 9.03) and other sums payable under the Loan Documents (any of such Loans are herein referred to as "Protective Advances"); provided further that, the Aggregate Revolving Exposure after giving effect to the Protective Advances being made shall not exceed the Aggregate Revolving Commitment. Protective Advances may be made even if the conditions precedent set forth in Section 4.02 have not been satisfied. The Protective Advances shall be secured by the Liens in favor of the Administrative Agent in and to the Collateral and shall constitute Obligations hereunder. All Protective Advances shall be ABR Borrowings. The making of a Protective Advance on any one occasion shall not obligate the Administrative Agent to make any Protective Advance on any other occasion. The Administrative Agent's authorization to make Protective Advances may be revoked at any time by the Required Lenders. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof. At any time that there is sufficient Availability and the conditions precedent set forth in Section 4.02 have been satisfied, the Administrative Agent may request the Revolving Lenders to make a Revolving Loan to repay a Protective Advance. At any other time the Administrative Agent may require the Lenders to fund their risk participations described in Section 2.04(b).

(b) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent, without recourse or warranty, an undivided interest and participation in such Protective Advance in proportion to its Applicable Percentage. From and after the date, if any, on which any Lender is required to fund its participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

SECTION 2.05 Swingline Loans and Overadvances.

(a) Subject to the terms and conditions set forth herein, from time to time during the Availability Period, the Swingline Lender shall make Swingline Loans to the Borrower in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding the Swingline Lender's Swingline Commitment, (ii) the Swingline Lender's Revolving Exposure exceeding its Revolving Commitment, or (iii) the Aggregate Revolving Exposure exceeding the lesser of the Aggregate Revolving Commitment and the Borrowing Base; provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans. To request a Swingline Loan, the Borrower shall notify the Administrative Agent of such request in writing (delivered by hand or fax) or through Electronic System if arrangements for doing so have been approved by the Administrative Agent (or if an Extenuating Circumstance shall exist, by telephone) not later than 1:00 p.m., New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. Each such telephonic Borrowing Request, if permitted, shall be confirmed immediately upon the cessation of the Extenuating Circumstance by hand delivery, facsimile or a communication through Electronic System to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by a Responsible Officer of the Borrower. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Borrower. The Swingline Lender shall make each Swingline Loan available to the Borrower by means of a credit to the Funding Account (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e), by remittance to the Issuing Bank, and in the case of repayment of another Loan or fees or expenses as provided by Section 2.18(c), by remittance to the Administrative Agent to be distributed to the Lenders) by 3:00 p.m., New York City time, on the requested date of such Swingline Loan. All Swingline Loans shall be ABR Borrowings. In addition, the Borrower hereby authorizes the Swingline Lender to, and the Swingline Lender shall, subject to the terms and conditions set forth herein (but without any further written notice required), not later than 4:00 p.m., New York City time, on each Business Day, make available to the Borrower by means of a credit to the Funding Account, the proceeds of a Swingline Loan to the extent necessary to pay items to be drawn on any Controlled Disbursement Account that Business Day; provided that, if on any Business Day there is insufficient borrowing capacity to permit the Swingline Lender to make available to the Borrower a Swingline Loan in the amount necessary to pay all items to be so drawn on any such Controlled Disbursement Account on such Business Day, then the Borrower shall be deemed to have requested an ABR Borrowing pursuant to Section 2.03 in the amount of such deficiency to be made on such Business Day.

(b) The Swingline Lender may by written notice given to the Administrative Agent require the Revolving Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which the Revolving Lenders will participate. Promptly upon receipt of such notice, the

Administrative Agent will give notice thereof to each Revolving Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, promptly upon receipt of such notice from the Administrative Agent (and in any event, if such notice is received by noon, New York City time, on a Business Day no later than 4:00 p.m., New York City time on such Business Day and if received after noon, New York City time, "on a Business Day" shall mean no later than 10:00 a.m. New York City time on the immediately succeeding Business Day), to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Revolving Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; provided that any such payment so remitted shall be repaid to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

(c) Any provision of this Agreement to the contrary notwithstanding, at the request of the Borrower, the Administrative Agent may in its sole discretion (but with absolutely no obligation), on behalf of the Revolving Lenders, (x) make Revolving Loans to the Borrower in amounts that exceed Availability (any such excess Revolving Loans are herein referred to collectively as "Overadvances") or (y) deem the amount of Revolving Loans outstanding to the Borrower that are in excess of Availability to be Overadvances; provided that, no Overadvance shall result in a Default due to the Borrower's failure to comply with Section 2.01 for so long as such Overadvance remains outstanding in accordance with the terms of this paragraph, but solely with respect to the amount of such Overadvance. In addition, Overadvances may be made even if the condition precedent set forth in Section 4.02(c) has not been satisfied. All Overadvances shall constitute ABR Borrowings. The making of an Overadvance on any one occasion shall not obligate the Administrative Agent to make any Overadvance on any other occasion. The authority of the Administrative Agent to make Overadvances is limited to an aggregate amount not to exceed \$5,000,000 at any time, no Overadvance may remain outstanding for more than thirty days without the consent of all Revolving Lenders and no Overadvance shall cause any Revolving Lender's

Revolving Exposure to exceed its Revolving Commitment; provided that, the Required Lenders may at any time revoke the Administrative Agent's authorization to make Overadvances. Any such revocation must be in writing and shall become effective prospectively upon the Administrative Agent's receipt thereof.

(d) Upon the making of an Overadvance by the Administrative Agent, each Revolving Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent, without recourse or warranty, an undivided interest and participation in such Overadvance in proportion to its Applicable Percentage of the Revolving Commitment. The Administrative Agent may, at any time, require the Revolving Lenders to fund their participations. From and after the date, if any, on which any Revolving Lender is required to fund its participation in any Overadvance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Applicable Percentage of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Loan.

SECTION 2.06 Letters of Credit. (a) General. Subject to the terms and conditions set forth herein, the Borrower may request any Issuing Bank to issue Letters of Credit for its own account or for the account of another Loan Party denominated in dollars as the applicant thereof for the support of its or its Subsidiaries' obligations, in a form reasonably acceptable to such Issuing Bank, at any time and from time to time during the Availability Period, and such Issuing Bank may, but shall have no obligation, to issue such requested Letters of Credit pursuant to the terms of this Agreement.

(b) Notice of Issuance, Amendment, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment or extension of an outstanding Letter of Credit), the Borrower shall deliver by hand or facsimile (or transmit through Electronic System, if arrangements for doing so have been approved by the respective Issuing Bank) to an Issuing Bank selected by it and to the Administrative Agent (prior to 10:00 am, New York City time, at least three (3) Business Days prior to the requested date of issuance, amendment or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended or extended, and specifying the date of issuance, amendment or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend or extend such Letter of Credit. In addition, as a condition to any such Letter of Credit issuance, the Borrower shall have entered into a continuing agreement (or other letter of credit agreement) for the issuance of letters of credit and/or shall submit a letter of credit application in each case, as required by the respective Issuing Bank and using such Issuing Bank's standard form (each, a "Letter of Credit Agreement"). In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any Letter of Credit Agreement, the terms and conditions of this Agreement shall control. A Letter of Credit shall be issued, amended or extended only if (and upon issuance, amendment or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment or extension (i) the aggregate LC Exposure shall not exceed \$30,000,000, (ii) no Revolving Lender's Revolving Exposure shall exceed its Revolving Commitment and (iii) the Aggregate Revolving Exposure shall not exceed the lesser of (x) the Aggregate Revolving Commitment and (y) the Borrowing

Base. Notwithstanding the foregoing or anything to the contrary contained herein, no Issuing Bank shall be obligated to issue or modify any Letter of Credit if, immediately after giving effect thereto, the outstanding LC Exposure in respect of all Letters of Credit issued by such Person and its Affiliates would exceed such Issuing Bank's Issuing Bank Sublimit. Without limiting the foregoing and without affecting the limitations contained herein, it is understood and agreed that the Borrower may from time to time request that an Issuing Bank issue Letters of Credit in excess of its individual Issuing Bank Sublimit in effect at the time of such request, and each Issuing Bank agrees to consider any such request in good faith. Any Letter of Credit so issued by an Issuing Bank in excess of its individual Issuing Bank Sublimit then in effect shall nonetheless constitute a Letter of Credit for all purposes of this Agreement, and shall not affect the Issuing Bank Sublimit of any other Issuing Bank, subject to the limitations on the aggregate LC Exposure set forth in clause (i) of this Section 2.06(b).

An Issuing Bank shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any Requirement of Law relating to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense that was not applicable on the Effective Date and that such Issuing Bank in good faith deems material to it, or

(ii) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally.

(c) Expiration Date. Each Letter of Credit shall expire (or be subject to termination or non-renewal by notice from the applicable Issuing Bank to the beneficiary thereof) at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (or, in the case of any extension of the expiration thereof, including, without limitation, any automatic renewal provision, one year after such extension) and (ii) the date that is five Business Days prior to the Maturity Date.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Revolving Lenders, such Issuing Bank hereby grants to each Revolving Lender, and each Revolving Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the respective Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement

payment required to be refunded to the Borrower for any reason, including after the Maturity Date. Each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments.

(e) Reimbursement. If an Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than noon, New York City time, on (a) (i) the Business Day that the Borrower receives notice of such LC Disbursement, if such notice is received prior to 10:00 a.m., New York City time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is received after 10:00 a.m. New York City time on the day of receipt; provided that, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.05 that such payment be financed with an ABR Revolving Borrowing or Swingline Loan in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing or Swingline Loan. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the respective Issuing Bank the amounts so received by it from the Revolving Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the respective Issuing Bank or, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank, as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse an Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Agreement or this Agreement, or any term or provision therein or herein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) any payment by the respective Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) 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, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Revolving Lenders, nor any Issuing Bank or any of their respective Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the respective Issuing Bank; provided that the foregoing shall not be construed to excuse an Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented that appear on their face to be in substantial compliance with the terms of a Letter of Credit, an Issuing Bank 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.

(g) Disbursement Procedures. The Issuing Bank for any Letter of Credit shall, within the time allowed by applicable law or the specific terms of the Letter of Credit following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. Such Issuing Bank shall promptly after such examination notify the Administrative Agent and the Borrower by telephone (confirmed by fax or through Electronic Systems) of such demand for payment if such Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of their obligation to reimburse such Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the Issuing Bank for any Letter of Credit shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburse such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans and such interest shall be due and payable on the date when such reimbursement is payable; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.13(d) shall apply. Interest accrued pursuant to this paragraph shall be for the account of such Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section to reimburse such Issuing Bank for such LC Disbursement shall be for the account of such Lender to the extent of such payment.

(i) Replacement and Resignation of an Issuing Bank.

(i) An Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Revolving Lenders of any such replacement of an Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (A) the successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (B) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit then outstanding and issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit or extend or otherwise amend any existing Letter of Credit.

(ii) Subject to the appointment and acceptance of a successor Issuing Bank, any Issuing Bank may resign as an Issuing Bank at any time upon thirty days' prior written notice to the Administrative Agent, the Borrower and the Lenders, in which case, such resigning Issuing Bank shall be replaced in accordance with Section 2.06(i)(i) above.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Revolving Lenders with LC Exposure representing greater than 50% of the aggregate LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Revolving Lenders (the "LC Collateral Account"), an amount in cash equal to 105% of the amount of the LC Exposure as of such date plus accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (h) or (i) of Article VII. The Borrower also shall deposit cash collateral in accordance with this paragraph as and to the extent required by Sections 2.10(b), 2.11(b) or 2.20. Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Secured Obligations. In addition, and without limiting the foregoing or paragraph (c) of this Section, if any LC Exposure remains outstanding after the expiration date specified in said paragraph (c), the Borrower shall immediately deposit in the LC Collateral Account an amount in cash equal to 105% of such LC Exposure as of such date plus any accrued and unpaid interest thereon. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrower hereby grants the Administrative Agent a security interest in the LC Collateral Account and all money or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall

accumulate in the LC Collateral Account. Moneys in the LC Collateral Account shall be applied by the Administrative Agent to reimburse each Issuing Bank for LC Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing greater than 50% of the aggregate LC Exposure), be applied to satisfy other Secured Obligations. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of a Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all such Defaults have been cured or waived as confirmed in writing by the Administrative Agent.

(k) [Reserved].

(l) Letters of Credit Issued for Account of Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder supports any obligations of, or is for the account of, a Subsidiary, or states that a Subsidiary is the “account party,” “applicant,” “customer,” “instructing party,” or the like of or for such Letter of Credit, and without derogating from any rights of the Issuing Bank (whether arising by contract, at law, in equity or otherwise) against such Subsidiary in respect of such Letter of Credit, the Borrower (i) shall reimburse, indemnify and compensate the Issuing Bank hereunder for such Letter of Credit (including to reimburse any and all drawings thereunder) as if such Letter of Credit had been issued solely for the account of the Borrower and (ii) irrevocably waives any and all defenses that might otherwise be available to it as a guarantor or surety of any or all of the obligations of such Subsidiary in respect of such Letter of Credit. The Borrower hereby acknowledges that the issuance of such Letters of Credit for its Subsidiaries inures to the benefit of the Borrower, and that the Borrower’s business derives substantial benefits from the businesses of such Subsidiaries.

SECTION 2.07 Funding of Borrowings. (a) Each Lender shall make each Loan to be made by such Lender hereunder on the proposed date thereof solely by wire transfer of immediately available funds by 1:00 p.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders in an amount equal to such Lender’s Applicable Percentage; provided that, Swingline Loans shall be made as provided in Section 2.05. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the funds so received in the aforesaid account of the Administrative Agent to an account of the Borrower as specified in the applicable Borrowing Request, or if none is specified, into the Funding Account; provided that ABR Revolving Loans made to finance the reimbursement of (i) an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the Issuing Bank and (ii) a Protective Advance or an Overadvance shall be retained by the Administrative Agent.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender’s share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing

available to the Administrative Agent, then the applicable Lender and the Borrower each severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (ii) in the case of the Borrower, the interest rate applicable to ABR Loans. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing, provided, that any interest received from the Borrower by the Administrative Agent during the period beginning when Administrative Agent funded the Borrowing until such Lender pays such amount shall be solely for the account of the Administrative Agent.

SECTION 2.08 Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings, Overadvances or Protective Advances, which may not be converted or continued.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election either in writing (delivered by hand or fax) by delivering an Interest Election Request signed by a Responsible Officer of the Borrower or through Electronic System if arrangements for doing so have been approved by the Administrative Agent (or if an Extenuating Circumstance shall exist, by telephone) by the time that a Borrowing Request would be required under Section 2.03 if the Borrower was requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such Interest Election Request shall be irrevocable and each such telephonic Interest Election Request, if permitted, shall be confirmed immediately upon the cessation of the Extenuating Circumstance by hand delivery, Electronic System or facsimile to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by a Responsible Officer of the Borrower.

(c) Each written (or if permitted, telephonic) Interest Election Request (including requests submitted through Electronic System) shall specify the following information in compliance with Section 2.02:

(i) the name of the Borrower and the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if a Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as a Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

**SECTION 2.09 Termination and Reduction of Commitments; Increase in Revolving Commitments.** (a) Unless previously terminated, the Revolving Commitments shall terminate on the Maturity Date.

(b) The Borrower may at any time terminate the Revolving Commitments upon the Payment in Full of the Secured Obligations.

(c) The Borrower may at any time terminate, or from time to time reduce any Class of the Revolving Commitments; provided that (i) each reduction of the Revolving Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000 (or, if less, the remaining amount of the applicable Revolving Commitments), (ii) the Borrower may not reduce the Aggregate Revolving Commitment below \$15,000,000 without the written consent of the Required Lenders and the Administrative Agent and (iii) the Borrower shall not terminate or reduce the Revolving Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, (A) any Lender's Revolving Exposure would exceed such Lender's Revolving Commitment or (B) the Aggregate Revolving Exposure would exceed the lesser of the Aggregate Revolving Commitment and the Borrowing Base.

(d) The Borrower shall notify the Administrative Agent of any election to terminate or reduce any Class of the Commitments under paragraph (b) or (c) of this Section at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

(e) At any time and from time to time, on one or more occasions, Borrower shall have the right to increase the Revolving Commitments by obtaining additional Revolving Commitments, either from one or more of the Lenders or another lending institution provided that (i) any such request for an increase shall be in a minimum amount of \$2,000,000, (ii) the Borrower may make a maximum of 3 such requests after the Effective Date, (iii) after giving effect thereto, the sum of the total of the additional Commitments does not exceed \$15,000,000, (iv) the Administrative Agent and the Issuing Bank have approved the identity of any such new Lender, such approval not to be unreasonably withheld, (v) any such new Lender assumes all of the rights and obligations of a "Lender" hereunder, and (vi) the procedure described in Section 2.09(f) have been satisfied. Nothing contained in this Section 2.09 shall constitute, or otherwise be deemed to be, a commitment on the part of any Lender to increase its Commitment hereunder at any time.

(f) Any amendment hereto for such an increase or addition shall be in form and substance reasonably satisfactory to the Administrative Agent and shall only require the written signatures of the Administrative Agent, the Borrower and each Lender being added or increasing its Commitment. As a condition precedent to such an increase or addition, the Borrower shall deliver to the Administrative Agent (i) a certificate of each Loan Party signed by an authorized officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) in the case of the Borrower, certifying that, before and after giving effect to such increase or addition, (1) the representations and warranties contained in Article III and the other Loan Documents are true and correct in all material respects (except for representations and warranties that are already qualified by materiality, which representations and warranties will be accurate in all respects), except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, (2) no Default exists and (3) immediately after giving effect to and at all times during the 30-day period immediately prior to such increase, the Loan Parties shall have Availability calculated on a pro forma basis after giving effect to such increase of not less than \$15,000,000 and (ii) legal opinions and documents consistent with those delivered on the Effective Date, to the extent requested by the Administrative Agent.

(g) On the effective date of any such increase or addition, (i) any Lender increasing (or, in the case of any newly added Lender, extending) its Revolving Commitment shall make available to the Administrative Agent such amounts in immediately available funds as the Administrative Agent shall determine, for the benefit of the other Lenders, as being required in order to cause, after giving effect to such increase or addition and the use of such amounts to make payments to such other Lenders, each Lender's portion of the outstanding Revolving Loans of all the Lenders

to equal its revised Applicable Percentage of such outstanding Revolving Loans, and the Administrative Agent shall make such other adjustments among the Lenders with respect to the Revolving Loans then outstanding and amounts of principal, interest, commitment fees and other amounts paid or payable with respect thereto as shall be necessary, in the opinion of the Administrative Agent, in order to effect such reallocation and (ii) the Borrower shall be deemed to have repaid and reborrowed all outstanding Revolving Loans as of the date of any increase (or addition) in the Revolving Commitments (with such reborrowing to consist of the Types of Revolving Loans, with related Interest Periods if applicable, specified in a notice delivered by the Borrower, in accordance with the requirements of Section 2.03). The deemed payments made pursuant to clause (ii) of the immediately preceding sentence shall be accompanied by payment of all accrued interest on the amount prepaid and, in respect of each Eurodollar Loan, shall be subject to indemnification by the Borrower pursuant to the provisions of Section 2.16 if the deemed payment occurs other than on the last day of the related Interest Periods. Within a reasonable time after the effective date of any increase or addition, the Administrative Agent shall, and is hereby authorized and directed to, revise the Commitment Schedule to reflect such increase or addition and shall distribute such revised Commitment Schedule to each of the Lenders and the Borrower, whereupon such revised Commitment Schedule shall replace the old Commitment Schedule and become part of this Agreement.

SECTION 2.10 Repayment and Amortization of Loans; Evidence of Debt. (a) The Borrower hereby unconditionally promises to pay (i) to the Administrative Agent for the account of each Revolving Lender the then unpaid principal amount of each Revolving Loan on the Maturity Date, (ii) to the Administrative Agent the then unpaid amount of each Protective Advance on the earlier of the Maturity Date and demand by the Administrative Agent, (iii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earlier of the Maturity Date and the fifth Business Day after such Swingline Loan is made; provided that on each date that a Revolving Loan is made, the Borrower shall repay all Swingline Loans then outstanding and the proceeds of any such Revolving Loan shall be applied by the Administrative Agent to repay any Swingline Loans outstanding, and (iv) to the Administrative Agent the then unpaid principal amount of each Overadvance on the earlier of the Maturity Date and the 30<sup>th</sup> day after such Overadvance is made.

(b) At all times that full Cash Dominion is in effect, on each Business Day, the Administrative Agent shall apply all funds credited to the Collection Account on such Business Day or the immediately preceding Business Day (at the discretion of the Administrative Agent, whether or not immediately available), first to prepay any Protective Advances and Overadvances that may be outstanding, pro rata, and second to prepay the Revolving Loans (including Swingline Loans) and to cash collateralize outstanding LC Exposure. Notwithstanding the foregoing, to the extent any funds credited to the Collection Account constitute Net Proceeds, the application of such Net Proceeds shall be subject to Section 2.11(c).

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Class and Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(e) The entries made in the accounts maintained pursuant to paragraph (c) or (d) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(f) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form.

SECTION 2.11 Prepayment of Loans. (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (e) of this Section and, if applicable, payment of any break funding expenses under Section 2.16.

(b) Except for Overadvances permitted under Section 2.05, in the event and on such occasion that the Aggregate Revolving Exposure exceeds the lesser of (i) the Aggregate Revolving Commitment and (ii) the Borrowing Base, the Borrower shall prepay the Revolving Loans, LC Exposure and/or Swingline Loans or cash collateralize the LC Exposure in an account with the Administrative Agent pursuant to Section 2.06(j), as applicable, in an aggregate amount equal to such excess.

(c) In the event and on each occasion that any Net Proceeds are received by or on behalf of any Loan Party or any Subsidiary in respect of any Prepayment Event, the Borrower shall, within ten (10) Business Days after such Net Proceeds are received by any Loan Party or any Subsidiary, prepay the Obligations and cash collateralize the LC Exposure as set forth in Section 2.11(e) below in an aggregate amount equal to 100% of such Net Proceeds, provided that, in the case of any event described in clause (a) of the definition of the term "Prepayment Event", if the Borrower shall deliver to the Administrative Agent a certificate of a Responsible Officer to the effect that the Loan Parties intend to apply the Net Proceeds from such event (or a portion thereof specified in such certificate), within 12 months after receipt of such Net Proceeds, to acquire (or replace or rebuild) real property, equipment or other tangible assets (excluding inventory) or to enter into definitive agreement(s) to acquire (or replace or rebuild) such assets to be used in the business of the Loan Parties (such assets, "Additional Assets"), and certifying that no Default has occurred and is continuing or would result therefrom, then either (i) so long as full Cash Dominion is not in effect, no prepayment shall be required pursuant to this paragraph in respect of the Net Proceeds specified in such certificate or (ii) if full Cash Dominion is in effect, then such Net

Proceeds shall be applied by the Administrative Agent to reduce the outstanding principal balance of the Revolving Loans (without a permanent reduction of the Revolving Commitment) and upon such application, the Administrative Agent shall establish a Reserve against the Borrowing Base in an amount equal to the amount of such proceeds so applied and, thereafter, such funds shall be made available to the applicable Loan Party as follows:

- (1) the Borrower shall request a Revolving Borrowing (specifying that the request is to use Net Proceeds pursuant to this Section) or the applicable Loan Party shall request a release from the cash collateral account be made in the amount needed;
- (2) so long as the conditions set forth in Section 4.02 have been met, the Revolving Lenders shall make such Revolving Borrowing; and
- (3) in the case of Net Proceeds applied against the Revolving Borrowing, the Reserve established with respect to such proceeds shall be reduced by the amount of such Revolving Borrowing;

provided that to the extent of any such Net Proceeds therefrom that have not been so applied, or such definitive agreement(s) have not been entered into, by the end of such 12-month period or any such Net Proceeds that are subject to such definitive agreement(s) have not been so applied by the end of an additional six months following the end of such 12-month period, a prepayment shall be required at such time in an amount equal to such Net Proceeds that have not been so applied; provided, further, that, in the case of any event described in clause (a) of the definition of the term "Prepayment Event", to the extent that (A) the assets that were subject to such Prepayment Event constituted ABL Priority Collateral or Term Loan Priority Collateral, such Additional Assets shall also constitute ABL Priority Collateral or Term Loan Priority Collateral, respectively (and Borrower or its Subsidiaries, as the case may be, shall promptly take such action (if any) as may be required to cause that portion of such reinvestment constituting ABL Priority Collateral or Term Loan Priority Collateral, as applicable, to be added to the ABL Priority Collateral or Term Loan Priority Collateral securing the Obligations or the Term Debt, as applicable), (B) any such Prepayment Event that consisted of or constituted any portion of ABL Priority Collateral, such Net Proceeds shall be applied to the Obligations, and (C) any such Prepayment Event is of assets solely constituting Term Loan Priority Collateral that are required to be applied to the Term Debt pursuant to the terms of the Term Loan Credit Agreement, then the Net Proceeds of such Prepayment Event shall first be applied to the Term Debt as required under the Term Loan Documents until the Term Loan Obligations Payment Date (as defined in the Intercreditor Agreement) and then to the Obligations as required hereunder. To the extent the Net Proceeds of any Prepayment Event are required to be applied to the Term Debt under this Section 2.11(c) or the Intercreditor Agreement, upon the occurrence of the Term Loan Obligations Payment Date (as defined in the Intercreditor Agreement), such Net Proceeds shall be applied to the Obligations as set forth in this Section 2.11(c).

