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

FORM 10-Q

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

For the quarterly period ended: September 27, 2020

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

For the transition period from to

Commission File Number: 1-38643

PAE INCORPORATED
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization) 82-3173473
(I.R.S. Employer Identification No.)

7799 Leesburg Pike, Suite 300 North, Falls Church, Virginia 22043
(Address of principal executive offices) (Zip Code)

(703) 717-6000
(Registrant’s telephone number, including area code)

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

<table>
<thead>
<tr>
<th>Title of each class</th>
<th>Trading Symbols</th>
<th>Name of each exchange on which registered</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class A Common Stock</td>
<td>PAE</td>
<td>Nasdaq Stock Market</td>
</tr>
<tr>
<td>Warrants</td>
<td>PAEW</td>
<td>Nasdaq Stock Market</td>
</tr>
</tbody>
</table>

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

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

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

Large accelerated filer ☐ Accelerated filer ☒
Non-accelerated filer ☐ Smaller reporting company ☐
Emerging growth company ☐

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

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

The number of shares of the registrant’s common stock outstanding as of October 31, 2020 was 92,040,654.
EXPLANATORY NOTE

This Quarterly Report on Form 10-Q (the "Form 10-Q") contains our condensed consolidated financial statements for the three-month and nine-month periods ended September 27, 2020.

We were originally incorporated in Delaware on October 23, 2017 under the name “Gores Holdings III, Inc.” as a special purpose acquisition company formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or other similar business combination with one or more target businesses. On September 11, 2018, we consummated our initial public offering (the "IPO"), following which our shares began trading on the Nasdaq Stock Market ("Nasdaq").

On February 10, 2020 (the "Closing Date"), we consummated the previously announced business combination (the "Business Combination") pursuant to that certain Agreement and Plan of Merger, dated November 1, 2019, by and among Gores Holdings III, Inc. ("Gores III"), EAP Merger Sub, Inc. ("First Merger Sub"), EAP Merger Sub II, LLC ("Second Merger Sub"), Shay Holding Corporation ("Shay"), and Platinum Equity Advisors, LLC (in its capacity as the Stockholder Representative, the "Stockholder Representative") (the "Merger Agreement"), as more fully described in the Company's Form 8-K filed with the Securities and Exchange Commission on February 14, 2020, and the amendment thereto filed on March 11, 2020. In connection with the closing of the Business Combination (the "Closing"), we acquired 100% of the stock of Shay (as it existed immediately prior to the Second Merger, as such term is defined in the Merger Agreement) and its subsidiaries, changed our name from “Gores Holdings III, Inc.” to “PAE Incorporated”, and changed the trading symbols of our Class A Common Stock and warrants on Nasdaq from "GRSH" and "GRSHW," to "PAE" and "PAEWW," respectively.

For accounting purposes, the Business Combination is treated as a reverse acquisition and recapitalization, in which Shay is considered the accounting acquirer (and legal acquiree) and Gores III is considered the accounting acquiree (and legal acquirer). Additionally, unless otherwise stated or the context indicates otherwise, with respect to the financial information contained in this Form 10-Q, including in "Part I, Item 1. Financial Statements" and the notes thereto and in "Part I, Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations," the financial information relating to the three-month and nine-month periods ended September 29, 2019 are those of Shay and its subsidiaries, and for the three-month and nine-month periods ended September 27, 2020, the financial information includes the financial information of Shay and its subsidiaries for the period prior to the Closing and the financial information of PAE Incorporated and its subsidiaries for the period subsequent to the Closing. See Note 1 – “Description of Business” and Note 6 – “Business Combinations and Acquisitions” of the Notes to the condensed consolidated financial statements for additional information.

Unless the context indicates otherwise, the terms “PAE,” the "Company," “we,” “us,” and "our" refer to PAE Incorporated and its consolidated subsidiaries taken as a whole.
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<th>Page No.</th>
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<tr>
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<td>8</td>
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</table>

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<table>
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<tr>
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<th>Description</th>
<th>Page No.</th>
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<tr>
<td>Item 5</td>
<td>Other Information</td>
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</tr>
<tr>
<td>Item 6</td>
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<td>58</td>
</tr>
</tbody>
</table>

## Signatures

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## PART I. FINANCIAL INFORMATION

### Item 1. Financial Statements

**PAE Incorporated**

**Condensed Consolidated Statements of Operations (Unaudited)**

*(In thousands, except per share data)*

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended</th>
<th>Nine Months Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>September 27, 2020</td>
<td>September 29, 2019</td>
</tr>
<tr>
<td>Revenues</td>
<td>$666,240</td>
<td>$697,717</td>
</tr>
<tr>
<td>Cost of revenues</td>
<td>512,877</td>
<td>565,703</td>
</tr>
<tr>
<td>Selling, general and administrative expenses</td>
<td>119,168</td>
<td>133,215</td>
</tr>
<tr>
<td>Amortization of intangible assets</td>
<td>8,047</td>
<td>8,176</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>640,092</td>
<td>707,094</td>
</tr>
<tr>
<td>Program profit (loss)</td>
<td>26,148</td>
<td>(9,377)</td>
</tr>
<tr>
<td>Other income (loss), net</td>
<td>2,384</td>
<td>(1,148)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operating income (loss)</td>
<td>28,532</td>
<td>(10,525)</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>(13,607)</td>
<td>(20,983)</td>
</tr>
<tr>
<td>Income (loss) before income taxes</td>
<td>14,925</td>
<td>(31,508)</td>
</tr>
<tr>
<td>Expense (benefit) from income taxes</td>
<td>4,194</td>
<td>117</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>10,731</td>
<td>(31,625)</td>
</tr>
<tr>
<td>Noncontrolling interest in earnings of ventures</td>
<td>413</td>
<td>545</td>
</tr>
<tr>
<td>Net income (loss) attributed to PAE Incorporated</td>
<td>$10,318</td>
<td>$(32,170)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net income (loss) per share attributed to PAE Incorporated:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>$0.11</td>
<td>$(1.52)</td>
</tr>
<tr>
<td>Diluted</td>
<td>$0.11</td>
<td>$(1.52)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weighted average shares outstanding:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>92,070,306</td>
<td>21,127,823</td>
</tr>
<tr>
<td>Diluted</td>
<td>93,392,565</td>
<td>21,127,823</td>
</tr>
</tbody>
</table>

*See accompanying notes to condensed consolidated financial statements*
### Condensed Consolidated Statements of Comprehensive Income (Loss) (Unaudited)

**PAE Incorporated**

**In thousands**

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended</th>
<th>Nine Months Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>September 27, 2020</td>
<td>September 29, 2019</td>
</tr>
<tr>
<td><strong>Net income (loss)</strong></td>
<td>$10,731</td>
<td>$31,625</td>
</tr>
<tr>
<td><strong>Other comprehensive income (loss):</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Change in foreign currency translation adjustment, net of tax</td>
<td>780</td>
<td>(432)</td>
</tr>
<tr>
<td>Other, net</td>
<td>1</td>
<td>422</td>
</tr>
<tr>
<td><strong>Other comprehensive income (loss)</strong></td>
<td>781</td>
<td>(10)</td>
</tr>
<tr>
<td><strong>Comprehensive income (loss)</strong></td>
<td>11,512</td>
<td>(31,635)</td>
</tr>
<tr>
<td>Comprehensive income attributed to noncontrolling interests</td>
<td>505</td>
<td>298</td>
</tr>
<tr>
<td><strong>Comprehensive income (loss) attributed to PAE Incorporated</strong></td>
<td>$11,007</td>
<td>$(31,933)</td>
</tr>
</tbody>
</table>

*See accompanying notes to condensed consolidated financial statements*
## PAE Incorporated

### Condensed Consolidated Balance Sheets (Unaudited)

*In thousands, except share and par value amounts*

<table>
<thead>
<tr>
<th></th>
<th>September 27, 2020</th>
<th>December 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assets</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current assets:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$145,446</td>
<td>$68,035</td>
</tr>
<tr>
<td>Accounts receivable, net</td>
<td>445,429</td>
<td>442,180</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>44,363</td>
<td>43,549</td>
</tr>
<tr>
<td>Total current assets</td>
<td>635,238</td>
<td>553,764</td>
</tr>
<tr>
<td>Property and equipment, net</td>
<td>25,696</td>
<td>30,404</td>
</tr>
<tr>
<td>Deferred income taxes, net</td>
<td>13,419</td>
<td>3,212</td>
</tr>
<tr>
<td>Investments</td>
<td>18,961</td>
<td>17,925</td>
</tr>
<tr>
<td>Goodwill</td>
<td>409,588</td>
<td>409,588</td>
</tr>
<tr>
<td>Intangible assets, net</td>
<td>156,323</td>
<td>180,464</td>
</tr>
<tr>
<td>Operating lease right-of-use assets, net</td>
<td>159,975</td>
<td>162,184</td>
</tr>
<tr>
<td>Other noncurrent assets</td>
<td>9,762</td>
<td>13,758</td>
</tr>
<tr>
<td>Total assets</td>
<td>$1,428,962</td>
<td>$1,371,299</td>
</tr>
<tr>
<td><strong>Liabilities and stockholders’ equity</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current liabilities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$140,515</td>
<td>$124,661</td>
</tr>
<tr>
<td>Accrued expenses</td>
<td>103,025</td>
<td>102,315</td>
</tr>
<tr>
<td>Customer advances and billings in excess of costs</td>
<td>60,390</td>
<td>51,439</td>
</tr>
<tr>
<td>Salaries, benefits and payroll taxes</td>
<td>141,537</td>
<td>130,633</td>
</tr>
<tr>
<td>Accrued taxes</td>
<td>13,604</td>
<td>18,488</td>
</tr>
<tr>
<td>Current portion of long-term debt, net</td>
<td>23,044</td>
<td>22,007</td>
</tr>
<tr>
<td>Operating lease liabilities, current portion</td>
<td>40,979</td>
<td>36,997</td>
</tr>
<tr>
<td>Other current liabilities</td>
<td>31,528</td>
<td>30,893</td>
</tr>
<tr>
<td>Total current liabilities</td>
<td>554,622</td>
<td>517,433</td>
</tr>
<tr>
<td>Long-term debt, net</td>
<td>584,038</td>
<td>727,930</td>
</tr>
<tr>
<td>Long-term operating lease liabilities</td>
<td>120,883</td>
<td>129,244</td>
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<tr>
<td>Other long-term liabilities</td>
<td>7,410</td>
<td>8,601</td>
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<tr>
<td>Total liabilities</td>
<td>1,266,953</td>
<td>1,383,208</td>
</tr>
<tr>
<td><strong>Stockholders’ equity:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preferred stock, $0.0001 par value per share, 1,000,000 shares authorized; no shares issued and outstanding</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Common stock, $0.0001 par value per share: 210,000,000 shares authorized; 92,040,654 and 21,127,823 shares issued and outstanding as of September 27, 2020 and December 31, 2019, respectively</td>
<td>9</td>
<td>2</td>
</tr>
<tr>
<td>Additional paid-in capital</td>
<td>250,805</td>
<td>101,743</td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(123,975)</td>
<td>(145,371)</td>
</tr>
<tr>
<td>Accumulated other comprehensive income (loss)</td>
<td>153</td>
<td>(134)</td>
</tr>
<tr>
<td>Total PAE Incorporated stockholders’ equity</td>
<td>126,992</td>
<td>(43,760)</td>
</tr>
<tr>
<td>Noncontrolling interests</td>
<td>35,017</td>
<td>31,851</td>
</tr>
<tr>
<td>Total liabilities and stockholders’ equity</td>
<td>$1,428,962</td>
<td>$1,371,299</td>
</tr>
</tbody>
</table>

See accompanying notes to condensed consolidated financial statements.
### PAE Incorporated
Condensed Consolidated Statements of Stockholders’ Equity (Unaudited)
*(in thousands, except share data)*

<table>
<thead>
<tr>
<th>Common Stock</th>
<th>Additional Paid-in Capital</th>
<th>Accumulated Deficit</th>
<th>Accumulated Comprehensive (Loss) / Income</th>
<th>Total PAE Incorporated Stockholders’ Equity</th>
<th>Noncontrolling Interests</th>
<th>Total Stockholders’ Equity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shares</td>
<td>Amount</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Balance at December 31, 2018</strong></td>
<td>282,047</td>
<td>$ 3</td>
<td>$ 101,742</td>
<td>$ (95,562)</td>
<td>$ (2,138)</td>
<td>$ 4,045</td>
</tr>
<tr>
<td>Retrospective application of the capitalization</td>
<td>20,845,776</td>
<td>(1)</td>
<td>1</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Adjusted balance at December 31, 2018</strong></td>
<td>21,127,823</td>
<td>2</td>
<td>101,743</td>
<td>(95,562)</td>
<td>(2,138)</td>
<td>4,045</td>
</tr>
<tr>
<td>Net (loss) income</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(5,719)</td>
<td>—</td>
<td>(5,719)</td>
</tr>
<tr>
<td>Other comprehensive income, net</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>712</td>
<td>712</td>
</tr>
<tr>
<td>Equity contributions from venture partners</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Balance at March 31, 2019</strong></td>
<td>21,127,823</td>
<td>2</td>
<td>101,743</td>
<td>(101,281)</td>
<td>(1,426)</td>
<td>(962)</td>
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<tr>
<td>Net income</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>2,674</td>
<td>—</td>
<td>2,674</td>
</tr>
<tr>
<td>Other comprehensive income, net</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>6</td>
<td>6</td>
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<tr>
<td>Net contributions from noncontrolling interests</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Distributions to venture partners and other</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td><strong>Balance at June 30, 2019</strong></td>
<td>21,127,823</td>
<td>2</td>
<td>101,743</td>
<td>(98,607)</td>
<td>(1,420)</td>
<td>1,718</td>
</tr>
<tr>
<td>Net (loss) income</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(32,170)</td>
<td>—</td>
<td>(32,170)</td>
</tr>
<tr>
<td>Other comprehensive loss, net</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(10)</td>
<td>(10)</td>
</tr>
<tr>
<td><strong>Balance at September 29, 2019</strong></td>
<td>21,127,823</td>
<td>2</td>
<td>101,743</td>
<td>(130,777)</td>
<td>(1,430)</td>
<td>(30,462)</td>
</tr>
</tbody>
</table>
## PAE Incorporated
Condensed Consolidated Statements of Stockholders' Equity (Unaudited) (Continued)

*(In thousands, except share data)*

<table>
<thead>
<tr>
<th>Shares</th>
<th>Amount</th>
<th>Additional Paid-in Capital</th>
<th>Accumulated Deficit</th>
<th>Comprehensive (Loss) / Income</th>
<th>Total PAE Incorporated Stockholders' Equity</th>
<th>Noncontrolling Interests</th>
<th>Total Stockholders' Equity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at December 31, 2019</td>
<td>282,047</td>
<td>$3</td>
<td>$101,742</td>
<td>$(145,371)</td>
<td>$(134)</td>
<td>$(11,909)</td>
<td>$31,851</td>
</tr>
<tr>
<td>Retrospective application of the capitalization</td>
<td>20,845,776</td>
<td>(1)</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adjusted balance at December 31, 2019</td>
<td>21,127,823</td>
<td>2</td>
<td>101,743</td>
<td>$(145,371)</td>
<td>$(134)</td>
<td>$(11,909)</td>
<td>$31,851</td>
</tr>
<tr>
<td>Net (loss) income</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other comprehensive loss, net</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Distributions to venture partners and other</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>152</td>
</tr>
<tr>
<td>Equity contributions from venture partners</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>13</td>
</tr>
<tr>
<td>Equity infusion from Gores III</td>
<td>46,999,787</td>
<td>5</td>
<td>364,773</td>
<td></td>
<td></td>
<td></td>
<td>364,778</td>
</tr>
<tr>
<td>Private placement</td>
<td>23,913,044</td>
<td>2</td>
<td>219,998</td>
<td></td>
<td></td>
<td></td>
<td>220,000</td>
</tr>
<tr>
<td>Payment to Shay Stockholders</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(424,243)</td>
</tr>
<tr>
<td>Balance at Balance at March 29, 2020</td>
<td>92,040,654</td>
<td>9</td>
<td>262,284</td>
<td>$(150,314)</td>
<td>$(829)</td>
<td>111,150</td>
<td>32,169</td>
</tr>
<tr>
<td>Net income</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>16,021</td>
</tr>
<tr>
<td>Other comprehensive income, net</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Distributions to venture partners and other</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(443)</td>
</tr>
<tr>
<td>Equity contributions from venture partners</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1,939</td>
</tr>
<tr>
<td>Post-closing adjustment to Shay Stockholders</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(20,169)</td>
</tr>
<tr>
<td>Stock-based compensation</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3,700</td>
</tr>
<tr>
<td>Balance at June 28, 2020</td>
<td>92,040,654</td>
<td>9</td>
<td>245,815</td>
<td>$(134,293)</td>
<td>$(628)</td>
<td>110,903</td>
<td>34,430</td>
</tr>
<tr>
<td>Net income</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>10,318</td>
</tr>
<tr>
<td>Other comprehensive income, net</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>781</td>
</tr>
<tr>
<td>Equity contributions from venture partners</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>(146)</td>
</tr>
</tbody>
</table>

5
<table>
<thead>
<tr>
<th>Post-closing adjustment to Shay Stockholders</th>
<th>—</th>
<th>—</th>
<th>818</th>
<th>—</th>
<th>—</th>
<th>818</th>
<th>—</th>
<th>818</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Stock-based compensation</strong></td>
<td>—</td>
<td>—</td>
<td>4,318</td>
<td>—</td>
<td>—</td>
<td>4,318</td>
<td>—</td>
<td>4,318</td>
</tr>
<tr>
<td>Balance at September 27, 2020</td>
<td>92,040,654</td>
<td>9</td>
<td>$250,805</td>
<td>$126,992</td>
<td>35,017</td>
<td>$162,009</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

See accompanying notes to condensed consolidated financial statements
<table>
<thead>
<tr>
<th>Operating activities</th>
<th>September 27, 2020</th>
<th>September 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net income (loss)</td>
<td>$22,739</td>
<td>$(33,397)</td>
</tr>
<tr>
<td>Adjustments to reconcile net income (loss) to net cash provided by operating activities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation of property and equipment</td>
<td>7,263</td>
<td>9,468</td>
</tr>
<tr>
<td>Amortization of intangible assets</td>
<td>24,141</td>
<td>25,029</td>
</tr>
<tr>
<td>Amortization of debt issuance cost</td>
<td>9,560</td>
<td>6,096</td>
</tr>
<tr>
<td>Stock-based compensation</td>
<td>8,018</td>
<td>—</td>
</tr>
<tr>
<td>Net undistributed income from unconsolidated ventures</td>
<td>(3,533)</td>
<td>(2,253)</td>
</tr>
<tr>
<td>Deferred income taxes, net</td>
<td>(11,229)</td>
<td>(1,872)</td>
</tr>
<tr>
<td>Other non-cash activities, net</td>
<td>382</td>
<td>35,598</td>
</tr>
<tr>
<td>Changes in operating assets and liabilities, net:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable, net</td>
<td>(3,477)</td>
<td>65,752</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>15,852</td>
<td>1,310</td>
</tr>
<tr>
<td>Accrued expenses</td>
<td>765</td>
<td>12,217</td>
</tr>
<tr>
<td>Customer advances and billings in excess of costs</td>
<td>8,923</td>
<td>34,179</td>
</tr>
<tr>
<td>Salaries, benefits and payroll taxes</td>
<td>10,975</td>
<td>1,569</td>
</tr>
<tr>
<td>Inventories, net</td>
<td>2,291</td>
<td>(2,195)</td>
</tr>
<tr>
<td>Prepaid expenses and other current assets</td>
<td>(4,409)</td>
<td>1,050</td>
</tr>
<tr>
<td>Other current and noncurrent liabilities</td>
<td>71</td>
<td>(17,172)</td>
</tr>
<tr>
<td>Investments</td>
<td>2,793</td>
<td>3,314</td>
</tr>
<tr>
<td>Other noncurrent assets</td>
<td>5,903</td>
<td>(6,289)</td>
</tr>
<tr>
<td>Accrued taxes</td>
<td>(4,904)</td>
<td>(3,527)</td>
</tr>
<tr>
<td>Net cash provided by operating activities</td>
<td>92,124</td>
<td>128,877</td>
</tr>
<tr>
<td>Investing activities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Expenditures for property and equipment</td>
<td>(2,628)</td>
<td>(8,421)</td>
</tr>
<tr>
<td>Other investing activities, net</td>
<td>(72)</td>
<td>2,221</td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>(2,700)</td>
<td>(6,200)</td>
</tr>
<tr>
<td>Financing activities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net contributions from noncontrolling interests</td>
<td>2,095</td>
<td>5,400</td>
</tr>
<tr>
<td>Borrowings on long-term debt</td>
<td>60,734</td>
<td>161,409</td>
</tr>
<tr>
<td>Repayments on long-term debt</td>
<td>(212,184)</td>
<td>(246,411)</td>
</tr>
<tr>
<td>Payments of debt issuance costs</td>
<td>(964)</td>
<td>—</td>
</tr>
<tr>
<td>Recapitalization from merger with Gores III</td>
<td>605,713</td>
<td>—</td>
</tr>
<tr>
<td>Payment of underwriting and transaction costs</td>
<td>(27,267)</td>
<td>—</td>
</tr>
<tr>
<td>Distribution to selling stockholders</td>
<td>(439,719)</td>
<td>—</td>
</tr>
<tr>
<td>Other financing activities, net</td>
<td>(292)</td>
<td>(742)</td>
</tr>
<tr>
<td>Net cash used in financing activities</td>
<td>(11,884)</td>
<td>(80,344)</td>
</tr>
<tr>
<td>Effect of exchange rate changes on cash and cash equivalents</td>
<td>(129)</td>
<td>(1,486)</td>
</tr>
<tr>
<td>Net increase in cash and cash equivalents</td>
<td>77,411</td>
<td>40,847</td>
</tr>
<tr>
<td>Cash and cash equivalents at beginning of period</td>
<td>68,035</td>
<td>51,097</td>
</tr>
<tr>
<td>Cash and cash equivalents at end of period</td>
<td>$145,446</td>
<td>$91,944</td>
</tr>
</tbody>
</table>

| Supplemental cash flow information | | |
| Cash paid for interest | $35,085 | $40,628 |
| Cash paid for taxes | $5,304 | $6,936 |

See accompanying notes to condensed consolidated financial statements
1. Description of Business

PAE Incorporated, formerly known as Gores Holdings III, Inc. ("Gores III"), was originally incorporated in Delaware on October 23, 2017 as a special purpose acquisition company formed for the purpose of effecting a merger, capital stock exchange, asset acquisition, stock purchase, reorganization, or other similar business combination with one or more target businesses. On September 11, 2018, Gores III consummated its initial public offering (the "IPO"), following which our shares began trading on the Nasdaq Stock Market ("Nasdaq"). Unless the context otherwise indicates, references herein to the "Company" or "PAE" refer to PAE Incorporated and its consolidated subsidiaries.

On February 10, 2020 (the "Closing Date"), the Company completed the previously announced business combination (the "Business Combination") in which Shay Holding Corporation ("Shay") was acquired by Gores III. The transaction was completed in a multi-step process pursuant to which Shay ultimately merged with and into a wholly-owned subsidiary of Gores III, with the Gores III subsidiary continuing as the surviving company. As a result of the Business Combination, each share of common stock of Shay was cancelled and converted into the right to receive a portion of the consideration payable in connection with the transaction and Gores III acquired Shay (as it existed immediately prior to the Second Merger, as such term is defined in the Merger Agreement) and its subsidiaries. Additionally, the stockholders of Shay as of immediately prior to the transaction hold a portion of the common stock of the Company.

For accounting purposes, the Business Combination is treated as a reverse acquisition and recapitalization, in which Shay is considered the accounting acquirer (and legal acquiree) and Gores III is considered the accounting acquiree (and legal acquirer).

Accordingly, as of the Closing Date, Shay's historical results of operations replaced Gores III's historical results of operations for periods prior to the Business Combination and the results of operations of both companies are included in the accompanying condensed consolidated financial statements for periods following the Closing Date. See Note 6 - "Business Combinations and Acquisitions" for additional information.

PAE provides a wide variety of integrated support solutions, including defense and military readiness, diplomacy, intelligence support, business process outsourcing, counter-terrorism solutions, peacekeeping, development, host nation capacity building, aircraft and ground equipment maintenance and logistics, and operations and maintenance of facilities and infrastructure. Customers include agencies of the U.S. Government, such as the Department of Defense ("DoD") and Department of State ("DoS"), the National Aeronautics and Space Administration ("NASA"), Department of Homeland Security, intelligence community agencies and other civilian agencies, as well as allied foreign governments and international organizations.

The Company's operations are organized into the following two reportable segments:

- **Global Mission Services ("GMS")**: GMS provides infrastructure and logistics management, international logistics and stabilization support, and aircraft and vehicle readiness and sustainment support. The segment focuses on customer relationships with DoD, DoS, NASA, and other government agencies for work both in the United States and outside of the United States.
• **National Security Solutions ("NSS"):** NSS provides counter-threat solutions, business process outsourcing, adjudication support services and full life cycle support for complex legal matters. NSS focuses on customer relationships in the areas of intelligence, defense and security, and with civilian agencies.

The Company separately presents the costs associated with certain corporate functions as "Corporate", which primarily include costs that are not reimbursed by the Company's U.S. Government customers.

**2. Significant Accounting Principles and Policies**

**Basis of Presentation**

The accompanying unaudited condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") for interim financial information. Accordingly, they do not include all of the information and notes required by U.S. GAAP for complete financial statements. In management's opinion, all adjustments, consisting of only normal recurring adjustments, considered necessary for a fair presentation have been included. The results of operations for the interim periods are not necessarily indicative of the results that may be expected for the full fiscal year. These unaudited condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements and notes thereto for the year ended December 31, 2019, which are filed as Exhibit 99.3 to the Company's Form 8-K/A filed with the SEC on March 11, 2020.

The Company closes its books and records on the last Sunday of the calendar quarter to align its financial closing with its business processes, and therefore the closing of books and records for the third quarter was on September 27, 2020 and September 29, 2019, respectively. The condensed consolidated financial statements and disclosures included herein are labeled based on that convention. This practice only affects interim periods, as the Company's fiscal year ends on December 31.

The condensed consolidated financial statements include the accounts of PAE Incorporated and subsidiaries and ventures in which the Company owns more than 50% or otherwise controls. All intercompany amounts have been eliminated in consolidation.

**Use of Estimates**

These consolidated financial statements are prepared in conformity with U.S. GAAP, which requires the use of estimates and assumptions, including assumptions to determine the fair value of acquired assets and liabilities, recoverability of long-lived assets, goodwill, valuation allowances on deferred taxes, inputs used in stock based compensation and anticipated contract costs and revenues utilized in the earnings recognition process, which affect the reported amounts in the consolidated financial statements and accompanying notes. Due to the size and nature of many of the Company's programs, the estimation of total revenues and cost at completion is subject to a wide range of variables, including assumptions for schedule and technical issues. Actual results may differ from management's estimates.
Update to Significant Accounting Policies

There have been no material changes to the Company's significant accounting policies described in the Company's Form 8-K/A filed with the SEC on March 11, 2020, other than Accounts Receivable, net and Net Income (Loss) Per Share as described below.

Accounts Receivable, net

Amounts billed and due from customers are recorded as billed receivables within accounts receivable, net on the condensed consolidated balance sheets. Generally, customer accounts are due within 30 to 45 days of billings. The Company recognizes an allowance for credit losses based on historical experience, current conditions and reasonable and supportable forecasts. The Company assesses its overall allowance for credit losses at least on a quarterly basis. Prior to the implementation of ASU 2016-13 "Financial Instruments- Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments", the Company recorded adjustments to an allowance for doubtful accounts when collectability was uncertain.

Net Income (Loss) Per Share

Basic net income (loss) per common share is determined by dividing the net income (loss) allocable to stockholders by the weighted average number of common shares outstanding during the periods presented. Diluted income (loss) per share is computed by dividing the net income (loss) allocable to common stockholders by the weighted average number of shares of common stock and common stock equivalents outstanding for the period.

Fair Value of Financial Instruments

Fair value is the price that would be received to sell an asset or paid to transfer a liability in the principal or most advantageous market in an orderly transaction between marketplace participants at the measurement date. The valuation techniques the Company utilized to measure the fair value of financial instruments are based upon observable and unobservable inputs. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect internal market assumptions. These two types of inputs create the following fair value hierarchy:

- **Level 1** – Quoted prices for identical instruments in active markets.
- **Level 2** – Quoted prices for similar instruments in active markets; quoted prices for identical or similar instruments in markets that are not active; and model-derived valuations whose inputs are observable or whose significant value drivers are observable.
- **Level 3** – Significant inputs to the valuation model are unobservable.

The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable, and amounts included in other current assets and current liabilities that meet the definition of a financial instrument approximate fair value because of the short-term nature of these amounts.

The carrying value of the Company's outstanding debt obligations approximates its fair value. The fair value of long-term debt is calculated using Level 2 inputs, based on interest rates.
available for debt with terms and maturities similar to the Company's existing debt arrangements.

3. Recent Accounting Pronouncements

Accounting Pronouncements Adopted

In June 2016, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update (ASU) No. 2016-13, Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses for financial instruments, which requires the measurement and recognition of expected credit losses for financial assets held at amortized cost, replacing the existing incurred loss impairment model. The new standard is effective for reporting periods beginning after December 15, 2019, with early adoption permitted. The Company adopted this guidance effective January 1, 2020 under the modified retrospective method and such adoption did not have a material impact on the Company's financial statements.

In August 2018, the FASB issued ASU 2018-15, Intangibles - Goodwill and Other - Internal-Use Software (Topic 350-40): Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement that is a Service Contract, which requires the tracking and recognition of costs that will be capitalized as an asset and amortized over the assets useful life. The new standard is effective for reporting periods beginning after December 15, 2019, with early adoption permitted. The Company adopted this guidance effective January 1, 2020 prospectively and the standard did not have a material impact on the Company's financial statements.

4. Revenues

Disaggregated Revenues

Disaggregated revenues by customer type were as follows (in thousands):

<table>
<thead>
<tr>
<th>Three Months Ended September 27, 2020</th>
<th>GMS</th>
<th>NSS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>DoD</td>
<td>$203,693</td>
<td>$65,354</td>
<td>$269,047</td>
</tr>
<tr>
<td>Other U.S. government agencies</td>
<td>270,344</td>
<td>57,379</td>
<td>327,723</td>
</tr>
<tr>
<td>Commercial and non-U.S. customers</td>
<td>47,309</td>
<td>22,161</td>
<td>69,470</td>
</tr>
<tr>
<td>Total</td>
<td>$521,346</td>
<td>$144,894</td>
<td>$666,240</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Nine Months Ended September 27, 2020</th>
<th>GMS</th>
<th>NSS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>DoD</td>
<td>$595,933</td>
<td>$194,629</td>
<td>$790,562</td>
</tr>
<tr>
<td>Other U.S. government agencies</td>
<td>781,004</td>
<td>177,535</td>
<td>958,539</td>
</tr>
<tr>
<td>Commercial and non-U.S. customers</td>
<td>109,706</td>
<td>67,988</td>
<td>177,694</td>
</tr>
<tr>
<td>Total</td>
<td>$1,486,643</td>
<td>$440,152</td>
<td>$1,926,795</td>
</tr>
</tbody>
</table>
### Three Months Ended September 29, 2019

<table>
<thead>
<tr>
<th></th>
<th>GMS</th>
<th>NSS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>DoD</td>
<td>$220,480</td>
<td>$46,941</td>
<td>$267,421</td>
</tr>
<tr>
<td>Other U.S. government agencies</td>
<td>284,218</td>
<td>94,105</td>
<td>378,323</td>
</tr>
<tr>
<td>Commercial and non-U.S. customers</td>
<td>30,937</td>
<td>21,036</td>
<td>51,973</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$535,635</strong></td>
<td><strong>$162,082</strong></td>
<td><strong>$697,717</strong></td>
</tr>
</tbody>
</table>

### Nine Months Ended September 29, 2019

<table>
<thead>
<tr>
<th></th>
<th>GMS</th>
<th>NSS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>DoD</td>
<td>$635,531</td>
<td>$162,409</td>
<td>$797,940</td>
</tr>
<tr>
<td>Other U.S. government agencies</td>
<td>839,680</td>
<td>277,008</td>
<td>1,116,688</td>
</tr>
<tr>
<td>Commercial and non-U.S. customers</td>
<td>90,927</td>
<td>61,253</td>
<td>152,180</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,566,138</strong></td>
<td><strong>$500,670</strong></td>
<td><strong>$2,066,808</strong></td>
</tr>
</tbody>
</table>

Disaggregated revenues by contract type were as follows (in thousands):

### Three Months Ended September 27, 2020

<table>
<thead>
<tr>
<th></th>
<th>GMS</th>
<th>NSS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost-reimbursable</td>
<td>$302,795</td>
<td>$35,656</td>
<td>$338,451</td>
</tr>
<tr>
<td>Fixed-price</td>
<td>161,024</td>
<td>62,568</td>
<td>223,592</td>
</tr>
<tr>
<td>Time and materials</td>
<td>57,527</td>
<td>46,670</td>
<td>104,197</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$521,346</strong></td>
<td><strong>$144,894</strong></td>
<td><strong>$666,240</strong></td>
</tr>
</tbody>
</table>

### Nine Months Ended September 27, 2020

<table>
<thead>
<tr>
<th></th>
<th>GMS</th>
<th>NSS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost-reimbursable</td>
<td>$868,780</td>
<td>$106,848</td>
<td>$975,628</td>
</tr>
<tr>
<td>Fixed-price</td>
<td>481,309</td>
<td>185,218</td>
<td>666,527</td>
</tr>
<tr>
<td>Time and materials</td>
<td>136,554</td>
<td>148,086</td>
<td>284,640</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,486,643</strong></td>
<td><strong>$440,152</strong></td>
<td><strong>$1,926,795</strong></td>
</tr>
</tbody>
</table>

### Three Months Ended September 29, 2019

<table>
<thead>
<tr>
<th></th>
<th>GMS</th>
<th>NSS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost-reimbursable</td>
<td>$274,776</td>
<td>$26,864</td>
<td>$301,640</td>
</tr>
<tr>
<td>Fixed-price</td>
<td>220,142</td>
<td>66,548</td>
<td>286,690</td>
</tr>
<tr>
<td>Time and materials</td>
<td>40,717</td>
<td>68,670</td>
<td>109,387</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$535,635</strong></td>
<td><strong>$162,082</strong></td>
<td><strong>$697,717</strong></td>
</tr>
</tbody>
</table>
### Nine Months Ended September 29, 2019

<table>
<thead>
<tr>
<th></th>
<th>GMS</th>
<th>NSS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost-reimbursable</td>
<td>$870,155</td>
<td>$72,566</td>
<td>$942,721</td>
</tr>
<tr>
<td>Fixed-price</td>
<td>$571,132</td>
<td>$215,143</td>
<td>$786,275</td>
</tr>
<tr>
<td>Time and materials</td>
<td>$124,851</td>
<td>$212,961</td>
<td>$337,812</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,566,138</strong></td>
<td><strong>$500,670</strong></td>
<td><strong>$2,066,808</strong></td>
</tr>
</tbody>
</table>

Disaggregated revenues by geographic location were as follows (in thousands):

#### Three Months Ended September 27, 2020

<table>
<thead>
<tr>
<th></th>
<th>GMS</th>
<th>NSS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>$275,785</td>
<td>$142,890</td>
<td>$418,675</td>
</tr>
<tr>
<td>International</td>
<td>$245,561</td>
<td>$2,004</td>
<td>$247,565</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$521,346</strong></td>
<td><strong>$144,894</strong></td>
<td><strong>$666,240</strong></td>
</tr>
</tbody>
</table>

#### Nine Months Ended September 27, 2020

<table>
<thead>
<tr>
<th></th>
<th>GMS</th>
<th>NSS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>$802,230</td>
<td>$434,904</td>
<td>$1,237,134</td>
</tr>
<tr>
<td>International</td>
<td>$684,413</td>
<td>$5,248</td>
<td>$689,661</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,486,643</strong></td>
<td><strong>$440,152</strong></td>
<td><strong>$1,926,795</strong></td>
</tr>
</tbody>
</table>

#### Three Months Ended September 29, 2019

<table>
<thead>
<tr>
<th></th>
<th>GMS</th>
<th>NSS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>$299,306</td>
<td>$160,412</td>
<td>$459,718</td>
</tr>
<tr>
<td>International</td>
<td>$236,329</td>
<td>$1,670</td>
<td>$237,999</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$535,635</strong></td>
<td><strong>$162,082</strong></td>
<td><strong>$697,717</strong></td>
</tr>
</tbody>
</table>

#### Nine Months Ended September 29, 2019

<table>
<thead>
<tr>
<th></th>
<th>GMS</th>
<th>NSS</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>$817,437</td>
<td>$496,220</td>
<td>$1,313,657</td>
</tr>
<tr>
<td>International</td>
<td>$748,701</td>
<td>$4,450</td>
<td>$753,151</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$1,566,138</strong></td>
<td><strong>$500,670</strong></td>
<td><strong>$2,066,808</strong></td>
</tr>
</tbody>
</table>
Remaining Performance Obligations

The Company’s remaining performance obligations balance represents the expected revenue to be recognized for the satisfaction of remaining performance obligations on existing contracts. This balance excludes unexercised contract option years and task orders that may be issued underneath an indefinite delivery, indefinite quantity contract. The remaining performance obligations balance as of September 27, 2020 and December 31, 2019 was $1,527.0 million and $1,640.0 million, respectively.

The Company expects to recognize approximately 96.4% and 3.6% of the remaining performance obligations balance as revenue over the next year and thereafter, respectively.

5. Contract Assets and Contract Liabilities

Contract assets consist of unbilled receivables which represent rights to payment for work or services completed but not billed as of the reporting date. Contract assets are recorded as unbilled receivables within accounts receivable, net on the condensed consolidated balance sheets.

Contract liabilities are advances and milestone payments from customers on certain contracts that exceed revenue earned to date. Contract liabilities are recorded as customer advances and billings in excess of costs on the condensed consolidated balance sheets.

Contract assets and contract liabilities consisted of the following as of the dates presented (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>September 27, 2020</th>
<th>December 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract assets</td>
<td>$263,085</td>
<td>$295,103</td>
</tr>
<tr>
<td>Contract liabilities</td>
<td>$60,390</td>
<td>$51,439</td>
</tr>
</tbody>
</table>

The decrease in contract assets of $(32.0) million during the nine-month period ended September 27, 2020 was primarily due to the timing of billings, partially offset by revenue recognized related to the satisfaction of performance obligations.

The increase in contract liabilities of $9.0 million during the nine-month period ended September 27, 2020 was primarily due to the timing of advance payments from customers partially offset by revenue recognized during the period.

During the three-month and nine-month periods ended September 27, 2020, the Company recognized $1.2 million and $34.6 million, respectively, relating to amounts that were included in the beginning balance of contract liabilities. During the three-month and nine-month periods ended September 29, 2019, the Company recognized $1.5 million and $21.2 million, respectively, relating to amounts that were included in the beginning balance of contract liabilities.
6. Business Combinations and Acquisitions

As described in Note 1- “Description of Business”, the Business Combination was consummated on February 10, 2020. For financial accounting and reporting purposes under U.S. GAAP, the Business Combination was accounted for as a reverse acquisition and recapitalization, with no goodwill or other intangible asset recorded. Under this method of accounting, Gores III (legal acquirer) is treated as the acquired entity and Shay (legal acquiree) is deemed to have issued common stock for the net assets and equity of Gores III consisting of mainly cash, accompanied by simultaneous equity recapitalization of Shay (“Recapitalization”). The net assets of Gores III are stated at historical cost, and accordingly the equity and net assets of Shay have not been adjusted to fair value. Consequently, the consolidated assets, liabilities and results of operations of Shay are the historical financial statements of PAE Incorporated and the Gores III assets, liabilities and results of operations are consolidated with the assets, liabilities and results of operations of Shay beginning on the Closing Date. Shares and earnings per share information prior to the Business Combination have been retroactively restated to reflect the exchange ratio established in the Recapitalization.

Other than professional fees paid to consummate the transaction, the Business Combination primarily involved the exchange of cash and equity between Gores III, Shay and the stockholders of the respective companies. The aggregate proceeds paid to the Shay Stockholders on the Closing Date was approximately $424.2 million. The remainder of the consideration paid to the Shay Stockholders consisted of 21,127,823 newly issued shares of Class A Common Stock of PAE Incorporated, par value $0.0001 per share (“Class A Common Stock”).

In addition to the foregoing consideration paid on the Closing Date, former stockholders of Shay are entitled to receive additional Earn-Out Shares from PAE of up to an aggregate of 4,000,000 shares of Class A Common Stock if the price of Class A Common Stock trading on the Nasdaq exceeds certain thresholds during the five-year period following the completion of the Business Combination. See Note 11 - “Stockholders’ Equity - Earn-Out Agreement” for additional information.

The Company also has certain warrants issued by Gores III that remain outstanding after the Business Combination. See Note 11 - “Stockholders’ Equity - Warrants” for further information about the warrants.

In connection with the Business Combination, the Company recorded $20.9 million, net of tax as a reduction to additional paid in capital related to the transaction costs. These costs were directly attributable to the Recapitalization.

Post-Closing Adjustment

During the third quarter, pursuant to the post-closing adjustment provisions contained in the Merger Agreement, the Company made a post-closing adjustment payment of $20.2 million to the Shay Stockholders. Additionally, during the third quarter, the Company paid $1.0 million to certain members of PAE management in connection with the post-closing adjustment and such amount was recorded as compensation expense.

7. Accounts Receivable, net

The components of Accounts receivable, net consisted of the following as of the dates presented (in thousands):

<table>
<thead>
<tr>
<th>Date Presented</th>
<th>Components of Accounts Receivable (in thousands)</th>
<th>Note Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

15
<table>
<thead>
<tr>
<th></th>
<th>September 27, 2020</th>
<th>December 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Billed receivables</td>
<td>$ 184,700</td>
<td>$ 148,747</td>
</tr>
<tr>
<td>Unbilled receivables</td>
<td>263,085</td>
<td>295,103</td>
</tr>
<tr>
<td>Less allowance for credit losses</td>
<td>(2,356)</td>
<td>(1,670)</td>
</tr>
<tr>
<td>Total accounts receivables, net</td>
<td>$ 445,429</td>
<td>$ 442,180</td>
</tr>
</tbody>
</table>

As of September 27, 2020 approximately 90.7% of the Company's accounts receivable are with the U.S. government.

8. Goodwill and Intangible Assets, net

Goodwill

Based on management’s assessment of goodwill, there was no impairment or change for the three-month and nine-month periods ended September 27, 2020.

The Company considered the implications of COVID-19 as it relates to goodwill and indefinite-lived assets fair value. COVID-19 has had a marginally unfavorable impact on the Company's results of operations for the three-month and nine-month periods ended September 27, 2020. Since the Company’s primary customers are departments and agencies within the U.S. Government, it has not historically had significant issues collecting its receivables and management does not foresee issues collecting receivables in the foreseeable future. In addition, the Company's contract awards typically extend to at least five years, including options, and it has a strong history of being awarded a majority of these contract options. Management does not anticipate that the pandemic will have a materially adverse impact on such options. The Company's liquidity position has not been materially impacted, and management continues to believe that the Company has adequate liquidity to fund its operations and meet its debt service obligations for the foreseeable future. Based on management’s assessment there has been no material impact to goodwill and indefinite-lived assets fair value due to the implications of COVID-19.
Intangible Assets, net

The components of intangible assets, net consisted of the following as of the dates presented (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>September 27, 2020</th>
<th>December 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Gross Carrying</td>
<td>Accumulated</td>
</tr>
<tr>
<td></td>
<td>Amount</td>
<td>Amortization</td>
</tr>
<tr>
<td>Customer relationships</td>
<td>$286,900</td>
<td>$(139,699)</td>
</tr>
<tr>
<td>Technology</td>
<td>1,700</td>
<td>(1,700)</td>
</tr>
<tr>
<td>Trade name</td>
<td>16,900</td>
<td>(7,778)</td>
</tr>
<tr>
<td>Total</td>
<td>$305,500</td>
<td>$(149,177)</td>
</tr>
</tbody>
</table>

As of the nine-month period ended September 27, 2020, customer relationships and trade name intangibles had weighted average remaining useful lives of 7.0 and 5.3 years, respectively. As of the year-ended December 31, 2019, customer relationships and trade name intangibles had weighted average remaining useful lives of 7.9 and 6.0 years, respectively.

During the three-month and nine-month periods ended September 27, 2020 amortization expense was approximately $8.0 million and $24.1 million, respectively. During the three-month and nine-month periods ended September 29, 2019, amortization expense was approximately $8.2 million and $25.0 million, respectively.
Estimated amortization expense in future years is expected to be:

<table>
<thead>
<tr>
<th>Period</th>
<th>As of September 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remainder of 2020</td>
<td>$ 8,047</td>
</tr>
<tr>
<td>2021</td>
<td>31,824</td>
</tr>
<tr>
<td>2022</td>
<td>31,775</td>
</tr>
<tr>
<td>2023</td>
<td>24,565</td>
</tr>
<tr>
<td>2024</td>
<td>20,490</td>
</tr>
<tr>
<td>Thereafter</td>
<td>39,622</td>
</tr>
<tr>
<td>Total</td>
<td>$ 156,323</td>
</tr>
</tbody>
</table>

9. Consolidated Variable Interest Entities

The Company is the majority shareholder and primary beneficiary of PAE (New Zealand) Limited, ATOM Training Limited, PAE-Perini LLC, Syncom Space Services LLC, PAE-SGT Partners LLC, PAE-Parsons Global Logistics Services, LLC and accordingly, these entities are consolidated. As the primary beneficiary, the Company has a risk and obligation to absorb any losses significant to the VIE and the power, through voting rights or similar rights, to direct the activities that could impact economic performance of the VIE. The use of the assets of the VIEs to settle the Company’s obligations is subject to the approval of the managing body of each VIE.

The cash flows generated by these VIEs are included within the Company’s condensed consolidated statements of cash flows. The condensed consolidated balance sheets include the following amounts from these consolidated VIEs as of the dates presented (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>September 27, 2020</th>
<th>December 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total assets</td>
<td>$ 138,177</td>
<td>$ 127,742</td>
</tr>
<tr>
<td>Liabilities and equity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total liabilities</td>
<td>$ 83,596</td>
<td>$ 80,151</td>
</tr>
<tr>
<td>Total equity</td>
<td>54,581</td>
<td>47,591</td>
</tr>
<tr>
<td>Total liabilities and equity</td>
<td>$ 138,177</td>
<td>$ 127,742</td>
</tr>
</tbody>
</table>

The condensed consolidated statements of operations include the following amounts from consolidated VIEs for the periods presented (in thousands):
10. Debt

Long-term debt consisted of the following as of the dates presented (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>September 27, 2020</th>
<th>December 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Term Loan</td>
<td>$491,867</td>
<td>$506,772</td>
</tr>
<tr>
<td>Second Term Loan</td>
<td>128,783</td>
<td>265,329</td>
</tr>
<tr>
<td>Total debt</td>
<td>620,650</td>
<td>772,101</td>
</tr>
<tr>
<td>Unamortized discount and debt issuance costs</td>
<td>(13,568)</td>
<td>(22,164)</td>
</tr>
<tr>
<td>Total debt, net of discount and debt issuance costs</td>
<td>607,082</td>
<td>749,937</td>
</tr>
<tr>
<td>Less current maturities of long-term debt</td>
<td>(23,044)</td>
<td>(22,007)</td>
</tr>
<tr>
<td>Total long-term debt, net of current</td>
<td>$584,038</td>
<td>$727,930</td>
</tr>
</tbody>
</table>

Credit Agreements

The Company’s borrowing arrangement provides for current borrowings of $491.9 million under a first lien term loan credit agreement, dated October 26, 2016, as amended (the “2016 First Term Loan”), $128.8 million under a second lien term loan credit agreement, dated October 26, 2016, as amended (the “2016 Second Term Loan”), and $150.0 million under a revolving credit facility dated October 26, 2016, as amended (the “2016 Revolving Credit Facility,” and together with the 2016 First Term Loan and the 2016 Second Term Loan, the “2016 Credit Agreements”). Principal and interest are due quarterly on the 2016 First Term Loan and interest only is due quarterly on the 2016 Second Term Loan. The maturity date of the 2016 First Term Loan is October 20, 2022. For the 2016 Second Term Loan the maturity date is October 20, 2023. For the Company’s 2016 Revolving Credit Facility the maturity date is October 20, 2021.

In connection with the Business Combination, Shay was required to amend its 2016 Credit Agreements and reduce its outstanding indebtedness under its credit facilities such that the total indebtedness under the facilities, minus cash on hand at the consummation of the transaction would not be greater than $572.1 million. Immediately after the closing of the Business...
Combination the outstanding balance on the 2016 Second Term Loan was reduced by approximately $136.5 million to a principal balance of $128.8 million.

The 2016 Credit Agreements require the Company to comply with specified financial covenants under certain circumstances, including the maintenance of certain leverage ratios.

The 2016 Credit Agreements also contain various non-financial covenants, including affirmative covenants with respect to reporting requirements and maintenance of business activities, and negative covenants that, among other things, may limit or impose restrictions on the Company’s ability to alter the character of the business, consolidate, merge, or sell assets, incur liens or additional indebtedness, make investments, and undertake certain additional actions.

The Company was in compliance with the financial and non-financial covenants under the 2016 Credit Agreements as of September 27, 2020 and December 31, 2019, respectively.

Future principal maturities of the Company’s long-term debt are summarized as follows (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>As of September 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remainder of 2020</td>
<td>$14,905</td>
</tr>
<tr>
<td>2021</td>
<td>29,810</td>
</tr>
<tr>
<td>2022</td>
<td>447,152</td>
</tr>
<tr>
<td>2023</td>
<td>128,783</td>
</tr>
<tr>
<td>2024</td>
<td>—</td>
</tr>
<tr>
<td>Thereafter</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>$620,650</td>
</tr>
</tbody>
</table>

As of September 27, 2020 and December 31, 2019, the available borrowing capacity under the 2016 Revolving Credit Facility was approximately $105.4 million and $121.8 million, respectively.

**Interest Rates on Credit Agreements**

The interest rate per annum applicable to amounts borrowed under the 2016 First Term Loan is equal to either the Base Rate (as defined below) or the LIBO Rate (as defined below), in either case, plus (i) 4.5% in the case of the Base Rate loans and (ii) 5.5% in the case of LIBO Rate loans.

The interest rate per annum applicable to amounts borrowed under the 2016 Second Term Loan is equal to either the Base Rate or the LIBO Rate, in either case, plus (i) 8.5% in the case of the Base Rate loans and (ii) 9.5% in the case of LIBO Rate loans.

The “Base Rate” is defined as a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus one half of one percent, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America (“BofA”) as its “prime rate,” and (c) the LIBO Rate for a LIBO Rate loan with a one month Interest Period commencing on such day plus
The “prime rate” is a rate set by BofA based upon various factors including BofA’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. The LIBO Rate is defined as the rate per annum equal to the London Interbank Offered Rate or a comparable or successor rate, whichever rate is approved by the Administrative Agent (as that term is defined in the Credit Agreements).

The interest rate per annum applicable to the 2016 Revolving Credit Facility is equal to either a Base Rate or a LIBO Rate plus (i) a range of 0.8% to 1.3% in the case of Base Rate loans and (ii) a range of 1.8% to 2.3% in the case of LIBO Rate loans, each based on average availability as of the first day of each quarter.

As of September 27, 2020 and December 31, 2019, the applicable interest rate on the amounts borrowed under the 2016 First Term Loan was 6.5% and 7.4%, respectively. As of September 27, 2020 and December 31, 2019, the applicable interest rate on amounts borrowed under the 2016 Second Term Loan was 10.5% and 11.4%, respectively.

As of September 27, 2020 and December 31, 2019, the applicable interest rate on amounts borrowed under the 2016 Revolving Credit Facility was 4.0% and 5.8%, respectively.

In addition, the interest rate on our term loan borrowings and revolving loan borrowings is based on the London Interbank Offered Rate ("LIBOR" or "LIBO Rate"). LIBOR is the subject of recent national, international, and other regulatory guidance and proposals for reform. In July 2017, the Chief Executive of the U.K. Financial Conduct Authority (the "FCA"), which regulates LIBOR, announced that the FCA will no longer persuade or compel banks to submit rates for the calculation of the LIBOR benchmark after 2021. This announcement indicates that the continuation of LIBOR on the current basis cannot and will not be guaranteed after 2021, and it appears likely that LIBOR will be discontinued or modified by 2021. The consequences of the discontinuance of the LIBOR benchmark cannot be entirely predicted but could include an increase in the cost of our variable rate indebtedness.

Letters of Credit

The Company had 13 outstanding letters of credit for program and insurance requirements totaling approximately $23.9 million as of September 27, 2020 and 11 outstanding letters of credit for program and insurance requirements totaling approximately $21.2 million as of December 31, 2019.

11. Stockholders’ Equity

Authorized and Outstanding Stock

In connection with the Business Combination, the Company made changes to its capital stock. The Company’s amended and restated certificate of incorporation authorizes the issuance of 211,000,000 shares of capital stock, par value of $0.0001 per share, consisting of (a) 210,000,000 shares of Class A common stock, and (b) 1,000,000 shares of preferred stock.
As a result of the Business Combination, the shares issued to Shay Stockholders are reflected as if they were issued and outstanding as of the earliest reported period to reflect the new capital structure.