(d) Upon any Extraordinary Receipt received by or paid to or for the account of the Borrower or any of its Subsidiaries, and not otherwise included in clause (c) of this Section 2.11, the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of all Net Proceeds received therefrom within ten (10) Business Days of receipt thereof by the Borrower or such Subsidiary (such prepayments to be applied as set forth in clause (e) below); provided,

however, that if the Borrower shall deliver to the Administrative Agent a certificate of a Responsible Officer to the effect that the Loan Parties intend to apply the Net Proceeds from such event (or a portion thereof specified in such certificate), within 180 days after receipt of such Net Proceeds, to acquire or to enter into definitive agreement(s) to acquire Additional Assets, and certifying that no Default has occurred and is continuing or would result therefrom, then either (i) so long as full Cash Dominion is not in effect, no prepayment shall be required pursuant to this paragraph in respect of the Net Proceeds specified in such certificate or (ii) if full Cash Dominion is in effect, then such Net Proceeds shall be applied by the Administrative Agent to reduce the outstanding principal balance of the Revolving Loans (without a permanent reduction of the Revolving Commitment) and upon such application, the Administrative Agent shall establish a Reserve against the Borrowing Base in an amount equal to the amount of such proceeds so applied and, thereafter, such funds shall be made available to the applicable Loan Party as follows:

(1) the Borrower shall request a Revolving Borrowing (specifying that the request is to use Net Proceeds pursuant to this Section) or the applicable Loan Party shall request a release from the cash collateral account be made in the amount needed;

(2) so long as the conditions set forth in Section 4.02 have been met, the Revolving Lenders shall make such Revolving Borrowing; and

(3) in the case of Net Proceeds applied against the Revolving Borrowing, the Reserve established with respect to such proceeds shall be reduced by the amount of such Revolving Borrowing;

provided that to the extent of any such Net Proceeds therefrom that have not been so applied, or such definitive agreement(s) have not been entered into, by the end of such 180-day period or any such Net Proceeds that are subject to such definitive agreement(s) have not been so applied by the end of an additional 180 days following the end of such 180-day period, a prepayment shall be required at such time in an amount equal to such Net Proceeds that have not been so applied; provided, further, that, in the case of any event described in this Section 2.11(d), to the extent that (A) the assets that were subject to such event constituted ABL Priority Collateral or Term Loan Priority Collateral, such Additional Assets shall also constitute ABL Priority Collateral or Term Loan Priority Collateral, respectively (and Borrower or its Subsidiaries, as the case may be, shall promptly take such action (if any) as may be required to cause that portion of such reinvestment constituting ABL Priority Collateral or Term Loan Priority Collateral, as applicable, to be added to the ABL Priority Collateral or Term Loan Priority Collateral securing the Obligations or the Term Debt, as applicable), (B) any such event that consisted of or constituted any portion of ABL Priority Collateral, such Net Proceeds shall be applied to the Obligations, and (C) any such event is of assets solely constituting Term Loan Priority Collateral that are required to be applied to the Term Debt pursuant to the terms of the Term Loan Credit Agreement, then the Net Proceeds of such event shall first be applied to the Term Debt as required under the Term Loan Documents until the Term Loan Obligations Payment Date (as defined in the Intercreditor Agreement) and then to the Obligations as required hereunder. To the extent the Net Proceeds of any such event described in this Section 2.11(d) are required to be applied to the Term Debt under this Section 2.11(d) or the Intercreditor Agreement, upon the occurrence of the Term Loan Obligations Payment Date (as defined in the Intercreditor Agreement), such Net Proceeds shall be applied to the Obligations as set forth in this Section 2.11(d).

(e) (i) All prepayments made pursuant to Section 2.11(a) shall be applied to prepay Revolving Loans or the Swingline Loans in accordance with the Lenders' respective Applicable Percentages without a corresponding reduction in the Revolving Commitments or the Swingline Commitment, as applicable and to cash collateralize outstanding LC Exposure.

(ii) All such amounts pursuant to Sections 2.11(c) and (d) shall be applied, first to prepay any Protective Advances and Overadvances that may be outstanding, pro rata, second to prepay the Revolving Loans (including Swingline Loans) without a corresponding reduction in the Revolving Commitments or the Swingline Commitment, as applicable and to cash collateralize outstanding LC Exposure. If the precise amount of insurance or condemnation proceeds allocable to Inventory as compared to equipment, fixtures and real property is not otherwise determined, the allocation and application of those proceeds shall be determined by the Administrative Agent, in its Permitted Discretion.

(f) The Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by fax) or through Electronic System, if arrangements for doing so have been approved by the Administrative Agent, of any prepayment hereunder not later than (i) in the case of prepayment of a Eurodollar Revolving Borrowing, 11:00 a.m., New York City time three (3) Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Revolving Borrowing, noon, New York City time one (1) Business Day before the date of prepayment or (iii) in the case of prepayment of a Swingline Loan, noon, New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Revolving Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Revolving Borrowing shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Borrowing shall be applied ratably to the Revolving Loans included in the prepaid Borrowing. Prepayments shall be accompanied by (i) accrued interest to the extent required by Section 2.13 and (ii) break funding payments pursuant to Section 2.16.

**SECTION 2.12 Fees.** (a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a commitment fee, which shall accrue at 0.375% *per annum* on the average daily amount of the Available Revolving Commitment of such Lender during the period from and including the Effective Date to but excluding the date on which the Revolving Commitments terminate. Accrued commitment fees shall be payable in arrears on the first Business Day of each of January, April, July and October and on the date on which the Revolving Commitments terminate, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of this Section 2.12(a), Available Revolving Commitment of each Lender shall be calculated based on the Swingline Exposure of such Lender calculated assuming that all of the Lenders have funded their participations in all Swingline Loans outstanding at such time.

(b) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee with respect to its participations in each outstanding Letter of Credit, which shall accrue on the daily maximum amount then available to be drawn under such Letter of Credit at the same Applicable Rate used to determine the interest rate applicable to Eurodollar Revolving Loans during the period from and including the Effective Date to but excluding the later of the date on which such Lender's Revolving Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to each Issuing Bank for its own account a fronting fee with respect to each Letter of Credit issued by such Issuing Bank, which shall accrue at the rate of 0.125% per annum (or such higher rate or rates per annum separately agreed upon between the Borrower and such Issuing Bank) on the daily maximum amount then available to be drawn under such Letter of Credit, during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Commitments and the date on which there ceases to be any LC Exposure with respect to Letters of Credit issued by such Issuing Bank, as well as such Issuing Bank's standard fees and commissions with respect to the issuance, amendment or extension of any Letter of Credit and other processing fees and other standard costs and charges, of such Issuing Bank relating to Letters of Credit as from time to time in effect. Participation fees and fronting fees accrued through and including the last day of each calendar quarter shall be payable on the first Business Day of each of January, April, July and October, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand. Any other fees payable to an Issuing Bank pursuant to this paragraph shall be payable within ten (10) days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(d) All fees payable hereunder shall be paid on the dates due, in dollars in immediately available funds, to the Administrative Agent (or to an Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 2.13 Interest. (a) The Loans comprising ABR Borrowings (including all Swingline Loans) shall bear interest at the ABR plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Each Protective Advance and each Overadvance shall bear interest at the ABR plus the Applicable Rate for Revolving Loans plus 2%.

(d) Notwithstanding the foregoing, during the occurrence and continuance of an Event of Default, the Administrative Agent or the Required Lenders may, at their option, by notice to the Borrower (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 9.02 requiring the consent of “each Lender affected thereby” for reductions in interest rates), declare that (i) all Loans shall bear interest at 2% plus the rate otherwise applicable to such Loans as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount outstanding hereunder, such amount shall accrue at 2% plus the rate applicable to such fee or other obligation as provided hereunder; provided, that, the increased rates described in the foregoing subclauses (i) and (ii) shall automatically take effect (without any such notice to the Borrower from Administrative Agent or the Required Lenders) upon the occurrence and during the continuance of an Event of Default under clauses (a), (b), (h), (i) or (j) of Article VII.

(e) Accrued interest on each Loan (for ABR Loans, accrued through the last day of the prior calendar quarter) shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Revolving Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

#### SECTION 2.14 Alternate Rate of Interest; Illegality.

(a) Subject to clauses (c), (d), (e), (f), (g) and (h) of this Section 2.14, if prior to the commencement of any Interest Period for a Eurodollar Borrowing:

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable (including, without limitation, by means of an Interpolated Rate or because the LIBO Screen Rate is not available or published on a current basis) for such Interest Period; provided that no Benchmark Transition Event shall have occurred at such time; or

(ii) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders through Electronic System as provided in Section 9.01 as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (A) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and any such Eurodollar Borrowing shall be repaid or converted into an ABR Borrowing on the last day of the then current Interest Period applicable thereto, and (B) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

(b) If any Lender determines that any Requirement of Law has made it unlawful, or if any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable lending office to make, maintain, fund or continue any Eurodollar Borrowing, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, any obligations of such Lender to make, maintain, fund or continue Eurodollar Loans or to convert ABR Borrowings to Eurodollar Borrowings will be suspended until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, the Borrower will upon demand from such Lender (with a copy to the Administrative Agent), either convert or prepay all Eurodollar Borrowings of such Lender to ABR Borrowings, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Borrowings to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such conversion or prepayment, the Borrower will also pay accrued interest on the amount so converted or prepaid.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, 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 and subject to the proviso below in this paragraph, if a Term SOFR 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 the applicable Benchmark Replacement will replace the then-

current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that, this clause (c) shall not be effective unless the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may do so in its sole discretion.

(e) In connection with the implementation of a Benchmark Replacement, 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.

(f) The Administrative Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement 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 (d) 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, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.14, 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 or any selection, 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 to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.14.

(g) 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 Term SOFR or LIBO 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.

(h) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurodollar Borrowing of, conversion to or continuation of Eurodollar Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ABR Loans. 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.

SECTION 2.15 Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or the Issuing Bank;

(ii) impose on any Lender or the Issuing Bank or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or any Letter of Credit or participation therein; or

(iii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender or such other Recipient of making, continuing, converting into or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender, the Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender, the Issuing Bank or such other Recipient hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender, the Issuing Bank or such other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the Issuing Bank or such other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or the Issuing Bank determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Bank's capital or on the capital of such Lender's or the Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of, or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Bank, to a level below that which such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Bank's policies and the policies of such Lender's or the Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to such Lender or the Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Bank or such Lender's or the Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or the Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or the Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Bank, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or the Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or the Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or the Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Bank's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.16 Break Funding Payments. Except as otherwise set forth herein, the Borrower will compensate each Lender for the actual out-of-pocket loss, cost and expense (excluding loss of anticipated profits) attributable to the following events: (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or as a result of any prepayment pursuant to Section 2.11), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto, or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19 or 9.02(d). A certificate of any Lender setting forth in reasonable detail any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

SECTION 2.17 Withholding of Taxes; Gross-Up. (a) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.17) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) Payment of Other Taxes by the Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for, Other Taxes.

(c) Evidence of Payment. Upon the request of the Administrative Agent, as soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.17, 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.

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

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(c) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to setoff and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to such Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender

is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that the Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), an executed copy of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

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

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, an executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) in the case of a Foreign Lender claiming that its extension of credit will generate U.S. effectively connected income, an executed copy of IRS Form W-8ECI;

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

(4) to the extent a Foreign Lender is not the beneficial owner, an executed copy of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-2 or Exhibit E-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit E-4 on behalf of each such direct and indirect partner;

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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

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

(g) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section (including by the payment of additional amounts pursuant to this Section), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (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 paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) 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 giving rise to such refund had never been paid. This paragraph (g) 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.

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

(i) Defined Terms. For purposes of this Section 2.17, the term "Lender" includes any Issuing Bank and the term "applicable law" includes FATCA.

SECTION 2.18 Payments Generally; Allocation of Proceeds; Sharing of Setoffs. Unless otherwise expressly specified herein, (a) the Borrower shall make each payment or prepayment required to be made by them hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 2:00 p.m., New York City time, on the date when due or the date fixed for any prepayment hereunder, in immediately available funds, without setoff, recoupment or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 10 South Dearborn Street, Floor L2, Chicago, Illinois, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Unless otherwise provided for herein, if any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) All payments and any proceeds of Collateral received by the Administrative Agent (i) not constituting either (A) a specific payment of principal, interest, fees or other sum payable under the Loan Documents (which shall be applied as specified by the Borrower), (B) a mandatory prepayment (which shall be applied in accordance with Section 2.11) or (C) amounts to be applied from the Collection Account when full Cash Dominion is in effect (which shall be applied in accordance with Section 2.10(b)) or (ii) after an Event of Default has occurred and is continuing and the Administrative Agent so elects or the Required Lenders so direct, shall be applied ratably first, to pay any fees, indemnities, or expense reimbursements then due to the Administrative Agent and the Issuing Bank from the Borrower (other than in connection with Banking Services Obligations or Swap Agreement Obligations), second, to pay any fees, indemnities, or expense reimbursements then due to the Lenders from the Borrower (other than in connection with Banking Services Obligations or Swap Agreement Obligations), third, to pay interest due in respect of the Overadvances and Protective Advances, fourth, to pay the principal of the Overadvances and Protective Advances, fifth, to pay interest then due and payable on the Loans (other than the Overadvances and Protective Advances) ratably, sixth, to prepay principal on the Loans (other than the Overadvances and Protective Advances) and unreimbursed LC Disbursements, to pay an amount to the Administrative Agent equal to one hundred five percent (105%) of the aggregate LC Exposure, to be held as cash collateral for such Obligations, and to pay any amounts owing in respect of Swap Agreement Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22, for which Reserves have been established, ratably, seventh, to payment of any amounts owing in respect of Banking Services Obligations up to and including the amount most recently provided to the Administrative Agent pursuant to Section 2.22, and eighth, to the payment of any other Secured Obligation due to the Administrative Agent or any Lender by the Borrower. Notwithstanding the foregoing amounts received from any Loan Party shall not be applied to any Excluded Swap Obligation of such Loan Party. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower, or unless a Default is in existence, neither the Administrative Agent nor any Lender shall apply any payment that it receives to any Eurodollar Loan of a Class, except (a) on the expiration date of the Interest Period applicable thereto or (b) in the event, and only to the extent, that there are no outstanding ABR Loans of the same Class and, in any such event, the Borrower shall pay the break funding payment required in accordance with Section 2.16. The Administrative Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

(c) At the election of the Administrative Agent, all payments of principal, interest, LC Disbursements, fees, premiums, reimbursable expenses (including, without limitation, all reimbursement for fees, costs and expenses pursuant to Section 9.03), and other sums payable under the Loan Documents, may be paid from the proceeds of Borrowings made hereunder whether made following a request by the Borrower pursuant to Section 2.03 or a deemed request as provided in this Section or may be deducted from any deposit account of the Borrower maintained with the Administrative Agent. The Borrower hereby irrevocably authorizes (i) the Administrative Agent to make a Borrowing for the purpose of paying each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged shall constitute Loans (including Swingline Loans and Overadvances, but such a Borrowing may only constitute a Protective Advance if it is to reimburse costs, fees and expenses as described in Section 9.03) and that all such Borrowings shall be deemed to have been requested pursuant to Section 2.03, 2.04 or 2.05, as applicable, and (ii) the Administrative Agent to charge any deposit account of the Borrower maintained with the Administrative Agent for each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents.

(d) If, except as otherwise expressly provided herein, any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other similarly situated Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by all such Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the 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 Loans or participations in LC Disbursements or Swingline Loans to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(e) Unless the Administrative Agent shall have received, prior to any date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank pursuant to the terms hereof or any other Loan Document (including any date that is fixed for prepayment by notice from the Borrower to the Administrative Agent pursuant to Section 2.11(e)), notice from the Borrower that the Borrower will not make such payment or prepayment, the Administrative Agent may assume that the Borrower have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Bank, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the NYFRB Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) The Administrative Agent may from time to time provide the Borrower with account statements or invoices with respect to any of the Secured Obligations (the "Statements"). The Administrative Agent is under no duty or obligation to provide Statements, which, if provided, will be solely for the Borrower's convenience. Statements may contain estimates of the amounts

owed during the relevant billing period, whether of principal, interest, fees or other Secured Obligations. If the Borrower pays the full amount indicated on a Statement on or before the due date indicated on such Statement, the Borrower shall not be in default of payment with respect to the billing period indicated on such Statement; provided, that acceptance by the Administrative Agent, on behalf of the Lenders, of any payment that is less than the total amount actually due at that time (including but not limited to any past due amounts) shall not constitute a waiver of the Administrative Agent's or the Lenders' right to receive payment in full at another time.

#### SECTION 2.19 Mitigation Obligations; Replacement of Lenders.

(a) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender becomes a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights (other than its existing rights to payments pursuant to Section 2.15 or 2.17) and obligations under this Agreement and other Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent (and in circumstances where its consent would be required under Section 9.04, the Issuing Bank and the Swingline Lender), which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and funded participations in LC Disbursements and Swingline 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 Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that (x) an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and such parties are participants), and (y) the Lender required to make such

assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided that any such documents shall be without recourse to or warranty by the parties thereto.

SECTION 2.20 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 unfunded portion of the Revolving Commitment of such Defaulting Lender pursuant to Section 2.12(a);

(b) any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 2.18(b) or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank or Swingline Lender hereunder; third, to cash collateralize the LC Exposure with respect to such Defaulting Lender in accordance with this Section; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) cash collateralize future LC Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with this Section; sixth, to the payment of any amounts owing to the Lenders, the Issuing Banks or Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Banks or Swingline Lender 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; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement or under any other Loan Document; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Disbursements owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure and Swingline Loans are held by the

Lenders pro rata in accordance with the Commitments without giving effect to clause (d) below. 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 shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto;

(c) such Defaulting Lender shall not have the right to vote on any issue on which voting is required (other than to the extent expressly provided in Section 9.02(b)) and the Commitment and Revolving Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders or the Supermajority Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02) or under any other Loan Document; provided, that, except as otherwise provided in Section 9.02, this clause (c) 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 directly affected thereby;

(d) if any Swingline Exposure or LC Exposure exists at the time such Lender becomes a Defaulting Lender then:

(i) all or any part of the Swingline Exposure and LC 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 that such reallocation does not, as to any non-Defaulting Lender, cause such non-Defaulting Lender's Revolving Exposure to exceed its Revolving Commitment;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one (1) Business Day following notice by the Administrative Agent (x) first, prepay such Swingline Exposure and (y) second, cash collateralize, for the benefit of the Issuing Bank, the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to clause (ii) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (i) above, then the fees payable to the Lenders pursuant to Sections 2.12(a) and 2.12(b) shall be adjusted in accordance with such non-Defaulting Lenders' Applicable Percentages; and

(v) if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (i) or (ii) above, then, without prejudice to any rights or remedies of the Issuing Bank or any other Lender hereunder, all letter of credit fees payable under Section 2.12(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Bank until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and

(e) so long as such Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, amend, renew, extend or increase any Letter of Credit, unless it is satisfied that the related exposure and such Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.20(d), and Swingline Exposure related to any such newly made Swingline Loan or LC Exposure related to any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.20(d)(i) (and such Defaulting Lender shall not participate therein).

If (i) a Bankruptcy Event or a Bail-In Action with respect to a Lender Parent shall occur following the date hereof and for so long as such event shall continue or (ii) the Swingline Lender or the Issuing Bank has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, the Swingline Lender shall not be required to fund any Swingline Loan and the Issuing Bank shall not be required to issue, amend or increase any Letter of Credit, unless the Swingline Lender or the Issuing Bank, as the case may be, shall have entered into arrangements with the Borrower or such Lender, satisfactory to the Swingline Lender or the Issuing Bank, as the case may be, to defease any risk to it in respect of such Lender hereunder.

In the event that each of the Administrative Agent, the Borrower, the Swingline Lender and the Issuing Bank agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Revolving Commitment and on the date of such readjustment such Lender shall purchase at par such of the Loans of the other Lenders (other than Swingline 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 2.21 Returned Payments. If after receipt of any payment that is applied to the payment of all or any part of the Obligations (including a payment effected through exercise of a right of setoff), the Administrative Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion), then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Administrative Agent or such Lender. The provisions of this Section 2.21 shall be and remain effective notwithstanding any contrary action that may have been taken by the Administrative Agent or any Lender in reliance upon such payment or application of proceeds. The provisions of this Section 2.21 shall survive the termination of this Agreement.

SECTION 2.22 Banking Services and Swap Agreements. Each Lender or Affiliate thereof providing Banking Services for, or having Swap Agreements with, any Loan Party shall deliver to the Administrative Agent, promptly after entering into such Banking Services or Swap Agreements, written notice setting forth the aggregate amount of all Banking Services Obligations and Swap Agreement Obligations of such Loan Party to such Lender or Affiliate (whether matured or unmatured, absolute or contingent). In addition, each such Lender or Affiliate (other than any such Person that is an Affiliate of the Administrative Agent) thereof shall deliver to the Administrative Agent, from time to time after a significant change therein or upon a request therefor, a summary of the amounts due or to become due in respect of such Banking Services Obligations and Swap Agreement Obligations. The most recent information provided to the Administrative Agent shall be used in determining the amounts to be applied in respect of such Banking Services Obligations and/or Swap Agreement Obligations pursuant to Section 2.18(b) and which tier of the waterfall, contained in Section 2.18(b), such Banking Services Obligations and/or Swap Agreement Obligations will be placed. For the avoidance of doubt, so long as JPMCB or its Affiliate is the Administrative Agent, neither JPMCB nor any of its Affiliates providing Banking Services for, or having Swap Agreements with, any Loan Party shall be required to provide any notice described in this Section 2.22 in respect of such Banking Services or Swap Agreements.

### ARTICLE III

#### Representations and Warranties.

Each Loan Party represents and warrants to the Lenders that:

SECTION 3.01 Organization; Powers. Each Loan Party and each Subsidiary (a) is duly organized or formed, validly existing and in good standing (or comparable concept in the applicable jurisdiction) under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and is qualified to do business, and (b) is in good standing (or comparable concept in the applicable jurisdiction), in every material jurisdiction where such qualification is required where the failure of the requirements of this clause (b) to so qualify would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 3.02 Authorization; Enforceability. The Transactions are within each Loan Party's corporate or other organizational powers and have been duly authorized by all necessary corporate or other organizational actions and, if required, actions by equity holders. Each Loan Document to which each Loan Party is a party has been duly executed and delivered by such Loan Party and constitutes a legal, valid and binding obligation of such Loan Party, enforceable in accordance with its terms, subject to applicable moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03 Governmental Approvals; No Conflicts. The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except for (i) such as have been obtained or made and are in full force and effect, (ii) filings that are necessary to perfect Liens created pursuant to the Loan Documents,

(iii) filings as may be required under the Securities Exchange Act of 1934, as amended, and applicable stock exchange rules in connection therewith, or (iv) such actions, consents and approvals the failure of which to be obtained or made would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (b) will not violate any Requirement of Law applicable to any Loan Party or any Subsidiary; (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon any Loan Party or any Subsidiary or the assets of any Loan Party or any Subsidiary; and (d) will not result in the creation or imposition of, or the requirement to create, any Lien on any asset of any Loan Party or any Subsidiary, except Liens created pursuant to or otherwise permitted under the Loan Documents; except with respect to any conflict, breach, default or violation referred to in clauses (b) and (c) above, solely to the extent that such conflicts, breaches, defaults or violations, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. Each Loan Party is in material compliance with all applicable Bank Secrecy Act and anti-money laundering laws and regulations.

**SECTION 3.04 Financial Condition; No Material Adverse Change.** (a) The Company has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows (i) as of and for the fiscal year ended December 31, 2018, reported on by PricewaterhouseCoopers LLP, independent public accountants (ii) as of and for the fiscal year ended December 31, 2019, reported on by PricewaterhouseCoopers LLP, independent public accountants, and (iii) as of and for the fiscal quarter and the portion of the fiscal year ended December 31, 2020, certified by its chief financial officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Company and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to normal year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

(b) No event, change or condition has occurred that has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, since December 31, 2020.

**SECTION 3.05 Properties.** (a) As of the date of this Agreement, Schedule 3.05 sets forth the address of each parcel of real property that is owned or leased by any Loan Party. Each of the Loan Parties and each of its Subsidiaries has good and indefeasible title to, or valid leasehold interests in, real and personal property (subject to Liens permitted pursuant to Section 6.02), free of all Liens, in each case, except where the failure to have such title, interest, or right would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Each Loan Party and each Subsidiary owns, or has the right to use, all trademarks, tradenames, copyrights, patents and other intellectual property necessary to its business as currently conducted, a correct and complete list of which, as of the date of this Agreement, is set forth on Schedule 3.05, and to the knowledge of the Company, the use thereof by each Loan Party and each Subsidiary does not infringe in any material respect upon the rights of any other Person.

**SECTION 3.06 Litigation and Environmental Matters.** (a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Loan Party, threatened against or affecting any Loan Party or any Subsidiary (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, would reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve any Loan Document or the Transactions.