Warrants

As of September 27, 2020, there were warrants outstanding to acquire 19,999,985 shares of our Class A Common Stock including: (i) 13,333,319 warrants sold as part of the public units issued in our IPO on September 11, 2018 (the "Public Warrants"), and (ii) 6,666,666 warrants issued or transferred to our former sponsor in a private placement on the IPO closing date (the "Private Placement Warrants" and, together with the Public Warrants, the "Warrants"). The Company currently has an effective registration statement on Form S-1 relating to the issuance by the Company of up to (i) 13,333,333 shares of its Class A Common Stock issuable upon the exercise of the outstanding Public Warrants, and (ii) 6,666,666 shares of its Class A Common Stock issuable upon exercise of the Private Placement Warrants.

Each whole Warrant entitles the registered holder to purchase one share of Class A Common Stock at a price of $11.50 per share. The Warrants became exercisable on March 11, 2020, thirty days following the completion of the Business Combination, and expire five years after that date, or upon redemption or liquidation. The Company may redeem outstanding Public Warrants and, unless held by the former sponsor or its permitted transferees, the Private Placement Warrants at a price of $0.01 per Warrant, provided the last reported sales price of the Company's Class A Common Stock equals or exceeds $18.00 per share for any 20 trading days within a 30-trading-day period ending on the third business day before the Company gives proper notice of such redemption to the warrant holders.

The Private Placement Warrants are identical to the Public Warrants except that, so long as they are held by the former sponsor or its permitted transferees: (i) they will not be redeemable by the Company; (ii) they may be exercised by the holders on a cashless basis; and (iii) they are subject to registration rights.

Any transactions related to the Warrants are recorded within the stockholders' equity section of the Company's condensed consolidated financial statements. However, the issuance of shares pursuant to the exercise of these warrants is contingent upon the share price reaching $11.50. Therefore, share activity related to such warrants will not be recorded until such time as the contingency has been met.

Earn-Out Agreement

In connection with the Business Combination, stockholders of Shay immediately prior to the transaction (which stockholders consisted of certain affiliates of Platinum Equity, LLC and members of PAE management (the "Shay Stockholders")) are now entitled to receive up to an aggregate of 4,000,000 additional shares of Class A Common Stock (the "Earn-Out Shares") if at any time during the five-year period following the Closing Date (the "Earn-Out Period") the volume weighted average closing sale price of one share of Class A Common Stock on the Nasdaq (or the exchange which shares of Class A Common Stock are then listed) for a period of at least 10 days out of 20 consecutive trading days (the "Common Share Price") exceeds certain thresholds, described below.
The thresholds (each a “Triggering Event”) causing the Earn-Out Shares to be issued by the Company to the Shay Stockholders is any such event that occurs within the Earn-Out period as follow: (i) a one-time issuance of 1,000,000 shares if the Common Share Price is greater than $13.00; (ii) a one-time issuance of 1,000,000 shares if the Common Share Price is greater than $15.50; (iii) a one-time issuance of 1,000,000 shares if the Common Share Price is greater than $18.00; and (iv) a one-time issuance of 1,000,000 shares if the Common Share Price is greater than $20.50.

Further, if during the Earn-Out Period there is a change in control (as defined in the Merger Agreement) that results in the holders of Class A Common Stock receiving a per share price in respect of their Class A Common Stock that is equal to or greater than the applicable Common Share Price required in connection with any Triggering Event (an “Acceleration Event”), then any such Triggering Event that has not previously occurred will be deemed to have occurred, and the Company must issue Earn-Out Shares accordingly.

If no Triggering Event is achieved within the Earn-Out Period, the Company will not be required to issue the Earn-Out Shares. No Triggering Event was achieved during the three-month and nine-month periods ended September 27, 2020.

Any transactions related to Earn-Out Shares are recorded within the stockholders’ equity section of the Company’s condensed consolidated financial statements. Earn-Out Shares will be recognized as stock dividends and recorded at fair value as an increase in accumulated deficit (or reduction of retained earnings) and as an increase in Common Stock and Additional Paid-in Capital when they are effectively declared by virtue of a Triggering Event being achieved.

12. Stock-Based Compensation

2016 Participation Plan

On May 23, 2016, the Company adopted the Pacific Architects and Engineers Incorporated 2016 Participation Plan (the “2016 Participation Plan”). The purpose of the 2016 Participation Plan was to provide incentive compensation to key employees by granting performance units (“Units”). The Units were valued on the date of grant by the compensation committee of the pre-Business Combination company. Participants in the 2016 Participation Plan were entitled to receive compensation for their Units in the event a qualifying event occurs. In connection with the Business Combination, which was a qualifying event, the 2016 Participation Plan was terminated effective immediately prior to the Closing Date and, in exchange for a release of claims relating to the plan, plan participants received payments totaling approximately $17.4 million. The $17.4 million was paid out during the three-month ended March 29, 2020, and was recorded as compensation expense.

2020 Incentive Plan

Prior to the closing of the Business Combination, the Gores III Board of Directors and stockholders approved the PAE Incorporated 2020 Equity Incentive Plan (the “2020 Incentive Plan”). The 2020 Incentive Plan provides for the grant of stock options, stock appreciation rights, restricted units (RSUs) and other stock or cash-based awards.
**Restricted Stock Units**

During the three-month period ended September 27, 2020, the Company issued 454,709 RSUs to certain employees out of the shares approved for issuance under the 2020 Incentive Plan. RSUs cliff vest in accordance with their respective service period or grade vest on an anniversary date, subject to the terms of the grant agreements and the 2020 Incentive Plan.

The Company recognized $4.0 million and $7.5 million in share-based compensation costs related to RSUs during the three-month and nine-month periods ended September 27, 2020, respectively. Forfeitures are recognized in compensation costs when those occur.

Activity related to RSUs during the nine-months ended September 27, 2020 is as follows:

<table>
<thead>
<tr>
<th></th>
<th>Shares</th>
<th>Weighted-Average Grant Date Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at December 31, 2019</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Granted</td>
<td>2,631,857</td>
<td>7.45</td>
</tr>
<tr>
<td>Vested</td>
<td>(34,366)</td>
<td>10.32</td>
</tr>
<tr>
<td>Forfeited</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Balance at September 27, 2020</td>
<td>2,597,491</td>
<td>7.69</td>
</tr>
</tbody>
</table>

During the three-month period ended September 27, 2020, the Company issued 288,822 performance-based restricted stock units ("PSUs") to certain employees out of the shares approved for issuance under the 2020 Incentive Plan. These PSUs earn out over a three-year performance period, subject to the terms of the grant agreements and the 2020 Incentive Plan. The vesting of PSUs is contingent on the achievement of performance goals stated in the agreement, such as revenue growth, weighted at 50%, and EBITDA margin, weighted at 50%. Compensation costs are recognized when the performance conditions are satisfied or likely to be satisfied. The Company recognized $0.3 million and $0.5 million in PSUs compensation costs during the three-month and nine-month periods ended September 27, 2020, respectively. Forfeitures are recognized in compensation costs as they occur.

Activity related to PSUs during the nine months ended September 27, 2020 is as follows:
Performance-based Restricted Stock Unit

<table>
<thead>
<tr>
<th></th>
<th>Shares</th>
<th>Weighted-Average Date</th>
<th>Fair Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at December 31, 2019</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Granted</td>
<td>619,125</td>
<td>8.61</td>
<td></td>
</tr>
<tr>
<td>Vested</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Forfeited</td>
<td>—</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Balance at September 27, 2020</td>
<td>619,125</td>
<td>$8.61</td>
<td></td>
</tr>
</tbody>
</table>

13. Net Income (Loss) Per Share

Basic net income (loss) per common share is determined by dividing the net income (loss) attributed to stockholders by the weighted average number of common shares outstanding during the period presented. Diluted income (loss) per share is determined by adjusting the weighted average number of shares of common stock and common stock equivalents outstanding for the dilutive effect of common stock equivalents for the periods presented.

The following table sets forth the computation of basic and diluted loss per share attributable to the Company’s common stockholders for the periods presented (in thousands, except shares and per share amounts):

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended</th>
<th>Nine Months Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>September 27, 2020</td>
<td>September 29, 2019</td>
</tr>
<tr>
<td></td>
<td>September 27, 2020</td>
<td>September 29, 2019</td>
</tr>
<tr>
<td>Numerator:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net income (loss) attributed to PAE Incorporated</td>
<td>$10,318</td>
<td>$21,395</td>
</tr>
<tr>
<td>(in thousands)</td>
<td>$10,318</td>
<td>$21,395</td>
</tr>
<tr>
<td>Denominator:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic weighted average shares</td>
<td>92,070,306</td>
<td>81,323,258</td>
</tr>
<tr>
<td>Diluted weighted average shares</td>
<td>93,392,565</td>
<td>82,115,825</td>
</tr>
<tr>
<td>Basic income (loss) per share</td>
<td>$0.11</td>
<td>$0.26</td>
</tr>
<tr>
<td>Diluted income (loss) per share</td>
<td>$0.11</td>
<td>$0.26</td>
</tr>
</tbody>
</table>

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The Company has not included the effect of 19,999,985 shares of Common Stock issuable upon the exercise of Warrants in the calculation of diluted net income (loss) per share for the three-month and nine-month periods ended September 27, 2020. Warrants are excluded when the exercise price exceeds the average market value of the Company's common stock price during the applicable period.

The Company has not included the effect of 4,000,000 Earn-Out Shares in the calculation of basic and diluted net (loss) income per share for the three-month and nine-month periods ended September 27, 2020. The condition for the issuance of these shares is based on the weighted average closing sale price of the Company’s Class A Common Stock and such condition has not been met as of September 27, 2020.

Unvested RSUs and PSUs will not impact the calculation of basic earnings per share (“EPS”) until vested, in which case they would be included in the total weighted average number of shares. All potential dilutive securities, which include unvested RSUs, are included in the diluted EPS calculation. Unvested PSUs are included in the calculation of diluted EPS to the extent that the performance criteria have been achieved.

14. Leases

At September 27, 2020, the Company had right-of-use ("ROU") assets, net of $160.0 million and lease liabilities of $161.9 million recorded on the condensed consolidated balance sheet.

The Company rents certain facilities and equipment under operating leases. The Company’s total lease cost is recorded primarily within selling, general and administrative expenses on the condensed consolidated statements of operations. Rents which are directly chargeable to a project are charged to cost of revenues.

During the three-month and nine-month periods ended September 27, 2020, the Company recognized operating lease costs of approximately $13.8 million and $42.3 million, respectively.
The Company’s future minimum operating lease payments for noncancelable operating leases were as follows (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>September 27, 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remainder of 2020</td>
<td>$10,942</td>
</tr>
<tr>
<td>2021</td>
<td>41,682</td>
</tr>
<tr>
<td>2022</td>
<td>36,043</td>
</tr>
<tr>
<td>2023</td>
<td>31,331</td>
</tr>
<tr>
<td>2024</td>
<td>23,077</td>
</tr>
<tr>
<td>Thereafter</td>
<td>60,704</td>
</tr>
<tr>
<td>Total future minimum lease payments</td>
<td>203,779</td>
</tr>
<tr>
<td>Less imputed interest</td>
<td>41,917</td>
</tr>
<tr>
<td>Present value of minimum lease payments</td>
<td>161,862</td>
</tr>
<tr>
<td>Less current maturities of lease liabilities</td>
<td>40,979</td>
</tr>
<tr>
<td>Long-term lease liabilities</td>
<td>$120,883</td>
</tr>
</tbody>
</table>

The weighted-average remaining lease term and the weighted-average discount rate for the Company’s operating leases were approximately 7.1 years and 7.1%, respectively, at September 27, 2020.

The Company made cash payments of approximately $11.3 million and $32.5 million for operating leases for the three-month and nine-month periods ended September 27, 2020, which are included in cash flows from operating activities in the condensed consolidated statement of cash flows.

15. Legal Proceedings, Commitments, and Contingencies

The Company is a party to, or has property subject to, litigation and other proceedings. Management believes the probability is remote that the outcome of the matters will have a material adverse effect on its operations as a whole, notwithstanding that the unfavorable resolution of any matter may have a material effect on net earnings in a future period. The Company cannot predict the outcome of legal proceedings and loss or range of loss contingencies with certainty.

16. Segment Reporting

The Company’s operations and reportable segments are organized around the nature of the services and products provided to customers. The Company defines its reportable segments based on the way the chief operating decision maker (“CODM”), currently its President and Chief Executive Officer, manages the operations of the Company for purposes of allocating resources and assessing performance.

The GMS operating segment provides support to the U.S. Government and its partners within and outside the United States providing sustainment, training and readiness support and
advancing foreign policy objectives. The NSS operating segment provides a wide-ranging portfolio of offerings that support all facets of national security, including intelligence, homeland security and civil government missions.

While the CODM uses a variety of different measures to evaluate the Company's segments, the primary measures used to evaluate segment performance are revenues and operating income. As a result, interest expense, net and provision for income taxes as recorded on the condensed consolidated statements of operations are not allocated to the Company’s operating segments.

The following table shows information by reportable segment for the periods presented (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended</th>
<th>Nine Months Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>September 27, 2020</td>
<td>September 29, 2019</td>
</tr>
<tr>
<td>Revenues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>GMS</td>
<td>$521,346</td>
<td>$535,635</td>
</tr>
<tr>
<td>NSS</td>
<td>144,894</td>
<td>162,082</td>
</tr>
<tr>
<td>Corporate</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total revenues</td>
<td>$666,240</td>
<td>$697,717</td>
</tr>
<tr>
<td>Operating income</td>
<td></td>
<td></td>
</tr>
<tr>
<td>GMS</td>
<td>$31,401</td>
<td>$26,000</td>
</tr>
<tr>
<td>NSS</td>
<td>5,679</td>
<td>(26,402)</td>
</tr>
<tr>
<td>Corporate</td>
<td>(8,548)</td>
<td>(10,123)</td>
</tr>
<tr>
<td>Total operating income</td>
<td>$28,532</td>
<td>(10,525)</td>
</tr>
<tr>
<td>Amortization of intangible assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>GMS</td>
<td>$4,115</td>
<td>$4,140</td>
</tr>
<tr>
<td>NSS</td>
<td>3,932</td>
<td>4,036</td>
</tr>
<tr>
<td>Corporate</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total amortization of intangible assets</td>
<td>$8,047</td>
<td>$8,176</td>
</tr>
</tbody>
</table>

Under U.S. Government cost accounting standards, indirect costs including depreciation expense are collected in numerous indirect cost pools, which are then collectively allocated to the Company’s reportable segments based on a representative causal or beneficial relationship of the costs in the pool to the costs in the base. While depreciation expense is a component of the allocated costs, the allocation process precludes depreciation expense from being specifically identified by the Company’s individual reportable segments. For this reason, depreciation expense by reportable segment is not presented separately above.

Asset information by segment is not a key measure of performance used by the CODM and therefore segment assets are not presented.
Less than 10% of the Company’s revenues and tangible long-lived assets are generated by or owned by entities outside of the United States. Therefore, additional segment financial information by geographic location is not presented.

17. Related-Party Transactions

Tax Overpayment/Underpayment Amount

In connection with the Business Combination, the Shay Stockholders are entitled to a payment of the net cash savings in U.S. federal, state and local income tax that the post-closing company actually realizes (or is deemed to realize in certain circumstances) in periods after the Closing Date. The liability for this estimated payment and the corresponding charge to equity of $4.7 million are reflected in the Company’s consolidated balance sheets as of September 27, 2020.

Advisory Services

During the nine-month period ended September 27, 2020 and twelve-month period ended December 31, 2019, the Company recognized management fees, transaction and advisory fees, and expenses of approximately $15.8 million and $5.1 million, respectively. As a result of the Business Combination $15.0 million was grouped with other similar transactional expenses and recorded as a reduction to the recapitalized equity and $0.8 million was recorded in selling, general and administrative expenses. The amount of $5.1 million was recorded in selling, general and administrative expenses for the period ended December 31, 2019.

These expenses were for services rendered by one or more affiliates of Platinum Equity, LLC.

18. Income Taxes

The Company’s provision for income tax expense (benefits) were approximately $4.2 million and $(0.8) million and its effective income tax rates were 28.1% and (3.5)% for the three-month and nine-month periods ended September 27, 2020, respectively. The Company’s provision for income tax expense (benefits) were approximately $0.1 million and $(1.9) million and its effective income tax rates were (0.4)% and 5.3% for the three-month and nine-month periods ended September 29, 2019 respectively.

The provision for income taxes for the period ended September 27, 2020 differed from the U.S. federal statutory rate computed by applying the U.S. federal statutory rate to income or loss before income taxes primarily due to the benefit of Foreign Derived Intangible Income (“FDII”), increased prior year interest expense deduction under the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”), nontaxable income and settlement of foreign taxes offset by disallowed compensation deduction under Section 162(m) and disallowed transaction costs. The provision for income taxes for the period ended September 29, 2019 differed from the U.S. federal statutory rate computed by applying the U.S. federal statutory rate to income or loss before income taxes primarily due to a disallowed interest deduction, non-deductible settlement
paid to the U.S. Government, non-deductible goodwill and the effect of foreign operations offset by a benefit from foreign derived intangible income.

On March 27, 2020, President Trump signed into U.S. federal law the CARES Act, which is aimed at providing emergency assistance and health care for individuals, families, and businesses affected by the COVID-19 pandemic and generally supporting the U.S. economy. The CARES Act, among other things, includes provisions relating to refundable payroll tax credits, deferment of employer side social security payments, net operating loss carry-back periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations and technical corrections to tax depreciation methods for qualified improvement property.

In particular, under the CARES Act, for taxable years beginning in 2019 and 2020, the base for interest deductibility is increased from 30% to 50% of EBITDA. As of September 27, 2020, the Company estimated that the net tax benefit related to the CARES Act is approximately $2.7 million. The Company is expecting to defer $36.0 million of employer share Social Security tax under the CARES Act that will be paid equally by December 31, 2021 and 2022. The Company has considered the impact of the CARES Act and continues to review its position as additional guidance is issued by the government.

19. Subsequent Events

Debt Refinancing

On October 19, 2020 the Company refinanced the 2016 Credit Agreements and entered into new senior secured credit facilities (the “2020 Credit Agreements”). The 2020 Credit Agreements establish a $740 million term loan facility maturing in October 2027 priced at LIBOR plus a spread of 4.50%, a $150 million delayed draw term loan facility maturing in October 2027 priced at LIBOR plus a spread of 4.50%, and a $175 million senior secured revolving credit facility maturing in October 2025 priced at LIBOR plus a spread of 1.75% to 2.25%.

The loans under the 2020 Credit Agreements are secured by a first lien over substantially all of the Company's assets as well as affirmative and negative covenants customary for transactions of this type, including limitations with respect to indebtedness, liens, investments, dividends, disposition of assets, change in business and transactions with affiliates.

The Company used the proceeds from the 2020 Credit Agreements to repay the amounts outstanding under the 2016 First Term Loan and 2016 Second Term Loan, with the remaining amounts to be used for general corporate purposes, potential mergers and acquisitions, and transaction fees and expenses.

For more information about the New Credit Agreements, see the Company's Form 8-K filed October 22, 2020, File No. 001-38643.

Agreement to Acquire CENTRA Technology, Inc.

On October 26, 2020, Pacific Architects and Engineers, LLC, a Delaware limited liability company (the “Purchaser”), an indirect wholly owned subsidiary of the Company, entered into a
The parties to the Stock Purchase Agreement have certain customary rights to terminate the Stock Purchase Agreement. The closing of the Transaction is subject to customary closing conditions, and the Company expects that the closing will occur in the fourth quarter of 2020.
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is designed to provide a reader of our financial statements with a narrative from the perspective of management on the Company's financial condition, results of operations, liquidity and certain other factors that may affect future results. The following discussion of the Company's financial condition and results of operations should be read in conjunction with the MD&A and the consolidated financial statements and related notes included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2019, which was filed with the Securities and Exchange Commission (the "SEC") on March 11, 2020, the Company's Current Report on Form 8-K/A filed with the SEC on March 11, 2020, and the unaudited condensed consolidated financial statements and related notes contained in this Quarterly Report on Form 10-Q. Unless otherwise noted, the MD&A compares the three-month and nine-month periods ended September 27, 2020 to the three-month and nine-month periods ended September 29, 2019.

This Quarterly Report on Form 10-Q of PAE contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities and Exchange Act of 1934, as amended (the "Exchange Act"). These forward-looking statements include information concerning the Company's plans, objectives, goals, strategies, future events, future revenues, performance, capital expenditures, financing needs and other information that is not historical information. Many of these statements appear, in particular, in the MD&A. When used in this Quarterly Report on Form 10-Q, the words "anticipates," "assumes," "believes," "estimates," "expects," "intends," "may," "plans," "projects," "seeks," "should," and variations of such words or similar expressions, or the negatives thereof, are intended to identify forward-looking statements. All forward-looking statements, including, without limitation, those based on the Company's examination of historical operating trends, are based upon the Company's current expectations and various assumptions. The Company believes there is a reasonable basis for its expectations and assumptions, but there can be no assurance that the Company will realize its expectations or that the Company's assumptions will prove correct.

There are a number of risks and uncertainties that could cause the Company's actual results to differ materially from the forward-looking statements contained in this Quarterly Report. Important factors that could cause the Company's actual results to differ materially from those expressed as forward-looking statements are set forth in the Company's 2019 Annual Report on Form 10-K in Part I, Item 1A under the heading Risk Factors, the Company's Current Report on Form 8-K/A filed on March 11, 2020 under the heading Risk Factors, and the Company's Form 424B3 prospectus filed on April 23, 2020 under the heading Risk Factors. Such risks, uncertainties and other important factors include, among others, risks related to:

- a loss of contracts with the U.S. federal government or its agencies or other state, local or foreign governments or agencies, including as a result of a reduction in government spending;
- service failures or failures to properly manage projects;
- issues that damage our professional reputation;
- disruptions in or changes to prices of our supply chain, including from difficulties in the supplier qualification process;

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• failures on the part of our subcontractors or joint venture partners to perform their contractual obligations;
• failures to maintain strong relationships with other contractors;
• the impact of a negative audit or other investigation;
• failure to comply with numerous laws and regulations regarding procurement, anti-bribery and organizational conflicts of interest;
• inability to comply with the laws and other security requirements governing access to classified information;
• inability to share information from classified contracts with investors;
• the impact of implementing various data privacy and cybersecurity laws;
• costs and liabilities arising under various environmental laws and regulations;
• various claims, litigation and other disputes that could be resolved against PAE;
• delays, contract terminations or cancellations caused by competitors’ protests of major contract awards received by us;
• risks related to acquisitions, including our ability to realize the benefits of acquisitions in a manner consistent with our expectations and integration risks;
• risks from operating internationally;
• disruptions caused by natural or environmental disasters, terrorist activities or other events outside our control;
• disruptions caused by social unrest, including related protests or disturbances;
• the impact of public health crises, such as COVID-19;
• issues arising from cybersecurity threats or intellectual property infringement claims;
• the loss of members of senior management;
• the inability to attract, train or retain employees with the requisite skills, experience and security clearances;
• the impact of the expiration of our collective bargaining agreements; and
• other risks and uncertainties described in this Form 10-Q, including under the section entitled “Risk Factors,” and described in our other filings with the SEC.

There may be other factors that may cause the Company’s actual results to differ materially from those expressed in these forward-looking statements. Except as may be required by law, the Company undertakes no obligation to publicly update or revise forward-looking statements that may be made to reflect events or circumstances after the date made or to reflect the occurrence of unanticipated events.

Stockholders of the Company should read the following discussion and analysis of our financial condition and results of operations together with the condensed consolidated financial statements and related notes that are included elsewhere in this Quarterly Report on Form 10-Q.

This MD&A generally discusses 2020 and 2019 items and year-over-year comparisons between 2020 and 2019. As used in this MD&A, unless the context indicates otherwise, the financial information relating to the three-month and nine-month periods ended September 29, 2019, are those of Shay Holdings and its subsidiaries, and the financial information and data for the three-month and nine-month periods ended September 27, 2020 includes the financial information and data of Shay Holdings and its subsidiaries for the period prior to the Closing and the financial information and data of PAE Incorporated for the period subsequent to the Closing. See Note 1 – “Description of Business” and Note 6 – “Business Combinations and Acquisitions” for additional information.
We are subject to the informational requirements of the Exchange Act, and we file or furnish reports, proxy statements and other information with the SEC. Such reports and other information we file with the SEC are available free of charge at https://investors.pae.com/financials-and-filings/sec-filings as soon as practicable after such reports are available on the SEC’s website at www.sec.gov. The SEC’s website contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. We periodically provide other information for investors on our corporate website, www.pae.com, and our investor relations website, https://investors.pae.com. This includes press releases and other information about financial performance, information on corporate governance and details related to our annual meeting of stockholders. We intend to use our website as a means of disclosing material non-public information and for complying with our disclosure obligations under Regulation FD. Accordingly, investors should monitor our website, in addition to following the Company's press releases, SEC filings and public conference calls and webcasts. The information contained on the websites referenced in this Quarterly Report on Form 10-Q is not incorporated by reference into this filing. Further, our references to website URLs are intended to be inactive textual references only.

Business Overview

PAE is a leading, highly diversified, global company that provides a broad range of operational solutions and outsourced services to meet the critical enduring needs of the U.S. government, other allied governments, international organizations and companies. PAE merges technology with advanced business practices to deliver faster, smarter and more efficient managed services. Whether clients require high-profile support to operate the largest U.S. embassies around the world or need technical solutions for programs that monitor bioterrorism agents, PAE delivers for its customers. PAE leverages its scale, 65 years of experience and talented global workforce of approximately 20,000 to provide the essential services PAE's clients need to tackle some of the world’s toughest challenges.

Basis of Presentation

PAE provides a wide variety of integrated support solutions, including defense and military readiness, diplomacy, intelligence support, business process outsourcing, counter-terrorism solutions, peacekeeping, development, host nation capacity building, aircraft and ground equipment maintenance and logistics, and operations and maintenance of facilities and infrastructure. Customers include agencies of the U.S. Government, such as the Department of Defense (“DoD”) and Department of State (“DoS”), the National Aeronautics and Space Administration (“NASA”), Department of Homeland Security, intelligence community agencies and other civilian agencies, as well as allied foreign governments and international organizations.

PAE's operations are organized into two reportable segments, Global Mission Services (“GMS”) and National Security Solutions (“NSS”).

- The GMS segment generates revenues through contracts under which PAE provides customers with logistics and stability operations, force readiness and infrastructure management.
The NSS segment generates revenues through contracts under which PAE provides customers with counter-threat solutions, intelligence solutions and information optimization.

Segment performance is based on consolidated revenues and consolidated operating income. For additional information regarding PAE’s reportable segments, refer to Note 16 - “Segment Reporting” of the notes to PAE’s condensed consolidated financial statements.

Factors Affecting PAE’s Operating Results

Business Combinations and Acquisitions

Business Combination

Merger Consideration

As described in Note 1 - “Description of Business” and Note 6 - “Business Combinations and Acquisitions” of the notes to the condensed consolidated financial statements, the Company completed the Business Combination on February 10, 2020. Pursuant to the terms of the Merger Agreement, the aggregate merger consideration paid for the Business Combination was approximately $1,427.0 million. The consideration paid to the Shay Stockholders consisted of a combination of cash and stock consideration. The aggregate cash consideration paid to the Shay Stockholders at the Closing was approximately $424.2 million, consisting of (a) approximately $408.0 million of cash available to Gores III from its trust account, after giving effect to income and franchise taxes payable in respect of interest income earned in the trust account and redemptions that were elected by Gores III’s public stockholders, plus (b) all of Gores III’s other cash and cash equivalents, plus (c) gross proceeds of approximately $220.0 million from a private placement offering conducted by Gores III in which investors purchased an aggregate of 23,913,044 shares of Class A Common Stock for $9.20 per share, less (d) certain transaction fees and expenses, including the payment of deferred underwriting commissions agreed to at the time of Gores III’s initial public offering, less (e) certain payments to participants in the 2016 Participation Plan, less (f) approximately $136.5 million used to repay a portion of the indebtedness of Shay immediately prior to the Closing, less (g) approximately $33.8 million of transaction fees and expenses of Shay. The remainder of the consideration paid to the Shay Stockholders consisted of 21,127,823 newly issued shares of Class A Common Stock.

In addition to the foregoing consideration paid on the Closing Date, Shay Stockholders are entitled to receive additional Earn-Out Shares of up to an aggregate of four million shares of Class A Common Stock, if the price of Class A Common Stock trading on the Nasdaq exceeds certain thresholds during the five-year period following the completion of the Business Combination or if there is an Acceleration Event. See Note 11 - “Stockholders’ Equity - Earn-Out Agreement” of the notes to the condensed consolidated financial statements for additional information.

During the third quarter, pursuant to the post-closing adjustment provisions contained in the Merger Agreement, the Company made a post-closing adjustment payment of $20.2 million to the Shay Stockholders. Additionally, during the third quarter, the Company paid $1.0 million to certain members of PAE management in connection with the post-closing adjustment and such amount was recorded as compensation expense.
Incentive Plan

For a discussion of the 2020 Incentive Plan refer to Note 12 - “Stock-Based Compensation” of the notes to the condensed consolidated financial statements.

Debt

In connection with the Business Combination, Shay was required to amend its 2016 Credit Agreements and reduce its outstanding indebtedness under its credit facilities such that the total indebtedness under the facilities, minus cash on hand at the consummation of the transaction would not be greater than $572.1 million. Immediately after the closing of the Business Combination the outstanding balance on the 2016 Second Term Loan was reduced by approximately $136.5 million to a principal balance of $128.8 million.

Agreement to Acquire CENTRA Technology, Inc.

On October 26, 2020, Pacific Architects and Engineers, LLC, a Delaware limited liability company (the “Purchaser”), an indirect wholly owned subsidiary of the Company, entered into a stock purchase agreement (the “Stock Purchase Agreement”) by and among the Purchaser, CENTRA Technology, Inc., a Maryland corporation (“CENTRA”), certain stockholders of CENTRA, and Barbara Rosenbaum as the sellers representative. CENTRA provides mission critical services to the intelligence community and other U.S. national and homeland security customers. Pursuant to the Stock Purchase Agreement, the Purchaser has agreed to acquire all of the shares of CENTRA for approximately $208.0 million (net of tax benefits) in cash, subject to customary purchase price adjustments as set forth in the Stock Purchase Agreement (the “Transaction”).

The Stock Purchase Agreement contains customary representations, warranties and covenants of the parties. The Stock Purchase Agreement also contains customary indemnities, and the Company has obtained representation and warranty insurance, subject to exclusions, policy limits and certain other terms and conditions, to obtain coverage for losses that may result from a breach of certain representations and warranties made by the sellers in the Stock Purchase Agreement. An aggregate of $5.0 million of the purchase price will be deposited into an escrow account to satisfy purchase price adjustments, if any.

The parties to the Stock Purchase Agreement have certain customary rights to terminate the Stock Purchase Agreement. The closing of the Transaction is subject to customary closing conditions, and the Company expects that the closing will occur in the fourth quarter of 2020.

Financial and Other Highlights

From December 31, 2019 to September 27, 2020, PAE’s overall contract backlog increased by 1.4% from $6,351.8 million to $6,987.9 million, of which $1,650.2 million was funded. Backlog is an operational measure representing PAE’s estimate of the amount of revenue that it expects to realize over the remaining life of awarded contracts and task orders; the funded backlog refers to the value on contracts for which funding is appropriated less revenues previously recognized on these contracts. Unfunded backlog represents the estimated future revenues to be earned from negotiated contracts for which funding has not been appropriated or authorized, and unexercised priced contract options. The total backlog consists of remaining performance obligations plus unexercised options. PAE believes backlog is a useful metric for investors because it is an important measure of business development performance and revenue growth.
This metric is used by management to conduct and evaluate its business during its regular review of operating results for the periods presented. See Note 4 - “Revenues” of the notes to the condensed consolidated financial statements for more information.

The estimated value of PAE’s total backlog was as follows (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>As of September 27, 2020</th>
<th>As of December 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Global Mission Services:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funded GMS backlog</td>
<td>$1,297,983</td>
<td>$1,173,196</td>
</tr>
<tr>
<td>Unfunded GMS backlog</td>
<td>$4,196,193</td>
<td>$3,393,081</td>
</tr>
<tr>
<td>Total GMS backlog</td>
<td>$5,494,176</td>
<td>$4,566,277</td>
</tr>
<tr>
<td><strong>National Security Solutions:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funded NSS backlog</td>
<td>$352,257</td>
<td>$311,214</td>
</tr>
<tr>
<td>Unfunded NSS backlog</td>
<td>$1,141,423</td>
<td>$1,474,309</td>
</tr>
<tr>
<td>Total NSS backlog</td>
<td>$1,493,680</td>
<td>$1,785,523</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funded backlog</td>
<td>$1,650,240</td>
<td>$1,484,410</td>
</tr>
<tr>
<td>Unfunded backlog</td>
<td>$5,337,616</td>
<td>$4,867,390</td>
</tr>
<tr>
<td>Total backlog</td>
<td>$6,987,856</td>
<td>$6,351,800</td>
</tr>
</tbody>
</table>

As of September 27, 2020, PAE had a contract base of more than 581 active contracts and task orders. PAE served as the prime contractor on approximately 96.6% of its contracts. The DoD and DoS are PAE’s largest customers and accounted for 37.0% and 18.7% of its revenue during the nine-month period ended September 27, 2020, respectively and 36.1% and 24.6% of its revenue during the nine-month period ended September 29, 2019, respectively. International Logistics and Stabilization, Infrastructure and Logistics, Readiness and Sustainment, and Business Process Solutions were PAE’s largest contributors by service area, representing 34.5%, 28.1%, 14.6%, and 11.2% of its revenue, respectively during the nine-month period ended September 27, 2020. International Logistics and Stabilization, Infrastructure and Logistics, Readiness and Sustainment, and Business Process Solutions were PAE’s largest contributors by service area, representing 34.8%, 26.0%, 14.9%, and 15.3% of its revenue, respectively during the nine-month period ended September 29, 2019.

PAE’s long-tenured contracts have created a recurring base business with its top revenue-generating contracts having a weighted average contract length of greater than 7.2 years, as of September 27, 2020. We believe that revenue from these long-running contracts will continue to be secure as PAE’s contracts are predominately funded from stable portions of the U.S. Government budget with little dependence on wartime or emergency overseas contingency operations funding.

**Trends and Factors Affecting PAE’s Future Performance**

**External Factors**
PAE’s business primarily focuses on providing services to the U.S. Government and allied nations and organizations; PAE’s performance is inherently linked to governmental missions and goals. We have concentrated our business efforts on those missions and goals that are enduring and that have limited exposure to abrupt policy changes. For example, PAE has supported U.S. embassies since the 1970s. We are also trusted by our customers to support them on major policy initiatives that require immediate response to solve an acute crisis. Examples of this work include our rapid establishment and operation of Ebola treatment units in Liberia in 2015 and our work this year supporting COVID-19 testing and care, including on behalf of the state of Georgia converting a convention center to a COVID-19 treatment center in less than one week, mobilizing trained-and-ready test teams to conduct COVID-19 testing for the Southeastern Conference of the National Collegiate Athletic Association, and serving as the joint logistics and medical integrator for the Navajo Nation Department of Health’s COVID-19 response.

Over most of the last two decades, the U.S. Government has increased its reliance on the private sector for a wide range of professional and support services. This increased use of outsourcing by the U.S. Government has been driven by a variety of factors, including lean-government initiatives launched in the 1990s, surges in demand during times of national crisis, the increased complexity of missions conducted by the U.S. military and the DoS, increased focus of the U.S. military on war-fighting efforts and loss of skills within the government caused by workforce reductions and retirements.

Although the size of future U.S. Government department and agency budgets remains subject to change, current indications are that overall U.S. Government spending will remain consistent with current spending levels. PAE believes the following industry trends will result in continued strong demand in the target markets for the types of services it provides:

- the continued transformation of military forces, leading to increased outsourcing of non-combat functions, including life-cycle asset management functions ranging from organizational to depot level maintenance;
- an increased level of coordination between the DoS and DoD on key national security initiatives and foreign policies;
- increased maintenance, overhaul and upgrade needs to support aging military platforms; and
- the on-going evolution of international relations that may require enhanced or new policy initiatives.

**Current Economic Conditions**

PAE believes that its industry and customer base are less likely to be affected by many of the factors generally affecting business and consumer spending. PAE’s contract awards typically extend to five years, including options, and it has a strong history of being awarded a majority of these contract options. Additionally, since PAE’s primary customers are departments and agencies within the U.S. Government, it has not historically had significant issues collecting its receivables. However, PAE cannot be certain that the economic environment, government debt levels, or other factors will not adversely impact its business, financial condition or results of operations in the future. The government has taken several financial precautions and measures...
to combat the current financial market conditions, including in response to the COVID-19 pandemic.

**Impact of COVID-19**

We continue to work with our stakeholders (including customers, employees, suppliers and local communities) to address this global pandemic. Specifically, we are working closely with our customers, including those within the U.S. Government, to permit continued contract performance and to mitigate the impact of the current COVID-19 pandemic on our operations and personnel. We continue to review our contractual provisions, hold discussions with customers regarding the pandemic’s potential impact on contract operations, and take actions to reduce the impact of COVID-19 on our business, workforce, supply chain, revenues, and results of operations. We are continuing to monitor the impact of the pandemic and other related uncertainties on financial markets, which previously caused us to delay undertaking certain actions in support of our strategic plans. In response to COVID-19, we have taken a number of steps to ensure the protection of employees and customers, as well as to mitigate any operational and financial impacts. In particular, we are:

- Implementing enhanced health and safety protocols, including at customer sites, in order to protect our employees and customers and to maintain continuity of operations;
- Monitoring on a daily basis the COVID-19 status of employees and independent contractors;
- Reviewing on an ongoing basis the impact of COVID-19 on programs, facilities and contracts with customers;
- Reducing overhead costs by among other things delaying planned hiring and by cancelling travel that is not directly related to program requirements;
- Developing contingency and business continuity plans in case COVID-19 disruptions increase or key personnel become incapacitated;
- Identifying new business opportunities related to COVID-19, including expanded service offerings for existing customers;
- Entering into contract modifications and advance agreements where applicable to permit recovery of costs relating to COVID-19; and
- Engaging in frequent and ongoing dialogue and contract negotiations with customers to either:
  - Permit PAE employees to continue to work safely (including remotely); or,
  - Permit PAE to be reimbursed the costs of paid leave for employees who are unable to work (as provided by Section 3610 of the Coronavirus Aid, Relief and Economic Security Act (“CARES Act”).

COVID-19 has had a marginally unfavorable impact on the Company’s results of operations for the three-month and nine-month periods ended September 27, 2020. Although our operations have been disrupted by the COVID-19 pandemic, the impact has been mitigated due to the nature of our business. In particular, our U.S. Government customers have taken steps to ensure the continuance of many of the services provided by us and other contractors, including, but not limited to, designating certain PAE contracts as essential for continued performance and authorizing remote work for contractor personnel that cannot access worksites. In addition, the impact may be further mitigated by Section 3610 of the CARES Act, which allows U.S. government agencies to reimburse contractors such as us at the minimum applicable contract billing rate for costs of certain paid leave for employees who cannot access work sites or telework through December 11, 2020. However, some U.S. Government customers have suspended or reduced work under certain of our contracts.
COVID-19 related costs for us and our subcontractors could be significant, and we are seeking reimbursement of such costs under our U.S. Government contracts through a combination of contract actions and reimbursement of costs under Section 3610 of the CARES Act. Reimbursement of any costs under Section 3610 is not expected to include profit or fee. Costs for employees whose jobs cannot be performed remotely may not be fully recoverable under our contracts. We also have no assurance that Congress will appropriate funds to cover the reimbursement of contractors authorized by the CARES Act.

Management expects that the impact of COVID-19 will be marginally unfavorable on our full year results based on information known to us at this time. Since our primary customers are departments and agencies within the U.S. Government, we have not historically had significant issues collecting our receivables and do not foresee issues collecting our receivables in the foreseeable future. In addition, our contract awards typically extend to at least five years, including options, and we have a strong history of being awarded a majority of these contract options; we do not anticipate that the pandemic will have a materially adverse impact on such awards.

Our liquidity position has not been materially impacted, and we continue to believe that we have adequate liquidity to fund our operations and meet our debt service obligations for the foreseeable future. However, we cannot predict the impact of the COVID-19 pandemic, and the longer the duration of the event and the more widespread in geographic locations where we and our suppliers operate, the more likely it is that it could have an adverse impact on our financial condition, results of operations, and/or cash flows in the future.

**Inflation and Pricing**

Most of PAE’s contracts provide for estimates of future labor costs to be escalated for any option periods, while the non-labor costs in its contracts are normally considered reimbursable at cost. PAE’s property and equipment consists principally of computer systems equipment, machinery and transportation equipment, leasehold improvements, and furniture and fixtures. PAE does not expect the overall impact of inflation on replacement costs of its property and equipment to be material to its future results of operations or financial condition.

**Primary Components of Operating Results**

**Revenues**

The majority of PAE’s revenues are generated from contracts with the U.S. Government and its agencies. PAE enters into a variety of contract types, including fixed price, cost reimbursable, and time and materials contracts.

**Cost of revenues**

Cost of revenues includes costs related to labor, material, subcontract labor and other costs that are allowable and allocable to contracts under federal procurement standards.

**Selling, general and administrative expenses**
Selling, general and administrative expenses primarily consist of (i) fringe benefits related to the contract costs; (ii) salaries and wages plus associated fringe benefits and occupancy costs related to executive and senior management, business development, bid and proposal, contracts administration, finance and accounting, human resources, recruiting, information systems support, legal and corporate governance; and (iii) unallowable costs under applicable procurement standards that are not allocable to contracts for billing purposes. Unallowable costs do not generate revenue but are necessary for business operations.

Results of Operations

Comparison of Results for the Three Months Ended September 27, 2020 (unaudited) and September 29, 2019 (unaudited) (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended</th>
<th>Dollar Change</th>
<th>Percent Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>September 27, 2020</td>
<td>September 29, 2019</td>
<td></td>
</tr>
<tr>
<td>Revenues</td>
<td>$666,240</td>
<td>$697,717</td>
<td>($31,477)</td>
</tr>
<tr>
<td>Cost of revenues</td>
<td>512,877</td>
<td>565,703</td>
<td>(52,826)</td>
</tr>
<tr>
<td>Selling, general and administrative expenses</td>
<td>119,168</td>
<td>133,215</td>
<td>(14,047)</td>
</tr>
<tr>
<td>Amortization of intangible assets</td>
<td>8,047</td>
<td>8,176</td>
<td>(129)</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>640,092</td>
<td>707,094</td>
<td>(67,002)</td>
</tr>
<tr>
<td>Program profit (loss)</td>
<td>26,148</td>
<td>(9,377)</td>
<td>35,525</td>
</tr>
<tr>
<td>Other income, net</td>
<td>2,384</td>
<td>(1,148)</td>
<td>3,532</td>
</tr>
<tr>
<td>Operating income</td>
<td>28,532</td>
<td>(10,525)</td>
<td>39,057</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>(13,607)</td>
<td>(20,983)</td>
<td>7,376</td>
</tr>
<tr>
<td>Income (loss) before income taxes</td>
<td>14,925</td>
<td>(31,508)</td>
<td>46,433</td>
</tr>
<tr>
<td>Expense from income taxes</td>
<td>4,194</td>
<td>117</td>
<td>4,077</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>10,731</td>
<td>(31,625)</td>
<td>42,356</td>
</tr>
<tr>
<td>Noncontrolling interest in earnings of ventures</td>
<td>413</td>
<td>545</td>
<td>(132)</td>
</tr>
<tr>
<td>Net income (loss) attributed to PAE Incorporated</td>
<td>$10,318</td>
<td>$(32,170)</td>
<td>$42,488</td>
</tr>
</tbody>
</table>

Revenues

Revenues for the three-month period ended September 27, 2020, decreased by approximately $31.5 million, or 4.5%, from the comparable period in 2019. The decrease was attributable to a $53.3 million impact from COVID-19, of which approximately $42.8 million was non-labor and
$10.5 million was labor, which decrease was partially offset by a $21.9 million net increase in contract volume and new business programs.

Cost of revenues

Cost of revenues for the three-month period ended September 27, 2020, decreased by approximately $52.8 million, or 9.3%, from the comparable period in 2019. The decrease in cost of revenues was primarily driven by lower revenue volume and the write down of PAE ISR LLC (“PAE ISR”) assets held for sale in the prior year period.

Selling, general and administrative expenses

Selling, general and administrative expense for the three-month period ended September 27, 2020, decreased by approximately $14.0 million, or 10.5%, from the comparable period in 2019. The decrease in selling, general and administrative expenses was primarily driven by lower indirect expenses including savings from the sale of PAE ISR assets in 2019 and lower revenue volume.

Amortization of intangible assets

Amortization of intangible assets for the three-month period ended September 27, 2020, decreased by approximately $0.1 million, or 1.6%, from the comparable period in 2019. The reduction was associated with amortizing certain customer relationships, development technologies, and trade names.

Other income, net

Other income, net for the three-month period ended September 27, 2020, increased by approximately $3.5 million, from the comparable period in 2019. The increase was primarily driven by higher joint venture income in the current period.

Operating income

Operating income for the three-month period ended September 27, 2020, increased by approximately $39.1 million, from the comparable period in 2019. The increase resulted from the write down of PAE ISR assets held for sale in the prior year period and higher other operating income in the current period, which increase was partially offset by lower revenue volume in the current period.

Interest expense, net

Interest expense, net for the three-month period ended September 27, 2020, decreased by approximately $7.4 million, or 35.2%, from the comparable period in 2019. This decrease was primarily driven by reduction of debt year over year.

Net income

Net income attributed to PAE for the three-month period ended September 27, 2020 was $10.3 million compared with a net income attributed to PAE of approximately $(32.2) million in the comparable period in 2019. The increase in net income for the three-month period ended
September 27, 2020, was primarily driven by factors impacting operating income and reduced interest expense.

**Comparison of Results for the Nine Months Ended September 27, 2020 (unaudited) and September 29, 2019 (unaudited) (in thousands):**

<table>
<thead>
<tr>
<th></th>
<th>Nine Months Ended</th>
<th>Dollar Change</th>
<th>Percent Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>September 27, 2020</td>
<td>September 29, 2019</td>
<td></td>
</tr>
<tr>
<td>Revenues</td>
<td>$1,926,795</td>
<td>$2,066,808</td>
<td>$(140,013)</td>
</tr>
<tr>
<td>Cost of revenues</td>
<td>1,474,763</td>
<td>1,623,634</td>
<td>(148,871)</td>
</tr>
<tr>
<td>Selling, general and administrative expenses</td>
<td>361,945</td>
<td>394,689</td>
<td>(32,744)</td>
</tr>
<tr>
<td>Amortization of intangible assets</td>
<td>24,141</td>
<td>25,029</td>
<td>(888)</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>1,860,849</td>
<td>2,043,352</td>
<td>(182,503)</td>
</tr>
<tr>
<td>Program profit (loss)</td>
<td>65,946</td>
<td>23,456</td>
<td>42,490</td>
</tr>
<tr>
<td>Other income, net</td>
<td>4,338</td>
<td>6,530</td>
<td>(2,192)</td>
</tr>
<tr>
<td>Operating income</td>
<td>70,284</td>
<td>29,986</td>
<td>40,298</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>(48,312)</td>
<td>(65,260)</td>
<td>16,948</td>
</tr>
<tr>
<td>Income (loss) before income taxes</td>
<td>21,972</td>
<td>(35,274)</td>
<td>57,246</td>
</tr>
<tr>
<td>Benefit from income taxes</td>
<td>(767)</td>
<td>(1,877)</td>
<td>1,110</td>
</tr>
<tr>
<td>Net income (loss)</td>
<td>22,739</td>
<td>(33,397)</td>
<td>56,136</td>
</tr>
<tr>
<td>Noncontrolling interest in earnings of ventures</td>
<td>1,344</td>
<td>1,819</td>
<td>(475)</td>
</tr>
<tr>
<td>Net income (loss) income attributed to PAE Incorporated</td>
<td>$21,395</td>
<td>$(35,216)</td>
<td>$56,611</td>
</tr>
</tbody>
</table>

**Revenues**

Revenues for the nine-month period ended September 27, 2020, decreased by approximately $140.0 million, or 6.8%, from the comparable period in 2019. The decrease was attributable to a $125.4 million impact from COVID-19, of which approximately $92.6 million was non-labor and $32.8 million was labor, and by a net decrease of $14.6 million from change in contract volume and new business.

**Cost of revenues**

Cost of revenues for the nine-month period ended September 27, 2020, decreased by approximately $148.9 million, or 9.2%, from the comparable period in 2019. The decrease in cost of revenues was primarily driven by lower revenue volume and the write down of PAE ISR assets held for sale in the prior year period partially offset by higher participation of lower cost of sales programs in the current period.
Selling, general and administrative expenses

Selling, general and administrative expense for the nine-month period ended September 27, 2020, decreased by approximately $32.7 million, or 8.3%, from the comparable period in the prior year. The decrease in selling, general and administrative expenses was primarily driven by lower revenue volume and PAE ISR discontinued operations.

Amortization of intangible assets

Amortization of intangible assets for the nine-month period ended September 27, 2020, decreased by approximately $0.9 million, or 3.5%, from the comparable period in 2019. The reduction was associated with amortizing certain customer relationships, development technologies, and trade names.

Other income, net

Other income, net for the nine-month period ended September 27, 2020, decreased by approximately $2.2 million, from the comparable period in 2019. This decrease was driven by a one-time contract reserve write-off in the prior year period.

Operating income

Operating income for the nine-month period ended September 27, 2020, increased by approximately $40.3 million, from the comparable period in 2019. The increase resulted from the write down of PAE ISR assets held for sale in the prior year period, which increase was partially offset by lower revenue volume and lower other operating income in the current period.

Interest expense, net

Interest expense, net for the nine-month period ended September 27, 2020, decreased by approximately $16.9 million, or 26.0%, from the comparable period in 2019. This decrease was primarily driven by reduction of debt year over year.

Net income (loss)

Net income attributed to PAE for the nine-month period ended September 27, 2020 was $21.4 million compared with a net loss attributed to PAE of approximately $35.2 million in the comparable period in 2019. The increase in net income for the nine-month period ended September 27, 2020, was primarily driven by factors impacting operating income and lower interest expense.
PAE’s Segments

Comparison of Results by Segments for the Three Months Ended September 27, 2020 (Unaudited), and September 29, 2019 (Unaudited) (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>September 27, 2020</th>
<th>September 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Revenues</td>
<td>% of Total</td>
</tr>
<tr>
<td>GMS</td>
<td>$521,346</td>
<td>78.3</td>
</tr>
<tr>
<td>NSS</td>
<td>144,894</td>
<td>21.7</td>
</tr>
<tr>
<td>Corporate</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Consolidated revenues</td>
<td>$666,240</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Operating Income (Loss) Profit Margin % Operating Income (Loss) Profit Margin %

<table>
<thead>
<tr>
<th></th>
<th>Operating Income (Loss)</th>
<th>Profit Margin %</th>
<th>Operating Income (Loss)</th>
<th>Profit Margin %</th>
</tr>
</thead>
<tbody>
<tr>
<td>GMS</td>
<td>$31,401</td>
<td>4.7</td>
<td>$26,000</td>
<td>3.7</td>
</tr>
<tr>
<td>NSS</td>
<td>5,679</td>
<td>0.9</td>
<td>(26,402)</td>
<td>(3.8)</td>
</tr>
<tr>
<td>Corporate</td>
<td>(8,548)</td>
<td>0.9</td>
<td>(10,123)</td>
<td>0.9</td>
</tr>
<tr>
<td>Consolidated operating income</td>
<td>$28,532</td>
<td></td>
<td>$ (10,525)</td>
<td></td>
</tr>
</tbody>
</table>

Global Mission Services Segment Results

Revenues

Revenues for the three-month period ended September 27, 2020, decreased by $14.3 million, or 2.7%, from the comparable period in 2019. The decrease was attributable to a $38.7 million impact from COVID-19, of which approximately $31.9 million was non-labor and $6.9 million was labor, partially offset by a $24.2 million net increase in contract volume and new business programs.

Operating income

Operating income for the three-month period ended September 27, 2020 increased by $5.4 million from the comparable period in 2019. This improvement was driven by increased consolidated venture income and increased volume on higher margin programs, which increase was partially offset by lower revenue volume.
National Security Solutions Segment Results

Revenues

Revenues for the three-month period ended September 27, 2020 decreased by $17.2 million, or 10.6%, from the comparable period in 2019. The decrease was attributable to a $14.6 million impact from COVID-19, of which approximately $9.3 million was non-labor and $5.3 million was labor, and by a $2.4 million decrease from small business set aside re-compete losses, net of new business wins.

Operating income

Operating income for the three-month period ended September 27, 2020 increased by $32.1 million from the comparable period in 2019. The increase was primarily due to the write down of PAE ISR assets held for sale in the prior year period and lower selling, general and administrative expenses in the current period, partially offset by lower revenue volume in the current period.

Comparison of Results by Segments for the Nine Months Ended September 27, 2020 (Unaudited), and September 29, 2019 (Unaudited) (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>September 27, 2020</th>
<th>September 29, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Revenues</td>
<td>% of Total Revenues</td>
</tr>
<tr>
<td>GMS</td>
<td>$1,486,643</td>
<td>77.2%</td>
</tr>
<tr>
<td>NSS</td>
<td>440,152</td>
<td>22.8%</td>
</tr>
<tr>
<td>Corporate</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Consolidated revenues</td>
<td>$1,926,795</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Operating Income (Loss)</th>
<th>Profit Margin %</th>
<th>Operating Income (Loss)</th>
<th>Profit Margin %</th>
</tr>
</thead>
<tbody>
<tr>
<td>GMS</td>
<td>$75,541</td>
<td>3.9%</td>
<td>$77,449</td>
<td>3.7%</td>
</tr>
<tr>
<td>NSS</td>
<td>17,770</td>
<td>0.9%</td>
<td>(23,270)</td>
<td>(1.1)%</td>
</tr>
<tr>
<td>Corporate</td>
<td>(23,027)</td>
<td></td>
<td>(24,193)</td>
<td></td>
</tr>
</tbody>
</table>
| Consolidated operating income | $70,284 |                 | $29,986 |}

Global Mission Services Segment Results

Revenues

Revenues for the nine-month period ended September 27, 2020, decreased by $79.5 million, or 5.1%, from the comparable period in 2019. The decrease was attributable to a $91.7 million
impact from COVID-19, of which approximately $70.5 million was non-labor and $21.2 million was labor, partially offset by a $11.9 million net increase in contract volume and new business.