(b) Except for the Disclosed Matters (i) no Loan Party or any Subsidiary has received written notice of any claim with respect to any Environmental Liability or knows of any basis for any Environmental Liability and (ii) except with respect to any other matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, no Loan Party or any Subsidiary (A) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (B) has become subject to any Environmental Liability, (C) has received written notice of any claim with respect to any Environmental Liability or (D) has actual knowledge of any basis for any Environmental Liability.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

SECTION 3.07 Compliance with Laws and Agreements; No Default. Except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, each Loan Party and each Subsidiary is in compliance with (a) all Requirement of Law applicable to it or its property and (b) all indentures, agreements and other instruments binding upon it or its property. No Default has occurred and is continuing.

SECTION 3.08 Investment Company Status. No Loan Party or any Subsidiary is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.09 Taxes. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Loan Party has timely filed or caused to be filed all federal Tax returns and reports and all other material Tax returns and reports required to have been filed and has paid or caused to be paid all federal and state Taxes and all other material Taxes required to have been paid by it, except Taxes that are being contested in good faith by appropriate proceedings and for which such Loan Party has set aside on its books adequate reserves. To the Borrower's knowledge, no tax liens have been filed and to the knowledge of Borrower, no claims are being asserted with respect to any such contested Taxes.

SECTION 3.10 ERISA. No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan, and the present value of all accumulated benefit obligations of all underfunded Plans (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87 or subsequent recodification thereof, as applicable) did not, as of the date of the most recent financial statements reflecting such amounts, exceed by more than \$2,500,000 the fair market value of the assets of all such underfunded Plans.

SECTION 3.11 Disclosure. (a) The Loan Parties have disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which any Loan Party or any Subsidiary is subject, that if violated, breached, or terminated for any reason, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information furnished by or on behalf of any Loan Party or any Subsidiary to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not materially misleading; provided that (a) no representation is made with respect to general economic or industry information and (b) with respect to projected and pro forma financial information, the Loan Parties represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date; it being understood that such projections may vary from actual results and that such variances may be material.

(b) As of the Effective Date, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

SECTION 3.12 [reserved].

SECTION 3.13 Solvency. (a) Immediately after the consummation of the Transactions to occur on the Effective Date, (i) the fair value of the assets of each Loan Party, at a fair valuation, will exceed its debts and liabilities, subordinated, contingent or otherwise; (ii) the present fair saleable value of the property of each Loan Party will not be less than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (iii) each Loan Party will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured in the ordinary course of business; and (iv) no Loan Party will have unreasonably small capital with which to conduct the business in which it is engaged as such business is now conducted and is proposed to be conducted after the Effective Date.

(b) No Loan Party intends to, nor will permit any Subsidiary to, and no Loan Party believes that it or any Subsidiary will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or any such Subsidiary and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such Subsidiary.

SECTION 3.14 Insurance. Schedule 3.14 sets forth a description of all material insurance maintained by or on behalf of the Loan Parties and their Subsidiaries as of the Effective Date. As of the Effective Date, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, all premiums in respect of such insurance have been paid. The Borrower maintains, and has caused each Subsidiary to maintain, with financially sound and reputable insurance companies (or is self-insured), insurance on all their real and personal property in such amounts, subject to such deductibles and self-insurance retentions and covering such properties and risks as are adequate and customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations.

SECTION 3.15 Capitalization and Subsidiaries. Schedule 3.15 sets forth, as of the Effective Date, (a) each Subsidiary of the Company (and whether such Subsidiary is an Immaterial Subsidiary, Foreign Subsidiary or Loan Party), (b) its state (or jurisdiction) of formation, and (c) its relationship to the Company, including the percentage of each class of stock or other Equity Interest owned, directly or indirectly, by a Loan Party or any other Subsidiary. All of the issued and outstanding Equity Interests owned by any Loan Party have been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and are fully paid and non-assessable. There are no outstanding commitments or other obligations of any Loan Party to issue, and no options, warrants or other rights of any Person to acquire, any shares of any class of capital stock or other equity interests of any Loan Party.

SECTION 3.16 Security Interest in Collateral. The provisions of the Security Agreement and the other Collateral Documents create legal and valid Liens on all of the Collateral in favor of the Administrative Agent, for the benefit of the Secured Parties, and, with respect to the Loan Parties, when financing statements in appropriate form are filed in the appropriate filing officer such Liens on the Collateral granted pursuant to the Security Agreement shall constitute perfected and continuing Liens on the Collateral, securing the Secured Obligations, on all right, title and interest of the Loan Parties in such Collateral in which (and to the extent) a security interest can be perfected under Article 9 of the Uniform Commercial Code by the filing of a financing statement, in each case prior to and superior in right of the Lien of any other Person (except for (a) Liens permitted pursuant to Section 6.02 and (b) Liens perfected only by possession (including possession of any certificate of title) to the extent the Administrative Agent has not obtained or does not maintain possession of such Collateral), enforceable against the applicable Loan Party and all third parties.

SECTION 3.17 Employment Matters. As of the Effective Date, there are no strikes, lockouts or slowdowns against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened in writing.

SECTION 3.18 Margin Regulations. No Loan Party is engaged principally or as one of its important activities, in the business of purchasing or carrying Margin Stock, or extending credit for the purpose of purchasing or carrying Margin Stock, and no part of the proceeds of any Borrowing or Letter of Credit hereunder will be used to buy or carry any Margin Stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25% of the value of the assets (either of any Loan Party only or of the Loan Parties and their Subsidiaries on a consolidated basis) will be Margin Stock. Neither the granting of the Loans (or any conversion thereof) nor the use of the proceeds of the Loans will violate, or be inconsistent with, the provisions of Regulation T, Regulation U or Regulation X or any other regulation of the Federal Reserve Board.

SECTION 3.19 Use of Proceeds. The proceeds of the Loans have been used and will be used, whether directly or indirectly as set forth in Section 5.08.

SECTION 3.20 No Burdensome Restrictions. Except as set forth on Schedule 3.20, no Loan Party is subject to any Burdensome Restrictions except Burdensome Restrictions permitted under Section 6.10.

SECTION 3.21 Anti-Corruption Laws and Sanctions. Each Loan Party and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and such Loan Party and its Subsidiaries and, to the knowledge of such Loan Party, its officers, directors, employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) any Loan Party or any Subsidiary or (b) to the knowledge of any such Loan Party or Subsidiary, any officer, director or agent of such Loan Party or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person.

SECTION 3.22 Common Enterprise. The successful operation and condition of each of the Loan Parties is dependent on the continued successful performance of the functions of the group of the Loan Parties as a whole and the successful operation of each of the Loan Parties is dependent on the successful performance and operation of each other Loan Party. Each Loan Party expects to derive benefit, directly or indirectly, from (a) successful operations of each of the other Loan Parties and (b) the credit extended by the Lenders to the Borrower hereunder, both in their separate capacities and as members of the group of companies. The applicable governing body of each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, in furtherance of its direct and/or indirect business interests, will be of direct and/or indirect benefit to such Loan Party, and is in its best interest.

SECTION 3.23 Plan Assets; Prohibited Transactions. No Loan Party or any of its Subsidiaries is an entity deemed to hold "plan assets" (within the meaning of the Plan Asset Regulations), and neither the execution, delivery nor performance of the transactions contemplated under this Agreement, including the making of any Loan and the issuance of any Letter of Credit hereunder, will give rise to a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code.

SECTION 3.24 Term Loan Documents. As of the Effective Date, the Borrower has delivered to the Administrative Agent true and correct copies of the Term Loan Documents and the definitive documentation executed in connection with the issuance of the Series D Preferred Stock. Such documentation is in full force and effect as of the Effective Date and has not been terminated, rescinded or withdrawn as of such date. The execution, delivery and performance of such documentation on the Effective Date does not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any governmental authority, other than consents or approvals that have been obtained and that are still in full force and effect. This Agreement, the other Loan Documents and the Obligations incurred hereunder and thereunder are permitted to be incurred under such documentation. Each Person that is a guarantor or a borrower under the Term Loan Documents is a Loan Party hereunder.

ARTICLE IV

Conditions.

SECTION 4.01 Effective Date. The obligations of the Lenders to make Loans and of the Issuing Bank to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) Credit Agreement and Other Loan Documents. The Administrative Agent (or its counsel) shall have received (i) from each party hereto a counterpart of this Agreement signed on behalf of such party (which, subject to Section 9.06(b), may include any Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), (ii) either (A) a counterpart of each other Loan Document signed on behalf of each party thereto or (B) written evidence satisfactory to the Administrative Agent (which may include facsimile or other electronic transmission of a signed signature page thereof) that each such party has signed a counterpart of such Loan Document, (iii) from each party thereto a counterpart of the Intercreditor Agreement signed on behalf of such party, and (iv) subject to Section 5.15, such other certificates, documents, instruments and agreements as the Administrative Agent shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents, including any promissory notes requested by a Lender pursuant to Section 2.10 payable to the order of each such requesting Lender and a customary written opinion of the Loan Parties' counsel, addressed to the Administrative Agent, the Issuing Bank and the Lenders and the other Secured Parties, all in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(b) Financial Statements and Projections. The Lenders shall have received (i) audited consolidated financial statements of the Company for the December 31, 2019 fiscal year, (ii) unaudited interim consolidated financial statements of the Company for the fiscal quarter ended after the date of the latest applicable financial statements delivered pursuant to clause (i) of this paragraph as to which such financial statements are available, and such financial statements shall not, in the reasonable judgment of the Administrative Agent, reflect any material adverse change in the consolidated financial condition of the Company and its Subsidiaries, as reflected in the audited, consolidated financial statements described in clause (i) of this paragraph and (iii) satisfactory projections through 2025.

(c) Closing Certificates; Certified Certificate of Incorporation; Good Standing Certificates. The Administrative Agent (or its counsel) shall have received (i) a certificate of each Loan Party, dated the Effective Date and executed by its Secretary or Assistant Secretary (which, subject to Section 9.06(b), may include any Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page) that shall (A) certify the resolutions of its Board of Directors, members or other body authorizing the execution, delivery and performance of the Loan Documents to which it is a party, (B) identify by name and title and bear the specimen signatures of the officers of such Loan Party authorized to sign the Loan Documents to which it is a party and, in the case of the Borrower,

its Financial Officers (which, subject to Section 9.06(b), may include any Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), and (C) contain appropriate attachments, including the certificate or articles of incorporation or organization of each Loan Party certified by the relevant authority of the jurisdiction of organization of such Loan Party and a true and correct copy of its by-laws or operating, management or partnership agreement, or other Organization Documents, and (ii) a good standing certificate for each Loan Party from its jurisdiction of organization or the substantive equivalent available in the jurisdiction of organization for each Loan Party from the appropriate governmental officer in such jurisdiction.

(d) Closing Certificate. The Administrative Agent (or its counsel) shall have received a certificate, signed by a Financial Officer of the Borrower and each other Loan Party (which, subject to Section 9.06(b), may include any Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), dated as of the Effective Date (i) stating that no Default has occurred and is continuing at the time of an immediately after the Effective Date and the effectiveness of the Transactions, (ii) stating that the representations and warranties contained in the Loan Documents are true and correct as of such date and (iii) attaching the final executed copy of the Term Loan Credit Agreement, the Securities Purchase Agreement and Certificate of Designation relating to the Series D Preferred Stock and any other material documents related thereto that is requested by the Administrative Agent.

(e) Fees. The Lenders and the Administrative Agent shall have received all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable fees and expenses of legal counsel to the Administrative Agent), on or before the Effective Date. All such amounts will be paid with proceeds of Loans made on the Effective Date and will be reflected in the funding instructions given by the Borrower to the Administrative Agent on or before the Effective Date.

(f) Lien Searches. The Administrative Agent (or its counsel) shall have received the results of a recent lien search in each jurisdiction where the Loan Parties are organized and where the material assets of the Loan Parties are located, and such search shall reveal no Liens on any of the assets of the Loan Parties except for Liens permitted by Section 6.02 or discharged on or prior to the Effective Date pursuant to a pay-off letter or other documentation reasonably satisfactory to the Administrative Agent.

(g) Pay Off Letter; Termination of Certain Obligations. The Administrative Agent shall have received (i) satisfactory pay-off letters for all existing Indebtedness (including Indebtedness and obligations under the Existing Credit Agreement), confirming that all Liens upon any of the property of the Loan Parties constituting Collateral will be terminated concurrently with such payment and all letters of credit issued or guaranteed as part of such Indebtedness shall have been cash collateralized or supported by a Letter of Credit and (ii) evidence reasonably satisfactory to the Administrative Agent that all Secured Hedge Agreements (as defined in the Existing Credit Agreement) and all obligations thereunder have been terminated.

(h) Funding Account. The Administrative Agent shall have received a notice setting forth the deposit account of the Borrower (the "Funding Account") to which the Administrative Agent is authorized by the Borrower to transfer the proceeds of any Borrowings requested or authorized pursuant to this Agreement unless otherwise requested by Borrower.

(i) Mortgages. Subject to Section 5.15, a Mortgage in respect of each Mortgaged Property described on Schedule 1.02.

(j) Collateral Access and Control Agreements. Subject to Section 5.15, the Administrative Agent shall have received (i) each Collateral Access Agreement required to be provided pursuant to Section 5.14 and (ii) each Control Agreement required to be provided pursuant to Section 5.13.

(k) Solvency. The Administrative Agent shall have received a satisfactory solvency certificate signed by a Financial Officer dated the Effective Date.

(l) Borrowing Base Certificate. The Administrative Agent shall have received a Borrowing Base Certificate that calculates the Borrowing Base as of the end of the calendar month immediately preceding the Effective Date.

(m) Closing Availability. After giving effect to all Borrowings to be made on the Effective Date, the issuance of any Letters of Credit on the Effective Date and the payment of all fees and expenses due hereunder, and with all of the Loan Parties' indebtedness, liabilities, and obligations current, the Availability shall not be less than \$25,000,000.

(n) Term Debt. The Borrower shall have received proceeds of at least \$150,000,000 in consideration of the issuance of term loans under the Term Loan Credit Agreement, subject to the terms of the Intercreditor Agreement.

(o) Pledged Equity Interests; Stock Powers; Pledged Notes. Subject to Section 5.15 and the Intercreditor Agreement or as otherwise agreed by the Administrative Agent, the Administrative Agent (or its counsel) shall have received (i) the certificates representing the Equity Interests (if such Equity Interests are (or are required to be pursuant to applicable law) certificated) pledged pursuant to the Security Agreement, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof and (ii) each promissory note (if any) pledged to the Administrative Agent pursuant to the Security Agreement endorsed (without recourse) in blank (or accompanied by an executed transfer form in blank) by the pledgor thereof.

(p) Filings, Registrations and Recordings. Subject to Section 5.15, each document (including any Uniform Commercial Code financing statement) required by the Collateral Documents or under law or reasonably requested by the Administrative Agent to be filed, registered or recorded in order to create in favor of the Administrative Agent, for the benefit of itself, the Lenders and the other Secured Parties, a perfected Lien on the Collateral described therein, prior and superior in right to any other Person (other than with respect to Liens expressly permitted by Section 6.02), shall be in proper form for filing, registration or recordation.

(q) Insurance. Subject to Section 5.15, the Administrative Agent (or its counsel) shall have received evidence of insurance coverage in form, scope, and substance reasonably satisfactory to the Administrative Agent and otherwise in compliance with the terms of Section 5.10 hereof.

(r) Letter of Credit Application. If a Letter of Credit is requested to be issued on the Effective Date, the Administrative Agent shall have received a properly completed letter of credit application (whether standalone or pursuant to a master agreement, as applicable). The Borrower shall have executed the Issuing Bank's master agreement for the issuance of commercial Letters of Credit.

(s) Tax Withholding. The Administrative Agent (or its counsel) shall have received a properly completed and signed IRS Form W-8 or W-9, as applicable, for each Loan Party.

(t) [reserved].

(u) Field Examination. The Administrative Agent or its designee shall have conducted a field examination of the Loan Parties' Accounts, Inventory and related working capital matters and of the Borrower's related data processing and other systems, the results of which shall be satisfactory to the Administrative Agent in its sole discretion.

(v) Legal Due Diligence. The Administrative Agent and its counsel shall have completed all legal due diligence, the results of which shall be satisfactory to Administrative Agent in its sole but reasonable discretion (provided that, upon the execution and delivery by the Administration Agent of its signature page to this Agreement, the condition set forth in this clause (v) shall be deemed to be satisfied).

(w) Appraisal(s). The Administrative Agent shall have received an appraisal of the applicable Loan Parties' Inventory from one or more firms satisfactory to the Administrative Agent, which appraisal shall be satisfactory to the Administrative Agent in its Permitted Discretion.

(x) USA PATRIOT Act, Etc. (i) The Administrative Agent shall have received, at least five (5) days prior to the Effective Date, all documentation and other information regarding the Borrower requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, to the extent requested in writing of the Borrower at least ten (10) days prior to the Effective Date, and (ii) to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five (5) days prior to the Effective Date, any Lender that has requested, in a written notice to the Borrower at least ten (10) days prior to the Effective Date, a Beneficial Ownership Certification in relation to the Borrower shall have received such Beneficial Ownership Certification (provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(y) Other Documents. Subject to Section 5.15, the Administrative Agent shall have received such other documents as the Administrative Agent, the Issuing Bank, any Lender or their respective counsel may have reasonably (provided that, upon the execution and delivery by such Lender, Issuing Bank or Administrative Agent of its signature page to this Agreement, the condition set forth in this clause (y) shall be deemed to be satisfied).

Each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Effective Date specifying its objection thereto. The Administrative Agent shall notify the Borrower, the Lenders and the Issuing Bank of the Effective Date, and such notice shall be conclusive and binding.

SECTION 4.02 Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of the Issuing Bank to issue, amend or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) Except with respect to any Borrowing pursuant to Section 2.09(e), the representations and warranties of the Loan Parties set forth in the Loan Documents shall be true and correct in all material respects with the same effect as though made on and as of the date of such Borrowing or the date of issuance, amendment or extension of such Letter of Credit, as applicable (it being understood and agreed that any representation or warranty that by its terms is made as of a specified date shall be required to be true and correct in all material respects only as of such specified date, and that any representation or warranty that is subject to any materiality qualifier shall be required to be true and correct in all respects).

(b) At the time of and immediately after giving effect to such Borrowing (other than a Borrowing pursuant to Section 2.09(e)) or the issuance, amendment or extension of such Letter of Credit, as applicable, (i) no Default shall have occurred and be continuing and (ii) no Protective Advance shall be outstanding.

(c) After giving effect to any Borrowing or the issuance, amendment or extension of any Letter of Credit, Availability shall not be less than zero.

Each Borrowing and each issuance, amendment or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a), (b) and (c) of this Section 4.02.

Notwithstanding the failure to satisfy the conditions precedent set forth in paragraphs (a) or (b) of this Section 4.02, unless otherwise directed by the Required Lenders, the Administrative Agent may, but shall have no obligation to, continue to make Loans and an Issuing Bank may, but shall have no obligation to, issue, amend or extend, or cause to be issued, amended or extended, any Letter of Credit for the ratable account and risk of Lenders from time to time if the Administrative Agent believes that making such Loans or issuing, amending or extending, or causing the issuance, amendment or extension of, any such Letter of Credit is in the best interests of the Lenders.

ARTICLE V

Affirmative Covenants.

Until all of the Secured Obligations have been Paid in Full or the Required Lenders otherwise consent in writing, each Loan Party executing this Agreement covenants and agrees, and shall cause each Subsidiary to covenant and agree, jointly and severally with all of the other Loan Parties and such Subsidiaries, with the Lenders that:

SECTION 5.01 Financial Statements; Borrowing Base and Other Information. The Borrower will furnish to the Administrative Agent and each Lender:

(a) within ninety-five (95) days after the end of each fiscal year of the Company (beginning with the fiscal year ending December 31, 2020), its audited consolidated balance sheet and related statements of income (loss), stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing or otherwise satisfactory to the Administrative Agent in its sole discretion (without a "going concern" or like qualification, commentary or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, accompanied by any management letter prepared by said accountants;

(b) within fifty (50) days after the end of each of the first three fiscal quarters of each fiscal year of the Company (commencing with the fiscal quarter ending March 31, 2021), its consolidated balance sheets and related statements of income (loss), stockholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of such fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer of the Borrower as presenting fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) during any Availability Triggering Financial Statement Period, within twenty (20) days after the end of each fiscal month of the Company, its consolidated balance sheet and related statements of income (loss), stockholders' equity and cash flows as of the end of and for such fiscal month and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by a Financial Officer of the Borrower as presenting fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(d) concurrently with any delivery of financial statements under clause (a), (b) or (c) and on the first day that an Availability Triggering Covenant Event has occurred, a Compliance Certificate (i) certifying, in the case of the financial statements delivered under clause (b) or (c), as presenting fairly in all material respects the financial condition and results of operations of the Company and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes, (ii) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (iii) setting forth reasonably detailed calculations demonstrating compliance with Sections 6.13 (whether or not compliance with such Section is required at that time), (iv) setting forth any change in the identity of any of the Immaterial Subsidiaries with respect to its characterization as an Immaterial

Subsidiary pursuant to Section 5.14(g) during such period, (v) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate and (vi) setting forth all patents, trademarks, registered copyrights, service marks, and material license agreements owned by each Loan Party or Subsidiary or to which a Loan Party or Subsidiary is a party and that is not set forth on Schedule 3.05 hereto or on any previously delivered Compliance Certificate;

(e) within forty-five (45) days after the end of each fiscal year of the Borrower, (i) a report supplementing Schedule 3.05 and Exhibit A to the Security Agreement (with respect to locations of Collateral), including an identification of all owned and leased real property disposed of by any Loan Party or any Subsidiary thereof during such fiscal year, a list and description (including the street address, county or other relevant jurisdiction, state, record owner, book value thereof and, in the case of leases of property, lessor, lessee, expiration date and annual rental cost thereof) of all real property acquired or leased during such fiscal year and a description of such other changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete and (ii) a report supplementing Schedule 3.15 containing a description of all changes in the information included in such Schedules as may be necessary for such Schedules to be accurate and complete, each such report to be signed by a Responsible Officer of the Borrower and to be in a form reasonably satisfactory to the Administrative Agent;

(f) as soon as available, but in any event no later than 45 days after the end of each fiscal year of the Company, (x) a copy of the plan and forecast (including a projected consolidated balance sheet, income statement and cash flow statement) of the Company for each month of the upcoming fiscal year (the "Projections") in form reasonably satisfactory to the Administrative Agent and (y) any such other projections as required to be delivered under the Term Loan Credit Agreement;

(g) as soon as available but in any event within 20 days (or 25 days with respect to the first three such months after the Effective Date) of the end of each calendar month (or, upon the request of the Administrative Agent, during any Availability Triggering Financial Statement Event Period, on Wednesday of each week (or, if Wednesday is not a Business Day, on the next succeeding Business Day)), and at such other times as may be necessary to re-determine Availability or as may be requested by the Administrative Agent, as of the period then ended, a Borrowing Base Certificate and supporting information in connection therewith (including, in respect of any Borrowing Base Certificate delivered for a month that is also the end of any fiscal quarter of the Company, a calculation of Average Quarterly Availability for such quarter then ended and an indication of what the Applicable Rate is as a result of such Average Quarterly Availability), together with any additional reports with respect to the Borrowing as the Administrative Agent may reasonably request; provided, that (x) in the event the Borrower sells Accounts owed by an Account Debtor (or an Affiliate of an Account Debtor) pursuant to a Supplier Financing Agreement, Borrower shall (1) provide the Administrative Agent with at least three (3) Business Days' prior written notice of such sale and (2) prior to the start of any such sale program, deliver an updated Borrowing Base Certificate that reflects, on a pro forma basis, the removal of all Accounts (including, for the avoidance of doubt, any Accounts owed by an Account Debtor that are not sold pursuant to a Supplier Financing Agreement) owing to a Loan Party by such Account Debtor, and (y) in the event the Borrower subsequently discontinues selling all (but not

less than all) of the Accounts owed by an Account Debtor (or an Affiliate of an Account Debtor) to any Loan Party that was previously sold pursuant to a Supplier Financing Agreement, Borrower shall (1) provide the Administrative Agent with at least three (3) Business Days' prior written notice of such discontinuance and (2) after any such sale program has been discontinued but prior to the inclusion of any Accounts of such Account Debtor in the Borrowing Base, deliver an updated Borrowing Base Certificate that reflects, on a pro forma basis, the addition of any Eligible Accounts of such Account Debtor that have not been so sold; provided, that, for the avoidance of doubt, such Accounts shall not be included as Eligible Accounts unless such Accounts meet the criteria set forth in the definition of Eligible Accounts (including, without limitation, clauses (a) and (b));

(h) as soon as available but in any event within 20 days (or 25 days with respect to the first three months after the Effective Date) of the end of each calendar month (or, during Availability Triggering Financial Statement Event Period, on Wednesday (or, if Wednesday is not a Business Day, on the next succeeding Business Day) of each week (other than with respect to subclause (ii) below that will continue to be delivered on a monthly basis as provided above in this clause (h)) and at such other times as may be requested by the Administrative Agent, as of the period then ended, all delivered electronically in a text formatted file acceptable to the Administrative Agent;

(i) a detailed aging of the Loan Parties' Accounts, including all invoices aged by invoice date and due date (with an explanation of the terms offered), prepared in a manner reasonably acceptable to the Administrative Agent, together with a summary specifying the name, address, and balance due for each Account Debtor;

(ii) a schedule detailing the Loan Parties' Inventory, in form satisfactory to the Administrative Agent, (1) by location (showing Inventory in transit, any Inventory located with a third party under any consignment, bailee arrangement, or warehouse agreement), by class (raw material, work-in-process and finished goods), by product type, and by volume on hand, which Inventory shall be valued at the lower of cost (determined on a first-in, first-out basis) or market and adjusted for Reserves as the Administrative Agent has previously indicated to the Borrower are deemed by the Administrative Agent to be appropriate, and (2) including a report of any variances or other results of Inventory counts performed by the Loan Parties since the last Inventory schedule (including information regarding sales or other reductions, additions, returns, credits issued by Loan Parties and complaints and claims made against the Loan Parties);

(iii) a worksheet of calculations prepared by the Loan Parties to determine Eligible Accounts and Eligible Inventory, such worksheets detailing the Accounts and Inventory excluded from Eligible Accounts and Eligible Inventory and the reason for such exclusion;

(iv) a reconciliation of the Loan Parties' Accounts and Inventory between (A) the amounts shown in the Loan Parties' general ledger and financial statements and the reports delivered pursuant to clauses (i) and (ii) above and (B) the amounts and dates shown in the reports delivered pursuant to clauses (i) and (ii) above and the Borrowing Base Certificate delivered pursuant to clause (g) above as of such date; and

(v) a reconciliation of the loan balance per the Loan Parties' general ledger to the loan balance under this Agreement;

(i) promptly after the furnishing thereof, copies of any statement or report (other than any routine ministerial statements or reports) furnished to any holder of obligations pursuant to an agreement evidencing Material Indebtedness of any Loan Party pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to any other clause of this Section 5.01;

(j) if so requested by the Administrative Agent, not later than five (5) Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of all material notices, requests and other documents (including amendments, waivers and other modifications) so received under or pursuant to any agreement evidencing Material Indebtedness and, from time to time upon request by the Administrative Agent, such information and reports regarding any agreement evidencing Material Indebtedness as the Administrative Agent may reasonably request;

(k) promptly upon the Administrative Agent's request:

(i) copies of invoices issued by the Loan Parties in connection with any Accounts, credit memos, shipping and delivery documents, and other information related thereto;

(ii) copies of purchase orders, invoices, and shipping and delivery documents in connection with any Inventory or Equipment purchased by any Loan Party; and

(iii) a schedule detailing the balance of all intercompany accounts of the Loan Parties;

(l) [reserved];

(m) [reserved];

(n) [reserved];

(o) [reserved];

(p) promptly after the same become publicly available, copies of all periodic and other reports, definitive proxy statements and other materials filed by any Loan Party with the SEC (other than any routine ministerial statements, notices, reports or other documents), or any Governmental Authority succeeding to any or all of the functions of the SEC, or with any national securities exchange, or distributed by any Loan Party to its shareholders generally, as the case may be;

(q) [reserved];

(r) promptly following any request therefor, (i) such other information regarding the operations, changes in ownership of Equity Interests, business affairs and financial condition of any Loan Party or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request, and (ii) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation;

(s) promptly, and in any event within five (5) Business Days after receipt thereof by the Borrower or any Subsidiary, copies of each written notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by the SEC or such other agency regarding financial or other operational results of the Borrower or any Subsidiary thereof; and

(t) promptly following any request therefor, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of any Loan Party by independent accountants in connection with the accounts or books of such Loan Party or any Subsidiary, or any audit of any of them as the Administrative Agent or any Lender (through the Administrative Agent) may reasonably request.

Documents required to be delivered pursuant to Section 5.01(a), (b) or (p) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and, if so delivered, shall be deemed to have been delivered on the date (i) on which such materials are publicly available as posted on the Electronic Data Gathering, Analysis and Retrieval system (EDGAR); or (ii) on which such documents are posted on a Loan Party’s behalf on an Internet or intranet website (including the provision of a link thereto on the Borrower’s website on the Internet or intranet website), if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether made available by the Administrative Agent); provided that: (A) upon written request by the Administrative Agent (or any Lender through the Administrative Agent) to the Borrower, the Borrower shall deliver paper copies of such documents to the Administrative Agent or such Lender until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (B) the Borrower shall notify the Administrative Agent and each Lender (by fax or through Electronic Systems) of the posting of any such documents and provide to the Administrative Agent through Electronic Systems electronic versions (i.e. soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents to it and maintaining its copies of such documents.

The Company represents and warrants that each of it, and its Controlling and Controlled entities, in each case, if any (collectively with the Borrower, the “Relevant Entities”), either (i) has no SEC registered or unregistered, publicly traded securities outstanding, or (ii) files its financial statements with the SEC and/or makes its financial statements available to potential holders of its securities, and, accordingly, the Company hereby (A) authorizes the Administrative Agent to make the financial statements to be provided under Section 5.01(a) and (b) above (collectively or individually, as the context requires, the “Financial Statements”), along with the Loan Documents, available to Public-Siders and (B) agree that at the time such Financial Statements are provided

hereunder, they shall already have been made available to holders of any such securities. The Company will not request that any other material be posted to Public-Siders without expressly representing and warranting to the Administrative Agent in writing that such materials do not constitute material non-public information within the meaning of the federal securities laws or that the Relevant Entities have no outstanding SEC registered or unregistered, publicly traded securities. Notwithstanding anything herein to the contrary, in no event shall the Company request that the Administrative Agent make available to Public-Siders budgets or any certificates, reports or calculations with respect to the Loan Parties' compliance with the covenants contained herein or with respect to the Borrowing Base.

SECTION 5.02 Notices of Material Events. The Borrower will furnish to the Administrative Agent and each Lender prompt (but in any event within any time period that may be specified below) written notice of the following:

(a) the occurrence of any Default within five (5) Business Days after any Loan Party's actual knowledge thereof;

(b) receipt of any written notice of any investigation by a Governmental Authority or any litigation or Proceeding commenced or threatened in writing against any Loan Party or any Subsidiary that (i) seeks damages in excess of \$4,000,000, (ii) seeks injunctive relief that has resulted, or, either individually or in the aggregate, would reasonably be expected to result, in a Material Adverse Effect, (iii) is asserted or instituted against any Plan, its fiduciaries or its assets that has resulted, or, either individually or in the aggregate, would reasonably be expected to result, in a Material Adverse Effect, (iv) alleges criminal misconduct by any Loan Party or any Subsidiary, (v) alleges the violation of, or seeks to impose remedies under, any Environmental Law or related Requirement of Law, or seeks to impose Environmental Liability that has resulted, or, either individually or in the aggregate, would reasonably be expected to result, in a Material Adverse Effect, (vi) asserts liability on the part of any Loan Party or any Subsidiary in excess of \$4,000,000 in respect of any tax, fee, assessment, or other governmental charge, or (vii) involves any product recall that has resulted, or, either individually or in the aggregate, would reasonably be expected to result, in a Material Adverse Effect;

(c) any Lien (other than Liens permitted pursuant to Section 6.02) or claim made or asserted in writing against any material portion of the Collateral;

(d) any loss, damage, or destruction to the Collateral in the amount of \$4,000,000 or more, whether or not covered by insurance;

(e) within two (2) Business Days of receipt thereof, any and all default notices received under or with respect to any leased location or public warehouse where Collateral is located with a fair market value in excess of \$4,000,000;

(f) (i) no later than five (5) Business Days prior to earlier of the execution date or the effective date thereof, copies of substantially final drafts of any proposed amendment, supplement, waiver or other modification under or pursuant to the Term Loan Documents, the definitive documentation related to the Series D Preferred Stock or any documentation evidencing Material Indebtedness and (ii) copies of all final executed documents described;

(g) within two (2) Business Days after the occurrence thereof, any Loan Party entering into a Swap Agreement or an amendment thereto, together with copies of all agreements evidencing such Swap Agreement or amendment;

(h) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Loan Parties and their Subsidiaries in an aggregate amount exceeding \$4,000,000;

(i) any material change in accounting or financial reporting practices by the Borrower or any Subsidiary;

(j) any change in the credit ratings from a credit rating agency, or the placement by a credit rating agency of any Loan Party on a "Credit Watch" or "WatchList" or any similar list, in each case with negative implications, or the cessation by a credit rating agency of, or its intent to cease, rating such Loan Party's debt;

(k) any other development that results, or would, individually or in the aggregate, reasonably be expected to result in, a Material Adverse Effect;

(l) any other data or information required to be provided to the Term Loan Agent or any lender under the Term Loan Documents (other than routine ministerial reports, notices and documents that are not material), at the same time such data or information is provided to such Person;

(m) any change in the information provided in the Beneficial Ownership Certification delivered to such Lender that would result in a change to the list of beneficial owners identified in such certification; and

(n) promptly after any Loan Party or any Subsidiary thereof obtains knowledge that any Loan Party or any Subsidiary thereof or any Person that owns, directly or indirectly, any Equity Interest of any Loan Party or any Subsidiary thereof, or any other holder at any time of any direct or indirect equitable, legal or beneficial interest therein is in violation or breach of any of Section 5.06 or 5.08, such Loan Party or Subsidiary will deliver reasonably prompt notice to the Administrative Agent and the Lenders of such violation.

Each notice delivered under this Section (i) shall be in writing, (ii) shall contain a heading or a reference line that reads "Notice under Section 5.02 of Credit Agreement dated March 22, 2021" and (iii) shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

**SECTION 5.03 Existence; Conduct of Business.** Each Loan Party will, and will cause each Subsidiary to, (a) do or cause to be done all things necessary to preserve, renew and keep in full force and effect (i) its legal existence and (ii) the rights, qualifications, licenses, permits, franchises, governmental authorizations, intellectual property rights, licenses and permits material to the conduct of its business, except in the case of this subclause (ii) to the extent that failure to do so, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, and maintain all requisite authority to conduct its business in each

jurisdiction in which its business is conducted, provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03, and (b) carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted.

SECTION 5.04 Payment of Obligations. Each Loan Party will, and will cause each Subsidiary to, pay or discharge all Material Indebtedness and all federal and state and other material Taxes, before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Loan Party or Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) such liabilities would not result in aggregate liabilities in excess of \$4,000,000 and none of the Collateral would become subject to forfeiture or loss as a result of the contest; provided, however, that each Loan Party will, and will cause each Subsidiary to, remit withholding taxes and other payroll taxes to appropriate Governmental Authorities as and when claimed to be due, notwithstanding the foregoing exceptions.

SECTION 5.05 Maintenance of Properties. Except where the failure to do so, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, each Loan Party will, and will cause each Subsidiary to, keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted.

SECTION 5.06 Books and Records; Inspection Rights. Each Loan Party will (a) keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities and (b) permit any representatives designated by the Administrative Agent or any Lender (including employees of the Administrative Agent or any consultants, accountants, lawyers, agents and appraisers retained by the Administrative Agent), upon reasonable prior notice and during the Company's normal business hours, to visit and inspect its properties, to conduct at such Loan Party's premises field examinations of such Loan Party's assets, liabilities, books and records, including examining and making extracts from its books and records, environmental assessment reports and Phase I or Phase II studies, and to discuss its affairs, finances and condition with its officers and independent accountants (and hereby authorizes the Administrative Agent to contact its independent accountants directly) and to provide contact information for each bank where each Loan Party has a depository and/or securities account and each such Loan Party hereby authorizes the Administrative Agent to contact the bank(s) in order to request bank statements and/or balances, all at such reasonable times and as often as reasonably requested; provided, that if an Event of Default has occurred and is continuing, the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing without advance notice. Each Loan Party acknowledges that the Administrative Agent, after exercising its rights of inspection, may prepare and distribute to the Lenders certain Reports pertaining to the Loan Parties' assets for internal use by the Administrative Agent and the Lenders. The Loan Parties shall be responsible for the costs of expenses of one (1) field examination during any 12-month period and one (1) additional field examination (for the total of two (2) such field examinations during any 12-month period) conducted at any time after Availability falls below 15% of the Aggregate Revolving Commitment; provided, that the Loan Parties shall be responsible for the costs and expenses of all field examinations conducted while an Event of Default has occurred and is continuing.

SECTION 5.07 Compliance with Laws and Material Contractual Obligations. Each Loan Party will, and will cause each Subsidiary to, (a) comply with each Requirement of Law applicable to it or its property (including without limitation Environmental Laws) and (b) perform in all respects its obligations under agreements to which it is a party, except, in each case, where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect. Each Loan Party will maintain in effect and enforce policies and procedures designed to promote and achieve compliance by such Loan Party, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 5.08 Use of Proceeds.

(a) The proceeds of the Loans and the Letters of Credit will be used only for working capital and other general corporate purposes by the Loan Documents (including for capital expenditures, Permitted Acquisitions, the repayment or refinancing of Indebtedness and the making of Investments). No part of the proceeds of any Loan and no Letter of Credit will be used, whether directly or indirectly, for any purpose that entails a violation of any of the regulations of the Federal Reserve Board, including Regulations T, U and X. Letters of Credit will be issued only to support business and operations of the Loan Parties and their Subsidiaries.

(b) The Borrower will not request any Borrowing or Letter of Credit, and the Borrower shall not use, and the Borrower shall ensure that its Subsidiaries and its and their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing or Letter of Credit (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 5.09 Accuracy of Information. The Loan Parties will ensure that any information, including financial statements or other documents, furnished to the Administrative Agent or the Lenders in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder contains no material misstatement of fact or omits to state any material fact necessary to make the statements therein (when taken as a whole), in the light of the circumstances under which they were made, not materially misleading, and the furnishing of such information shall be deemed to be a representation and warranty by the Borrower on the date thereof as to the matters specified in this Section; provided that (a) no representation is made with respect to general economic or industry information and (b) with respect to projected and *pro forma* financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions reasonably believed by the Borrower to be reasonable at the time of preparation; it being understood that such projections may vary from actual results and that such variances may be material.

SECTION 5.10 Insurance. Each Loan Party will, and will cause each Subsidiary to, maintain with financially sound and reputable carriers having a financial strength rating of at least A- by A.M. Best Company (a) insurance in such amounts (with no greater risk retention) and against such risks (including, without limitation: loss or damage by fire and loss in transit; theft, burglary, pilferage, larceny, embezzlement, and other criminal activities; business interruption; and general liability) and such other hazards, as is customarily maintained by companies of established repute engaged in the same or similar businesses operating in the same or similar locations and (b) all insurance required pursuant to the Collateral Documents. The Borrower will furnish to the Lenders, upon request of the Administrative Agent, but no less frequently than annually, information in reasonable detail as to the insurance so maintained.

SECTION 5.11 Casualty and Condemnation. The Borrower will (a) furnish to the Administrative Agent and the Lenders prompt written notice of any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any material portion of the Collateral or interest therein under power of eminent domain or by condemnation or similar proceeding and (b) ensure that the Net Proceeds of any such event (whether in the form of insurance proceeds, condemnation awards or otherwise) are collected and applied in accordance with the applicable provisions of this Agreement and the Collateral Documents.

SECTION 5.12 Appraisals. At any time that the Administrative Agent requests, each Loan Party will provide the Administrative Agent with appraisals or updates thereof of its Inventory from an appraiser selected and engaged by the Administrative Agent in consultation with the Borrower, and prepared on a basis reasonably satisfactory to the Administrative Agent, such appraisals and updates to include, without limitation, information required by any applicable Requirement of Law. The Loan Parties shall be responsible for the costs of expenses of one (1) Inventory appraisal during any 12-month period and one (1) additional field examination (for the total of two (2) such Inventory appraisals during any 12-month period) conducted at any time after Availability falls below 15% of the Aggregate Revolving Commitment. Additionally, there shall be no limitation on the number or frequency of Inventory appraisals if an Event of Default has occurred and is continuing, and the Loan Parties shall be responsible for the costs and expenses of any such appraisals conducted while an Event of Default has occurred and is continuing.

SECTION 5.13 Depository Banks. Within one hundred twenty (120) days of the Effective Date, or such later date as shall be agreed to by Administrative Agent, in its sole discretion, the Loan Parties will maintain their primary depository, blocked account and cash management relationship with Administrative Agent or an Affiliate of the Administrative Agent; provided, that, (i) with respect to the Collection Account and the Concentration Account, (x) on or prior to the Effective Date, such accounts shall be maintained with the Administrative Agent or an Affiliate of the Administrative Agent, (y) on or prior to the Effective Date, such accounts shall meet all applicable requirements set forth in the Term Loan Credit Agreement, and (z) within one hundred twenty (120) days of the Effective Date, such accounts shall be subject to a Control Agreement and (ii) within sixty (60) days of the Effective Date, the Loan Parties shall have established Lock Boxes with the banks set forth on Exhibit B to the Security Agreement, which Lock Boxes shall be subject to Lock Box Agreements. Within sixty (60) days of the Effective Date, the Administrative Agent shall have control of all other deposit and securities accounts of all Loan Parties (other than Excluded Deposit Accounts) pursuant to executed Control Agreements

and other executed documentation as shall be required by Administrative Agent, in its reasonable discretion, such documentation to be in form and substance satisfactory to Administrative Agent and delivered to Administrative Agent, it being understood and agreed that, other than with respect to any Excluded Deposit Account, Company and the other Loan Parties will cause or direct all cash to be transferred daily to, and maintained in, accounts subject to a Control Agreement. During any Availability Triggering Covenant Event Period the Administrative Agent may at all times require that all such cash be swept on a daily basis to an account of Administrative Agent to be applied by Administrative Agent to repay outstanding Loans, LC Disbursements, other amounts then due and payable, and, if an Event of Default exists, to cash collateralize outstanding Letters of Credit in an amount equal to 105% of the face amount thereof ("Cash Dominion"). Unless an Availability Triggering Covenant Event Period is continuing, the Administrative Agent waives Cash Dominion. Subject to Section 5.15, with respect to any deposit accounts or securities accounts not maintained with the Administrative Agent or an Affiliate of the Administrative Agent, Loan Parties shall maintain springing or blocked deposit accounts pursuant to springing, lockbox and blocked account arrangements reasonably acceptable to Administrative Agent with such banks as may be selected by the Borrower and be reasonably acceptable to Administrative Agent; provided, that Administrative Agent hereby agrees that it shall not institute or otherwise require a Control Agreement and/or springing or blocked account agreement with regard to any Excluded Deposit Account maintained by any Loan Party. At any time Cash Dominion is in existence, Administrative Agent shall have the right to issue to any such banks irrevocable instructions directing such banks to remit all payments or other remittances received in the accounts to an account of Administrative Agent for application on account of the Obligations as provided herein. Administrative Agent assumes no responsibility for such lockbox and blocked account arrangements, including, without limitation, any claim of accord and satisfaction or release with respect to deposits accepted by any bank thereunder. For each deposit account or brokerage account that any Loan Party at any time opens after the Effective Date, the Loan Parties shall maintain such account with the Administrative Agent and enter into a Control Agreement and/or blocked account agreement in accordance with this Section.

SECTION 5.14 Additional Collateral; Further Assurances. (a) Subject to applicable Requirement of Law, each Loan Party will cause each Subsidiary (other than Excluded Subsidiaries) formed or acquired after the date of this Agreement to become a Loan Party by executing a Joinder Agreement within forty-five (45) days of such formation or acquisition (or such longer period as the Administrative Agent shall approve in its sole discretion). In connection therewith, the Administrative Agent shall have received all documentation and other information regarding such newly formed or acquired Subsidiaries as may be required to comply with the applicable "know your customer" rules and regulations, including the USA Patriot Act. Upon execution and delivery thereof, each such Person (i) shall automatically become a Guarantor hereunder and thereupon shall have all of the rights, benefits, duties and obligations in such capacity under the Loan Documents and (ii) will grant Liens to the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, in any property of such Loan Party that constitutes Collateral. Notwithstanding anything herein or in the Term Loan Documents to the contrary and subject to the Lien priorities specified within the Intercreditor Agreement, (x) no Person shall become a Guarantor (as defined in the Term Loan Credit Agreement) under the Term Loan Credit Agreement if they are not a Guarantor hereunder, and (y) no Person shall grant Liens to the Term Loan Agent in any property of such Loan Party that constitutes Collateral (as defined in the Term Loan Credit Agreement) under the Term Loan Credit Agreement or the Term Loan Documents if they do not grant Liens to the Administrative Agent in such property of such Loan Party that constitutes Collateral under this Agreement or the Loan Documents.

(b) Each Loan Party will cause (i) 100% of the issued and outstanding Equity Interests of each of its Domestic Subsidiaries and (ii) 65% of the issued and outstanding Equity Interests entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2)) and 100% of the issued and outstanding Equity Interests not entitled to vote (within the meaning of Treas. Reg. Section 1.956-2(c)(2) in each Foreign Subsidiary organized in Mexico, Brazil and Poland or Foreign Subsidiary Holding Company directly owned by the Borrower or any Domestic Subsidiary to be subject at all times to a first priority, perfected Lien in favor of the Administrative Agent, for the benefit of the Administrative Agent and the other Secured Parties, pursuant to the terms and conditions of the Loan Documents or other security documents as the Administrative Agent shall reasonably request.

(c) Without limiting the foregoing, each Loan Party will, and will cause each Subsidiary to, execute and deliver, or cause to be executed and delivered, to the Administrative Agent such documents, agreements and instruments, and will take or cause to be taken such further actions (including the filing of financing statements, mortgages, deeds of trust and other documents and such other actions or deliveries of the type required by Section 4.01, as applicable), that may be required by any Requirement of Law or that the Administrative Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents and to ensure perfection and priority of the Liens created or intended to be created by the Collateral Documents, all in form and substance reasonably satisfactory to the Administrative Agent and all at the expense of the Loan Parties.

(d) If any assets (excluding Excluded Assets) are acquired by any Loan Party after the Effective Date (other than assets constituting Collateral under the Security Agreement that become subject to the Lien under the Security Agreement upon acquisition thereof), the Borrower will (i) notify the Administrative Agent and the Lenders thereof and, if requested by the Administrative Agent or the Required Lenders, cause such assets to be subjected to a Lien securing the Secured Obligations and (ii) take, and cause each applicable Loan Party to take, such actions as shall be necessary or reasonably requested by the Administrative Agent to grant and perfect such Liens, including actions described in paragraph (c) of this Section, all at the expense of the Loan Parties.

(e) Each Loan Party shall use commercially reasonable efforts to obtain a Collateral Access Agreement, from the lessor of each leased property, mortgagee of owned property or bailee or consignee with respect to any warehouse, processor or converter facility or other location where Collateral is stored or located with a fair market value in excess of \$250,000 (other than any such locations that are leased by the Loan Parties as of the Effective Date), which agreement or letter shall provide access rights, contain a waiver or subordination of all Liens or claims that the landlord, mortgagee, bailee or consignee may assert against the Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to the Administrative Agent. After the Effective Date, no real property or warehouse space shall be leased by such Loan Party and no Inventory shall be shipped to a processor or converter under arrangements established after the Effective Date, unless and until a satisfactory Collateral Access Agreement shall first have been obtained with respect to such location. Such Loan Party shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location or third party warehouse where any Collateral is or may be located.

(f) The Borrower shall provide the Administrative Agent with prompt written notice with respect to any Material Real Property or material personal property (other than accounts, inventory, equipment and general intangibles and other property acquired in the ordinary course of business) acquired by any Loan Party subsequent to the Effective Date. In addition to any other right that the Administrative Agent and the Lenders may have pursuant to this Agreement or otherwise, upon written request of the Administrative Agent, whenever made, the Borrower shall, and shall cause each Loan Party to, grant to the Administrative Agent, for the benefit of the Lenders, as additional security for the Obligations, a perfected Lien on any Material Real Property or personal property of each Loan Party, including, without limitation, such property acquired subsequent to the Effective Date, in which the Administrative Agent does not have a perfected first priority Lien (subject to the terms of the Intercreditor Agreement and any Liens permitted pursuant to Section 6.02). The Borrower agrees, (i) in the case of Material Real Property, to provide all Real Estate Requirements with respect to such Material Real Property within ninety (90) days (or such later time as may be specified by the Administrative Agent in its sole but reasonable discretion) of acquisition of such Material Real Property, and (ii) in all other cases, within ten (10) days after the date of a written request by the Administrative Agent, to secure all of the Obligations by delivering to the Administrative Agent security agreements, intellectual property security agreements, pledge agreements, mortgages (or deeds of trust, if applicable) or other documents, instruments or agreements or such thereof as the Administrative Agent may reasonably require. The Borrower shall pay all recordation, legal and other expenses in connection therewith.