Operating income

Operating income for the nine-month period ended September 27, 2020 decreased by $1.9 million from the comparable period in 2019. This decrease was primarily from higher selling, general and administrative expenses, partially offset by lower revenue volume.

National Security Solutions Segment Results

Revenues

Revenues for the nine-month period ended September 27, 2020 decreased by $60.5 million, or 12.1%, from the operating loss in the comparable period in 2019. The decrease was attributable to a $33.7 million impact from COVID-19, of which approximately $21.5 million was non-labor and $12.2 million was labor, and by a $26.6 million decrease from small business set aside re-compete losses, net of new business wins.

Operating income

Operating income for the nine-month period ended September 27, 2020 increased by $41.0 million from the comparable period in 2019. The increase was driven by the write down of PAE ISR assets held for sale in the prior year period and lower selling, general and administrative expenses in the current period, partially offset by lower revenue volume in the current period.

Liquidity and Capital Resources

As of September 27, 2020, PAE had cash and cash equivalents totaling $145.4 million and the Company had no outstanding borrowings on its asset-based revolving loan credit facility.

As of December 31, 2019, PAE had cash and cash equivalents totaling $68.0 million and the Company had no outstanding borrowings on its asset-based revolving loan credit facility.

PAE’s primary sources of liquidity are cash flow from operations and borrowings under its credit facility to provide capital necessary for financing working capital requirements, capital expenditures and making selective strategic acquisitions.

PAE expects the combination of its current cash, cash flow from operations, and the available borrowing capacity under its new 2020 Revolving Credit Facility to be sufficient to continue to meet its normal working capital requirements, capital expenditures and other cash requirements. However, significant increases or decreases in revenues, accounts receivable, accounts payable, and merger and acquisition activity can affect PAE’s liquidity. PAE’s accounts receivable and accounts payable levels can be affected by changes in the level of contract work it performs, by the timing of large materials purchases, and subcontractor efforts used in its contracts. Government funding delays can cause delays in PAE’s ability to invoice for revenues earned, presenting a potential negative impact on liquidity.
In connection with the Business Combination, Shay was required to amend its 2016 Credit Agreements and reduce its outstanding indebtedness under its credit facilities such that the total indebtedness under the facilities, minus cash on hand at the consummation of the transaction would not be greater than $572.1 million. Immediately after the closing of the Business Combination the outstanding balance on the 2016 Second Term Loan was reduced by approximately $136.5 million to a principal balance of $128.8 million.

See Note 10 - “Debt” and Note 19 - “Subsequent Events” of the notes to the condensed consolidated financial statements for further information on the terms and availability of PAE’s credit facilities.

**Cash Flows Analysis**

**Comparison of Results for the Three Months Ended September 27, 2020 (Unaudited), and September 29, 2019 (Unaudited) (in thousands):**

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended September 27, 2020</th>
<th>September 29, 2019</th>
<th>Dollar Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net cash provided by operating activities</td>
<td>36,536</td>
<td>56,954</td>
<td>$(20,418)</td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>(1,140)</td>
<td>(2,609)</td>
<td>1,469</td>
</tr>
<tr>
<td>Net cash used in financing activities</td>
<td>(27,480)</td>
<td>(17,500)</td>
<td>(9,980)</td>
</tr>
<tr>
<td>Effect of exchange rate changes on cash and cash equivalents</td>
<td>(939)</td>
<td>(281)</td>
<td>(658)</td>
</tr>
<tr>
<td>Net increase in cash and cash equivalents</td>
<td>$ 6,977</td>
<td>$ 36,564</td>
<td>$(29,587)</td>
</tr>
</tbody>
</table>

**Net cash provided by operating activities**

Net cash provided by operating activities for the quarter of $36.5 million, decreased by $20.4 million over the prior year period, primarily as a result of lower comparable cash collections and customer advances and billings in excess of costs, partially offset by net income growth, increases in accounts payable and accrued salaries.

**Net cash used in investing activities**

Cash used in investing activities for the three-month period ended September 27, 2020 improved from the comparable period in 2019, primarily driven by lower expenditures in property and equipment.

**Net cash used in financing activities**

Cash used in financing activities for the three-month period ended September 27, 2020 was $27.5 million, an increase of $10.0 million from the comparable period in 2019. The increase was primarily driven by the working capital adjustment to Shay stockholders and repayment on long-term debt offset by lower long-term debt borrowings.
Comparison of Results for the Nine Months Ended September 27, 2020 (Unaudited), and September 29, 2019 (Unaudited) (in thousands):

<table>
<thead>
<tr>
<th>Nine Months Ended</th>
<th>September 27, 2020</th>
<th>September 29, 2019</th>
<th>Dollar Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net cash provided by operating activities</td>
<td>$92,124</td>
<td>$128,877</td>
<td>$(36,753)</td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>$(2,700)</td>
<td>$(6,200)</td>
<td>$3,500</td>
</tr>
<tr>
<td>Net cash used in financing activities</td>
<td>$(11,884)</td>
<td>$(80,344)</td>
<td>$68,460</td>
</tr>
<tr>
<td>Effect of exchange rate changes on cash and cash equivalents</td>
<td>$(129)</td>
<td>$(1,486)</td>
<td>$1,357</td>
</tr>
<tr>
<td>Net increase in cash and cash equivalents</td>
<td>$77,411</td>
<td>$40,847</td>
<td>$36,564</td>
</tr>
</tbody>
</table>

Net cash provided by operating activities

Net cash provided by operating activities for the nine-month period ended September 27, 2020 decreased by $36.8 million, primarily as a result of lower comparable cash collections and customer advances and billings in excess of cost, partially offset by net income growth, increases in accounts payable and accrued salaries.

Net cash used in investing activities

Cash used in investing activities for the nine-month period ended September 27, 2020 improved by $3.5 million from the comparable period in 2019, primarily driven by lower expenditures for net property and equipment.

Net cash used in financing activities

Cash used in financing activities for the nine-month period ended September 27, 2020 improved by $68.5 million from the comparable period in 2019. The increase was primarily driven by the Recapitalization in 2020 partially offset by lower net borrowings.
Financing

Long-term debt consisted of the following as of the dates presented (in thousands):

<table>
<thead>
<tr>
<th></th>
<th>September 27, 2020</th>
<th>December 31, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Term Loan</td>
<td>$491,867</td>
<td>$506,772</td>
</tr>
<tr>
<td>Second Term Loan</td>
<td>128,783</td>
<td>265,329</td>
</tr>
<tr>
<td>Revolving Credit Facility</td>
<td>—</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>620,650</td>
<td>772,101</td>
</tr>
<tr>
<td>Unamortized discount and debt issuance costs</td>
<td>(13,568)</td>
<td>(22,164)</td>
</tr>
<tr>
<td>Total debt, net of discount and debt issuance costs</td>
<td>607,082</td>
<td>749,937</td>
</tr>
<tr>
<td>Less current maturities of long-term debt</td>
<td>(23,044)</td>
<td>(22,007)</td>
</tr>
<tr>
<td>Total long-term debt, net of current</td>
<td>$584,038</td>
<td>$727,930</td>
</tr>
</tbody>
</table>

The following discusses the Company’s borrowing arrangements as of September 27, 2020. Subsequent to quarter end, the Company completed a refinancing of its existing indebtedness as further discussed below.

The Company’s borrowing arrangement provides for borrowings up to $491.9 million under a first lien term loan credit agreement, dated October 26, 2016, as amended (the “2016 First Term Loan”), $128.8 million under a second lien term loan credit agreement, dated October 26, 2016, as amended (the “2016 Second Term Loan”), and $150.0 million under a revolving credit facility dated October 26, 2016, as amended (the “2016 Revolving Credit Facility,” and together with the 2016 First Term Loan and the 2016 Second Term Loan, the “2016 Credit Agreements”). Principal and interest are due quarterly on the 2016 First Term Loan and interest is due quarterly on the 2016 Second Term Loan. The maturity date of the 2016 First Term Loan is October 20, 2022. For the 2016 Second Term Loan the maturity date is October 20, 2023. For the Company’s 2016 Revolving Credit Facility the maturity date is October 20, 2021.

In connection with the Business Combination, Shay was required to amend its 2016 Credit Agreements and reduce its outstanding indebtedness under its credit facilities such that the total indebtedness under the facilities, minus cash on hand at the consummation of the transaction would not be greater than $572.1 million. Immediately after the closing of the Business Combination the outstanding balance on the 2016 Second Term Loan was reduced by approximately $136.5 million to a principal balance of $128.8 million.

The 2016 Credit Agreements require the Company to comply with specified financial covenants under certain circumstances, including the maintenance of certain leverage ratios.

The 2016 Credit Agreements also contain various non-financial covenants, including affirmative covenants with respect to reporting requirements and maintenance of business activities, and negative covenants that, among other things, may limit or impose restrictions on the Company’s ability to alter the character of the business, consolidate, merge, or sell assets, incur liens or additional indebtedness, make investments, and undertake certain additional actions.
PAE was in compliance with the financial covenants under the 2016 Credit Agreements as of September 27, 2020. See Note 10 - "Debt" of the notes to the condensed consolidated financial statements.

On October 19, 2020 the Company refinanced the 2016 Credit Agreements and entered into new senior secured credit facilities (the "2020 Credit Agreements"). The 2020 Credit Agreements establish a $740.0 million term loan facility maturing in October 2027 priced at LIBOR plus a spread of 4.50%, a $150.0 million delayed draw term loan facility maturing in October 2027 priced at LIBOR plus a spread of 4.50%, and a $175.0 million senior secured revolving credit facility maturing in October 2025 priced at LIBOR plus a spread of 1.75% to 2.25%.

The loans under the 2020 Credit Agreements are secured by a first lien over substantially all of the Company's assets as well as affirmative and negative covenants customary for transactions of this type, including limitations with respect to indebtedness, liens, investments, dividends, disposition of assets, change in business and transactions with affiliates.

The Company used the proceeds from the 2020 Credit Agreements to repay the amounts outstanding under its existing first lien and second lien term loan facilities, with the remaining amounts to be used for general corporate purposes, potential mergers and acquisitions, and transaction fees and expenses.

For more information about the 2020 Credit Agreements, see the Company's Form 8-K filed October 22, 2020, File No. 001-38643.

Off-Balance Sheet Arrangements

PAE has outstanding performance guarantees and cross-indemnity agreements in connection with certain aspects of its business. PAE also has letters of credit outstanding principally related to performance guarantees on contracts and surety bonds outstanding principally related to performance and subcontractor payment bonds as described in Note 10 - "Debt" of the notes to the condensed consolidated financial statements.

PAE has entered into various arrangements to provide program management, construction management and operations and maintenance services. The ownership percentage of these ventures is typically representative of the work to be performed or the amount of risk assumed by each venture partner. Some of these ventures are considered variable interest entities. PAE has consolidated all ventures over which it has control. For all others, PAE’s portion of the earnings are recorded in equity in earnings of ventures. See Note 9 - "Consolidated Variable Interest Entities" of the notes to the condensed consolidated financial statements.

PAE does not believe that it has any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on its financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that would be material to investors.

Recently Issued Accounting Pronouncements

For a description of recently announced accounting standards, including the expected dates of adoption and estimated effects, if any, on PAE’s condensed consolidated financial statements,
Critical Accounting Policies

PAE’s MD&A is based upon its consolidated financial statements, which are prepared in conformity with U.S. generally accepted accounting principles (“GAAP”). The preparation of these financial statements in accordance with GAAP requires the use of estimates and assumptions which affect the reported amounts in the consolidated financial statements. Due to the size and nature of many of PAE’s programs, the estimation of total revenues and cost at completion is subject to a wide range of variables, including assumptions for schedule and technical issues. Actual results may differ from PAE’s management's estimates.

PAE has identified the following Significant Accounting Principles and Policies as critical because they require significant judgments and assumptions about highly complex and inherently uncertain matters and the use of reasonably different estimates and assumptions could have a material impact on its results of operations or financial condition.

- Revenue Recognition
- Goodwill and Indefinite-Lived Intangibles
- Income Taxes

Revenue Recognition

The majority of PAE’s revenues are generated from contracts with the U.S. Government and its agencies. PAE enters into a variety of contract types, including fixed price, cost reimbursable, and time and materials contracts.

PAE accounts for a contract when it has been approved by all parties in the arrangement, the rights of the parties and payment terms are identified, and collectability of consideration is probable. At contract inception, PAE identifies distinct goods or services promised in the contract, referred to as performance obligations, and then determines the transaction price for the contract.

PAE's contracts contain promises to provide distinct goods or services to its customers. These represent separate performance obligations and units of account. PAE's management evaluates whether a single contract should be accounted for as more than one performance obligation or whether two or more contracts should be combined and accounted for as one single arrangement at the outset of the contract. Most of PAE's contracts consist of providing a complex set of interrelated goods and services that together provide a single deliverable or solution to the customer, and accordingly are accounted for as a single performance obligation. PAE also may engage with a customer on a contract where multiple distinct goods or services may be provided. In such circumstance, multiple performance obligations exist, and PAE would allocate the contract's transaction price to the individual performance obligations based on the estimated relative standalone selling price. The primary method used to estimate standalone selling price is the expected cost plus a margin approach, under which PAE forecasts expected costs of satisfying a performance obligation and then adds an appropriate margin for that distinct good or service promised.

Revenue is recognized when, or as, the performance obligation is satisfied. For substantially all of PAE’s contracts, PAE satisfies its performance obligations over time as its customer.
simultaneously receives and consumes benefits. Revenue is recognized over time when there is a continuous transfer of control to the customer.

For U.S. Government contracts, this continuous transfer of control to the customer is supported by clauses in the contract that allow the U.S. Government to unilaterally terminate the contract for convenience, pay for costs incurred plus a reasonable profit and take control of any work in process. When control is transferred over time, revenue is recognized based on the extent of progress towards completion of the performance obligation. Based on the nature of the products and services provided in the contract, PAE uses judgment to determine if an input measure or output measure best depicts the transfer of control over time.

For service type contracts, performance obligations are typically satisfied as services are rendered and PAE uses a contract cost-based input method to measure progress. Contract costs include labor, material and allocable indirect expenses. Revenue is recognized proportionally as contract costs are incurred plus estimated fees. If a contract does not meet the criteria for recognizing revenue over time, revenue is recognized at the point in time when control of the good or service is transferred to the customer. Control is considered to have transferred when PAE has a right to payment and the customer has legal title.

PAE reviews the progress and execution of performance obligations under the estimate at completion process. As part of this process, PAE reviews information including, but not limited to, key contract terms and conditions, program schedule, progress towards completion, identified risks and opportunities and the related changes in estimates of revenues and costs. The risks and opportunities include judgments about the ability and cost to achieve the contract milestones and other technical contract requirements. PAE must make assumptions and estimates regarding labor productivity and availability, the complexity of the work to be performed, the availability of materials, the length of time to complete the performance obligation, execution by subcontractors, the availability and timing of funding from customers and overhead cost rates, among other variables. A significant change in one or more of these estimates could affect the profitability of PAE’s contracts.

**Goodwill and Indefinite-Lived Intangibles**

PAE evaluates goodwill for potential impairment annually on the first day of the fourth quarter or if an event occurs or circumstances change that indicate that the fair value of a reportable segment may have fallen below its carrying value. The evaluation includes a qualitative assessment to determine if it is more likely than not that fair value of a reportable segment is less than its carrying amount. If, as result of the qualitative assessment, it is more likely than not that the fair value of a reportable segment is less than its carrying amount, PAE compares the fair value of each of the reportable segments using a discounted cash flow methodology, or other fair value measures as considered appropriate in the circumstances, to its net book value, including goodwill. If the net book value exceeds the fair value, PAE will measure impairment by comparing the derived fair value of goodwill to its carrying value, and any impairment is recorded in the current period.

During the fourth quarter of 2019, PAE performed the annual qualitative impairment test for both of its reportable segments and noted that no impairment existed. There were no events or circumstances during the three-month and nine-month periods ended September 27, 2020 indicating that the carrying amount of goodwill was impaired. The Company has considered the implications of COVID-19 as they relate to the carrying value of goodwill and indefinite-lived assets. COVID-19 has had a marginally unfavorable impact on the Company’s results of
operations for the three-month and nine-month periods ended September 27, 2020. Management expects that such impact will similarly be marginally unfavorable to the Company’s full year results. Since our primary customers are departments and agencies within the U.S. Government, we have not historically had significant issues collecting our receivables and do not foresee issues collecting our receivables in the foreseeable future. In addition, our contract awards typically extend to at least five years, including options, and we have a strong history of being awarded a majority of these contract options; we do not anticipate that the COVID-19 pandemic will have a materially adverse impact on such options. Our liquidity position has not been materially impacted, and we continue to believe that we have adequate liquidity to fund our operations and meet our debt service obligations for the foreseeable future. However, we cannot predict the impact of the COVID-19 pandemic, and the longer the duration of the event and the more widespread in geographic locations where we and our suppliers operate, the more likely it is that it could have an adverse impact on our financial condition, results of operations, and/or cash flows in the future.

**Income Taxes**

Income taxes are accounted for using the asset and liability method whereby deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the consolidated financial statement carrying amounts of assets and liabilities, and their respective tax bases, and operating loss and tax credit carry forwards. PAE accounts for tax contingencies in accordance with ASC 740-10-25, *Income Taxes – Recognition (Topic 740)*. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities due to a change in tax rates is recognized in income in the period that includes the enactment date. Estimates of the realizability of deferred tax assets are based on the scheduled reversal of deferred tax liabilities, projected future taxable income, and tax planning strategies. PAE’s effective tax rate will be higher due to establishment of valuation allowance on the disallowed interest expense. Any interest or penalties incurred in connection with income taxes are recorded as part of income tax expense for financial reporting purposes.

**Item 3. Quantitative and Qualitative Disclosures About Market Risks**

There have not been any material changes to the Company’s market risk since December 31, 2019. For additional information, refer to "Management’s Discussion and Analysis of Financial Condition and Results of Operations" included in Exhibit 99.2 of the Company’s Current Report on Form 8-K/A filed with the SEC on March 11, 2020.

**Item 4. Controls and Procedures**

**Disclosure Controls and Procedures**

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed in company reports filed or submitted under the Exchange Act is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure.
As required by Rules 13a-15 and 15d-15 under the Exchange Act, our Chief Executive Officer and Chief Financial Officer carried out an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as of September 27, 2020. Based upon their evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) were effective.

**Internal Control over Financial Reporting**

During the most recently completed fiscal quarter, the Company continued to make changes to certain internal controls to reflect the operations of PAE acquired as a result of the Business Combination.

**Part II. Other Information**

**Item 1. Legal Proceedings**

PAE is involved in various legal proceedings, government audits, investigations, claims and disputes that arise in the normal course of business, including those related to employment matters, contractual relationships and other business matters. These legal proceedings seek various remedies, including claims for monetary damages in varying or unspecified amounts. In addition, awards of government contracts may be protested at the U.S. Government Accountability Office or the U.S. Court of Federal Claims; and conversely, PAE may from time to time protest awards made to other companies.

Although the outcome of any such matter is inherently uncertain and may be materially adverse, based on current information, PAE does not expect any of the currently ongoing audits, reviews, investigations, or litigation to have a material adverse effect on its financial condition or operating results. Its view of the matters not specifically disclosed could change in future periods as events unfold.

**Item 1A. Risk Factors**

For a discussion of risk factors that could significantly and negatively affect our business, financial condition, results of operations, cash flows and prospects, see the disclosure under the heading "Risk Factors" in our prospectus on Form 424B3, filed with the SEC on April 23, 2020, File No. 333-236468 (the "Prospectus"). There have been no material changes from the risk factors set forth in the Prospectus, other than the additional risk factor provided below.

*We face various risks related to public health crises, such as the coronavirus (“COVID-19”), that could disrupt PAE’s business and result in loss of revenue or higher expenses.*

Our operations face risks related to public health crises, such as the global outbreak of COVID-19 and other pandemics and epidemics. The COVID-19 virus has spread to over 100 countries, including the United States, and the World Health Organization has classified the COVID-19 outbreak as a pandemic. The ability of our personnel to work effectively and travel and the continued adequacy of our supply chains have been adversely impacted by the pandemic and responses thereto, such as the travel restrictions resulting from the COVID-19
virus. Additionally, as a result of COVID-19, we have experienced, and expect that we will experience in the future, delays, or partial reductions or full suspensions of contract work, which have caused and could result in further decreases of revenue and may have a material adverse impact on our business. We have experienced increased medical, housing, facility cleaning, and other costs due to quarantine requirements imposed by various jurisdictions and exposure of our personnel to pandemics such as the COVID-19 virus. In addition, we are permitting employees to telework who can meet our customer commitments remotely, and many of our employees are teleworking. Due to COVID-19, we are uncertain when and how many teleworking employees will return to work in person. We have not previously experienced so many employees working remotely for such an extended period of time, so the long-term effects on our operations are unknown. Moreover, we may be subject to additional cybersecurity risks as a result of a significant portion of our workforce working remotely. In addition, the resulting volatility in the global capital markets could, among other things, restrict our access to capital and/or increase our cost of capital. At this time, we cannot predict the impact of the COVID-19 pandemic or the duration of time that the pandemic and its impacts will last, but it could have a material adverse effect on our business, financial position, results of operations and/or cash flows. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Current Economic Conditions – Impact of COVID-19” for additional discussion of management’s assessment of the COVID-19 pandemic.

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

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

None.

Item 5. Other Information

On February 7, 2020, Gores III held a special meeting of stockholders in lieu of its 2020 Annual Meeting (the “2020 Meeting”). The definitive proxy statement for such meeting disclosed that it was anticipated that the 2021 Annual Meeting of Stockholders of Gores III (now PAE Incorporated) would be held no later than June 2021 (the “2021 Annual Meeting”). As of the date of this filing, PAE intends to hold its 2021 Annual Meeting on or about May 28, 2021 at a time and location to be determined. Because the date of the 2021 Annual Meeting will differ by more than thirty (30) calendar days from the anniversary date of the 2020 Meeting, PAE is providing the following disclosure in accordance with Rule 14a-5(f) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

Bylaws Advance Notice Deadline for Submission of Stockholder Proposals and Director Nominations
Pursuant to the Company’s Amended and Restated Bylaws (the “Bylaws”), since the 2021 Annual Meeting is being advanced by more than forty-five (45) calendar days from the date of the 2020 Meeting, for notice of stockholder proposals submitted outside of Rule 14a-8 of the Exchange Act and director nominations to be timely they must be so received not earlier than the opening of business on the 120th day before the 2021 Annual Meeting and not later than the later of: (A) the close of business on the 90th day before the 2021 Annual Meeting; or (B) the close of business on the 10th day following the day on which public announcement of the date of the 2021 Annual Meeting is first made by PAE. As this is PAE’s first public disclosure of the date of the 2021 Annual Meeting, to be considered timely, stockholder proposals submitted outside of Rule 14a-8 of the Exchange Act and director nominations, in each case intended to be brought before the 2021 Annual Meeting, must be received no earlier than the opening of business on Thursday, January 28, 2021 and not later than the close of business on Saturday, February 27, 2021. Any such stockholder proposals and director nominations must be directed to the Company’s Executive Vice President, General Counsel & Secretary at our corporate offices at PAE Incorporated, 7799 Leesburg Pike, Suite 300 North Falls Church, Virginia 22043. Such stockholder proposals and director nominations must also comply with the advance notice provisions contained in Sections 2.7 and 3.2 of the Company’s Bylaws.

**Rule 14a-8 Deadline for the Submission of Stockholder Proposals**

As noted above, the 2021 Annual Meeting date will represent a change of more than thirty (30) calendar days from the anniversary date of the 2020 Meeting. As a result, pursuant to Rule 14a-8 under the Exchange Act, a new deadline will apply for the receipt of any stockholder proposals submitted pursuant to Rule 14a-8 of the Exchange Act for inclusion in the Company’s proxy materials for the 2021 Annual Meeting. Pursuant to Rule 14a-8(e)(2) under the Exchange Act, such proposals must be received on or before the close of business on Thursday, December 17, 2020, which the Company has determined to be a reasonable time before it expects to begin to print and distribute its proxy materials for the 2021 Annual Meeting, as such date is approximately 120 calendar days prior to when the Company anticipates printing and distributing its proxy materials for the 2021 Annual Meeting. Such proposals must be directed to the Company’s Executive Vice President, General Counsel & Secretary at our corporate offices at PAE Incorporated, 7799 Leesburg Pike, Suite 300 North, Falls Church, Virginia 22043. Such proposals must also comply with Rule 14a-8 of the Exchange Act.
### Item 6. Exhibits

See the Exhibit Index below, which is incorporated by reference herein.

#### Exhibit Index

<table>
<thead>
<tr>
<th>Exhibit No.</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1*</td>
<td>Stock Purchase Agreement dated October 26, 2020, by and among Pacific Architects and Engineers, LLC, CENTRA Technology, Inc., certain stockholders of CENTRA Technology, Inc., and Barbara Rosenbaum as the sellers representative</td>
</tr>
<tr>
<td>10.1*</td>
<td>Amended and Restated First Lien Term Loan Credit Agreement, dated as of October 19, 2020, by and among PAE Holding Corporation, PAE Incorporated, the subsidiary borrowers party thereto, the lenders party thereto, and Bank of America, N.A., as administrative agent</td>
</tr>
<tr>
<td>10.2</td>
<td>Amendment No. 3 to Revolving Credit Agreement, dated as of October 19, 2020, by and among PAE Holding Corporation, PAE Incorporated, the subsidiary borrowers party thereto, the lenders party thereto, and Bank of America, N.A., as administrative agent</td>
</tr>
<tr>
<td>31.1</td>
<td>Certification by the Chief Executive Officer of the Company Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</td>
</tr>
<tr>
<td>31.2</td>
<td>Certification by the Chief Financial Officer of the Company Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</td>
</tr>
<tr>
<td>32.1</td>
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*Schedules and other similar attachments to this Exhibit have been omitted in accordance with Regulation S-K Item 601(a)(5). The Registrant agrees to furnish supplementally a copy of all omitted schedules to the Securities and Exchange Commission upon its request.*
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 thereunto duly authorized.