(g) In the event that the Immaterial Subsidiaries, when taken as a whole, (i) contribute more than 5% of the Consolidated EBITDA of the Borrower and its Subsidiaries, taken as a whole, during the most recently-ended four fiscal quarter period (taken as a single period) or (ii) as of any applicable date of determination have assets that in the aggregate constitute more than 5% aggregate net book value of the assets of the Borrower and its Subsidiaries, taken as a whole, the Borrower shall promptly designate one or more Immaterial Subsidiaries to be Loan Parties hereunder (at which time such Subsidiaries shall cease to be Immaterial Subsidiaries) such that the resulting Consolidated EBITDA attributable to, and net book value of the assets held by, the remaining Immaterial Subsidiaries, when taken as a whole, shall be less than the required percentages set forth in clauses (i) and (ii) of this clause (g). Notwithstanding anything contained herein to the contrary and for the avoidance of doubt, no Subsidiary shall constitute either an Immaterial Subsidiary if such Subsidiary guarantees or provides a Lien on its assets or otherwise provide credit support with respect to any other Indebtedness of any Loan Party.

SECTION 5.15 Post-Closing Obligations. Each Loan Party shall, and shall cause each of its Subsidiaries to, as applicable, satisfy the requirements set forth on Schedule 5.15 on or before the respective date specified for each such requirement or such later date as is agreed to by Administrative Agent in its sole discretion.

ARTICLE VI

Negative Covenants.

Until all of the Secured Obligations have been Paid in Full, each Loan Party executing this Agreement covenants and agrees, and shall cause each Subsidiary to covenant and agree, jointly and severally with all of the other Loan Parties and such Subsidiaries, with the Lenders that:

SECTION 6.01 Indebtedness. No Loan Party will, nor will it permit any Subsidiary to, create, incur, assume or suffer to exist any Indebtedness, except:

(a) the Secured Obligations (including Indebtedness created under an incremental revolving facility increase pursuant to Section 2.09);

(b) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and any Refinance in respect thereof;

(c) Indebtedness of the Borrower to any Subsidiary and of any Subsidiary to the Borrower or any other Subsidiary, provided that (i) Indebtedness of any Subsidiary that is not a Loan Party to the Borrower or any other Loan Party shall be subject to Section 6.04(c), (d) and (e) and (ii) Indebtedness of any Loan Party to any Subsidiary that is not a Loan Party shall be subordinated to the Secured Obligations on terms reasonably satisfactory to the Administrative Agent;

(d) Guarantees by the Borrower of Indebtedness of any Subsidiary and by any Subsidiary of Indebtedness of the Borrower or any other Subsidiary, provided that (i) the Indebtedness so Guaranteed is permitted by this Section 6.01, (ii) Guarantees by the Borrower or any other Loan Party of Indebtedness of any Subsidiary that is not a Loan Party shall be subject to Section 6.04(c) and (iii) Guarantees permitted under this clause (d) shall be subordinated to the Secured Obligations on the same terms as the Indebtedness so Guaranteed is subordinated to the Secured Obligations;

(e) Indebtedness of the Borrower or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets (whether or not constituting purchase money Indebtedness), including Financing Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness in accordance with clause (f) below; provided that (i) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) together with any Refinance Indebtedness in respect thereof permitted by clause (f) below, shall not exceed \$20,000,000 at any time outstanding;

(f) Indebtedness that represents extensions, renewals, refinancing or replacements (such Indebtedness being so extended, renewed, refinanced or replaced being referred to herein as the "Refinance Indebtedness") of any of the Indebtedness described in clauses (b), (e), (j) and (k) hereof (such Indebtedness being referred to herein as the "Original Indebtedness"); provided that (i) such Refinance Indebtedness does not increase the principal amount or interest rate of the

Original Indebtedness, (ii) any Liens securing such Refinance Indebtedness are not extended to any additional property of any Loan Party or any Subsidiary, (iii) no Loan Party or any Subsidiary that is not originally obligated with respect to repayment of such Original Indebtedness is required to become obligated with respect to such Refinance Indebtedness, (iv) such Refinance Indebtedness does not result in a shortening of the average weighted maturity of such Original Indebtedness, (v) the terms of such Refinance Indebtedness are not less favorable to the obligor thereunder than the original terms of such Original Indebtedness and (vi) if such Original Indebtedness was subordinated in right of payment or security to the Secured Obligations, then the terms and conditions of such Refinance Indebtedness must include subordination terms and conditions that are at least as favorable to the Administrative Agent and the Lenders as those that were applicable to such Original Indebtedness;

(g) Indebtedness owed to any Person providing workers' compensation, health, disability or other employee benefits or property, casualty or liability insurance, pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business;

(h) Indebtedness of any Loan Party in respect of performance bonds, bid bonds, appeal bonds, surety bonds and similar obligations, in each case provided in the ordinary course of business;

(i) so long as the Term Debt is subject to the terms and conditions of the Intercreditor Agreement, the Term Debt in an aggregate amount outstanding under this clause (i) at any time not to exceed the Term Loan Cap (as defined in the Intercreditor Agreement) at any time outstanding and any permitted refinancing (as permitted in the Intercreditor Agreement) thereof;

(j) Indebtedness of any Person that becomes a Subsidiary of a Loan Party after the date hereof pursuant to a Permitted Acquisition and any Refinancing Indebtedness in respect thereof; provided that (i) such Indebtedness is existing at the time such Person becomes a Subsidiary of such Loan Party (and is not incurred in contemplation of such Person's becoming a Subsidiary of such Loan Party), (ii) no Event of Default has occurred and is continuing, (iii) after giving *pro forma* effect thereto and to the application of the proceeds thereof (but disregarding any costs constituting proceeds thereof for the purposes of netting), the Borrower and its Subsidiaries shall be in *pro forma* compliance with (A) the Payment Conditions and (B) the Consolidated Net Leverage Ratio required pursuant to Section 7.14 of the Term Loan Credit Agreement, (iv) such Indebtedness is either secured by a Lien on the Collateral that is junior to the Liens securing the Obligations or is unsecured and (v) the aggregate principal amount of Indebtedness outstanding in reliance on this clause (j) that is (A) secured by a Lien on the Collateral that is junior to the Liens securing the Obligations, the amount of such Indebtedness shall not exceed \$10,000,000 at any time outstanding and (B) unsecured, the amount of such Indebtedness shall not exceed \$10,000,000 at any time outstanding;

(k) Indebtedness under any Swap Agreement, so long as such Swap Agreement shall have been entered into in the ordinary course of business and not for speculative purposes;

(l) Indebtedness incurred in connection with the financing of insurance premiums, in an aggregate amount not to exceed \$5,000,000 at any time outstanding;

(m) [reserved];

(n) the obligations (which shall not constitute Indebtedness for borrowed money) under any Supplier Financing Agreement, in an aggregate amount for all such obligations under this clause (n) not to exceed \$20,000,000 in the aggregate;

(o) other Indebtedness in an aggregate principal amount for the Borrower and all of its Subsidiaries not to exceed \$15,000,000 at any time outstanding; provided that, to the extent such Indebtedness is secured, it may only be secured by a Lien on the Collateral that is junior to the Liens securing the Obligations and subject to (i) no Event of Default has occurred and is continuing and (ii) after giving *pro forma* effect thereto (and to any Indebtedness incurred in connection therewith), the Borrower and its Subsidiaries shall be in compliance with the Consolidated Net Leverage Ratio as set forth in the Term Loan Credit Agreement (as in effect on the Effective Date or as amended with the consent of the Administrative Agent); and

(p) the Series D Preferred Stock on an unsecured basis, which, for the avoidance of doubt, shall also permit the accrual of interest or preferred return that is paid in the form of additional Indebtedness (including, without limitation, the form of an increase to a liquidation preference).

SECTION 6.02 Liens. No Loan Party will, nor will it permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including Accounts) or rights in respect of any thereof, except:

(a) Liens created pursuant to any Loan Document;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of the Borrower or any Subsidiary existing on the date hereof and set forth in Schedule 6.02; provided that (i) such Lien shall not apply to any other property or asset of the Borrower or such Subsidiary or any other Subsidiary and (ii) such Lien shall secure only those obligations that it secures on the date hereof, and extensions, renewals, replacements, refundings or refinancings thereof, but only to the extent that the amount of Indebtedness secured thereby shall not be increased (except by an amount equal to a reasonable premium, and fees and expenses reasonably incurred, in connection with such replacement, extension, renewal, refunding or refinancing and by an amount equal to any existing commitments unutilized thereunder) and the property secured thereby is not expanded or changed;

(d) Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Subsidiary; provided that (i) such Liens secure Indebtedness permitted by clause (e) of Section 6.01, (ii) such Liens and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such Liens shall not apply to any other property or assets of the Borrower or such Subsidiary or any other Subsidiary;

(e) any Lien existing on any property or asset (other than Accounts and Inventory) prior to the acquisition thereof by the Borrower or any Subsidiary or existing on any property or asset (other than Accounts and Inventory) of any Person that becomes a Loan Party after the date hereof prior to the time such Person becomes a Loan Party; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Loan Party, as the case may be, (ii) such Lien shall not apply to any other property or assets of the Loan Party and (iii) such Lien shall secure only those obligations that it secures on the date of such acquisition or the date such Person becomes a Loan Party, as the case may be, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(f) Liens of a collecting bank arising in the ordinary course of business under Section 4-210 of the UCC in effect in the relevant jurisdiction covering only the items being collected upon;

(g) Liens arising out of Sale and Leaseback Transactions permitted by Section 6.06;

(h) Liens in favor of the Term Loan Agent pursuant to the Term Loan Documents and subject to the terms of the Intercreditor Agreement;

(i) Liens granted by a Subsidiary that is not a Loan Party in favor of the Borrower or another Loan Party in respect of Indebtedness owed by such Subsidiary;

(j) other Liens securing Indebtedness permitted by Section 6.01(k); provided that no such Lien shall extend to, or cover, any Collateral;

(k) Liens in respect of any judgment solely to the extent not constituting an Event of Default under Section 8.01(k);

(l) Liens arising solely from precautionary UCC financing statements filed with respect to any consignment agreement entered into by Borrower or any Subsidiary in the ordinary course of business;

(m) any non-consensual statutory or civil law Lien arising in the Netherlands under Netherland's General Banking Conditions (other than arising under article 26 thereof) so long as such Lien does not secure Indebtedness and arises in the ordinary course of business;

(n) Liens granted pursuant to the Precious Metal Consignment Agreements so long as such Lien does not secure Indebtedness;

(o) other non-consensual Liens not securing Indebtedness, (i) the amount of which does not exceed \$5,000,000 in the aggregate at any time outstanding, and (ii) the existence of which, either individually or in the aggregate, will not have a Material Adverse Effect; provided that any Lien permitted by this clause (o) is permitted only for so long as is reasonably necessary for the affected Loan Party or the affected Subsidiary, using its best efforts, to remove or eliminate such Lien and, provided, further, that any Lien not otherwise permitted by this clause (o) shall be permitted so long as such Loan Party or the affected Subsidiary shall within thirty (30) days after the filing thereof either (A) cause such Lien to be discharged, or (B) post with the Administrative Agent a bond or other security in form and amount satisfactory to the Administrative Agent in all respects and shall thereafter diligently pursue its discharge;

(p) any Lien on a Sold Account;

(q) Liens on Transferred Accounts pursuant to a Supplier Financing Agreement permitted under Section 6.01(n);

(r) other Liens securing Indebtedness permitted by Section 6.01(o) the amount of which does not exceed \$10,000,000; provided that such Liens must be junior to the Liens securing the Collateral and the Term Priority Collateral.

Notwithstanding the foregoing, none of the Liens permitted pursuant to this Section 6.02 may at any time attach to any Loan Party's (1) Accounts, other than (i) those permitted under clause (a) of the definition of Permitted Encumbrances, (ii) those permitted under clause (a) above and (iii) any Lien on a Sold Account and (2) Inventory, other than those permitted under clauses (a) and (b) of the definition of Permitted Encumbrances and clause (a) above.

SECTION 6.03 Fundamental Changes. (a) No Loan Party will, nor will it permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or otherwise Dispose of all or substantially all of its assets, or all or substantially all of the stock of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing (i) any Subsidiary of the Borrower may merge into the Borrower in a transaction in which the Borrower is the surviving entity (ii) any Subsidiary of the Borrower may merge into any one of more Loan Parties in a transaction in which a Loan Party is the surviving entity, (iii) any Subsidiary (other than a Loan Party) may merge, amalgamate or consolidate with or into any other Subsidiary (other than a Loan Party), (iv) a Foreign Subsidiary may merge, amalgamate or consolidate with or into another Foreign Subsidiary or the Borrower or a Loan Party (provided that, in any merger, amalgamation or consolidation involving the Borrower or a Loan Party, the Borrower or Loan Party shall be the continuing or surviving Person), (v) any Loan Party (other than the Borrower) may merge into any other Loan Party in a transaction in which the surviving entity is a Loan Party and (vi) any Subsidiary may be dissolved or liquidated so long as such Subsidiary is not, at the time, a Loan Party or, if it is a Loan Party at such time, all assets and interests of such Subsidiary, are transferred to another Loan Party on or before the time of its dissolution or liquidation; provided that any such merger involving a Person that is not a wholly owned Subsidiary immediately prior to such merger shall not be permitted unless also permitted by Section 6.04.

(b) No Loan Party will, nor will it permit any Subsidiary to, consummate a Division as the Dividing Person, without the prior written consent of Administrative Agent. Without limiting the foregoing, if any Loan Party that is a limited liability company consummates a Division (with or without the prior consent of Administrative Agent as required above), each Division Successor shall be required to comply with the obligations set forth in Section 5.14 and the other further assurances obligations set forth in the Loan Documents and become a Loan Party under this Agreement and the other Loan Documents.

(c) No Loan Party will, nor will it permit any Subsidiary to, engage in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the date hereof and businesses substantially similar, reasonably related, incidental thereto and reasonable expansions and extensions thereof.

(d) No Loan Party will, nor will it permit any Subsidiary to, change its fiscal year from the basis in effect on the Effective Date.

(e) No Loan Party will change the accounting basis upon which its financial statements are prepared, except as required by GAAP after providing written notice to the Administrative Agent and any reconciliation statements requested by the Administrative Agent.

**SECTION 6.04 Investments, Loans, Advances, Guarantees and Acquisitions.** No Loan Party will, nor will it permit any Subsidiary to, form any subsidiary after the Effective Date, or purchase, hold or acquire (including pursuant to any merger with any Person that was not a Loan Party and a wholly owned Subsidiary prior to such merger) any evidences of Indebtedness or Equity Interests (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, Guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of transactions) any assets of any other Person constituting a business unit (whether through purchase of assets, merger or otherwise), except:

(a) Permitted Investments;

(b) investments in existence on the date hereof and described in Schedule 6.04;

(c) investments by the Borrower and the Subsidiaries in Equity Interests in their respective Subsidiaries, provided that (i) any such Equity Interests held by a Loan Party shall be pledged pursuant to the Security Agreement (subject to the limitations applicable to Equity Interests of a Foreign Subsidiary referred to in Section 5.14) and (ii) the aggregate amount of investments by Loan Parties in Subsidiaries that are not Loan Parties (together with outstanding intercompany loans permitted under clause (ii) to the proviso to Section 6.04(d) and outstanding Guarantees permitted under the proviso to Section 6.04(e)) shall not exceed \$30,000,000 during any fiscal year and \$60,000,000 in the aggregate at any time outstanding after the Effective Date (in each case determined without regard to any write-downs or write-offs) and the Payment Conditions shall be satisfied prior to and after giving effect to any such investment;

(d) loans or advances made by any Loan Party to any Subsidiary and made by any Subsidiary to a Loan Party or any other Subsidiary, provided that (i) any such loans and advances made by a Loan Party shall be evidenced by a promissory note to the extent required by and pledged pursuant to the Security Agreement and (ii) the amount of such loans and advances made by Loan Parties to Subsidiaries that are not Loan Parties (together with outstanding investments permitted under clause (ii) to the proviso to Section 6.04(c) and outstanding Guarantees permitted under the proviso to Section 6.04(e)) shall not exceed \$30,000,000 during any fiscal year and \$60,000,000 in the aggregate at any time outstanding after the Effective Date (in each case determined without regard to any write-downs or write-offs);

(e) Guarantees constituting Indebtedness permitted by Section 6.01, provided that the aggregate principal amount of Indebtedness of Subsidiaries that are not Loan Parties that is Guaranteed by any Loan Party (together with outstanding investments permitted under clause (ii) to the proviso to Section 6.04(c) and outstanding intercompany loans permitted under clause (ii) to the proviso to Section 6.04(d)) shall not exceed \$30,000,000 during any fiscal year and \$60,000,000 in the aggregate at any time outstanding after the Effective Date (in each case determined without regard to any write-downs or write-offs);

(f) loans or advances made by a Loan Party to its officers or in the ordinary course of business consistent with past practices as an advance on commission, travel and entertainment expenses, relocation costs and similar purposes up to a maximum of \$1,000,000 at any one time outstanding;

(g) notes payable, or stock or other securities issued by Account Debtors to a Loan Party pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the ordinary course of business, consistent with past practices;

(h) investments in the form of Swap Agreements permitted by Section 6.07;

(i) investments of any Person existing at the time such Person becomes a Subsidiary of the Borrower or consolidates or merges with the Borrower or any of the Subsidiaries (including in connection with a Permitted Acquisition) so long as such investments were not made in contemplation of such Person becoming a Subsidiary;

(j) investments received in connection with Dispositions permitted by Section 6.05;

(k) investments constituting deposits described in clauses (c) and (d) of the definition of the term "Permitted Encumbrances";

(l) Permitted Acquisitions;

(m) Investments in Wuxi Weifu Autocam Precision Machinery Components Co., Ltd. (the "Wuxi Weifu JV"), so long as (A) no Default has occurred and is continuing or would result therefrom and (B) the aggregate amount of such Investments is limited to those made using reinvestment dividends or other distributions received from the Wuxi Weifu JV;

(n) the creation of a Subsidiary for the purpose of making a Permitted Acquisition or the holding of any Subsidiary as a result of a Permitted Acquisition, so long as, in each case, if required pursuant to Section 5.14 hereof, such Subsidiary becomes a Loan Party in accordance with Section 5.14;

(o) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(p) non-cash Investments made by Borrower or any Loan Party in any Foreign Subsidiary consisting of obligations of such Foreign Subsidiary to pay Capital Distributions to the Borrower or any other Loan Party that have been declared but the payment of which has been deferred (whether or not such obligation to pay such Capital Distributions is represented by a promissory note that has been pledged to the Administrative Agent in accordance with the Collateral Documents); and

(q) any other Investments of the Loan Parties and their Subsidiaries not otherwise covered by the foregoing clauses of this Section 6.04, so long as the Payment Conditions are satisfied after giving effect to such Investments.

SECTION 6.05 Asset Sales. No Loan Party will, nor will it permit any Subsidiary to, Dispose of any asset, including any Equity Interest owned by it, nor will the Borrower permit any Subsidiary to issue any additional Equity Interest in such Subsidiary (other than Disposition of assets to the Borrower or another Subsidiary in compliance with Section 6.04), except:

(a) Dispositions of (i) inventory or goods held for sale in the ordinary course of business and (ii) immaterial, used, obsolete, worn out or surplus equipment or property in the ordinary course of business;

(b) Dispositions of Accounts in connection with the compromise, settlement or collection thereof;

(c) Dispositions of Permitted Investments and other investments permitted by clauses (i) and (k) of Section 6.04;

(d) Sale and Leaseback Transactions permitted by Section 6.06;

(e) Dispositions resulting from any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of the Borrower or any Subsidiary;

(f) the sale of Accounts owing by an Account Debtor of a Loan Party to a Supplier Financing Intermediary under a Supplier Financing Agreement so long as (i) such Supplier Financing Agreement is in full force and effect at the time of any such sale, (ii) all proceeds of such sale are deposited into a Deposit Account subject to a Control Agreement, (iii) no Default or Event of Default is continuing immediately prior or after giving effect to such transaction or would result from such transaction, (iv) all such Accounts owing by such Account Debtor of a Loan Party are not included in the Borrowing Base, and (v) the Borrower delivers an updated Borrowing Base Certificate as required pursuant to Section 5.01(g); and

(g) Dispositions of assets (other than Equity Interests in a Subsidiary unless all Equity Interests in such Subsidiary are sold) that are not permitted by any other clause of this Section so long as (i) the consideration received for the assets to be so disposed is at least equal to the fair market value of such assets, as reasonably determined by the Board of Directors of the Borrower, and at least 75% of the consideration so received constitutes cash, (ii) the proceeds of such Disposition are applied in accordance with the Term Loan Credit Agreement (iii) after giving *pro forma* effect to such Disposition, the Borrower and its Subsidiaries shall be *pro forma* in compliance with the Consolidated Net Leverage Ratio requirements under the Term Loan Credit Agreement and (iv) no Event of Default has occurred and is continuing at the time of such Disposition or results therefrom.

Notwithstanding the foregoing, no Loan Party shall transfer (or license on a non-exclusive basis) or otherwise dispose of any Material Intellectual Property to any Subsidiary that is not a Loan Party.

SECTION 6.06 Sale and Leaseback Transactions. No Loan Party will, nor will it permit any Subsidiary to, enter into any arrangement, directly or indirectly, whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property or other property that it intends to use for substantially the same purpose or purposes as the property sold or transferred (a “Sale and Leaseback Transaction”), except for any such sale of any fixed or capital assets by the Borrower or any Subsidiary that is made for cash consideration in an amount not less than the fair value of such fixed or capital asset and is consummated within 90 days after the Borrower or such Subsidiary acquires or completes the construction of such fixed or capital asset.

SECTION 6.07 Swap Agreements. No Loan Party will, nor will it permit any Subsidiary to, enter into any Swap Agreement, except (a) Swap Agreements entered into to hedge or mitigate risks to which the Borrower or any Subsidiary has actual exposure (other than those in respect of Equity Interests of the Borrower or any of its Subsidiaries), but not for purposes of speculation, and (b) Swap Agreements entered into in order to effectively cap, collar or exchange interest rates (from floating to fixed rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of the Borrower or any Subsidiary, but not for speculation.

SECTION 6.08 Restricted Payments; Certain Payments of Indebtedness. (a) No Loan Party will, nor will it permit any Subsidiary to, declare or make, or agree to declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except (i) the Borrower may declare and pay dividends with respect to its common stock payable solely in additional shares of its common stock, and, with respect to its preferred stock, payable solely in additional shares of such preferred stock or in shares of its common stock, (ii) Subsidiaries may declare and pay Capital Distributions ratably with respect to their Equity Interests, (iii) the Loan Parties may make other Restricted Payments subject to the satisfaction of the Payment Condition after giving effect thereto, (iv) the Borrower and its Subsidiaries may make Restricted Payments with respect to the Series D Preferred Stock, subject to pro forma compliance with a Consolidated Net Leverage Ratio less than or equal to 2.50:1.00 after giving effect to such Restricted Payment; provided that no Event of Default is occurring and continuing at the time of such Restricted Payment, and the Restricted Payments under this clause (iv) shall not exceed 7.0% of the aggregate amount of proceeds received in respect of the Series D Preferred Stock, and (v) the Borrower and each Subsidiary may make Restricted Payments with the proceeds received from the substantially concurrent issue of new common Equity Interests.

(b) No Loan Party will, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any Indebtedness, except:

(i) payment of Indebtedness created under the Loan Documents;

(ii) (A) payment of regularly scheduled interest and principal payments as and when due in respect of any Indebtedness permitted under Section 6.01, other than payments in respect of the (x) Subordinated Indebtedness prohibited by the subordination provisions thereof and (y) the Term Debt that are not required under the Term Loan Credit Agreement as in effect on the date hereof or that are prohibited by the terms of the Intercreditor Agreement, (B) voluntary prepayments of the Term Debt permitted under the Term Loan Credit Agreement and the Intercreditor Agreement so long as the Payment Conditions are satisfied after giving effect thereto and (C) dividends, payments, prepayments, repurchases or redemptions made with respect to the Series D Preferred Stock to the extent (x) permitted under Section 6.08(a)(iv), (y) so long as the Payment Conditions are satisfied or (z) made in the form of an increase to a liquidation preference;

(iii) payment and prepayment of Indebtedness in connection with the Refinancing of such Indebtedness to the extent permitted by Section 6.01; and

(iv) payment of secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness to the extent such sale or transfer is permitted by the terms of Section 6.05.

(v) non-scheduled prepayments, repurchases or redemptions in respect of Indebtedness incurred pursuant to Section 6.01(j) and Subordinated Indebtedness (a "Restricted Debt Payment") so long as such Restricted Debt Payment is made (i) with proceeds of Equity Interests (other than Disqualified Equity Interests or the proceeds of an equity cure) or consideration paid in Equity Interests (other than Disqualified Equity Interests) that are not otherwise applied, (ii) in connection with the Transactions and (iii) in respect of any AHYDO Catch Up Payments.

(c) No Loan Party will, nor will it permit any Subsidiary to, make or agree to pay or make, directly or indirectly, any mandatory prepayment based on its excess cash flow under the Term Loan Documents unless the Payment Conditions are satisfied after giving effect thereto.

**SECTION 6.09 Transactions with Affiliates.** No Loan Party will, nor will it permit any Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates (other than a Loan Party), on terms that shall be less favorable to such Loan Party than those that might be obtained at the time in a transaction with a non-Affiliate; provided that the foregoing shall not prohibit (1) the payment of customary and reasonable directors' fees to directors who are not employees of the Borrower or any Subsidiary or an Affiliate or (2) the declaring, or the making, of dividends and other distributions in respect of the Series D Preferred Stock.