Dated: November 5, 2020

PAE Incorporated

By: /s/ Charles D. Peiffer
Name: Charles D. Peiffer
Title: Executive Vice President & Chief Financial Officer
STOCK PURCHASE AGREEMENT

by and among

PACIFIC ARCHITECTS AND ENGINEERS, LLC,

CENTRA TECHNOLOGY, INC.,

The Stockholders of CENTRA TECHNOLOGY, INC.,

and

Barbara Rosenbaum,

as the Sellers Representative

Dated as of October 26, 2020
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STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT (this “Agreement”), dated as of October 26, 2020, by and among Pacific Architects and Engineers, LLC, a Delaware limited liability company (“Purchaser”); CENTRA Technology, Inc., a Maryland corporation (the “Company”); the Persons identified on the signature page hereto under the heading “Sellers” (each, a “Seller” and collectively, the “Sellers”); and Barbara Rosenbaum as the sellers representative (the “Sellers Representative”).

WHEREAS, the Sellers collectively own all the issued and outstanding capital stock of the Company, consisting of 180,277.40 shares of common stock of the Company (all of such outstanding common stock is also referred to as the “Shares”); and

WHEREAS, the Sellers desire to sell to Purchaser and Purchaser desires to purchase from the Sellers, the Shares, upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the promises and the mutual agreements and covenants hereinafter set forth, and intending to be legally bound, the parties hereto hereby agree as follows:

ARTICLE I.

DEFINITIONS

Section 1.01 Certain Defined Terms. For purposes of this Agreement:

“Action” means any claim, action, suit, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority.

“Affiliate” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person.

“Amortization Value” means Five Million Two Hundred Ninety Thousand Dollars ($5,290,000).

“Base Purchase Price” means Two Hundred Ten Million Dollars ($210,000,000).

“Business Day” means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in New York City, New York.

“CARES Act” means the Coronavirus Aid, Relief, and Economic Security Act.
“Claims” means any and all administrative, regulatory or judicial actions, suits, petitions, appeals, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations, proceedings, consent orders or consent agreements.

“Closing Cash” means the aggregate amount of any cash and cash equivalents of the Company and the Company Subsidiaries, less the amount of any issued checks that have not cleared as of such time and the amount of any restricted cash or deposits.

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


“Company IP Agreements” means (i) licenses of Intellectual Property by the Company or any Company Subsidiary to any third party, (ii) licenses of Intellectual Property by any third party to the Company or any Company Subsidiary, (iii) agreements between the Company or any Company Subsidiary and any third party relating to the development or use of Intellectual Property, the development or transmission of data, or the use, modification, framing, linking, advertisement, or other practices with respect to Internet web sites and (iv) consents, settlements, decrees, orders, injunctions, judgments or rulings governing the use, validity or enforceability of Company Intellectual Property.

“Company IT Systems” means all Software, computer hardware, servers, networks, platforms, peripherals, and similar or related items of automated, computerized, or other information technology (IT) networks and systems (including telecommunications networks and systems for voice, data and video) owned, leased, licensed, or used (including through cloud-based or other third-party service providers) by the Company or a Company Subsidiary.

“Company Subsidiaries” means the Wholly Owned Subsidiaries and the Majority Owned Subsidiaries.

“control” (including the terms “controlled by” and “under common control with”), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee, personal representative or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee, personal representative or executor, by contract, credit arrangement or otherwise.

“Conveyance Taxes” means all sales, use, value added, transfer, stamp, stock transfer, real property transfer or gains and similar Taxes.

“Copyrights” means all published and unpublished original works of authorship and copyrights therein, copyright registrations and applications for registration thereof and all renewals, extensions, restorations and reversions thereto, or other registered and unregistered
copyrights and applications for registration of copyright, moral rights and waivers and consents not to enforce such moral rights.

“Delta Bridge” means Delta Bridge Inc., a Virginia corporation.

“Delta Bridge Minority Owner Purchase Price” means the “Purchase Price” as defined and determined in accordance with the Delta Bridge Stock Purchase Agreement and the Delta Bridge Amended and Restated Stockholders Agreement dated October 3, 2015.

“Delta Bridge Stock Purchase Agreement” means that certain Stock Purchase Agreement, dated August 31, 2020, among Delta Bridge, the Company and Thomas L. Becherer.

“Delta Network” means all of the equipment used by Delta Bridge in the provision of telecommunications services to its customers over a communication network, including: (1) all equipment associated with wireless and wireline communications, and (2) radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration.

“Disclosure Schedules” means the Disclosure Schedules attached hereto, dated as of the date hereof and delivered by the Company and Sellers to Purchaser in connection with this Agreement.

“Encumbrance” means any security interest, pledge, hypothecation, mortgage, lien, claim, charge, option, restriction or encumbrance.

“Environment” means surface waters, groundwaters, soil, subsurface strata and ambient air.

“Environmental Law” means any federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, consent decree or judgment relating to pollution or protection of the Environment.

“ESOP” means the CENTRA Technology, Inc. Employee Ownership Plan.

“ESOP Fairness Opinion” means a fairness opinion, dated as of the Closing Date, given to the ESOP Trustee from a financial advisor which is an “independent appraiser” (within the meaning of Section 401(a)(28)(C) of the Code) stating that (i) the consideration to be received by the ESOT for the ESOP Shares pursuant to the transactions contemplated by this Agreement is not less than “fair market value” (as such term is used in determining “adequate consideration” in accordance with Section 3(18)(B) of ERISA); and (ii) that the terms and conditions of the transactions contemplated by this Agreement, taken as a whole, are fair to the ESOT from a financial point of view.

“ESOP Shares” means the 10,131.4 shares of common stock of the Company owned by the ESOT.

“ESOP Trustee” means Diane Colpitts, as trustee under the ESOP.
“ESOT” means the CENTRA Technology, Inc. Employee Ownership Trust.

“Flow of Funds Memorandum” means a memorandum prepared by the Company and the Sellers Representative and delivered to Purchaser at least five (5) Business Days prior to the Closing Date, setting forth a good faith estimate (including all calculations in reasonable detail) of: (i) the Preliminary Statement; (ii) the amount of unpaid Sellers Expenses to be paid at the Closing and payment instructions with respect to each party to which such Sellers Expenses are to be paid; (iii) the amount of Change in Control Payments to be paid at the Closing to the Company, for further payment to the employees of the Company entitled to such payments through the Company’s payroll processor, identifying the employees entitled to such payment and the amounts thereof; (iv) the amounts of any unpaid Subsidiary Minority Owner Purchase Price to be paid at Closing and payment instructions with respect thereto; (v) the amount of Indebtedness of the Company as of the Closing Date together with payoff letters (including wire transfer instructions) from each holder of such Indebtedness, which letter shall specify the aggregate amount required to be paid in order to repay in full the Indebtedness related to such payoff letter (including any and all accrued but unpaid interest and prepayment penalty obligations and breakage costs due upon repayment) and payment instructions on the projected Closing Date, as well as the per diem amount to be added thereto in the event that the actual Closing Date is a date subsequent to the projected Closing Date; and (vi) the amount of the Closing Purchase Price Balance to be paid to the Sellers, together with wire instructions for the payment therefor.

“Fraud” means, with respect to any Person, (i) an intentional false representation of material fact by such Person in this Agreement, (ii) with knowledge that such representation is false, (iii) with an intention to induce another Person to act or refrain from acting in reliance upon it, (iv) causing such other Person, in justifiable reliance upon such false representation and with ignorance to the falsity of such representation, to take or refrain from taking action and (v) causing such other Person to suffer damage by reason of such reliance. For the avoidance of doubt, “Fraud” shall not include any type of constructive or equitable fraud.

“GAAP” means United States generally accepted accounting principles and practices in effect from time to time applied consistently throughout the periods involved.

“Governmental Authority” means any federal, national, foreign, state, provincial, local, or similar government, governmental, regulatory or administrative authority, agency, commission, department, board, bureau or any instrumentality, court, tribunal, or judicial or arbitral body exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supranational bodies such as the United Nations, the World Bank, and the International Monetary Fund).

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

“Hazardous Materials” means any substance, chemical, material, or waste now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “regulated substance,” “contaminant,” or “pollutant” (or
words of similar import) within the meaning of or regulated or addressed under any Environmental Law.


“Indebtedness” means, with respect to any Person, (i) all indebtedness of such Person, whether or not contingent, for borrowed money, (ii) all obligations of such Person for the deferred purchase price of property or services (other than trade payables, accrued compensation or similar obligations incurred in the ordinary course of business of such Person), (iii) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (iv) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (v) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (vi) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities, (vii) obligations secured by Encumbrances, (viii) interest, fees and other payment obligations (including any premiums, termination fees, expenses, breakage costs or penalties due upon payment or prepayment), and (ix) all Indebtedness of others referred to in clauses (i) through (viii) above guaranteed directly or indirectly in any manner by such Person.

“Indemnified Party” means a Purchaser Indemnified Party or a Seller Indemnified Party, as the case may be.

“Indemnifying Party” means the Sellers pursuant to Section 9.02, or Purchaser pursuant to Section 9.03, as the case may be.

“Independent Accountants” means KPMG or such other independent accounting firm of national or regional reputation which has not performed services for Purchaser, the Company or the Sellers, or any of their respective Affiliates, during the preceding three (3) year period, which is selected by Purchaser and the Sellers Representative.

“Intellectual Property” means any and all of the following in any jurisdiction throughout the world: (i) Patents, patent applications and statutory invention registrations, (ii) Trademarks, service marks, domain names, trade dress, logos, trade names, corporate names and other identifiers of source or goodwill, including registrations and applications for registration thereof and including the goodwill of the business symbolized thereby or associated therewith, (iii) mask works and Copyrights, including Copyrights in computer Software, and registrations and applications for registration thereof, and (iv) confidential and proprietary information, including trade secrets, know how, invention rights, designs, drawings, specifications, product configurations, prototypes, models, technical data, databases, formulae, and algorithms, processes, procedures, and all tangible embodiments thereof (in any form or medium), (v) internet domain name registrations and social media identifiers and accounts, and (vi) any other intellectual property and related proprietary rights, interests and protections, whether statutory, common law, or otherwise, including rights to limit the use or disclosure thereof by any Person, and the right to bring suit, pursue past, current and future violations, infringements, or misappropriations, and collections.
“IRS” means the Internal Revenue Service of the United States.

“Knowledge of the Company” or similar terms used in this Agreement, including with respect to the Company Subsidiaries, mean the actual (but not constructive or imputed) knowledge of any of the Persons listed in Schedule 1.01(a) as of the date of this Agreement (or, with respect to a certificate delivered pursuant to this agreement, as of the date of delivery of such certificate).

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“Leased Real Property” means the real property leased by the Company or any Company Subsidiary, as tenant, together with, to the extent leased by the Company or such Company Subsidiary, all buildings and other structures, facilities or improvements currently or hereafter located thereon, all fixtures, systems, equipment and items of personal property of the Company or such Company Subsidiary attached or appurtenant thereto and all easements, licenses, rights and appurtenances relating to the foregoing.

“Liabilities” means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, known or unknown, matured or unmatured or determined or determinable, including those arising under any Law, Action or Governmental Order and those arising under any contract, agreement, arrangement, commitment or undertaking.

“Licensed Intellectual Property” means Intellectual Property licensed to the Company or any Company Subsidiary pursuant to the Company IP Agreements.

“Majority Owned Subsidiaries” means the following companies in which the Company holds a majority of the outstanding capital stock: (i) Delta Bridge and (ii) TATE.

“Majority Sellers” means (i) the Principal Seller, (ii) the Rosenbaum Family Foundation, Inc. and (iii) the following sub-trusts of the Rosenbaum Family 2019 Irrevocable Trust: (1) Children’s Trust f/b/o Linda Anne Rosenbaum Duska; (2) Children’s Trust f/b/o Sharon Rosenbaum Harris; (3) Children’s Trust f/b/o Amy Debra Rosenbaum; (4) Grandchildren’s Trust f/b/o Rebecca Elizabeth Harris; (5) Grandchildren’s Trust f/b/o Rachel Casey Harris; (6) Grandchildren’s Trust f/b/o Samuel Joseph Duska; (7) Grandchildren’s Trust f/b/o Jacob Ethan Duska; (8) Grandchildren’s Trust f/b/o Jessica Louise Duska; (9) Grandchildren’s Trust f/b/o Sarah Rose Duska; (10) Grandchildren’s Trust f/b/o Louis Allen Lahey; (11) Grandchildren’s Trust f/b/o Hannah Paige Lahey; and (12) Grandchildren’s Trust f/b/o Alice Evelyn Lahey.

“Material Adverse Effect” means any circumstance, change, event, condition, or effect that has or would reasonably be expected to, individually or together with all other circumstances, changes, events, conditions or effects, (a) have a material adverse effect on the assets, liabilities, results of operations or the financial condition of the Company and the Company Subsidiaries, taken as a whole or (b) prevent, materially delay or materially impair the
ability of the Company or the Sellers to consummate the transactions contemplated by this Agreement; provided, however, that, for purposes of clause (a) none of the following, either alone or in combination, shall be considered in determining whether there has been a “Material Adverse Effect”: (i) events, circumstances, changes or effects that generally affect the industries in which the Company or the Company Subsidiaries operate (including legal and regulatory changes), (ii) general economic or political conditions or events, circumstances, changes or effects affecting the securities markets generally, (iii) any change in law or regulations in any jurisdiction in which the Company or any Company Subsidiary does business (iv) or any change in accounting principles required by GAAP or applicable regulations, (v) the effect of any change arising in connection with earthquakes, pandemics, epidemics, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions existing or underway as of the date hereof, (vi) any changes in financial, banking or securities markets in general, including any disruption thereof and any decline in the price of any security or any market index or any change in prevailing interest rates, (in the cases of clauses (i)–(vi), that does not disproportionately affect the Company or any Company Subsidiary in relation to other companies in the industry in which the Company or any Company Subsidiary operates) and (vii) any failure by the Company or any Company Subsidiary to meet any estimates of revenue, earnings or performance for any period ending on or after the date of this Agreement and prior to the Closing, provided, that clause (vii) shall not prevent an assertion that any circumstance, change, event, condition or effect that resulted in such failure constitutes or contributed to a Material Adverse Effect or (b).

“Open Source” means any Software that is, or that contains or is derived in any manner (in whole or in part) from any software that is distributed as “free software,” “open source software,” copyleft software, “freeware” or “shareware” or under similar licensing or distribution models, including, without limitation, any Software licensed under the GNU General Public License, the GNU Library General Public License, the GNU Lesser General Public License, the Affero General Public License, the Mozilla Public License, the Common Development and Distribution License, the Eclipse Public License or any Creative Commons “sharealike” license.

“Other Sellers” means the Sellers other than the Majority Sellers.

“Permits” means any permits approvals, authorizations, consents, licenses, or certificates of a Governmental Authority.

“Permitted Encumbrances” means (i) statutory liens for current Taxes not yet due or delinquent (or which may be paid without interest or penalties) or the validity or amount of which is being contested in good faith by appropriate proceedings and with respect to which adequate reserves are reflected on the Company’s financial statements, (ii) mechanics’, carriers’, workers’, repairers’ and other similar liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of the Company or any Company Subsidiary, or the validity or amount of which is being contested in good faith by appropriate proceedings and with respect to which adequate reserves are reflected on the Company’s financial statements, or pledges, deposits or other liens securing the performance of
bids, trade contracts, leases or statutory obligations (including workers’ compensation, unemployment insurance or other social security legislation), and (iii) zoning, entitlement, conservation restriction and other land use and environmental regulations by Governmental Authorities which do not materially interfere with the present use of the Company’s or any Company Subsidiary’s assets.

“Person” means any individual, partnership, firm, corporation, limited liability company, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

“Pre-Closing Tax Period” means a Tax Period ending on or before the Closing Date.

“Principal Seller” means the Harold Rosenbaum 2011 Revocable Trust.

“Pro Rata Share” means, with respect to any Seller, such Seller’s percentage ownership of the Company set forth opposite such Seller’s name on Schedule 1.01(b) attached hereto. The Pro Rata Share of the Majority Sellers is the sum of the Pro Rata Shares of each Majority Seller.

“R&W Insurance Policy” means the purchaser-side representations and warranties insurance policy purchased by and issued to Purchaser in respect of this Agreement effective as of the date hereof, on the terms and conditions set forth on Exhibit A.

“Regulations” means the Treasury Regulations (including Temporary Regulations) promulgated by the United States Department of the Treasury with respect to the Code or other federal tax statutes.

“SEC” means the U.S. Securities and Exchange Commission.

“Sellers Expenses” means the aggregate of all fees and expenses payable by the Company or the Sellers in connection with the consummation of the transactions contemplated hereby (or incurred in connection with the transactions hereunder) including any of the foregoing payable to legal counsel, accountants, investment bankers, financial advisors, brokers, finders, or consultants, but excluding Change in Control Payments and any expenses associated with the preparation of Tax Returns and payments associated with the termination and liquidation of the ESOP.

“Software” means all (a) software and computer programs (including all software implementation of algorithms, models and methodologies, whether in source code, object code, human readable form or other form, including statements in human readable form such as comments and definitions, which are generally formed and organized according to the syntax of a computer or programmable logic programming language, and such statements in batch or scripting languages); (b) text, diagrams, descriptions, flow charts and other work products used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, microcode and implementations, development tools, templates, menus,
buttons and icons; and (c) all documentation including user manuals and other training documentation relating to any of the foregoing.

“Straddle Period” means any Tax Period beginning before the date of the Closing and ending after the date of the Closing.

“Subsidiary Minority Owner Purchase Price” means the Delta Bridge Minority Owner Purchase Price and the TATE Minority Owner Purchase Price.

“TATE” means TATE Incorporated, a Maryland close corporation.

“TATE Minority Owner Purchase Price” means the “Purchase Price” as defined and determined in accordance with the TATE Stock Purchase Agreement.

“TATE Stock Purchase Agreement” means that certain stock purchase agreement among TATE, the Company and the David M. Ayres Grantor Retained Annuity Trust (2014), providing for the Company to acquire all of the outstanding minority interests in TATE prior to the Closing.

“Tax” or “Taxes” means any and all taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any government or taxing authority, including taxes or other charges on or with respect to income, franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers’ compensation, unemployment compensation, or net worth; taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value added, or gains taxes; license, registration and documentation fees; and customs’ duties, tariffs, and similar charges.

“Tax Period” means a taxable year of Company (or any Company Subsidiary, as applicable) as defined in Section 441(b) of the Code or comparable section of U.S. state or local tax law, as applicable (and, therefore, for the avoidance of doubt, may include a period of less than twelve (12) months for which a Tax Return is required to be made).

“Tax Returns” means any return, declaration, report, election, claim for refund or information return or other statement or form relating to, filed or required to be filed with any Tax authority, including any schedule or attachment thereto or any amendment thereof.

“Termination Fee” means an amount in cash equal to Six Million Dollars ($6,000,000).

“Trademarks” means all trademarks, service marks, trade dress, logos, brand names, trade names, corporate names, fictitious and other business names, product and service names, any other indicia of source or origin and all registrations and applications for registration of the foregoing (and any extensions, modifications and renewals of any such registrations and
applications), including all intent-to-use registrations or similar reservation of rights, together with the goodwill symbolized by any of the foregoing.

“Wholly Owned Subsidiaries” means the following wholly owned subsidiaries of the Company: (i) Courage Services, Inc., a Virginia corporation; and (ii) CENTRA Services, Inc., a Massachusetts corporation.

“Working Capital” means (i) all current assets (excluding Closing Cash and income tax receivable) of the Company and the Company Subsidiaries on a consolidated basis minus (ii) all current liabilities (excluding any items constituting Indebtedness or Sellers Expenses or income taxes payable or deferred tax but including the amounts of any tax liability deferred pursuant to the CARES Act) of the Company and the Company Subsidiaries on a consolidated basis, including $225,000 for the preparation of the Company’s refund claims and income Tax Returns as set forth in Section 7.02 and Section 7.04 and the costs of terminating and liquidating the ESOP. For the avoidance of doubt, for all purposes hereunder the calculation of Working Capital, including the good faith estimate thereof set forth on the Preliminary Statement and the calculation thereof set forth on the Closing Statement, shall take into account only the same line items set forth on Schedule 1.01(c) attached hereto and shall be determined or calculated in accordance with GAAP and in a manner consistent with, and using the same principles, policies, methods and practices (including as to reserves and accruals) used in, the preparation of the Financial Statements, and as further provided in Section 2.06(b).

Section 1.02 Definitions. The following terms have the meanings set forth in the Sections set forth below:

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Section 1.03 Interpretation and Rules of Construction. In this Agreement, except to the extent otherwise provided or that the context otherwise requires:

(a) when a reference is made in this Agreement to an Article, Section, Exhibit or Schedule, such reference is to an Article or Section of, or a Schedule or Exhibit to, this Agreement unless otherwise indicated;

(b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;
(c) whenever the words “include,” “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation”;

(d) the words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;

(e) all terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein;

(f) the definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms;

(g) any Law defined or referred to herein or in any agreement or instrument that is referred to herein means such Law or statute as from time to time amended, modified or supplemented, including by succession of comparable successor Laws;

(h) references to a Person are also to its successors and permitted assigns;

(i) the use of “or” is not intended to be exclusive unless expressly indicated;

(j) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day;

(k) any reference in this Agreement to $ shall mean U.S. dollars;

(l) any reference in this Agreement to a “consent” or a “request” shall mean a writing evidencing such consent or request, made by an authorized person of the party issuing such consent or request;

(m) the words “made available,” “provided” or words of similar import with respect to any item made available or provided by the Sellers or the Company shall mean that such item was either delivered by or on behalf of the Sellers or the Company or posted prior to the date of this Agreement in the online data room established by or on behalf of the Sellers or the Company in connection with the transactions contemplated by this Agreement; and

(n) all Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

ARTICLE II.

PURCHASE AND SALE
Section 2.01 Purchase and Sale of the Shares. Upon the terms and subject to the conditions of this Agreement, at the Closing, the Sellers shall sell, assign, transfer, convey and deliver, or cause to be sold, assigned, transferred, conveyed and delivered, to Purchaser, free and clear of all Encumbrances, the Shares, and Purchaser shall purchase the Shares.

Section 2.02 Purchase Price. The purchase price (the “Purchase Price”) for the acquisition of the Company through the purchase of the Shares shall be the sum of (i) an amount equal to the Base Purchase Price, plus (ii) the Amortization Value, increased or decreased pursuant to the estimated adjustments set forth in Section 2.06(a) (such total as so adjusted, the “Closing Purchase Price”), plus (iii) an amount equal to the post-Closing adjustment pursuant to Section 2.06(b)-(g). The Closing Purchase Price shall be paid at the Closing as follows:

(a) Purchaser will pay in immediately available funds for the benefit of the Sellers and the Company any unpaid Sellers Expenses identified in the Flow of Funds Memorandum that have not been paid by the Company or the Sellers prior to Closing;

(b) Purchaser will pay in immediately available funds any unpaid Change in Control Payments identified in the Flow of Funds Memorandum to the Company, for further payment by the Company through its payroll processor on or as soon as practicable following the Closing Date to the employees and in the amounts as set forth in the Flow of Funds Memorandum;

(c) Purchaser will pay in immediately available funds the amounts of any unpaid Subsidiary Minority Owner Purchase Price identified in the Flow of Funds Memorandum;

(d) Purchaser will pay in immediately available funds any unpaid Indebtedness identified in the Flow of Funds Memorandum;

(e) Purchaser shall deposit in escrow from the Closing Purchase Price Five Million Dollars ($5,000,000) (the “Purchase Price Adjustment Escrow Amount”), to be held in escrow with Citizens Commercial Bank or a mutually agreed upon substitute Escrow Agent (the “Escrow Agent”), on the terms set forth in this Agreement and the Escrow Agreement, attached hereto as Exhibit B (“Escrow Agreement”); and

(f) The amount of the Closing Purchase Price minus the amounts of the payments and deposit in Sections 2.02(a) through 2.02(e) (the “Closing Purchase Price Balance”) shall be paid by Purchaser in immediately available funds to the Sellers to their respective accounts the amounts set forth in the Flow of Funds Memorandum as follows:

(i) to the ESOT, $107,000, representing the anticipated amount of the ESOT’s Pro Rata Share of the estimated refund of state and federal income taxes resulting from the refund of estimated income Taxes paid for the Tax Period ended September 30, 2020 and the carryback of net operating losses in accordance with Section 7.02 hereof; and

(ii) to all Sellers, inclusive of the ESOT, their Pro Rata Share of the difference between (A) the Closing Purchase Price Balance and (B) the amount paid to the ESOT under
clause (i) above; provided, however, there shall be deducted from the amount payable to the Harold Rosenbaum 2011 Revocable Trust (“Rosenbaum Trust”), Two Million Dollars ($2,000,000) (the “Certain Matters Escrow Amount”, and together with the Purchase Price Adjustment Escrow Amount, the “Escrow Amount”) to be held in escrow with Escrow Agent and disbursed and released on the terms set forth in the Escrow Agreement for the Certain Matters Escrow Amount and any earnings thereon.

Section 2.03 Closing. Subject to the terms and conditions of this Agreement, the sale and purchase of the Shares contemplated by this Agreement shall take place at a closing (the “Closing”) to be held at the offices of Greenberg Traurig, LLP, 1750 Tysons Boulevard, Suite 1000, McLean, Virginia 22102 at 10:00 a.m. local time on the third (3rd) Business Day following the satisfaction or written waiver of each condition to the Closing set forth in Section 8.01 and Section 8.02 (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or written waiver of such conditions at the Closing), or at such other place or at such other time or on such other date as the Sellers Representative and Purchaser may mutually agree upon in writing (the date of such Closing, the “Closing Date”). By mutual agreement of the parties, the Closing may take place by conference call and electronic (i.e., email/PDF) or facsimile exchange of signatures with exchange of original signatures by overnight mail.

Section 2.04 Closing Deliveries by the Company and the Sellers. At the Closing, the Company and the Sellers shall deliver or cause to be delivered to Purchaser:

(a) stock powers duly executed in blank evidencing the transfer of the Shares to Purchaser, in the form attached hereto as Exhibit C;

(b) a true and complete copy, certified by the Secretary or an Assistant Secretary of the Company, of the resolutions duly and validly adopted by the Board of Directors of the Company evidencing its authorization of the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby;

(c) a certificate of the Secretary or an Assistant Secretary of the Company certifying the names and signatures of the officers of the Company authorized to sign this Agreement and the other documents to be delivered hereunder and thereunder;

(d) a copy of (i) the articles of incorporation, as amended, of the Company, certified by the Maryland State Department of Assessments and Taxation (the “SDAT”), as of a date not earlier than ten (10) Business Days prior to the Closing and accompanied by a certificate of the Secretary or Assistant Secretary of the Company, dated as of the Closing, stating that no amendments have been made to the articles of incorporation since such date, and (ii) the bylaws of the Company, certified by the Secretary or Assistant Secretary of the Company;

(e) a good standing certificate for the Company from the SDAT as of a date not earlier than ten (10) Business Days prior to the Closing;

(f) a certificate of the Chairman or President of the Company, certifying the items in Section 8.02(a);
Section 2.05 Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver to or on behalf of the Sellers, as applicable:

(a) the payment of the Closing Purchase Price in accordance with Section 2.02;

(b) a true and complete copy, certified by an authorized officer of Purchaser, of the resolutions duly and validly adopted by the sole member of Purchaser evidencing its authorization of the execution and delivery of this Agreement to which it is a party and the consummation of the transactions contemplated hereby and thereby;

(c) a certificate of an authorized officer of Purchaser certifying the names and signatures of the officers of Purchaser authorized to sign this Agreement and the other documents to be delivered hereunder and thereunder;

(d) a true and correct copy of the R&W Insurance Policy, bound as of the Closing Date; and

(e) a counterpart to the Escrow Agreement, duly executed by each of Purchaser and the Escrow Agent.

Section 2.06 Adjustment of Purchase Price.

(a) At least five (5) Business Days prior to the Closing, the Company shall deliver to Purchaser a statement (the “Preliminary Statement”) setting forth the Sellers’ good faith estimate of (i) Closing Cash, and (ii) the Working Capital as of the close of business on the Closing Date, in each case, including the components thereof and reasonable back-up information with respect thereto, and (iii) the calculation of the Closing Purchase Price based on the foregoing. In the event that Purchaser
notifies the Company of any objection to the Preliminary Statement no later than three (3) Business Days prior to the Closing Date, Purchaser and the Company shall discuss such objections in good faith and the Company will, in good faith and after taking into account the discussion between the Company and Purchaser, revise and re-deliver the Preliminary Statement no later than two (2) Business Days prior to the Closing Date to reflect the results of such discussion (which revised and re-delivered Preliminary Statement shall serve as the Preliminary Statement for all purposes under this Agreement). At the Closing, the Closing Purchase Price shall be (i) increased or decreased by the amount that Closing Cash reflected on the Preliminary Statement exceeds or is less than $0, respectively, and (ii) adjusted by the difference between the Working Capital reflected on the Preliminary Statement and Twenty Four Million Dollars ($24,000,000) (the “Targeted Working Capital”). If the Working Capital reflected on the Preliminary Statement exceeds the Targeted Working Capital, the amount of the Closing Purchase Price shall be increased dollar-for-dollar by the amount of such excess, and if the Working Capital reflected on the Preliminary Statement is less than the Targeted Working Capital, the amount of the Closing Purchase Price shall be decreased dollar-for-dollar by such shortfall.

(b) As soon as practicable, and in any event within ninety (90) calendar days after the Closing, Purchaser shall prepare or cause to be prepared and delivered to the Sellers Representative a statement as of the close of business on the Closing Date (the “Closing Statement”) setting forth the actual Closing Cash and the actual Working Capital of the Company. The Closing Statement shall entirely disregard (i) any and all effects on the assets or liabilities of the Company as a result of the transactions contemplated hereby or of any financing or refinancing arrangements entered into at any time by Purchaser or any other transaction entered into by Purchaser in connection with the consummation of the transactions contemplated hereby, and (ii) any of the plans, transactions or changes which Purchaser intends to initiate or make or cause to be initiated or made after the Closing with respect to the Company or its business or assets, or any facts or circumstances that are unique or particular to Purchaser or any of its assets or liabilities.

(c) Purchaser shall, and shall cause the Company to, grant the Sellers Representative and its authorized representatives reasonable access to all such papers and documents and all such personnel as it or its representatives may reasonably request, and the Sellers Representative shall have up to forty-five (45) days after receiving the Closing Statement to review the Closing Statement (the “Review Period”); provided, however, that, in the event Purchaser or the Company does not provide any papers or documents or access to personnel reasonably requested by the Sellers Representative or any of its representatives within five (5) Business Days after request therefor (or such shorter period as may remain in the Review Period), the Review Period shall be extended by five (5) Business Days plus one (1) Business Day for each additional day required for Purchaser or the Company to fully respond to such request. The Sellers Representative shall deliver notice to Purchaser on or prior to the expiration of the Review Period specifying in reasonable detail all disputed items and the basis therefor. If the Sellers Representative fails to deliver such notice by such date, the Sellers Representative and the Sellers shall have waived their right to contest the Closing Statement. If the Sellers Representative timely notifies Purchaser of any objections to the Closing Statement, the parties shall, within twenty (20) Business Days following the date of such notice (the “Resolution Period”), attempt to resolve their differences and any written resolution by them as to any disputed amount shall be final and binding for all purposes under this Agreement.
(d) If at the conclusion of the Resolution Period the parties have not reached an agreement on any objections with respect to the Closing Statement, then all amounts and issues remaining in dispute shall be submitted by the Sellers Representative and Purchaser to the Independent Accountants for a determination resolving such amounts and issues. All fees and expenses relating to the work, if any, to be performed by the Independent Accountants shall be borne by Purchaser and the Sellers Representative in the proportion that the aggregate dollar amount of the disputed items submitted to the Independent Accountants by such party that are unsuccessfully disputed by such party (as finally determined by the Independent Accountants) bears to the aggregate dollar amount of disputed items submitted by Purchaser and the Sellers Representative. Except as provided in the preceding sentence, all other costs and expenses incurred by the parties in connection with resolving any dispute hereunder before the Independent Accountants shall be borne by the party incurring such cost and expense. The Independent Accountants shall determine only those issues still in dispute at the end of the Resolution Period and the Independent Accountants’ determination shall be based upon and consistent with the terms and conditions of this Agreement. The determination by the Independent Accountants shall be based solely on presentations with respect to such disputed items by Purchaser and the Sellers Representative to the Independent Accountants and not on the Independent Accountants’ independent review. Each of Purchaser and the Sellers Representative shall use commercially reasonable efforts to make its presentation as promptly as practicable following submission to the Independent Accountants of the disputed items, and each such party shall be entitled, as part of its presentation, to respond to the presentation of the other party and any questions and requests of the Independent Accountants. In deciding any matter, the Independent Accountants (i) shall be bound by the provisions of this Section 2.06(d) and (ii) may not assign a value to any item greater than the greatest value for such item claimed by either Purchaser or the Sellers Representative or less than the smallest value for such item claimed by Purchaser or the Sellers Representative. The Independent Accountants’ determination shall be made within forty-five (45) calendar days after its engagement (which engagement shall be made no later than five (5) Business Days after the end of the Resolution Period), or as soon thereafter as possible, shall be set forth in a written statement delivered to Purchaser and the Sellers Representative and shall be final, conclusive, non-appealable and binding for all purposes hereunder. It is the intent of the parties hereto that the process set forth in this Section 2.06(d) and the activities of the Independent Accountants in connection herewith are not (and should not be considered to be or treated as) an arbitration proceeding or similar arbitral process and that no formal arbitration rules should be followed (including rules with respect to procedures and discovery). The term “Final Closing Statement” shall mean the definitive Closing Statement agreed to by the Sellers Representative and Purchaser if no items are disputed in accordance with Section 2.06(c) or the definitive Closing Statement resulting from the determination made by the Independent Accountants in accordance with this Section 2.06(d).

(e) In the event that the sum of the Working Capital and Closing Cash as reflected on the Final Closing Statement equals or exceeds the sum of the Working Capital and Closing Cash as reflected on the Preliminary Statement, then (i) Purchaser shall pay the Sellers the amount of such excess, if any, on a pro rata basis in accordance with the Sellers’ respective Pro Rata Shares, in immediately available funds to such account or accounts as may be designated by the Sellers Representative, and (ii) the Purchase Price Adjustment Escrow Amount and any earnings thereon will be disbursed by the Escrow Agent to the Sellers in the same manner as the payments in the preceding clause (i).
(f) In the event that the sum of the Working Capital and Closing Cash as reflected on the Final Closing Statement is less than the sum of the Working Capital and Closing Cash as reflected on the Preliminary Statement, then the Escrow Agent shall pay the amount of such difference to Purchaser from the Purchase Price Adjustment Escrow Amount; provided, however, if such difference exceeds the Purchase Price Adjustment Escrow Amount, the Sellers shall pay the amount of such excess, on a pro rata basis in accordance with their respective Pro Rata Shares, to Purchaser in immediately available funds to such account or accounts as may be designated by Purchaser; provided further, however, that if such difference is less than the Purchase Price Adjustment Escrow Amount, the remaining balance of the Purchase Price Adjustment Escrow Amount shall be disbursed by the Escrow Agent to the Sellers on a pro rata basis in accordance with their respective Pro Rata Shares, in immediately available funds to such account or accounts as may be designated by the Sellers Representative.

(g) If the Escrow Agent is required to pay or disburse an amount to the Sellers pursuant to clauses Section 2.06(e) or Section 2.06(f), then Purchaser shall direct the Escrow Agent to make such payment or disbursement from the Purchase Price Adjustment Escrow Amount in accordance with the Escrow Agreement within five (5) Business Days after the Final Closing Statement is agreed to by the Sellers Representative and Purchaser or is finally determined by the Independent Accountants in accordance with Section 2.06(d). If the Escrow Agent is required to pay or disburse an amount to Purchaser pursuant to Section 2.06(f), then the Sellers Representative shall direct the Escrow Agent to make such payment or disbursement from the Purchase Price Adjustment Escrow Amount in accordance with the Escrow Agreement within five (5) Business Days after the Final Closing Statement is agreed to by the Sellers Representative and Purchaser or is determined by the Independent Accountants in accordance with Section 2.06(g).

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Representations and Warranties of the Non-ESOT Sellers. Except with respect to those representations and warranties made in Section 3.07 below, each Seller other than the ESOT, as to and for themselves, and not with respect to any other Person, severally and not jointly, hereby represent and warrant to Purchaser, as of the date of this Agreement, as follows:

Section 3.01 Authorization. If such Seller is an individual, such Seller has the full right, capacity and power to enter into this Agreement and each of the ancillary agreements to which he or she is a party. If such Seller is a trust, such Seller has all requisite power and authority under its governing trust documents to enter into this Agreement and each of the ancillary agreements to which it is a party. All necessary action on the part of such Seller has been taken to authorize the execution and delivery of this Agreement and the performance of his, her or its obligations hereunder and the consummation of the transactions contemplated hereby.

Section 3.02 Execution and Delivery; Valid and Binding Agreement. This Agreement has been duly executed and delivered by such Seller, as applicable, and (assuming due authorization, execution and delivery by Purchaser) this Agreement constitutes a legal, valid and binding obligation of
such Person, enforceable against such Person in accordance with its terms, subject to applicable bankruptcy, insolvency,
reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally to general principles of equity,
including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a
proceeding at law or in equity) (collectively, the “Enforceability Exceptions”).

Section 3.03 No Conflict. Except as set forth in Schedule 3.03 of the Disclosure Schedules, the execution, delivery
and performance of this Agreement by such Seller, as applicable, does not and will not (a) conflict with or violate any Law or
Governmental Order applicable to such Person, or (b) conflict with, result in any breach of, constitute a default under, require any
consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, or
result in the creation of any Encumbrance on any of the Shares pursuant to, any note, bond, mortgage or indenture, contract,
agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which such Person is a party, except,
in the case of clause (b), to the extent that such conflicts, breaches, defaults or other matters would not (i) adversely affect the
ability of such Person to consummate the transactions contemplated by this Agreement or (ii) reasonably be expected to have a
Material Adverse Effect.

Section 3.04 Ownership of Shares. Such Seller has good and marketable title to the Shares listed opposite such
Seller’s name on Schedule 3.04 of the Disclosure Schedules, free and clear of all Encumbrances. There are no options, warrants,
convertible securities or other rights, agreements, arrangements or commitments of any character relating to the Shares or
obligating such Seller to sell any of the Shares.

Section 3.05 Litigation. No action, suit, proceeding or investigation is pending or, to such Seller’s actual knowledge,
threatened, against such Stockholder with respect to the execution and delivery of this Agreement or any ancillary document to
which it is a party, or for the consummation by such Seller of the transactions contemplated hereby or thereby.

Section 3.06 Brokers. Except for Citizens Capital Markets no broker, finder or investment banker is entitled to any
brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement based upon
arrangements made by or on behalf of the Seller.

Section 3.07 Representations and Warranties of ESOT. The ESOT hereby represents and warrants to Purchaser, as
of the date of this Agreement and as of the Closing Date, as follows:

(a) Organization. The ESOT consists of a duly organized and validly existing trust.

(b) Authorization; Execution; Enforceability. The execution, delivery and performance by the ESOT of
this Agreement are within the ESOT’s powers and have been duly authorized by all necessary actions on the part of the ESOT.
This Agreement has been duly executed and delivered by the ESOT and, assuming the due authorization, execution and delivery
by the other parties hereto, constitutes a valid and binding obligation of the ESOT, enforceable against the ESOT in accordance
with its terms, subject to (i) bankruptcy, insolvency, fraudulent transfer, reorganization,
moratorium and similar laws of general applicability relating to or affecting creditors’ rights generally, (ii) general principles of equity (whether considered in a proceeding at law or in equity) and (iii) ERISA.

(c) **Title to Shares.** The ESOT is the record owner of the ESOP Shares, free and clear of any Liens (other than restrictions on transfer arising under applicable federal, state or foreign securities laws). At the Closing, the ESOT will transfer the ESOP Shares to Purchaser, free and clear of all Liens (other than Liens created by Purchaser or arising out of ownership of the ESOP Shares by Purchaser and other than restrictions on transfer arising under any applicable federal, state or foreign securities laws).

(d) **No Conflict or Violation.** The execution, delivery and performance by the ESOT of this Agreement and the consummation by the ESOT of the transactions contemplated by this Agreement do not violate any provision of the trust or other governing documents of the ESOP.

(e) **Legal Proceedings.** There is no action, suit or proceeding, commenced, brought or conducted by any Governmental Authority pending, or to the ESOP Trustee’s actual knowledge, threatened, against the ESOT which contests the validity of this Agreement or could reasonably be expected to impair the ability of the ESOT to consummate the transactions contemplated by this Agreement.

**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

Except as disclosed in the Disclosure Schedules, the Company represents and warrants to Purchaser, as of the date of this Agreement, as follows:

Section 4.01 **Organization, Authority and Qualification of the Company.**

(a) The Company is corporation organized, validly existing and in good standing under the laws of the State of Maryland and has all necessary power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the business of the Company as it is currently conducted.

(b) The Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary or desirable, except to the extent that the failure to be so licensed or qualified and in good standing would not reasonably be expected to have a Material Adverse Effect, and all such jurisdictions are set forth in Schedule 4.01(b) of the Disclosure Schedules.

(c) Each Company Subsidiary is a corporation (or in the case of TATE, a close corporation) organized, validly existing and in good standing under the laws of the state in which it is organized, set forth in Schedule 4.01(c) of the Disclosure Schedules, and has all necessary power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its respective business as it is currently conducted. Each Company Subsidiary is duly licensed
or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary or desirable, except to the extent that the failure to be so licensed or qualified and in good standing would not reasonably be expected to have a Material Adverse Effect, and all such jurisdictions are specified with respect to each Company Subsidiary as set forth in Schedule 4.01(c) of the Disclosure Schedules.

Section 4.02 Execution and Delivery; Valid and Binding Agreement

This Agreement has been duly executed and delivered by the Company, and (assuming due authorization, execution and delivery by Purchaser) this Agreement constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to the Enforceability Exceptions.

Section 4.03 Capitalization; Subsidiaries and Joint Ventures.

(a) As of the date hereof, a total of 250,000 shares of capital stock are authorized, all of which are designated as common stock, par value $0.01 per share (“Common Stock”), and of which (i) 180,277.40 shares are issued and outstanding and owned beneficially and of record by the Sellers as set forth on Schedule 3.04 of the Disclosure Schedules, and are validly issued, fully paid and nonassessable, and (ii) 25,222.60 shares are held by the Company as treasury shares. None of such issued and outstanding shares or treasury shares were issued in violation of any preemptive rights. There are no options, warrants, convertible securities or other rights, agreements, arrangements or commitments obligating the Company to issue any shares of Common Stock, or any other equity securities of, the Company. Except as set forth in Schedule 4.03(a) of the Disclosure Schedules, there are no outstanding contractual obligations of the Company to repurchase, redeem or otherwise acquire any shares of Common Stock or to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any other Person. Upon consummation of the transactions contemplated by this Agreement and registration of the Shares in the name of Purchaser in the ownership interest records of the Company, Purchaser, assuming it shall have purchased the Shares for value in good faith and without notice of any adverse claim, will own all the issued and outstanding capital stock of the Company free and clear of all Encumbrances (other than any Encumbrances created by or as a result of actions taken by Purchaser). Except as set forth in Schedule 4.03(a) of the Disclosure Schedules, there are no voting trusts, stockholder agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the Shares.

(b) Except for the Company Subsidiaries, the ownership of which are as set forth on Schedule 4.03(b) of the Disclosure Schedules, the Company does not directly or indirectly control or have any direct or indirect equity participation in any other business entity. Except as set forth in Schedule 4.03(a) of the Disclosure Schedules, there are no options, warrants, convertible securities or other rights, agreements, arrangements or commitments obligating any Company Subsidiary to issue any shares of capital stock or any other equity securities. Except as set forth in Schedule 4.03(a) of the Disclosure Schedules, there are no outstanding contractual obligations of any Company Subsidiary to repurchase, redeem or otherwise acquire any shares of its capital stock or to provide funds to, or make any investment (in the form of a loan, capital contribution or otherwise) in, any other Person. Except as set forth in Schedule 4.03(a) of the Disclosure Schedules, there are no voting trusts, stockholder
agreements, proxies or other agreements or understandings in effect with respect to the voting or transfer of any of the shares of capital stock of any Company Subsidiary.

Section 4.04 No Conflict. Except as set forth in Schedule 4.04 of the Disclosure Schedules, the execution, delivery and performance of this Agreement by the Company does not and will not (a) violate, conflict with or result in the breach of any provision of the articles of incorporation or bylaws of the Company, or (b) conflict with or violate any Law or Governmental Order applicable to the Company, or (c) except as set forth in Schedule 4.04 of the Disclosure Schedules, conflict with, result in any breach of, constitute a default under, require any consent or notice under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any of the Company’s assets pursuant to, any Material Contract or Government Contract of the Company, except, in the case of clause (c), to the extent that such conflicts, breaches, defaults or other matters would not adversely affect the ability of the Company to carry out its obligations under, and to consummate the transactions contemplated by, this Agreement.

Section 4.05 Governmental Consents and Approvals. The execution, delivery and performance of this Agreement by the Company and the Sellers does not and will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any Governmental Authority, except (a) as described in Schedule 4.05 of the Disclosure Schedules and (b) the pre-merger notification and waiting period requirements of the HSR Act and the requirements of the antitrust laws of any other relevant jurisdiction.

Section 4.06 Third Party Consents and Approvals. The execution, delivery and performance of this Agreement by the Company and the Sellers, the performance by the Company or its Subsidiaries of their obligations hereunder, and the consummation of the transactions contemplated hereby will not require any consent, approval, authorization or other order of, action by, filing with or notification to, any party that is not a Governmental Authority, except as described in Schedule 4.06 of the Disclosure Schedules and except to the extent that the failure to obtain such consent, approval, authorization or other order of, action by, filing with or notification to, any such party would not reasonably be expected to have a Material Adverse Effect.

Section 4.07 Financial Information; Books and Records.

(a) Schedule 4.07(a) of the Disclosure Schedules sets forth (i) the consolidated audited balance sheets of the Company and the Company Subsidiaries as of September 30, 2019 and 2018, and the related consolidated audited statements of income and stockholders’ equity and cash flows for the fiscal years then ended (collectively referred to herein as the “Financial Statements”) and (ii) the consolidated unaudited balance sheet of the Company and the Company Subsidiaries as of July 31, 2020, and the related consolidated unaudited statements of income for the ten (10) month period then ended (collectively referred to herein as the “Interim Financial Statements”). The Financial Statements and the Interim Financial Statements (x) were prepared in accordance with the books of account and other financial records of the Company and the Company Subsidiaries, (y) present fairly in all material respects the consolidated financial condition and results of operations of the Company and the Company Subsidiaries as of the dates thereof or for the periods covered thereby, and (z) have been prepared in accordance with GAAP applied on a basis consistent with the past practices of the Company (provided,
that the Interim Financial Statements do not contain footnotes required by GAAP or changes of the type that are normal and recurring resulting from year-end adjustments).

(b) The systems of internal accounting controls maintained by the Company are sufficient to provide reasonable assurances that: (i) all material transactions are executed in accordance with management’s general or specific authorization; and (ii) all material transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain accountability for assets.

(c) Except as set forth in Schedule 4.07(c) of the Disclosure Schedules, there are no off-balance sheet arrangements of any type (including any off-balance sheet arrangement that would be required to be disclosed pursuant to Item 303(a)(4) of Regulation S-K of the SEC if the Company were an SEC reporting company) pertaining to the Company or the Company Subsidiaries.

Section 4.08 Absence of Undisclosed Liabilities. There are no Liabilities of the Company or the Company Subsidiaries of any nature, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise, except those (a) reflected or reserved against on the Interim Financial Statements, the Financial Statements or the notes thereto, or (b) incurred since the date of the balance sheet included in the Interim Financial Statements in the ordinary course of business of the Company or any Company Subsidiary.

Section 4.09 Conduct in the Ordinary Course. Except as expressly contemplated by this Agreement or as set forth on Schedule 4.09 of the Disclosure Schedules, from the date of the balance sheet included in the Interim Financial Statements, (i) the Company and Company Subsidiaries have operated only in the ordinary course of business in all material respects, (ii) there has not been, with respect to the Company or the Company Subsidiaries, taken together, any event, occurrence or development that has had a Material Adverse Effect and (iii) none of the Company or any Company Subsidiary have taken any of the following actions:

(a) (i) issued or sold any ownership interests, capital stock, notes, bonds or other securities of the Company or any Company Subsidiary (or any option, warrant or other right to acquire the same), (ii) redeemed any of the Shares of the Company, (iii) redeemed any of the shares of capital stock of any Company Subsidiary, other than pursuant to the Company’s purchase of the capital stock of the Majority Owned Subsidiaries contemplated by Section 6.14, or (iv) declared, made or paid any dividends or distributions to the holders of the Shares or the capital stock of any Company Subsidiary, other than cash dividends or distributions declared, made or paid by the Company solely to the Sellers or by any Company Subsidiary to the Company;

(b) incurred any Indebtedness for borrowed money other than borrowings under the Company’s existing line of credit in the ordinary course of business;

(c) amended or restated the articles of incorporation/organization or bylaws of the Company or any Company Subsidiary;

(d) granted or announced any material increase in the salaries, bonuses or other benefits payable by the Company or any Company Subsidiary to any of the employees of the Company.
or any Company Subsidiary other than as required by Law or the express terms of any plans, programs or agreements as in effect as of the date hereof and specified on Schedule 4.09(d) of the Disclosure Schedule, other than customary annual bonuses (i) which, in the aggregate, do not exceed the amount of the bonus pool accrued by the Company or any Company Subsidiary for the 2020 fiscal year, or (ii) which are consistent with executive and employee bonus plans and accruals in effect as of the date hereof;

(e) changed any method of accounting or accounting practice or policy used by the Company or any Company Subsidiary, other than such changes required by GAAP or contemplated by Section 6.16;

(f) failed to exercise any rights of renewal with respect to any Leased Real Property that by its terms would otherwise expire;

(g) settled or compromised any material Claims of the Company or any Company Subsidiary;

(h) sold or otherwise disposed of any of the assets shown or reflected on the Interim Balance Sheet except in the ordinary course of business;

(i) mortgaged or pledged any properties or assets or subjected any property or asset to any Encumbrance;

(j) made any commitment for capital expenditures or failed to incur any capital expenditures in excess, individually or in the aggregate, of $200,000;

(k) suffered any theft, damage, destruction or casualty loss of assets or properties, whether or not covered by insurance, in excess of $75,000 individually or $200,000 in the aggregate;

(l) purchased any securities of or made any other investment in any Person (or series of related investments in any Person), either by purchase of stock, securities or other equity interests, contributions to capital, asset transfers, or purchase of any assets, or otherwise acquired direct or indirect control over any Person;

(m) acquired by merger, consolidation or acquisition of stock any Person or any business of any other Person or any acquisition of a portion of the assets of any Person involving more than $200,000 other than purchases of assets in the ordinary course of business consistent with past practice;

(n) made any new Tax election made or any change to any Tax election, any change of annual accounting period, any adoption of or change in any accounting method, settlement of any material Tax claim or assessment relating to the Company or any Company Subsidiary, the entering into of any closing agreement, the surrender of any right to claim a material refund of Taxes, consent to any extension or waiver of the limitation period applicable to any material Tax claim or assessment relating to the Company or any Company Subsidiary, if such election, adoption, change, amendment, agreement, settlement, surrender or consent would reasonably have been expected to have the effect of
materially increasing the Tax liability of the Company or any Company Subsidiary for any period ending after the Closing Date or materially decreasing any Tax attribute of the Company or any Company Subsidiary existing on the Closing Date;

(o) terminated or made any modification or amendment to any Material Contract or Government Contract, or any bid therefor, that could reasonably be expected to be adverse to the Company in any material respect;

(p) entered into any contract or agreement to do any of the foregoing; or

(q) taken any action that, if taken after the date of this Agreement, would constitute a breach of any of the covenants set forth in Section 6.01.

Section 4.10 Affiliate Transactions. Except as set forth on Schedule 4.10 of the Disclosure Schedules, neither the Company nor any Company Subsidiary is a party to any contracts or agreements with any of its Affiliates (other than with wholly-owned Subsidiaries) or any Seller on terms and conditions which are less favorable to the Company or such Company Subsidiary than would be usual and customary in similar contracts or agreements between Persons not affiliated with each other.

Section 4.11 Litigation. There are no Actions by or against the Company or any Company Subsidiary or affecting any of the Company’s or any Company Subsidiary’s assets pending before any Governmental Authority (or, to the Knowledge of the Company, threatened to be brought by or before any Governmental Authority) which if determined adversely to the Company or any Company Subsidiary would result in a Material Adverse Effect. Neither the Company nor any Company Subsidiary nor any of their assets or properties is subject to any Governmental Order (nor, to the Knowledge of the Company, are there any such Governmental Orders threatened to be imposed by any Governmental Authority) which has or has had a Material Adverse Effect or could affect the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby or thereby.

Section 4.12 Compliance with Laws.

(a) Except with respect to (i) compliance with Environmental Laws (as to which certain representations and warranties are set forth in Section 4.13), (ii) compliance with Laws concerning Government Contracts (as to which representations and warranties are set forth in Section 4.15), (iii) compliance with Laws concerning employee benefits (as to which certain representations and warranties are set forth in Section 4.19), and (iv) compliance with Laws concerning Taxes (as to which certain representations and warranties are set forth in Section 4.22), each of the Company and each Company Subsidiary is in compliance in all material respects with all Laws and Governmental Orders applicable to it, and during the past three (3) years, the Company has not received any written notice of a violation or alleged violation of any such Law or Governmental Order, and to the Knowledge of the Company no investigation with respect to any such violation or alleged violation is being undertaken by any Governmental Authority. To the extent applicable to the Company or any Company Subsidiary, they are and have been in material compliance with all applicable export control and economic sanctions requirements administered by any Governmental Authority with jurisdiction over the Company or the Company Subsidiaries.
(b) Each of the Company and each Company Subsidiary currently has all material Permits which are required for the operation of the Company’s and such Company Subsidiary’s business as presently conducted. None of the Company or any Company Subsidiary is in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation), in any material respect, of any term, condition or provision of any Permit to which it is a party.