SECTION 6.10 Restrictive Agreements. No Loan Party will, nor will it permit any Subsidiary to, directly or indirectly, enter into, incur, or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of such Loan Party or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Subsidiary to pay any Capital Distributions with respect to any of its Equity Interests or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by any Requirement of Law, by any Loan Document or by any Term Loan Document to the extent not prohibited by the Intercreditor Agreement, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.10 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided that such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement (including, for the avoidance of doubt, any Supplier Financing Agreement) if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof.

SECTION 6.11 Amendment of Material Documents. No Loan Party will, nor will it permit any Subsidiary to, amend, restate, supplement modify or waive any of its rights under (a) (i) any agreement relating to any Subordinated Indebtedness, (ii) its Organization Documents or (iii) agreements evidencing Material Indebtedness, in each case, to the extent any such amendment, modification or waiver would be materially adverse to the Lenders, without the prior written consent of the Administrative Agent, which consent shall not be unreasonably withheld or (b) the Term Loan Documents unless permitted pursuant to the terms of the Intercreditor Agreement.

SECTION 6.12 Term Debt. No Loan Party will, nor will it permit any Subsidiary to, purchase or hold any of the Term Debt, except as expressly contemplated permitted under the Term Loan Credit Agreement as in effect on the date hereof pursuant to a Dutch Auction (as defined in the Term Loan Agreement) to the extent permitted pursuant to the Intercreditor Agreement, provided that any such Term Debt so purchased by a Loan Party or any of its Subsidiaries shall be immediately cancelled.

SECTION 6.13 Financial Covenants.

(a) Fixed Charge Coverage Ratio. During any Availability Triggering Covenant Event Period, the Borrower will not permit the Fixed Charge Coverage Ratio to be less than 1.00 to 1.00 as of (i) with respect to the first such test on the date of an Availability Triggering Covenant Event, as of the last day of the most recently ended fiscal month for which financial statements have been (or are required to have been) delivered pursuant to Section 5.01(c) (and if no such financials are then available, then as of the last day of the most recently ended fiscal month ended at least 30 days prior to such date of determination) and (ii) thereafter, as of the last day of each fiscal month. Once such covenant is in effect, compliance with any covenant will be discontinued on the first day on which no Availability Triggering Covenant Event Period is continuing.

ARTICLE VII

Events of Default.

If any of the following events ("Events of Default") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement or any other Loan Document, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of three (3) Business Days;

(c) any representation or warranty made or deemed made by or on behalf of any Loan Party or any Subsidiary in, or in connection with, this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or thereof or waiver hereunder or thereunder, shall prove to have been materially incorrect when made or deemed made;

(d) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02(a), 5.03 (with respect to a Loan Party's existence), 5.08, 5.13, 5.14 or 5.15 or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those that constitute a default under another Section of this Article), and such failure shall continue unremedied for a period of (i) five (5) Business Days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of Section 5.01, 5.02 (other than Section 5.02(a)), 5.05 or 5.07 of this Agreement or (ii) thirty (30) days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent (which notice will be given at the request of any Lender) if such breach relates to terms or provisions of any other Section of this Agreement;

(f) any Loan Party or Subsidiary shall default in the payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, Series D Preferred Stock or the Term Debt, beyond any applicable period of grace with respect thereto;

(g) any event or condition occurs that results in any Material Indebtedness, Series D Preferred Stock or the Term Debt becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness, Series D Preferred Stock or the Term Debt or any trustee or agent on its or their behalf to cause any Material Indebtedness, Series D Preferred Stock or the Term Debt to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness to the extent such sale or transfer is permitted by Section 6.05;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of a Loan Party or Subsidiary or its debts, or of a substantial part of its assets, under any federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Loan Party or Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) any Loan Party or Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for such Loan Party or Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) any Loan Party or Subsidiary shall become unable, admit in writing its inability, or publicly declare its intention not to, or fail generally to pay its debts as they become due;

(k) (i) one or more judgments for the payment of money in an aggregate amount in excess of \$5,000,000 (to the extent reasonably expected to be covered by independent insurance within 180 days of such judgment to the extent the relevant independent third-party insurer has not denied coverage therefor) shall be rendered against any Loan Party, any Subsidiary or any combination thereof by a court of competent jurisdiction, and the same shall remain undischarged or unstayed for a period of thirty (30) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Loan Party or Subsidiary to enforce any such judgment; or (ii) any Loan Party or Subsidiary shall fail within thirty (30) days to discharge one or more non-monetary judgments or orders that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect, which judgments or orders, in any such case, are not stayed on appeal or otherwise being appropriately contested in good faith by proper proceedings diligently pursued;

(l) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect or result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$12,500,000 for all periods;

(m) a Change in Control shall occur;

(n) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (a), (b) and (d) of this Article VII) (in each case solely to the extent applicable to such Person), and such failure shall continue unremedied for a period of thirty (30) days after the earlier of any Loan Party's knowledge of such breach or notice thereof from the Administrative Agent to the Borrower;

(o) the Loan Guaranty shall fail to remain in full force or effect or any action shall be taken by a Loan Party to discontinue or challenge the validity or enforceability in writing of the Loan Guaranty, or any Guarantor shall fail to comply with any of the terms or provisions of the Loan Guaranty to which it is a party, or any Guarantor shall deny in writing that it has any further liability under the Loan Guaranty to which it is a party, or shall give notice to such effect, including, but not limited to notice of termination delivered pursuant to Section 10.08;

(p) except as permitted by the terms of this Agreement or any Collateral Document, (i) any Collateral Document shall for any reason fail to create a valid security interest in any Collateral purported to be covered thereby, or (ii) any Lien securing any Secured Obligation shall cease to be a perfected, first priority Lien;

(q) any Collateral Document shall fail to remain in full force or effect or any action shall be taken by a Loan Party to discontinue or challenge the validity or enforceability in writing of any Collateral Document; or

(r) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or any Loan Party or Subsidiary of a Loan Party shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction that evidences its assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms);

(s) the Loan Parties or any of their Subsidiaries shall (x) contest in any manner the validity or enforceability of the Intercreditor Agreement or deny that it has any further obligation thereunder, or (y) the Obligations for any reason shall not have the priority contemplated by this Agreement or the Intercreditor Agreement, respectively, in the case of this subclause (y), as a result of any action or inaction on the part of a Loan Party or any Subsidiary of a Loan Party;

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitments (including the Swingline Commitment), whereupon the Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, but ratably as among the Classes of Loans and the Loans of each Class at the time outstanding, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), whereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees (including, for the avoidance of doubt, any break funding payments) and other obligations of the Borrower accrued hereunder and under any other Loan Document, shall become due and payable immediately, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower, and (iii) require cash collateral for the LC Exposure in accordance with Section 2.06(j)

hereof; and in the case of any event with respect to the Borrower described in clause (h) or (i) of this Article, the Commitments (including the Swingline Commitment) shall automatically terminate and the principal of the Loans then outstanding and the cash collateral for the LC Exposure, together with accrued interest thereon and all fees (including, for the avoidance of doubt, any break funding payments) and other obligations of the Borrower accrued hereunder and under any other Loan Documents, shall automatically become due and payable, in each case without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. Upon the occurrence and during the continuance of an Event of Default, the Administrative Agent may, and at the request of the Required Lenders shall, increase the rate of interest applicable to the Loans and other Obligations as set forth in this Agreement and exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

## ARTICLE VIII

### The Administrative Agent.

#### SECTION 8.01 Authorization and Action.

(a) Each Lender, on behalf of itself and any of its Affiliates that are Secured Parties and each Issuing Bank hereby irrevocably appoints the entity named as Administrative Agent in the heading of this Agreement and its successors and assigns to serve as the administrative agent and collateral agent under the Loan Documents and each Lender and each Issuing Bank authorizes the Administrative Agent to take such actions as agent on its behalf and to exercise such powers under this Agreement and the other Loan Documents as are delegated to the Administrative Agent under such agreements and to exercise such powers as are reasonably incidental thereto. In addition, to the extent required under the laws of any jurisdiction other than within the United States, each Lender and each Issuing Bank hereby grants to the Administrative Agent any required powers of attorney to execute and enforce any Collateral Document governed by the laws of such jurisdiction on such Lender's or such Issuing Bank's behalf. Without limiting the foregoing, each Lender and each Issuing Bank 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) As to any matters not expressly provided for herein and in the other Loan Documents (including enforcement or collection), the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the written instructions of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, pursuant to the terms in the Loan Documents), and, unless and until revoked in writing, such instructions shall be binding upon each Lender and each Issuing Bank; provided, however, that the Administrative Agent shall not be required to take any action that (i) 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 Banks with respect to such action or (ii) 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 affect 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. Except as expressly set forth in the Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower, any other Loan Party, any Subsidiary or any Affiliate of any of the foregoing that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity. Nothing in this Agreement shall require the Administrative Agent 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.

(c) In performing its functions and duties hereunder and under the other Loan Documents, the Administrative Agent is acting solely on behalf of the Lenders and the Issuing Banks (except in limited circumstances expressly provided for herein relating to the maintenance of the Register), and its duties are entirely mechanical and administrative in nature. Without limiting the generality of the foregoing:

(i) the Administrative Agent does not assume and shall not be deemed to have assumed any obligation or duty or any other relationship as the agent, fiduciary or trustee of or for any Lender, Issuing Bank, any other Secured Party or holder of any other obligation other than as expressly set forth herein and in the other Loan Documents, regardless of whether a Default or an 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 other 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) [reserved];

(iii) [reserved]; and

(iv) nothing in this Agreement or any Loan Document shall require the Administrative Agent to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent for its own account.

(d) The Administrative Agent may perform any of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any of their respective duties and exercise their respective rights and powers through their

respective Related Parties. The exculpatory provisions of this Article 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 pursuant to this Agreement. 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

(e) The Arranger shall not have obligations or duties whatsoever in such capacity under this Agreement or any other Loan Document and shall incur no liability hereunder or thereunder in such capacity, but all such persons shall have the benefit of the indemnities provided for hereunder.

(f) In case of the pendency of any proceeding with respect to any Loan Party under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, the Administrative Agent (irrespective of whether the principal of any Loan or any reimbursement obligation in respect of any LC Disbursement shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Disbursements and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim under Sections 2.12, 2.13, 2.15, 2.17 and 9.03) allowed in such judicial proceeding; and

(ii) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such proceeding is hereby authorized by each Lender, each Issuing Bank and each other Secured Party to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, the Issuing Banks or the other Secured Parties, to pay to the Administrative Agent any amount due to it, in its capacity as the Administrative Agent, under the Loan Documents (including under Section 9.03). Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

(g) The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Banks, and, except solely to the extent of the Borrower's right to consent pursuant to and subject to the conditions set forth in this Article, the Borrower, any Subsidiary, and each of their respective Affiliates, shall not have any rights as a third party beneficiary under any such provisions. Each Secured Party, whether or not a party hereto, will be deemed, by its acceptance of the benefits of the Collateral and of the Guarantees of the Secured Obligations provided under the Loan Documents, to have agreed to the provisions of this Article.

SECTION 8.02 Administrative Agent's Reliance, Limitation of Liability, Etc. Neither the Administrative Agent nor any of its Related Parties shall be (i) liable for any action taken or omitted to be taken by such party, the Administrative Agent or any of its Related Parties under or in connection with this Agreement or the other Loan Documents (x) with the consent of 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 in the Loan Documents) or (y) in the absence of its own gross negligence or willful misconduct (such absence to be presumed unless otherwise determined by a court of competent jurisdiction by a final and non-appealable judgment) or (ii) responsible in any manner to any of the Lenders for any recitals, statements, representations or warranties made by any Loan Party 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 (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page) or for any failure of any Loan Party to perform its obligations hereunder or thereunder.

(a) The Administrative Agent shall be deemed not to have knowledge of any (i) notice of any of the events or circumstances set forth or described in Section 5.02 unless and until written notice thereof stating that it is a "notice under Section 5.02" in respect of this Agreement and identifying the specific clause under said Section is given to the Administrative Agent by the Borrower, or (ii) notice of any Default or Event of Default unless and until written notice thereof (stating that it is a "notice of Default" or a "notice of an Event of Default") is given to the Administrative Agent by the Borrower, a Lender or the Issuing Bank. Further, 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 any Loan Document, (ii) the contents of any certificate, report or other document delivered thereunder or in connection therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth in any Loan Document or the occurrence of any Default or Event of Default, (iv) the sufficiency, validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article IV or elsewhere in any Loan Document, other than to confirm receipt of items (which on their face purport to be such 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, or (vi) the creation, perfection or priority of Liens on the Collateral.

(b) Without limiting the foregoing, 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 9.04, (ii) may rely on the Register to the extent set forth in Section 9.04(b), (iii) may consult with legal counsel (including counsel to the Borrower), independent public accountants and other experts selected by it, and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts, (iv) makes no warranty or representation to any Lender or Issuing Bank and shall not be responsible to any Lender or Issuing Bank for any statements, warranties or representations made by or on behalf of any Loan Party in connection with this Agreement or any other Loan Document, (v) 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 Bank, may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank sufficiently in advance of the making of such Loan or the issuance of such Letter of Credit and (vi) shall be entitled to rely on, and shall incur no liability under or in respect of this Agreement or any other Loan Document by acting upon, any notice, consent, certificate or other instrument or writing (which writing may be a fax, any electronic message, Internet or intranet website posting or other distribution) or any statement made to it orally or by telephone and believed by it to be genuine and signed or sent or otherwise authenticated by the proper party or parties (whether or not such Person in fact meets the requirements set forth in the Loan Documents for being the maker thereof).

#### SECTION 8.03 Posting of Communications.

(a) The Borrower agrees that the Administrative Agent may, but shall not be obligated to, make any Communications available to the Lenders and the Issuing Bank by posting the Communications on IntraLinks™, DebtDomain, SyndTrak, ClearPar or any other electronic system chosen by the Administrative Agent to be its electronic transmission system (the “Approved Electronic Platform”).

(b) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the Effective Date, a user ID/password authorization system) and the Approved Electronic Platform is secured through a per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each of the Lenders, the Issuing Bank and the Borrower acknowledges and agrees that the distribution of material through an electronic medium 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 Approved Electronic Platform, and that there may be confidentiality and other risks associated with such distribution. Each of the Lenders, the Issuing Bank and the Borrower hereby approves distribution of the Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(c) THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS ARE PROVIDED “AS IS” AND “AS AVAILABLE”. THE APPLICABLE PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE APPROVED ELECTRONIC PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC PLATFORM AND THE COMMUNICATIONS. 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 THE APPLICABLE PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT, THE ARRANGER OR ANY OF THEIR RESPECTIVE RELATED PARTIES (COLLECTIVELY, "APPLICABLE PARTIES") HAVE ANY LIABILITY TO ANY LOAN PARTY, ANY LENDER, ANY ISSUING BANK 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 ANY LOAN PARTY'S OR THE ADMINISTRATIVE AGENT'S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET OR THE APPROVED ELECTRONIC PLATFORM.

"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 that is distributed by the Administrative Agent, any Lender or Issuing Bank by means of electronic communications pursuant to this Section, including through an Approved Electronic Platform.

(d) Each Lender and Issuing Bank agrees that notice to it (as provided in the next sentence) specifying that Communications have been posted to the Approved Electronic Platform shall constitute effective delivery of the Communications to such Lender for purposes of the Loan Documents. Each Lender and Issuing Bank 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 Bank'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.

(e) Each of the Lenders, Issuing Bank and the Borrower agrees that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Communications on the Approved Electronic Platform in accordance with the Administrative Agent's generally applicable document retention procedures and policies.

(f) Nothing herein shall prejudice the right of the Administrative Agent, any Lender or Issuing Bank to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

SECTION 8.04 The Administrative Agent Individually. With respect to its Commitment, Loans (including Swingline Loans) and Letters of Credit, the Person serving as the Administrative Agent shall have and may exercise the same rights and powers hereunder and is subject to the same obligations and liabilities as and to the extent set forth herein for any other Lender or Issuing Bank, as the case may be. The terms "Issuing Bank", "Lenders", "Required Lenders" and any similar terms shall, unless the context clearly otherwise indicates, include the Administrative Agent in its individual capacity as a Lender, Issuing Bank or as one of the Required Lenders, as applicable. The Person serving as the Administrative Agent and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust or other business with, any Loan Party, any Subsidiary or any Affiliate of any of the foregoing as if such Person was not acting as the Administrative Agent and without any duty to account therefor to the Lenders or the Issuing Bank.

SECTION 8.05 Successor Administrative Agent.

(a) The Administrative Agent may resign at any time by giving 30 days' prior written notice thereof to the Lenders, the Issuing Bank and the Borrower, whether or not a successor Administrative Agent has been appointed. Upon any such resignation the Required Lenders shall have the right to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Bank, appoint a successor Administrative Agent, which shall be a bank with an office in New York, New York or an Affiliate of any such bank. In either case, such appointment shall be subject to the prior written approval of the Borrower (which approval may not be unreasonably withheld and shall not be required while an Event of Default has occurred and is continuing). Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent shall succeed to, and become vested with, all the rights, powers, privileges and duties of the retiring Administrative Agent. Upon the acceptance of appointment as Administrative Agent by a successor Administrative Agent, the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Loan Documents. Prior to any retiring Administrative Agent's resignation hereunder as Administrative Agent, the retiring Administrative Agent shall take such action as may be reasonably necessary to assign to the successor Administrative Agent its rights as Administrative Agent under the Loan Documents.

(b) Notwithstanding paragraph (a) of this Section, in the event no successor Administrative Agent shall have been so appointed and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its intent to resign, the retiring Administrative Agent may give notice of the effectiveness of its resignation to the Lenders, the Issuing Bank and the Borrower, whereupon, on the date of effectiveness of such resignation stated in such notice, (i) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents; provided that, solely for purposes of maintaining any security interest granted to the Administrative Agent under any Collateral Document for the benefit of the Secured Parties, the retiring Administrative Agent shall continue to be vested with such security interest as collateral agent for the benefit of the Secured Parties and continue to be entitled to the rights set forth in such Collateral Document and Loan Document, and, in the case of any Collateral in the possession of the Administrative Agent, shall continue to hold such Collateral, in each case until such time as a successor Administrative Agent is appointed and accepts such appointment in accordance with this Section (it being understood and agreed that the retiring Administrative Agent shall have no duty or obligation to take any further action under any Collateral Document, including any action required to maintain the perfection of any such security interest), and (ii) the Required Lenders shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent; provided that (A) all payments required to be made hereunder or under any other Loan Document to the Administrative Agent for the account of any Person other than the Administrative Agent shall be made directly to such Person and (B) all notices and other communications required or contemplated to be given or

made to the Administrative Agent shall directly be given or made to each Lender and Issuing Bank. Following the effectiveness of the Administrative Agent's resignation from its capacity as such, the provisions of this Article, Section 2.17(d) and Section 9.03, as well as any exculpatory, reimbursement and indemnification provisions set forth in any other Loan Document, shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent and in respect of the matters referred to in the proviso under clause (a) above.

**SECTION 8.06 Acknowledgements of Lenders and Issuing Bank.**

(a) Each Lender and each Issuing Bank represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility, (ii) it is engaged in making, acquiring or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender or Issuing Bank, in each case in the ordinary course of business, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument (and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing), (iii) it has, independently and without reliance upon the Administrative Agent, the Arranger, or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder and (iv) it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Bank, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Arranger or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender, by delivering its signature page to this Agreement on the Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the Effective Date or the effective date of any such Assignment and Assumption or any other Loan Document pursuant to which it shall have become a Lender hereunder.

(c) Each Lender hereby agrees that (i) it has requested a copy of each Report prepared by or on behalf of the Administrative Agent; (ii) the Administrative Agent (A) makes no representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein or any inaccuracy or omission contained in or relating to a Report and (B) shall not be liable for any information contained in any Report; (iii) the Reports are not comprehensive audits or examinations, and that any Person performing any field examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel and that the Administrative Agent undertakes no obligation to update, correct or supplement the Reports; (iv) it will keep all Reports confidential and strictly for its internal use, not share the Report with any Loan Party or any other Person except as otherwise permitted pursuant to this Agreement; and (v) without limiting the generality of any other indemnification provision contained in this Agreement, (A) it will hold the Administrative Agent and any such other Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any extension of credit that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans; and (B) it will pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorneys' fees) incurred by the Administrative Agent or any such other Person as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

#### SECTION 8.07 Collateral Matters.

(a) Except with respect to the exercise of setoff rights in accordance with Section 9.08 or with respect to a Secured Party's right to file a proof of claim in an insolvency proceeding, no Secured Party shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Secured Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Parties in accordance with the terms thereof. In its capacity, the Administrative Agent is a "representative" of the Secured Parties within the meaning of the term "secured party" as defined in the UCC. In the event that any Collateral is hereafter pledged by any Person as collateral security for the Secured Obligations, the Administrative Agent is hereby authorized, and hereby granted a power of attorney, to execute and deliver on behalf of the Secured Parties any Loan Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Administrative Agent on behalf of the Secured Parties.

(b) In furtherance of the foregoing and not in limitation thereof, no arrangements in respect of Banking Services the obligations under which constitute Secured Obligations and no Swap Agreement the obligations under which constitute Secured Obligations, will create (or be deemed to create) in favor of any Secured Party that is a party thereto any rights in connection with the management or release of any Collateral or of the obligations of any Loan Party under any Loan Document. By accepting the benefits of the Collateral, each Secured Party that is a party to any such arrangement in respect of Banking Services or Swap Agreement, as applicable, shall be deemed to have appointed the Administrative Agent to serve as administrative agent and collateral agent under the Loan Documents and agreed to be bound by the Loan Documents as a Secured Party thereunder, subject to the limitations set forth in this paragraph.

(c) The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion, to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(b). The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders or any other Secured Party for any failure to monitor or maintain any portion of the Collateral.

SECTION 8.08 Credit Bidding. The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which a Loan Party is subject, or (b) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid by the Administrative Agent at the direction of the Required Lenders on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) each of the Secured Parties' ratable interests in the Obligations that were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or equity interests thereof, shall be governed, directly or indirectly, by, and the governing documents shall provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 9.02 of this Agreement), (iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Parties, ratably on account of the relevant Obligations that were credit bid, interests, whether as equity, partnership interests, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Party or acquisition vehicle to take any further action, and (v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the

amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Secured Parties pro rata with their original interest in such Obligations and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Party shall execute such documents and provide such information regarding the Secured Party (and/or any designee of the Secured Party that will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

SECTION 8.09 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 the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower 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 Section 3(42) of ERISA or otherwise) of one or more Benefit Plans with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments or this Agreement,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the 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 Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the 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 Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with 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 the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that none of the Administrative Agent, the Arranger, or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

SECTION 8.10 Flood Laws. JPMCB has adopted internal policies and procedures that address requirements placed on federally regulated lenders under the National Flood Insurance Reform Act of 1994 and related legislation (the "Flood Laws"). JPMCB, as administrative agent or collateral agent on a syndicated facility, will post on the applicable electronic platform (or otherwise distribute to each Lender in the syndicate) documents that it receives in connection with the Flood Laws. However, JPMCB reminds each Lender and Participant in the facility that, pursuant to the Flood Laws, each federally regulated Lender (whether acting as a Lender or Participant in the facility) is responsible for assuring its own compliance with the flood insurance requirements.

SECTION 8.11 Acknowledgements of Lenders.

(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 8.11 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 that unless the Administrative Agent informs such Lender otherwise, in each such case, 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) 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 (such unrecovered amount, a "Return Payment Deficiency"), upon the Administrative Agent's request (i) each Lender hereby further agrees that it will (and is hereby obligated to) assign its Loans (but not its Commitments) of the relevant Class with respect to which such Payment was made (the "Impacted Class") in an amount equal to the Return Payment Deficiency (such assignment of the Loans (but not Commitments) of the Impacted Class, the "Deficiency Assignment") at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby deemed to execute and deliver an Assignment and Assumption with respect to such Deficiency Assignment, and shall deliver any Notes evidencing such Loans to the Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Lender shall be deemed to acquire the Deficiency Assignment and (iii) upon such deemed acquisition, the Administrative Agent as the assignee Lender shall become a Lender hereunder solely with respect to such Deficiency Assignment and the assigning Lender shall cease to be a Lender hereunder solely with respect to such Deficiency Assignment, excluding for, the avoidance of doubt, its obligations under the indemnification provisions under this Agreement and its applicable Commitments, which shall survive as to such assigning Lender. The parties hereto agree an erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party. For the avoidance of doubt, no Deficiency Assignment will reduce the Commitments of any Lender and such Commitments shall remain available in accordance with the terms of this Agreement.

(d) Each Lender's obligations under this Section 8.11 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, such Lender and the date upon which all of the Secured Obligations have been Paid in Full.

ARTICLE IX

Miscellaneous.

SECTION 9.01 Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone or Electronic Systems (and subject in each case to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:

- (i) if to any Loan Party, to the Borrower at:

NN, Inc.  
6210 Ardrey Kell Road  
Charlotte, NC 28277  
Attention: Thomas D. DeByle or the then current Chief Financial Officer  
Email: tom.debyle@nninc.com  
Facsimile No: 980-264-4389

With a copy to (which shall not constitute notice):

Bass, Berry & Sims PLC  
100 Peabody Place, Suite 1300  
Memphis, TN 38103  
Attn: T. Gaillard Uhlhorn  
Email: guhlhorn@bassberry.com

- (ii) if to the Administrative Agent, JPMCB in its capacity as an Issuing Bank or the Swingline Lender, to JPMorgan Chase Bank, N.A. at:

JPMorgan Chase Bank, N.A.  
2200 Ross Avenue, 9th Floor  
Dallas, TX 75201  
Attention: Credit Risk Manager for NN, Inc.  
Facsimile No: 214-965-2594

With a copy to (which shall not constitute notice):

King & Spalding LLP  
1180 Peachtree Street, NE  
Suite 1600  
Atlanta, GA 30309  
Attn: J. Craig Lee  
Email: craiglee@kslaw.com

- (iii) if to any other Lender or Issuing Bank, to it at its address or facsimile number set forth in its Administrative Questionnaire.

All such notices and other communications (A) sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, (B) sent by facsimile shall be deemed to have been given when sent, provided that if not given during normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day of the recipient, or (C) delivered through Electronic Systems or Approved Electronic Platforms, as applicable, to the extent provided in paragraph (b) below shall be effective as provided in such paragraph.

(b) Notices and other communications to the Borrower, any Loan Party, the Lenders and the Issuing Banks hereunder may be delivered or furnished by using Electronic Systems or Approved Electronic Platforms, as applicable, or pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II or to Compliance Certificates delivered pursuant to Section 5.01(d) unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent and the Borrower (on behalf of the Loan Parties) may, in its discretion, agree to accept notices and other communications to it hereunder by Electronic Systems or Approved Electronic Platforms, as applicable, pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise proscribes, all such notices and other communications (i) 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), provided that if not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, and (ii) 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, e-mail 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 of the recipient.

(c) Any party hereto may change its address, facsimile number or e-mail address for notices and other communications hereunder by notice to the other parties hereto.

SECTION 9.02 Waivers; Amendments. (a) No failure or delay by the Administrative Agent, the Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Bank and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent

shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or the Issuing Bank may have had notice or knowledge of such Default at the time.

(b) Except as provided in the first sentence of Section 2.09(f) (with respect to any commitment increase) and subject to Section 2.14(c), (d) and (e) and Section 9.02(e) below, neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except (i) in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or (ii) in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent and the Loan Party or Loan Parties that are parties thereto, with the consent of the Required Lenders; provided that no such agreement shall (A) increase the Commitment of any Lender without the written consent of such Lender (including any such Lender that is a Defaulting Lender), (B) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce or forgive any interest or fees payable hereunder, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby (provided that any amendment or modification of the financial covenants in this Agreement (or any defined term used therein) shall not constitute a reduction in the rate of interest or fees for purposes of this clause (B)), (C) postpone any scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any date for the payment of any interest, fees or other Obligations payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender (including any such Lender that is a Defaulting Lender) directly affected thereby, (D) change Section 2.09(d) or Section 2.18(b) or (d) in a manner that would alter the ratable reduction of Commitments or the manner in which payments are shared, without the written consent of each Lender (other than any Defaulting Lender), (E) increase the advance rates set forth in the definition of Borrowing Base or add new categories of eligible assets, without the written consent of the Supermajority Revolving Lenders and the Administrative Agent, (F) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision of any Loan Document specifying the number or percentage of Lenders (or Lenders of any Class) required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender (other than any Defaulting Lender) directly affected thereby, (G) release any Guarantor from its obligation under its Loan Guaranty (except as otherwise permitted herein or in the other Loan Documents), without the written consent of each Lender (other than any Defaulting Lender), or (H) except as provided in clause (c) of this Section or in any Collateral Document, release all or substantially all of the Collateral, without the written consent of each Lender (other than any Defaulting Lender); provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Issuing Bank or the Swingline Lender hereunder without the prior written consent of the Administrative Agent, the Issuing Bank or the Swingline Lender, as the case may be (it being understood that any amendment to Section 2.20 shall require the consent of the Administrative Agent, the Issuing Bank and the Swingline Lender); provided further that no such agreement shall amend or modify the provisions of Section 2.06 without the prior written consent of the Administrative Agent and the Issuing Banks. The Administrative Agent may also amend the Commitment Schedule to reflect assignments entered into pursuant to Section 9.04. Any amendment, waiver or other modification of this Agreement or any other Loan Document that by

its terms affects the rights or duties under this Agreement of the Lenders of one or more Classes (but not the Lenders of any other Class), may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite number or percentage in interest of each affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time.

(c) The Lenders and the Issuing Bank hereby irrevocably authorize the Administrative Agent, at its option and in its sole discretion, to release any Liens granted to the Administrative Agent by the Loan Parties on any Collateral (i) upon the Payment in Full of all Secured Obligations, and the cash collateralization of all Unliquidated Obligations in a manner satisfactory to each affected Lender, (ii) constituting property being sold or disposed of if the Loan Party disposing of such property certifies to the Administrative Agent that the sale or disposition is made in compliance with the terms of this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry), and to the extent that the property being sold or disposed of constitutes 100% of the Equity Interests of a Subsidiary, the Administrative Agent is authorized to release any Loan Guaranty provided by such Subsidiary, (iii) constituting property leased to a Loan Party under a lease that has expired or been terminated in a transaction permitted under this Agreement, or (iv) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Administrative Agent and the Lenders pursuant to Article VII. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Any execution and delivery by the Administrative Agent of documents in connection with any such release shall be without recourse to or warranty by the Administrative Agent.

(d) If, in connection with any proposed amendment, waiver or consent requiring the consent of “each Lender” or “each Lender affected thereby,” the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but has not been obtained being referred to herein as a “Non-Consenting Lender”), then the Borrower may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity that is reasonably satisfactory to the Borrower, the Administrative Agent and the Issuing Bank shall agree, as of such date, to purchase for cash the Loans and other Obligations due to the Non-Consenting Lender pursuant to an Assignment and Assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of clause (b) of Section 9.04, and (ii) the Borrower shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrower hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Sections 2.15 and 2.17, and (2) an amount, if any, equal to the payment that would have been due to such Lender on the day of such replacement under Section 2.16 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender. Each party hereto agrees that an assignment required pursuant to this paragraph may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to

an Approved Electronic Platform as to which the Administrative Agent and such parties are participants), and the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided that any such documents shall be without recourse to or warranty by the parties thereto.

(e) Notwithstanding anything to the contrary herein the Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency.

SECTION 9.03 Expenses; Limitation of Liability; Indemnity; Etc. (a) Expenses. The Loan Parties shall, jointly and severally, pay all (i) reasonable, documented (in summary form) and invoiced out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication and distribution (including, without limitation, via the internet or through any Electronic System or Approved Electronic Platform) of the credit facilities provided for herein, the preparation and administration of the Loan Documents and any amendments, modifications or waivers of the provisions of the Loan Documents (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) reasonable, documented (in summary form) and invoiced out-of-pocket expenses incurred by the Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) out-of-pocket expenses incurred by the Administrative Agent, the Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, the Issuing Bank or any Lender, in connection with the enforcement, collection or protection of its rights in connection with the Loan Documents, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit. Expenses being reimbursed by the Loan Parties under this Section include, without limiting the generality of the foregoing, fees, costs and expenses incurred in connection with:

(A) appraisals and insurance reviews;

(B) field examinations and the preparation of Reports based on the fees charged by a third party retained by the Administrative Agent or the internally allocated fees for each Person employed by the Administrative Agent with respect to each field examination, together with the reasonable, documented (in summary form) and invoiced fees and expenses associated with collateral monitoring services performed by the Administrative Agent (and the Loan Parties agree to modify or adjust the computation of the Borrowing Base (which may include maintaining additional Reserves, modifying the advance rates or modifying the eligibility criteria for the components of the Borrowing Base) to the extent required by the Administrative Agent as a result of any such evaluation, appraisal or monitoring);

(C) background checks regarding senior management and/or key investors, as deemed necessary or appropriate in the sole discretion of the Administrative Agent;

(D) Taxes, fees and other charges for (1) lien and title searches and title insurance and (2) recording the Mortgages, filing financing statements and continuations, and other actions to perfect, protect, and continue the Administrative Agent's Liens;

(E) sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take; and

(F) forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining the accounts and lock boxes, and costs and expenses of preserving and protecting the Collateral.

All of the foregoing fees, costs and expenses may be charged to the Borrower as Revolving Loans or to another deposit account, all as described in Section 2.18(c).

(b) Limitation of Liability. To the extent permitted by applicable law (i) neither the Borrower nor any Loan Party shall assert, and the Borrower and each Loan Party hereby waives, any claim against the Administrative Agent, the Arranger, any Issuing Bank and any Lender, and any Related Party of any of the foregoing Persons (each such Person being called a "Lender-Related Person") for any Liabilities arising from the use by others of information or other materials (including, without limitation, any personal data) obtained through telecommunications, electronic or other information transmission systems (including the Internet), and (ii) no party hereto shall assert, and each such party hereby waives, any Liabilities against any other party hereto, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby or thereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof; provided that, nothing in this Section 9.03(b) shall relieve the Borrower or any Loan Party of any obligation it may have to indemnify an Indemnitee, as provided in Section 9.03(c), against any special, indirect, consequential or punitive damages asserted against such Indemnitee by a third party.

(c) Indemnity. The Loan Parties shall, jointly and severally, indemnify the Administrative Agent, the Arranger, the Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all reasonable, documented (in summary form) and invoiced out of pocket Liabilities and related expenses (limited to reasonable (for items (i), (ii), and (iv), below), documented (in summary form) and invoiced legal fees of a single firm of counsel for all Indemnitees, taken as a whole, and, if necessary, one firm of counsel in each appropriate jurisdiction (which may include a single special counsel acting in multiple jurisdictions) for all Indemnitees taken as a whole (and, in the case of an actual or perceived conflict of interest, where the Indemnitee affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of an additional counsel for each group of affected Indemnitees similarly situated taken as a whole)), in connection with, or as a result of (i) the execution or delivery of the

Loan Documents or any agreement or instrument contemplated thereby, the performance by the parties hereto of their respective obligations thereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or Release of Hazardous Materials on or from any property owned or operated by a Loan Party or a Subsidiary, or any Environmental Liability related in any way to a Loan Party or a Subsidiary, (iv) the failure of a Loan Party to deliver to the Administrative Agent the required receipts or other required documentary evidence with respect to a payment made by a Loan Party for Taxes pursuant to Section 2.17, or (v) any actual or prospective Proceeding relating to any of the foregoing, whether or not such Proceeding is brought by any Loan Party or their respective equity holders, Affiliates, creditors or any other third Person and whether based on contract, tort or any other theory and regardless of whether any Indemnatee is a party thereto; provided no Indemnatee will be indemnified for any loss, claim, damage, liability, cost or expense to the extent it: (i) has been determined by a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from (x) the gross negligence, bad faith or willful misconduct of such Indemnatee or any of its Related Parties or (y) a material breach of the obligations of such Indemnatee or Related Parties under the Loan Documents or (ii) relates to any proceeding between or among Indemnitees other than (A) claims against the Administrative Agent or its Affiliates, in each case, in their capacity or in fulfilling their role as the agent, arranger, syndication agent or documentation agent or any other similar role under the Revolving Facility (excluding their role as a Lender) to the extent such Persons are otherwise entitled to receive indemnification under section (iii) above or (B) claims arising out of any act or omission on the part of the Borrower or its Affiliates. This Section 9.03(c) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim.

(d) Lender Reimbursement. Each Lender severally agrees to pay any amount required to be paid by any Loan Party under paragraphs (a), (b) or (c) of this Section 9.03 to the Administrative Agent, each Issuing Bank and the Swingline Lender, and each Related Party of any of the foregoing Persons (each, an "Agent-Related Person") (to the extent not reimbursed by a Loan Party and without limiting the obligation of any Loan Party to do so), ratably according to their respective Applicable Percentage in effect on the date on which such payment is sought under this Section (or, if such payment is sought after the date upon which the Commitments shall have terminated and the Loans shall have been paid in full, ratably in accordance with such Applicable Percentage immediately prior to such date), from and against any and all Liabilities and related expenses, including the fees, charges and disbursements of any kind whatsoever that may at any time (whether before or after the payment of the Loans) be imposed on, incurred by or asserted against such Agent-Related Person in any way relating to or arising out of the Commitments, 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 such Agent-Related Person under or in connection with any of the foregoing; provided that the unreimbursed expense or Liability or related expense, as the case may be, was incurred by or asserted against such Agent-Related Person in its capacity as such; provided, further, that no Lender shall be liable for the payment of any portion of such Liabilities, costs, expenses or disbursements that are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted primarily from such Agent-Related Person's gross negligence or willful misconduct. The agreements in this Section shall survive the termination of this Agreement and the Payment in Full of the Secured Obligations.

(e) Payments. All amounts due under this Section 9.03 shall be payable not later than 10 days after written demand therefor.

SECTION 9.04 Successors and Assigns. (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 Bank that issues any Letter of Credit), except that (i) the Borrower may not 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 the Borrower 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 Affiliate of the Issuing Bank that issues any Letter of Credit), 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 Bank and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more Persons (other than an Ineligible Institution) all or a portion of its rights and obligations under this Agreement (including all or a portion of its 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, delayed or conditioned) of:

(A) the Borrower, provided that, the Borrower shall be deemed to have consented to any such assignment of all or a portion of the Revolving Loans and Commitments unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof, and provided further that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee;

(B) the Administrative Agent;

(C) the Issuing Bank; and

(D) the Swingline 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 Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower 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 under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent (x) an Assignment and Assumption or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, together with a processing and recordation fee of \$3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Company, the other Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 9.04(b), the terms "Approved Fund" and "Ineligible Institution" have the following meanings:

"Approved Fund" means 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.

"Ineligible Institution" means (a) a natural person, (b) a Defaulting Lender or its Lender Parent, (c) 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, with respect to clause (c), 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 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, (d) a Loan Party or a Subsidiary or other Affiliate of a Loan Party or (e) direct operating competitors of the Loan Parties, in each case identified in writing by the Borrower to the Administrative Agent from time to time.

(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 2.15, 2.16, 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 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 Borrower, 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 Commitment of, and principal amount (and stated interest) of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the Issuing Bank 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 Borrower, the Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an Approved Electronic Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, 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 2.05, 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(d), 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, or notice to, the Borrower, the Administrative Agent, the Issuing Bank or the Swingline Lender, sell participations to one or more banks or other entities (a "Participant") other than an Ineligible Institution in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged; (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (iii) the Borrower, the Administrative

Agent, the Issuing Bank and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and/or obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f) (it being understood that the documentation required under Section 2.17(f) 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 2.18 and 2.19 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 2.15 or 2.17, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation.

Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 2.19(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.18(b) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement or any other Loan Document (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(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 without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, 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 9.05 Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, the Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any other Loan Document or any provision hereof or thereof.

SECTION 9.06 Counterparts; Integration; Effectiveness; Electronic Execution. (a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to (i) fees payable to the Administrative Agent and (ii) increases or reductions of the Issuing Bank Sublimit of the Issuing Bank constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent (or its counsel) shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 9.01), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an "Ancillary Document") that is an Electronic Signature transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), 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; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures

in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Borrower and each Loan Party hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders, the Borrower and the Loan Parties, Electronic Signatures transmitted by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) agrees that the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against any Lender-Related Person for any Liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by facsimile, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of the Borrower and/or any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

SECTION 9.07 Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Bank and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and other obligations at any time owing, by such Lender, the Issuing Bank or any such Affiliate, to or for the credit or the account of any Loan Party against any and all of the Secured Obligations held by such Lender, the Issuing Bank or their respective Affiliates, irrespective of whether or not such Lender, the Issuing Bank or their respective Affiliates shall have made any demand under the Loan Documents and although such obligations may be contingent or unmatured or are owed to a branch office or Affiliate of such Lender or the Issuing Bank different from the

branch office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.20 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Bank, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The applicable Lender, the Issuing Bank or such Affiliate shall notify the Borrower and the Administrative Agent of such setoff or application, provided that any failure to give or any delay in giving such notice shall not affect the validity of any such setoff or application under this Section. The rights of each Lender, the Issuing Bank and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Bank or their respective Affiliates may have.

**SECTION 9.09 Governing Law; Jurisdiction; Consent to Service of Process.** (a) The Loan Documents (other than those containing a contrary express choice of law provision) shall be governed by and construed in accordance with the internal laws of the State of New York, but giving effect to federal laws applicable to national banks.

(b) Each of the Lenders and the Administrative Agent hereby irrevocably and unconditionally agrees that, notwithstanding the governing law provisions of any applicable Loan Document, any claims brought against the Administrative Agent by any Secured Party relating to this Agreement, any other Loan Document, the Collateral or the consummation or administration of the transactions contemplated hereby or thereby shall be construed in accordance with and governed by the law of the State of New York.

(c) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any U.S. federal or New York state court sitting in New York, New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to any Loan Documents, the transactions relating hereto or thereto, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may (and any such claims, cross-claims or third party claims brought against the Administrative Agent or any of its Related Parties may only) be heard and determined in such New York State or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or any other Loan Document shall affect any right that the Administrative Agent, the Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against any Loan Party or its properties in the courts of any jurisdiction.

(d) Each Loan Party hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (c) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(e) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE OR OTHER AGENT (INCLUDING ANY ATTORNEY) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12 Confidentiality. Each of the Administrative Agent, the Issuing Bank 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 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 the extent requested by any Governmental Authority (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by any Requirement of Law or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies under this Agreement or 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, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Loan Parties and their obligations, (g) with the consent of the Borrower, (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 Bank or any Lender on a non-confidential basis from a source other than the Borrower, or (i) on a confidential basis to (1) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided for herein or (2) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of identification numbers with respect to the credit facilities provided for herein.

For the purposes of this Section, “Information” means all information received from the Borrower relating to the Borrower or their business, other than any such information that is available to the Administrative Agent, the Issuing Bank or any Lender on a non-confidential basis prior to disclosure by the Borrower and other than information pertaining to this Agreement provided by arrangers to data service providers, including league table providers, that serve the lending industry; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

**EACH LENDER ACKNOWLEDGES THAT INFORMATION (AS DEFINED IN THIS SECTION 9.12) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE COMPANY, AND ITS AFFILIATES, THE OTHER LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.**

**ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE COMPANY, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.**

SECTION 9.13 Several Obligations; Nonreliance; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any margin stock (as defined in Regulation U of the Board) for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, neither the Issuing Bank nor any Lender shall be obligated to extend credit to the Borrower in violation of any Requirement of Law.

SECTION 9.14 USA PATRIOT Act. Each Lender that is subject to the requirements of the USA PATRIOT Act hereby notifies each Loan Party that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the USA PATRIOT Act.

SECTION 9.15 Disclosure. Each Loan Party, each Lender and the Issuing Bank hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Loan Parties and their respective Affiliates. In addition, each Loan Party and each Lender hereby acknowledges JPMCB or an Affiliated thereof may have also purchased certain Equity Interests in the Borrower or invested in a fund that has invested debt or equity directly or indirectly in the Borrower.

SECTION 9.16 Appointment for Perfection. Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Administrative Agent and the other Secured Parties, in assets that, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession or control. Should any Lender (other than the Administrative Agent) obtain possession or control of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

SECTION 9.17 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts that are treated as interest on such Loan under applicable law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") that may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the NYFRB Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.18 Marketing Consent.

The Borrower hereby authorizes JPMCB and its affiliates (collectively, the "JPMCB Parties"), at their respective sole expense, and without any prior approval by the Borrower, to include the Borrower's name and logo in advertising, marketing, tombstones, case studies and training materials, and to give such other publicity to this Agreement as the JPMCB Parties may from time to time determine in their sole discretion. The foregoing authorization shall remain in effect unless and until the Borrower notifies JPMCB in writing that such authorization is revoked.

ARTICLE X

Loan Guaranty.

SECTION 10.01 Guaranty. Each Guarantor (other than those that have delivered a separate Guaranty) hereby agrees that it is jointly and severally liable for, and, as a primary obligor and not merely as surety, absolutely, unconditionally and irrevocably guarantees to the Secured Parties, the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Secured Obligations and all documented (in summary form) and invoiced costs and expenses, including, without limitation, all court costs and attorneys' and paralegals' fees and expenses paid or incurred by the Administrative Agent, the Issuing Bank and the Lenders in endeavoring to collect all or any part of the Secured Obligations from, or in prosecuting any action against, the Borrower, any Guarantor or any other guarantor of all or any part of the Secured Obligations (such costs and expenses, together with the Secured Obligations, collectively the "Guaranteed Obligations"; provided, however, that the definition of "Guaranteed Obligations" shall not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, as applicable) any Excluded Swap Obligations of such Guarantor for purposes of determining any obligations of any Guarantor). Each Guarantor further 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 remains bound upon its guarantee notwithstanding any such extension or renewal. All terms of this Loan Guaranty apply to and may be enforced by or on behalf of any domestic or foreign branch or Affiliate of any Lender that extended any portion of the Guaranteed Obligations.

SECTION 10.02 Guaranty of Payment. This Loan Guaranty is a guaranty of payment and not of collection. Each Guarantor waives any right to require the Administrative Agent, the Issuing Bank or any Lender to sue the Borrower, any Guarantor, any other guarantor of, or any other Person obligated for, all or any part of the Guaranteed Obligations (each, an "Obligated Party"), or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

SECTION 10.03 No Discharge or Diminishment of Loan Guaranty. (a) Except as otherwise provided for herein, the obligations of each Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than Payment in Full of the Guaranteed Obligations), including: (i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration or compromise of any of the Guaranteed Obligations, by operation of law or otherwise; (ii) any change in the corporate existence, structure or ownership of the Borrower or any other Obligated Party liable for any of the Guaranteed Obligations; (iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any Obligated Party or their assets or any resulting release or discharge of any obligation of any Obligated Party; or (iv) the existence of any claim, setoff or other rights that any Guarantor may have at any time against any Obligated Party, the Administrative Agent, the Issuing Bank, any Lender or any other Person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of each Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit payment by any Obligated Party, of the Guaranteed Obligations or any part thereof.

(c) Further, the obligations of any Guarantor hereunder are not discharged or impaired or otherwise affected by: (i) the failure of the Administrative Agent, the Issuing Bank or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations; (ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations; (iii) any release, non-perfection or invalidity of any indirect or direct security for the obligations of the Borrower for all or any part of the Guaranteed Obligations or any obligations of any other Obligated Party liable for any of the Guaranteed Obligations; (iv) any action or failure to act by the Administrative Agent, the Issuing Bank or any Lender with respect to any collateral securing any part of the Guaranteed Obligations; or (v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Guarantor or that would otherwise operate as a discharge of any Guarantor as a matter of law or equity (other than Payment in Full of the Guaranteed Obligations).

**SECTION 10.04 Defenses Waived.** To the fullest extent permitted by applicable law, each Guarantor hereby waives any defense based on or arising out of any defense of the Borrower or any Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of the Borrower, any Guarantor or any other Obligated Party, other than Payment in Full of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any Person against any Obligated Party or any other Person. Each Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. The Administrative Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with any Obligated Party or exercise any other right or remedy available to it against any Obligated Party, without affecting or impairing in any way the liability of such Guarantor under this Loan Guaranty except to the extent the Guaranteed Obligations have been Paid in Full. To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any Obligated Party or any security.

**SECTION 10.05 Rights of Subrogation.** No Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification, that it has against any Obligated Party or any collateral, until the Loan Parties and the Guarantors have fully performed all their obligations to the Administrative Agent, the Issuing Bank and the Lenders.

**SECTION 10.06 Reinstatement; Stay of Acceleration.** If at any time any payment of any portion of the Guaranteed Obligations (including a payment effected through exercise of a right of setoff) is rescinded, or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise (including pursuant to any settlement entered into by a Secured Party in its discretion), each Guarantor's obligations under this Loan Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Administrative Agent, the Issuing Bank and the Lenders are in possession of this Loan Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Guarantors forthwith on demand by the Administrative Agent.

**SECTION 10.07 Information.** Each Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Guarantor assumes and incurs under this Loan Guaranty, and agrees that none of the Administrative Agent, the Issuing Bank or any Lender shall have any duty to advise any Guarantor of information known to it regarding those circumstances or risks.

**SECTION 10.08 Termination.** Each of the Lenders and the Issuing Bank may continue to make loans or extend credit to the Borrower based on this Loan Guaranty until five (5) days after it receives written notice of termination from any Guarantor. Notwithstanding receipt of any such notice, each Guarantor will continue to be liable to the Lenders for any Guaranteed Obligations created, assumed or committed to prior to the fifth day after receipt of the notice, and all subsequent renewals, extensions, modifications and amendments with respect to, or substitutions for, all or any part of such Guaranteed Obligations. Nothing in this Section 10.08 shall be deemed to constitute a waiver of, or eliminate, limit, reduce or otherwise impair any rights or remedies the Administrative Agent or any Lender may have in respect of, any Default or Event of Default that shall exist under Article VII hereof as a result of any such notice of termination.

**SECTION 10.09 Taxes.** Each payment of the Guaranteed Obligations will be made by each Guarantor without withholding for any Taxes, unless such withholding is required by law. If any Guarantor determines, in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then such Guarantor 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 such Guarantor shall be increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section), the Administrative Agent, Lender or Issuing Bank (as the case may be) receives the amount it would have received had no such withholding been made.

**SECTION 10.10 Maximum Liability.** Notwithstanding any other provision of this Loan Guaranty, the amount guaranteed by each Guarantor hereunder shall be limited to the extent, if any, required so that its obligations hereunder shall not be subject to avoidance under Section 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act or similar statute or common law. In determining the limitations, if any, on the amount of any Guarantor's obligations hereunder pursuant to the preceding sentence, it is the intention of the parties hereto that any rights of subrogation, indemnification or contribution that such Guarantor may have under this Loan Guaranty, any other agreement or applicable law shall be taken into account.

SECTION 10.11 Contribution.

(a) To the extent that any Guarantor shall make a payment under this Loan Guaranty (a "Guarantor Payment") that, taking into account all other Guarantor Payments then previously or concurrently made by any other Guarantor, exceeds the amount that otherwise would have been paid by or attributable to such Guarantor if each Guarantor had paid the aggregate Guaranteed Obligations satisfied by such Guarantor Payment in the same proportion as such Guarantor's "Allocable Amount" (as defined below) (as determined immediately prior to such Guarantor Payment) bore to the aggregate Allocable Amounts of each of the Guarantors as determined immediately prior to the making of such Guarantor Payment, then, following indefeasible payment in full in cash of the Guarantor Payment and the Payment in Full of the Guaranteed Obligations and the termination of this Agreement, such Guarantor shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, each other Guarantor for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment.

(b) As of any date of determination, the "Allocable Amount" of any Guarantor shall be equal to the excess of the fair saleable value of the property of such Guarantor over the total liabilities of such Guarantor (including the maximum amount reasonably expected to become due in respect of contingent liabilities, calculated, without duplication, assuming each other Guarantor that is also liable for such contingent liability pays its ratable share thereof), giving effect to all payments made by other Guarantors as of such date in a manner to maximize the amount of such contributions.

(c) This Section 10.11 is intended only to define the relative rights of the Guarantors, and nothing set forth in this Section 10.11 is intended to or shall impair the obligations of the Guarantors, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Loan Guaranty.

(d) The parties hereto acknowledge that the rights of contribution and indemnification hereunder shall constitute assets of the Guarantor or Guarantors to which such contribution and indemnification is owing.

(e) The rights of the indemnifying Guarantors against other Guarantors under this Section 10.11 shall be exercisable upon the Payment in Full of the Guaranteed Obligations and the termination of this Agreement.

SECTION 10.12 Liability Cumulative. The liability of each Loan Party as a Guarantor under this Article X is in addition to and shall be cumulative with all liabilities of each Loan Party to the Administrative Agent, the Issuing Bank and the Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

SECTION 10.13 Keepwell. Each Qualified ECP Guarantor hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guarantee in respect of a Swap Obligation (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section 10.13 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 10.13 or otherwise under this Loan Guaranty voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). Except as otherwise provided herein, the obligations of each Qualified ECP Guarantor under this Section 10.13 shall remain in full force and effect until the termination of all Swap Obligations. Each Qualified ECP Guarantor intends that this Section 10.13 constitute, and this Section 10.13 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers as of the day and year first above written.

**BORROWER:**

NN, INC.

By  /s/ Thomas D. DeByle

Name: Thomas D. DeByle

Title: Senior Vice President and Chief Financial Officer

**OTHER LOAN PARTIES:**

**Industrial Molding Corporation**  
**Whirlaway Corporation**  
**PNC Acquisition Company, Inc.**  
**PMC USA Acquisition Company, Inc.**  
**PMC Acquisition Company, Inc.**  
**NN Precision Plastics, Inc.**  
**Caprock Manufacturing, Inc.**  
**Caprock Enclosures, LLC**  
**Brainin-Advance Industries LLC**  
**Wauconda Tool & Engineering LLC**  
**General Metal Finishing LLC**  
**Advanced Precision Products, Inc.**  
**Howes Temco, LLC**  
**Premco, Inc.**  
**Profiles Incorporated**  
**Holmed, LLC**  
**Southern California Technical Arts, Inc.**  
**Autocam Corporation**  
**Autocam-Pax, Inc.**  
**Polymetallurgical LLC**  
**NN Power Solutions Holdings, LLC**  
**NN Power Solutions, LLC**

By:  /s/ Matthew S. Heiter

Name: Matthew S. Heiter

Title: Vice President and Secretary

Signature Page to Credit Agreement

JPMORGAN CHASE BANK, N.A., individually and as  
Administrative Agent, Issuing Bank and Swingline Lender

By /s/ Philip VanFossan

Name: Philip VanFossan

Title: Executive Director

Signature Page to Credit Agreement

COMMITMENT SCHEDULE

<u>Lender</u>	<u>Revolving Commitment</u>	<u>Swingline Commitment</u>
JPMorgan Chase Bank, N.A.	\$ 50,000,000	\$ 5,000,000
<b>Total</b>	\$ 50,000,000	\$ 5,000,000

Commitment Schedule

EXHIBIT A  
ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the “Assignor”) and [*Insert name of Assignee*] (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, supplemented or otherwise modified from time to time, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below, (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit, guarantees and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and other rights of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

- 1. Assignor: \_\_\_\_\_
- 2. Assignee: \_\_\_\_\_  
[and is an Affiliate/Approved Fund of [*identify Lender*]<sup>1</sup>]
- 3. Borrower: \_\_\_\_\_
- 4. Administrative Agent: JPMorgan Chase Bank, N.A., as the administrative agent under the Credit Agreement
- 5. Credit Agreement: The Credit Agreement dated as of March 22, 2021 among NN, Inc., the other Loan Parties party thereto, the Lenders parties thereto, JPMorgan Chase Bank, N.A., as Administrative Agent, and the other agents parties thereto

6. AssignedInterest: \_\_\_\_\_

<sup>1</sup> Select as applicable.

<u>Facility Assigned</u> <sup>2</sup>	<u>Aggregate Amount of Commitment/Loans for all Lenders</u>	<u>Amount of Commitment/Loans Assigned</u>	<u>Percentage Assigned of Commitment/Loans</u> <sup>3</sup>
	\$	\$	%
	\$	\$	%
	\$	\$	%

Effective Date: \_\_\_\_\_, 20\_\_\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The Assignee agrees to deliver to the Administrative Agent a completed Administrative Questionnaire in which the Assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about the Company, the other Loan Parties and their Related Parties or their respective securities) will be made available and who may receive such information in accordance with the Assignee's compliance procedures and applicable laws, including Federal and state securities laws.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Title: \_\_\_\_\_

ASSIGNEE

[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Title: \_\_\_\_\_

- \_\_\_\_\_
- 2 Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Revolving Commitment," etc.)
  - 3 Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

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[Consented to and]<sup>4</sup> Accepted:

JPMORGAN CHASE BANK, N.A., as

[Administrative Agent, Issuing Bank and Swingline Lender]

By \_\_\_\_\_  
Title:

[Consented to:]<sup>5</sup>

[NAME OF RELEVANT PARTY]

By \_\_\_\_\_  
Title:

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<sup>4</sup> To be added only if the consent of the Administrative Agent, Issuing Bank and/or Swingline Lender, as applicable, is required by the terms of the Credit Agreement.

<sup>5</sup> To be added only if the consent of the Borrower and/or other parties (e.g. Swingline Lender, Issuing Bank) is required by the terms of the Credit Agreement.

ASSIGNMENT AND ASSUMPTION  
STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, (iv) any requirements under applicable law for the Assignee to become a lender under the Credit Agreement or to charge interest at the rate set forth therein from time to time, or (v) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement and under applicable law that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of this type, (v) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section \_\_\_ thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent, the Arranger, the Assignor or any other Lender or any of their respective Related Parties, and (vi) attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Arranger, the Assignor or any other Lender or any of their respective Related Parties, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations that by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts that have accrued to but excluding the Effective Date and to the Assignee for amounts that have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument.

Acceptance and adoption of the terms of this Assignment and Assumption by the Assignee and the Assignor by Electronic Signature or delivery of an executed counterpart of a signature page of this Assignment and Assumption by any Approved Electronic Platform shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT A-5

BORROWING BASE CERTIFICATE

J.P.Morgan

**BORROWING BASE REPORT**

Obligor Number:

Rpt#

Date:

Loan Number:

Period Covered: \_\_\_\_\_ to \_\_\_\_\_

<u>COLLATERAL CATEGORY</u>	<u>A/R</u>	<u>Inventory</u>	<u>Total Eligible Collateral</u>
<i>Description</i>			
1 Beginning Balance (Previous report—Line 8)			
2 Additions to Collateral (Gross Sales or Purchases)			
3 Other Additions (Add back any non-A/R cash in line 3)			
4 Deductions to Collateral (Cash Received)			
5 Deductions to Collateral (Discounts, other)			
6 Deductions to Collateral (Credit Memos, all)			
7 Other <b>non-cash</b> credits to A/R			
<b>8 Total Ending Collateral Balance</b>			
9 Less Ineligible—Past Due			
10 Less Ineligible —Cross-age (___%)			
11 Less Ineligible – Foreign			
12 Less Ineligible – Contra			
13 Less Ineligible—Other (attached schedule)			
<b>14 Total Ineligibles—Accounts Receivable</b>			
15 Less Ineligible — Inventory Slow-moving			
16 Less Ineligible — Inventory Offsite not covered			
17 Less Ineligible — Inventory WIP			
18 Less Ineligible – Consigned			
19 Less Ineligible — Other (attached schedule)			

EXHIBIT B-1

20	<b>Total Ineligible Inventory</b>		
21	<b>Total Eligible Collateral</b>		
22	Advance Rate Percentage	%	%
23	<b>Net Available—Borrowing Base Value</b>		
24	Reserves (other)		
25	<b>Total Borrowing Base Value</b>		
25A	<b>Total Availability/CAPS</b>		
26	<b>Revolver Line</b>		<b>Total Revolver Line</b>
27	<b>Maximum Borrowing Limit (Lesser of 25 or 26)*</b>		<b>Total Available</b>
27A	<b>Suppressed Availability</b>		
<b>LOAN STATUS</b>			
28	Previous Loan Balance (Previous Report Line 31)		
29	Less: A. Net Collections (Same as line 4)		
	B. Adjustments/Other		
30	Add: A. Request for Funds		
	B. Adjustments/Other		
31	New Loan Balance		
32	Letter of Credit/BA's outstanding		
33	<b>Availability Not Borrowed (Lines 27 less 31 &amp; 32)</b>		
34	<b>Term Loan</b>		<b>Total New Loan Balance:</b>
35	<b>OVERALL EXPOSURE (lines 31, 32 &amp; 34)</b>		

Pursuant to, and in accordance with, the terms and provisions of that certain Credit Agreement dated as of March 22, 2021 (as it may be amended or modified from time to time, the "Agreement") among NN, Inc. (the "Borrower"), the other Loan Parties, the Lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent for the Lenders, the Borrower is executing and delivering to the Administrative Agent this Borrowing Base Report accompanied by supporting data (collectively referred to as the "Report"). The Borrower represents and warrants to the Administrative Agent that this Report is true and correct, and is based on information contained in Borrower's own financial accounting records. The Borrower, by the execution of this Report, hereby ratifies, confirms and affirms all of the terms, conditions and provisions of the Agreement, and certifies on this \_\_\_\_ day of \_\_\_\_\_, 202\_, that the Borrower is in compliance with the Agreement. Unless otherwise defined herein, capitalized terms used herein have the meanings ascribed thereto in the Agreement.

BORROWER NAME:

AUTHORIZED SIGNATURE:

EXHIBIT B-3

EXHIBIT C

COMPLIANCE CERTIFICATE

To: The Lenders parties to the  
Credit Agreement Described Below

This Compliance Certificate is furnished pursuant to that certain Credit Agreement dated as of March 22, 2021 (as amended, modified, renewed or extended from time to time, the "Agreement") among NN, Inc. (the "Borrower"), the other Loan Parties, the Lenders party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent for the Lenders. Unless otherwise defined herein, capitalized terms used in this Compliance Certificate have the meanings ascribed thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES, ON ITS BEHALF AND ON BEHALF OF THE BORROWER, THAT:

1. I am the duly elected \_\_\_\_\_ of the Borrower;

2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Company and its Subsidiaries during the accounting period covered by the attached financial statements [**for quarterly or monthly financial statements add:** and such financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes];

3. The examinations described in paragraph 2 did not disclose, except as set forth below, and I have no knowledge of (i) the existence of any condition or event that constitutes a Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate or (ii) any change in GAAP or in the application thereof that has occurred since the date of the audited financial statements referred to in Section 3.04 of the Agreement;

4. I hereby certify that no Loan Party has changed (i) its name, (ii) its chief executive office, (iii) principal place of business, (iv) the type of entity it is or (v) its state of incorporation or organization without having given the Administrative Agent the notice required by Section 4.15 of the Security Agreement;

5. Schedule I attached hereto sets forth financial data and computations evidencing the Borrower's compliance with certain covenants of the Agreement, all of which data and computations are true, complete and correct<sup>29</sup>;

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<sup>29</sup> Schedule I must include detailed calculation tables for all components of the financial covenant calculations.

6. Schedule II hereto sets forth (i) the computations necessary to determine the Applicable Rate commencing on the Business Day this certificate is delivered and (ii) the Category from the definition of Applicable Rate determined by the computations;

Described below are the exceptions, if any, to paragraph 3 by listing, in detail, the (i) nature of the condition or event, the period during which it has existed and the action that the Borrower has taken, are taking, or propose to take with respect to each such condition or event or (i) the change in GAAP or the application thereof and the effect of such change on the attached financial statements:

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7. [As of the date hereof, there have been no changes in the identity of the Immaterial Subsidiaries from those provided to the Administrative Agent and the Lenders on the Effective Date or the most recent fiscal year or period, as the case may be.][Described below are any changes as of the date hereof in the identity of the Immaterial Subsidiaries from those provided to the Administrative Agent and the Lenders on the Effective Date or the most recent fiscal year or period, as the case may be.]

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8. [As of the date hereof, there have been no additional patents, trademarks, registered copyrights, service marks, and material license agreements owned by each Loan Party or Subsidiary or to which a Loan Party or Subsidiary is a party and that is not set forth on Schedule 3.05 of the Credit Agreement or on any previously delivered Compliance Certificate.][Schedule III hereto sets forth the identity of the additional patents, trademarks, registered copyrights, service marks, and material license agreements owned by each Loan Party or Subsidiary or to which a Loan Party or Subsidiary is a party and that is not set forth on Schedule 3.05 of the Credit Agreement or on any previously delivered Compliance Certificate.]

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The foregoing certifications, together with the computations or information set forth in Schedule I, Schedule II and Schedule III hereto and the financial statements delivered with this Certificate in support hereof, are made and delivered this \_\_ day of \_\_\_\_\_, \_\_\_\_\_.

NN, Inc., as Borrower

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT C-3

Compliance as of \_\_\_\_\_, \_\_\_\_ with

Provisions of Section 6.13 of the Agreement

[Schedule I must include detailed calculation tables for all components of the financial covenant calculations.]

EXHIBIT C-4

Borrower's Applicable Rate Calculation

- (i) Computation: \_\_\_\_\_
- (ii) Category from Grid in Definition of Applicable Rate: \_\_\_\_\_

EXHIBIT C-5

Intellectual Property]

Exhibit D

## JOINDER AGREEMENT

THIS JOINDER AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, \_\_\_\_ 20\_\_, is entered into between \_\_\_\_\_, a \_\_\_\_\_ (the "New Subsidiary") and JPMORGAN CHASE BANK, N.A., in its capacity as administrative agent (the "Administrative Agent") under that certain Credit Agreement dated as of March 22, 2021 (as the same may be amended, modified, extended or restated from time to time, the "Credit Agreement") among NN, Inc., (the "Borrower"), the other Loan Parties party thereto, the Lenders party thereto and the Administrative Agent for the Lenders. All capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Credit Agreement.

The New Subsidiary and the Administrative Agent, for the benefit of the Lenders, hereby agree as follows:

1. The New Subsidiary hereby acknowledges, agrees and confirms that, by its execution of this Agreement, the New Subsidiary will be deemed to be a Loan Party under the Credit Agreement and a "Guarantor" for all purposes of the Credit Agreement and shall have all of the obligations of a Loan Party and a Guarantor thereunder as if it had executed the Credit Agreement. The New Subsidiary hereby ratifies, as of the date hereof, and agrees to be bound by, all of the terms, provisions and conditions contained in the Credit Agreement, including without limitation (a) all of the representations and warranties of the Loan Parties set forth in Article III of the Credit Agreement, **\*[and]\*** (b) all of the covenants set forth in Articles V and VI of the Credit Agreement **\*[and (c) all of the guaranty obligations set forth in Article X of the Credit Agreement.** Without limiting the generality of the foregoing terms of this paragraph 1, the New Subsidiary, subject to the limitations set forth in Sections 10.10 and 10.13 of the Credit Agreement, hereby guarantees, jointly and severally with the other Guarantors, to the Administrative Agent and the Lenders, as provided in Article X of the Credit Agreement, the prompt payment and performance of the Guaranteed Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof and agrees that if any of the Guaranteed Obligations are not paid or performed in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise), the New Subsidiary will, jointly and severally together with the other Guarantors, promptly pay and perform the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration or otherwise) in accordance with the terms of such extension or renewal.**]\* \* [The New Subsidiary has delivered to the Administrative Agent an executed Loan Guaranty.]\***

2. If required, the New Subsidiary is, simultaneously with the execution of this Agreement, executing and delivering such Collateral Documents (and such other documents and instruments) as requested by the Administrative Agent in accordance with the Credit Agreement.

3. The address of the New Subsidiary for purposes of Section 9.01 of the Credit Agreement is as follows:

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EXHIBIT D-1

4. The New Subsidiary hereby waives acceptance by the Administrative Agent and the Lenders of the guaranty by the New Subsidiary upon the execution of this Agreement by the New Subsidiary.

5. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument.

6. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

IN WITNESS WHEREOF, the New Subsidiary has caused this Agreement to be duly executed by its authorized officer, and the Administrative Agent, for the benefit of the Lenders, has caused the same to be accepted by its authorized officer, as of the day and year first above written.

[NEW SUBSIDIARY]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Acknowledged and accepted:

JPMORGAN CHASE BANK, N.A., as Administrative Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of March 22, 2021 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among NN, Inc. (the "Borrower"), the other Loan Parties party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent for the Lenders.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate prior to the first payment to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_  
Name:

Title:

Date: \_\_\_\_\_, \_\_, 20[ ]

[FORM OF]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of March 22, 2021 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among NN, Inc. (the "Borrower"), the other Loan Parties party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent for the Lenders.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate prior to the first payment to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_  
Name:

Title:

Date: \_\_\_\_\_, \_\_, 20[ ]

[FORM OF]

## U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of March 22, 2021 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement") among NN, Inc. (the "Borrower"), the other Loan Parties party thereto, the Lenders party thereto and JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent for the Lenders.

Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by a withholding statement together with an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate prior to the first payment to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: \_\_\_\_\_  
 Name:  
 Title:

Date: \_\_\_\_\_, \_\_, 20[ ]

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

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Pursuant to the provisions of Section 2.17 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any promissory note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to the Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable, from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate prior to the first payment to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, \_\_, 20[ ]



NN, Inc.  
6210 Ardrey Kell Road  
Charlotte, NC 28277

**FOR IMMEDIATE RELEASE**

**NN, INC. ANNOUNCES SUCCESSFUL \$265 MILLION FINANCING**

*New \$50 Million Asset Based Credit Line, 5.5-Year \$150 Million Term Loan, and \$65 Million Preferred Offering Provide Flexibility to Continue Business Transformation*

**Charlotte, N.C., March 22, 2021** – NN, Inc. (NASDAQ: NNBR), a diversified industrial company, today announced the completion of a new financing with J.P. Morgan, funds managed by Oaktree Capital Management, L.P., and investment funds managed by Morgan Stanley Tactical Value to provide a \$50 million asset-based credit line (ABL), a 5.5-year \$150 million term loan, and a \$65 million preferred stock issuance, respectively. Proceeds from the transaction will be used to repay the current principal balance of \$70 million on its term loans due in 2022, to redeem its current \$100 million outstanding preferred stock, prior to the increase in redemption premium at March 31, 2021, and pay off its fixed interest rate swap of \$14 million. The transaction enables the Company to strengthen its balance sheet by extending its capital structure's maturity at an attractive blended cost of capital, allowing the Company financial flexibility to continue its current business transformation efforts.

"We are pleased to complete this financing that provides NN with a solid foundation and flexibility to continue pursuing our strategic initiatives toward transformational growth," stated Warren Veltman, President and Chief Executive Officer. "We have positioned ourselves well to take advantage of the confluence of emerging vehicle electrification and the smart grid technologies necessary to power those vehicles. Supplemented by additional trends in aerospace and defense, we are confident these offerings will assist our efforts to drive future growth."

**Transaction Highlights**

The \$50 million ABL revolving credit facility includes the following provisions:

- Interest rate of LIBOR +1.75% - 2.00%, with a 0.50% floor
- Term of 5 years
- Primarily secured by eligible receivables and inventory

The \$150 million term loan includes the following provisions:

- Interest rate of LIBOR + 6.875%, with a 1% floor
- Term of 5.5 years
- Minimal financial covenants, including maximum total leverage ratio

The \$65 million preferred issuance includes the following provisions:

- Perpetual maturity, redeemable at the greater of accrued value or 1.4x the investment amount
- A 10% annual cash dividend (or 12% PIK) payable quarterly, with a 2.5% increase after year five
- Penny warrants to purchase 1.9 million common shares with a 6-year expiration
- Board observer seat

Tom DeByle, NN Senior Vice President and CFO, commented, “With the reduction in leverage from the sale of Life Sciences in the fourth quarter, we sought to address the near-term debt maturities and outstanding preferred stock in a way that increased our ability to grow our business while maintaining an appropriate level of liquidity. This new agreement meets these needs while bringing in investment partners that understand our industry and are committed to our long-term strategy.”

J.P. Morgan acted as administrative agent, sole bookrunner and sole lead arranger on the asset based credit line, advised on the term loan, and served as sole placement agent on the preferred issuance. Bass, Berry & Sims PLC served as legal counsel to the Company on the transaction. Gibson, Dunn & Crutcher LLP served as legal counsel to Morgan Stanley Tactical Value.

#### **About NN, Inc.**

NN, Inc., a diversified industrial company, combines advanced engineering and production capabilities with in-depth materials science expertise to design and manufacture high-precision components and assemblies for a variety of markets on a global basis. Headquartered in Charlotte, North Carolina, NN has 32 facilities in North America, Europe, South America, and China.

*Except for specific historical information, many of the matters discussed in this press release may express or imply projections of revenues or expenditures, statements of plans and objectives or future operations or statements of future economic performance. These, and similar statements, are forward-looking statements concerning matters that involve risks, uncertainties and other factors which may cause the actual performance of NN, Inc. and its subsidiaries to differ materially from those expressed or implied by this discussion. All forward-looking information is provided by the Company pursuant to the safe harbor established under the Private Securities Litigation Reform Act of 1995 and should be evaluated in the context of these factors. Forward-looking statements generally can be identified by the use of forward-looking terminology such as “assumptions”, “target”, “guidance”, “outlook”, “plans”, “projection”, “may”, “will”, “would”, “expect”, “intend”, “estimate”, “anticipate”, “believe”, “potential” or “continue” (or the negative or other derivatives of each of these terms) or similar terminology. Factors which could materially affect actual results include, but are not limited to: general economic conditions and economic conditions in the industrial sector, the impacts of the coronavirus (COVID-19) pandemic on the Company’s financial condition, business operations and liquidity, inventory levels, regulatory compliance costs and the Company’s ability to manage these costs, start-up costs for new operations, debt reduction, competitive influences, risks that current customers will commence or increase captive production, risks of capacity underutilization, quality issues, availability and price of raw materials, currency and other risks associated with international trade, the Company’s dependence on certain major customers, and the successful implementation of the global growth plan including development of new products. Similarly, statements made herein and elsewhere regarding pending and completed transactions are also forward-looking statements, including statements relating to the future performance and prospects of an acquired business, the expected benefits of an acquisition on the Company’s future business and operations and the ability of the Company to successfully integrate recently acquired businesses.*

*For additional information concerning such risk factors and cautionary statements, please see the section titled “Risk Factors” in the Company’s periodic reports filed with the Securities and Exchange Commission, including, but not limited to, the Company’s Annual Report on Form 10-K for the fiscal year ended December 31, 2020. Except as required by law, we undertake no obligation to update or revise any forward-looking statements we make in our press releases, whether as a result of new information, future events or otherwise.*

FOR FURTHER INFORMATION:

Jeff Tryka, CFA  
Investor Relations Contact  
jtryka@lambert.com  
(616) 258-5766