Section 4.13 Environmental Matters.

Except as set forth in Schedule 4.13 of the Disclosure Schedules:

(a) the Company and each Company Subsidiary is and has been at all times in compliance in all material respects with all applicable Environmental Laws, and none of them has any material liability under any Environmental Laws;

(b) neither the Company nor any Company Subsidiary has disposed of or released any Hazardous Materials on, in or under any real property that requires remediation under Environmental Laws or that has resulted in an environmental condition for which the Company or any Company Subsidiary has any material liability;

(c) all permits, if any, required to be obtained by the Company or any Company Subsidiary under any Environmental Law in connection with its operations as they are currently being conducted, including those relating to the management of Hazardous Materials, have been obtained by the Company or a Company Subsidiary, as the case may be, are in full force and effect, and the Company and each Company Subsidiary is in material compliance with the terms thereof applicable to it; and

(d) there are no written claims pursuant to any Environmental Law pending or, to the Knowledge of the Company, threatened, against the Company or any Company Subsidiary.

Section 4.14 Material Contracts.

(a) Except for Government Contracts (which are addressed in Section 4.15), Schedule 4.14(a) of the Disclosure Schedules lists each of the following contracts and agreements (whether written or oral) of the Company or any Company Subsidiary existing as of the date of this Agreement (collectively, the “Material Contracts”):

(i) each contract, agreement and other binding arrangement, for the purchase or sale of personal property, with any supplier or for the furnishing of services to the Company or any Company Subsidiary or by the Company or any Company Subsidiary under the terms of which the Company or such Company Subsidiary, as applicable: (A) is likely to involve consideration of more than $100,000.00 in the aggregate during the calendar year ended December 31, 2020 or $300,000 in the aggregate in the 3 calendar years ending on December 31, 2020, or (B) is likely to involve consideration of more than $100,000.00 in the aggregate over the remaining term of such contract, or (C) which commits the Company or a Company Subsidiary to automatic renewal or restricts the ability of the Company or a Company Subsidiary to terminate the agreement;
(ii) all management contracts and contracts with independent contractors or consultants (or similar arrangements) to which the Company or any Company Subsidiary is a party and which are not cancelable without penalty or further payment and without more than 30 days’ notice;

(iii) any contract that sets forth the terms of a joint venture, partnership or other similar arrangement, and any stockholders agreement or similar contract among the Company or a Company Subsidiary on the one hand and its stockholders on the other;

(iv) any contract that (A) limits or purports to limit the ability of the Company or a Company Subsidiary to compete in any line of business or with any Person or in any geographic area or to provide services generally or in any market segment or any geographic area or (B) during any period of time or grants “most favored nation” status to any other Person;

(v) any contract that grants an Encumbrance, other than a Permitted Encumbrance, on any material asset of the Company or a Company Subsidiary;

(vi) any contract (or series of related contracts) that provides for the disposition of any material asset of the Company or a Company Subsidiary, in each case outside the ordinary course of business (whether by merger, sale or purchase of stock, sale or purchase of assets or otherwise) that contains express representations, covenants, indemnities or other obligations that are still in effect;

(vii) any contract (or series of related contracts) for the acquisition (whether by merger, sale or purchase of stock, sale or purchase of assets or otherwise) of the business or capital stock of a third party or assets which would, after such acquisition, be material to the business of the Company and the Company Subsidiaries, taken as a whole;

(viii) all contracts and agreements relating to Indebtedness of the Company or any Company Subsidiary involving more than $100,000.00;

(ix) any contract under which the Company or a Company Subsidiary guarantees any liabilities or obligations of any other Person;

(x) any employment contract for any employee as of the date of this Agreement that is reasonably expected to involve payments of more than $100,000 in total compensation per year (excluding any contract providing for employment at-will);

(xi) any contract requiring capital expenditures after the date of this Agreement in an amount in excess of $100,000.00 in any calendar year;

(xii) all collective bargaining agreements or other agreements or arrangements with a labor union or other employee representative body;

(xiii) contract that provides for a settlement, conciliation or similar arrangement in connection with any proceeding or threatened Action, which includes any non-monetary remedies or pursuant to which the Company or a Company Subsidiary is required to make any payments in excess of $100,000 after the Closing;
(xiv) all contracts and agreements between or among the Company or a Company Subsidiary, on one hand, and any Seller or any Affiliate of a Seller (other than the Company or a Company Subsidiary), on the other hand;

(xv) all Company IP Agreements other than commercially available, off-the-shelf computer software licensed pursuant to shrink-wrap or click-wrap licenses pursuant to which one-time or aggregate fees of less than $100,000 are or were payable; and

(xvi) all leases relating to the Leased Real Property.

(b) Each Material Contract is valid and binding on the parties thereto and is in full force and effect (subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors’ rights and remedies generally) except for such failures to be valid, binding and in full force and effect, that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. None of the Company or any Company Subsidiary that is a party to a Material Contract is in material breach of, or in default under, such Material Contract, and no event has occurred or condition exists that with notice or the lapse of time or both constitutes a breach or default thereunder.

(c) To the Knowledge of the Company, no other party to any Material Contract is in material breach thereof or in material default thereunder and neither the Company nor any Company Subsidiary has received any pending notice of termination, cancellation, breach or default under any Material Contract to which it is a party, and no event has occurred or condition exists that with notice or the lapse of time or both constitutes a breach or default thereunder.

(d) The Company has provided or made available to Purchaser true and complete copies of all Material Contracts.

Section 4.15 Government Contracts.

(a) For purposes of this Section 4.15, the following terms have the following meanings

(i) The term “Government Contract” shall mean any prime contract, subcontract, purchase order, task order, delivery order, basic ordering agreement, pricing agreement, letter contract or other similar written arrangement of any kind, including all amendments, modifications and options thereunder or relating thereto between the Company or a Company Subsidiary, on the one hand, and: (a) any Governmental Authority; (b) any prime contractor of a Governmental Authority in its capacity as a prime contractor or any higher-tier subcontractor of a Governmental Authority in its capacity as a subcontractor; or (c) any lower-tier subcontractor to the Company, on the other hand, and includes any “Other Government Contract” as defined below. A task or delivery order under a Government Contract shall not constitute a separate Government Contract, for purposes of this definition, but shall be part of the Government Contract to which it relates.

(ii) The term “Other Government Contract” means any prime contract with the U.S. Government held by another prime contractor or higher-tier subcontractor under which the Company or any Company Subsidiary is a subcontractor or lower-tier subcontractor thereto.
(b) Schedule 4.15(b)(i), Schedule 4.15(b)(ii), and Schedule 4.15(b)(iii) of the Disclosure Schedules, respectively, set forth a complete and accurate record of (i) all of the Company’s and each Company Subsidiary’s Government Contracts currently in force and active, including those awaiting close out, as of the date of this Agreement; (ii) all of the Company’s and each Company Subsidiary’s outstanding quotations, bids and proposals for Government Contracts outstanding as of the date of this Agreement; and (iii) all of the Company’s and each Company Subsidiary’s Government Contracts which, to the Knowledge of the Company, are currently or are likely to experience cost, schedule, technical or quality problems resulting from actions or inactions by the Company or such Company Subsidiary, or their subcontractors or vendors at any tier, that could result in claims against the Company or such Company Subsidiary (or their respective successors in interest) by the U.S. Government, a prime contractor or a higher-tier subcontractor.

(c) The Company has provided or made available to the Purchaser true and complete copies of all Government Contracts, quotations, bids and proposals listed in Schedule 4.15(b)(i) and Schedule 4.15(b)(ii) of the Disclosure Schedules.

(d) All of the Company’s and each Company Subsidiary’s Government Contracts listed (or required to be listed) in Schedule 4.15(b)(i) of the Disclosure Schedules (i) were legally awarded, and are binding on the other parties thereto, and (ii) are binding on the Company or such Company Subsidiary and are in full force and effect. Such Government Contracts (or, where applicable, the Other Government Contracts under which such Government Contracts were awarded) are not currently the subject of bid or award protest proceedings, and the Company has no Knowledge that such Government Contracts (or, where applicable, the Other Government Contracts under which such Government Contracts were awarded) will become the subject of bid or award protest proceedings.

(e) The Company and each Company Subsidiary has complied in all material respects with all statutory and regulatory requirements where and as applicable to each of the Company’s and such Company Subsidiary’s Government Contracts and each of the Company’s and such Company Subsidiary’s quotations, bids and proposals for Government Contracts.

(f) Each of the Company and each Company Subsidiary has complied in all material respects with all material terms and conditions, including all clauses, provisions, specifications, and quality assurance, testing and inspection requirements of the Company’s and such Company Subsidiary’s Government Contracts, whether incorporated expressly, by reference or by operation of Law.

(g) All facts (but excluding, for the avoidance of doubt, any forward-looking statements) set forth in or acknowledged by any representations, certifications or disclosure statements made or submitted by or on behalf of the Company or any Company Subsidiary in connection with each of the Company’s and such Company Subsidiary’s Government Contracts and each of the Company’s and each Company Subsidiary’s quotations, bids and proposals for Government Contracts were true and accurate as of the date of submission in all material respects.

(h) Each of the Company and each Company Subsidiary has complied in all material respects with all applicable representations, certifications and disclosure requirements under
each of the Company’s and such Company Subsidiary’s Government Contracts and each of the Company’s and such Company Subsidiary’s quotations, bids and proposals for Government Contracts.

(i) All of the written past performance evaluations submitted to the Contractor Performance Assessment Reporting System which have been provided to the Company or any Company Subsidiary during the three years immediately preceding the date of this Agreement have been made available to the Purchaser.

(j) Neither the U.S. Government nor any prime contractor or higher-tier subcontractor under a Government Contract nor any other person has notified the Company or any Company Subsidiary in writing or, to the Knowledge of Company, verbally, of any actual or alleged violation or breach of any statute, regulation, representation, certification, disclosure obligation, contract term, condition, clause, provision or specification of any Government Contract listed (or required to be listed) in Schedule 4.15(b)(i) of the Disclosure Schedules.

(k) To the Knowledge of the Company, no facts exist which could give rise to a claim for price adjustment under the Truth in Negotiations Act or to any other request for a reduction in the price of any of the Company’s or any Company Subsidiary’s Government Contracts listed (or required to be listed) in Schedule 4.15(b)(i) of the Disclosure Schedules.

(l) The Company and Company Subsidiaries have complied with all requirements with respect to employment discussions with current Government employees and restrictions placed on the employment of former Government employees.

(m) To the Knowledge of the Company, neither the Company nor any Company Subsidiary has any unmitigated organizational conflict of interest related to any of the Company’s or each Company Subsidiary’s Government Contracts.

(n) The Company and Company Subsidiaries have complied with all requirements necessary for it to maintain its Facility Security Clearances.

(o) Neither the Company nor any Company Subsidiary is aware of and neither of them has received any show cause, cure, deficiency, default or similar notice relating to any of the Government Contracts listed (or required to be listed) in Schedule 4.15(b)(i) of the Disclosure Schedules.

(p) None of the Company’s or any Company Subsidiary’s Government Contracts has been terminated for default.

(q) Neither the Company nor any Company Subsidiary has received written notice terminating any of the Government Contracts listed (or required to be listed) in Schedule 4.15(b)(i) of the Disclosure Schedules for convenience, advising of an intention to terminate any of such Government Contracts for convenience, or that the government customer, prime contractor, or higher-tier subcontractor which let the contract will not exercise any remaining option period.
(r) There are no outstanding claims or disputes relating to Government Contracts listed (or required to be listed) in Schedule 4.15(b)(i) of the Disclosure Schedules that have been asserted by the Company or any Company Subsidiary or, to the Knowledge of the Company, by the U.S. Government, any prime contractor, any higher-tier subcontractor or any third party against the Company or any Company Subsidiary and, to the Knowledge of the Company, no facts or allegations exist that could give rise to such a claim or dispute in the future.

(s) The Company and the Company Subsidiaries and their Principals, as defined in 48 CFR 52.209-5, have not been and are not now suspended, debarred or proposed for suspension or debarment from the award of any Government Contracts as a prime contractor or subcontractor.

(t) Except as set forth in Schedule 4.15(t) of the Disclosure Schedules, to the Knowledge of the Company, the Company and the Company Subsidiaries have not undergone and are not undergoing any audit, review, inspection, investigation, survey or examination of records relating to the Government Contracts listed (or required to be listed) in Schedule 4.15(b)(i) of the Disclosure Schedules, other than in the ordinary course of business, and, to the Knowledge of the Company, there is no basis for any such audit, review, inspection, investigation, survey or examination of records, other than in the ordinary course of business.

(u) The Company and the Company Subsidiaries have not been and are not now, to the Knowledge of the Company, under any administrative, civil or criminal investigation or indictment involving alleged false statements, false claims or other improprieties relating to the Company's or any Company Subsidiary's Government Contracts or quotations, bids and proposals for Government Contracts.

(v) The Company and the Company Subsidiaries have not been and are not now a party to any administrative or civil litigation involving alleged false statements, false claims or other improprieties relating to the Company's or any Company Subsidiary's Government Contracts or quotations, bids and proposals for Government Contracts.

(w) The Company and the Company Subsidiaries have not, directly or indirectly, made any offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any Person, including any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA, applicable U.S. Government procurement laws, or any laws relating to bribes, gratuities, kickbacks, lobbying expenditures, political contributions and contingent fee payments. “FCPA” means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

(x) Neither the U.S. Government nor any prime contractor or higher-tier subcontractor under a Government Contract has withheld or set off, or attempted to withhold or set off, monies due to the Company or any Company Subsidiary under any of the Company’s or any Company Subsidiary’s Government Contracts.
(y) The Company’s and each Company Subsidiary’s cost accounting systems comply in all material respects with all applicable government procurement statutes, and regulations and with the requirements of all of the Company’s and such Company Subsidiary’s Government Contracts.

(z) Neither the U.S. Government nor any prime contractor or higher-tier subcontractor under a Government Contract listed (or required to be listed) in Schedule 4.15(b)(i) of the Disclosure Schedules has questioned or disallowed any costs claimed by the Company or any Company Subsidiary under any such Government Contract.

(aa) The Company and the Company Subsidiaries have not made any assignments of, or been assigned, the Government Contracts listed (or required to be listed) in Schedule 4.15(b)(i) of the Disclosure Schedules or of any interests in such Government Contracts. The Company and the Company Subsidiaries have not entered into any financing arrangements with respect to the performance of any Government Contract listed (or required to be listed) in Schedule 4.15(b)(i) of the Disclosure Schedules.

(bb) Schedule 4.15(bb) of the Disclosure Schedules lists all U.S. Government property which has been provided to the Company or any Company Subsidiary pursuant to Government Contracts listed (or required to be listed) in Schedule 4.15(b)(i) of the Disclosure Schedules and which, as of the date of this Agreement, is in the Company’s or such Company Subsidiary’s possession.

(cc) None of the Government Contracts listed (or required to be listed) in Schedule 4.15(b)(i) of the Disclosure Schedules were set aside or reserved based in part on the Company’s or any Company Subsidiary’s status as a Small Business Concern or as any “special status” Small Business Concern (as such term is defined in the applicable federal regulations).

4.16 Intellectual Property.

(a) Schedule 4.16(a) of the Disclosure Schedules sets forth a true and complete list of (i) all patents and patent applications, registered trademarks and trademark applications, registered copyrights and copyright applications and domain names included in the Company Intellectual Property, (ii) all Company IP Agreements, other than commercially available, off-the-shelf computer software licensed pursuant to shrink-wrap or click-wrap licenses, and (iii) other Company Intellectual Property material to the Company and the Company Subsidiaries, taken as a whole.

(b) The Company or a Company Subsidiary is the exclusive owner of the entire right, title and interest in and to the registered Company Intellectual Property and the Company or Company Subsidiary using Licensed Intellectual Property in connection with the operation of its business has a valid license to use such Licensed Intellectual Property. The Company or a Company Subsidiary is entitled to use all Company Intellectual Property and Licensed Intellectual Property in the continued operation of the Company’s business without limitation, subject only to the terms of the Company IP Agreements. The Company Intellectual Property and the Licensed Intellectual Property have not been adjudged invalid or unenforceable in whole or in part.
(c) **Schedule 4.16(c)** of the Disclosure Schedules contains a complete list of all products and services offered by the Company and its Subsidiaries at any time incorporating any Company Intellectual Property or in-licensed software.

(d) Neither the execution, delivery nor performance of this Agreement will, with or without notice or lapse of time, result in, or give any other Person the right or option to cause or declare: (i) a loss of, or Encumbrance on, any Company Intellectual Property or Intellectual Property used in the business as currently conducted; (ii) the release, disclosure, or delivery of any Company Intellectual Property by or to any escrow agent or other Person; (iii) the grant, assignment, or transfer to any other Person of any license or other right or interest under, to, or in any of the Company Intellectual Property or Intellectual Property licensed to the Company or its Subsidiaries; (iv) any right of any third party to terminate or alter the Company’s or its Subsidiaries’ rights in or to any Company Intellectual Property or Intellectual Property licensed to the Company or its Subsidiaries; (v) by the terms of any Contract, a reduction of any royalties, revenue sharing, or other payments the Company or its Subsidiaries would otherwise be entitled to with respect to any Company Intellectual Property.

(e) To the Knowledge of the Company: (i) the conduct of the Company’s and each Company Subsidiary’s business as currently conducted does not infringe or misappropriate the Intellectual Property of any third party, (ii) no Action alleging any of the foregoing are pending or threatened, and (iii) no Claim has been threatened or asserted against the Sellers, the Company or any Company Subsidiary alleging any of the foregoing. To the Knowledge of the Company, no Person is engaging in any activity that infringes the Company Intellectual Property.

(f) The Company or one of Company Subsidiaries has entered into binding, valid and enforceable, written agreements with each current and former employee and independent contractor who is or was involved in or has contributed to the invention, creation, or development of any Company Intellectual Property during the course of employment or engagement with the Company or the Company Subsidiaries whereby such employee or independent contractor (A) acknowledges the Company’s or the Company Subsidiary’s exclusive ownership of all Company Intellectual Property invented, created, or developed by such employee or independent contractor within the scope of his or her employment or engagement with the Company or the Company Subsidiary; (B) grants to the Company or its Subsidiary a present, irrevocable assignment of any ownership interest such employee or independent contractor may have in or to such Company Intellectual Property, to the extent such Intellectual Property does not constitute a “work made for hire” under applicable Law or contract; and (C) irrevocably waives any right or interest, including any moral rights, regarding any such Intellectual Property, to the extent permitted by applicable Law.

(g) To the Knowledge of the Company, no Company Intellectual Property is subject to any outstanding decree, order, injunction, judgment or ruling restricting the use of such Intellectual Property or that would impair the validity or enforceability of such Intellectual Property.

(h) The conduct of the Company’s and Company Subsidiaries’ business as now conducted and as presently proposed to be conducted complies in all material respects with all applicable privacy and data protection laws, and each of the Company and the Company Subsidiaries have adequate security measures in place to protect, from unauthorized access by any parties, all personal data currently under its control or in its possession, or that it presently proposes to maintain
under its control or in its possession. To the Knowledge of the Company, none of the Companies has experienced any security breach or other incident that has resulted in any unauthorized access to, use of and/or disclosure of any such personal data. No Governmental Authority or employee or customer of the Company or any Company Subsidiary has claimed in writing that the Company or such Company Subsidiary has engaged in any information or data privacy violation or otherwise made claims in writing relating to any information or data security breach, and, to the Knowledge of the Company, neither the Company nor any of the Company Subsidiaries has suffered any breach in security that has permitted any unauthorized access to the Customer Data under the control or possession of any of the Company or any Company Subsidiary.

(i) All Company IT Systems are in good working condition and are sufficient for the operation of the business as currently conducted by the Company or Company Subsidiary using such Company IT System. In the past three (3) years, there has been no malfunction, failure, continued substandard performance, denial-of-service, or other cyber incident, including any cyberattack, or other impairment of the Company IT Systems that has resulted or is reasonably likely to result in disruption or damage to the business of the Company and the Company Subsidiaries, taken as a whole, and that has not been remedied. The Company and the Company Subsidiaries have taken all commercially reasonable steps to safeguard or to ensure the safeguarding of the confidentiality, availability, security, and integrity of the Company IT Systems, including implementing and maintaining appropriate backup, disaster recovery, and Software and hardware support arrangements.

(j) The Company has taken commercially reasonable steps to ensure that none of the software products or services of the Company or the Company Subsidiaries (collectively, the “Covered Software”) contains any “back door,” “drop dead device,” “time bomb,” “Trojan horse,” “virus,” or “worm” (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing, any of the following functions: (i) disrupting, disabling, harming or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed; or (ii) damaging or destroying any data or file without the user’s consent.

(k) None of the Covered Software: (i) contains any bug, defect, or error that materially adversely affects the use, functionality, or performance of such Covered Software or any product or system containing or used in conjunction with such Covered Software; or (ii) fails to comply with any applicable warranty or other contractual commitment relating to the use, functionality, or performance of such Covered Software or any product or system containing or used in conjunction with such Covered Software in a manner that adversely impacts the business or operations of the Company.

(l) Delta Bridge owns or has all rights necessary to operate the Delta Network in the ordinary course of business and consistent with current practices of Delta Bridge. The Delta Network is in good working condition and is sufficient for the provision of all services specified in the terms of Delta Bridge’s agreements with each of its customers.

Section 4.17 Real Property.
(a) **Owned Real Property.** Schedule 4.17(a) of the Disclosure Schedules lists the address and description of each parcel of real property owned by the Company or any Company Subsidiary. With respect to each such parcel:

(i) the Company or a Company Subsidiary, as the case may be, has good and marketable fee simple title, free and clear of all Liens, except Permitted Liens;

(ii) except as set forth on Schedule 4.17(a)(ii) of the Disclosure Schedule, the Company or a Company Subsidiary, as the case may be, has not leased or otherwise granted to any Person the right to use or occupy such real property or any portion thereof; and

(iii) there are no outstanding options, rights of first refusal or rights of first offer to purchase such real property or any portion thereof or interest therein.

(iv) Neither the Company nor any Company Subsidiary owes any brokerage commissions with respect to any owned real property.

(v) There are no condemnation or appropriation proceedings, litigation, foreclosure or government regulatory actions pending or, to the Knowledge of the Company, threatened against the owned real property or that could reasonably be expected to affect in any way material and adverse to the Company or any Company Subsidiary any of the real property leases.

(vi) Except as set forth on Schedule 4.17(a)(vi) of the Disclosure Schedule, the owned real property is in compliance with all applicable building, zoning, subdivision, health and safety and other land use laws. The current use and occupancy of the owned real property does not violate any easement, covenant, condition, restriction or similar provision in any instrument of record or other unrecorded agreement affecting such real property.

(b) **Leased Real Property.** Schedule 4.17(b) of the Disclosure Schedules lists the street address of each parcel of Leased Real Property and the identity of the lessor, lessee and current occupant (if different from lessee) of each such parcel of Leased Real Property. With respect to each such parcel:

(i) There has not been any sublease or assignment entered into by the Company or any Company Subsidiary in respect of such parcel.

(ii) The Company’s or any Company Subsidiary’s possession and quiet enjoyment, as applicable, of the Leased Real Property has not been disturbed and, to the Knowledge of the Company, there are no (i) material disputes with respect to the Company’s or any Company Subsidiary’s leases for the Leased Real Property or (ii) breaches or events of default, or events which, with notice or lapse of time, would constitute a breach or default or permit termination, modification, or acceleration thereunder and no party to the lease or sublease has repudiated any provision thereof.

(iii) Neither the Company nor any Company Subsidiary owes any brokerage commissions with respect to any Leased Real Property.
To the Knowledge of the Company, the current use and occupancy of the Leased Real Property does not violate any building, zoning, subdivision, health and safety or other land use law.

Section 4.18 Tangible Personal Property. Each of the Company and each Company Subsidiary owns good title to, or holds pursuant to valid and enforceable leases, all of the material personal property used in the operation of its business as currently conducted, free and clear of all Encumbrances other than Permitted Encumbrances. All such personal property is in satisfactory operating condition, ordinary wear and tear excepted, and is sufficient in all material respects to conduct the business of the Company and the Company Subsidiaries as currently conducted and satisfy their respective obligations under all Contracts to which they are a party.

Section 4.19 Employee Benefit Matters

(a) Schedule 4.19(a) of the Disclosure Schedules lists (i) all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”)) and all bonus, option, stock purchase, profits interest, restricted stock, incentive, deferred compensation, retiree medical or life insurance, supplemental retirement, severance or other benefit plans, programs or arrangements, and all employment, termination, severance or other contracts or agreements, whether legally enforceable or not, to which the Company or any Company Subsidiary is a party, with respect to which the Company or any Company Subsidiary has any obligation or which are maintained, contributed to or sponsored by the Company or any Company Subsidiary for the benefit of any current or former employee, officer or director of the Company or any Company Subsidiary, (ii) each employee benefit plan for which the Company or any Company Subsidiary could incur liability under Section 4069 of ERISA in the event such plan has been or were to be terminated, and (iii) any plan in respect of which the Company or any Company Subsidiary could incur liability under Section 4212(c) of ERISA (collectively, the “Plans”). Purchaser has been provided copies of each Plan and a copy of each material document prepared in connection with each such Plan, including, if applicable, a copy of (i) each trust or other funding arrangement, (ii) each summary plan description and summary of material modifications, (iii) the most recently filed IRS Form 5500, (iv) the most recently received IRS determination or opinion or advisory letter with respect to each such Plan which is an employee pension benefit plan (as such term is defined in Section 3(2) of ERISA) intended to qualify under Section 401(a) of the Code, and (v) the most recently prepared actuarial report and financial statement in connection with each such Plan. Other than the Plans, there are no other employee benefit plans, programs, arrangements or agreements, whether formal or informal, whether in writing or not, to which the Company or any Company Subsidiary is a party, with respect to which the Company or any Company Subsidiary has any obligation or which are maintained, contributed to or sponsored by the Company or any Company Subsidiary for the benefit of any current or former employee, officer or director of the Company or any Company Subsidiary.

(b) None of the Plans is a multiemployer plan (within the meaning of Section 3(37) or 4001(a)(3) of ERISA) (a “Multiemployer Plan”) or a single employer pension plan (within the meaning of Section 4001(a)(15) of ERISA) for which the Company of any Company Subsidiary could incur liability under Section 4063 or 4064 of ERISA (a “Multiple Employer Plan”). Except as set forth on Schedule 4.19(b) of the Disclosure Schedules, none of the Plans provides for the payment of
separation, severance, termination or similar-type benefits to any Person or obligates the Company or any Company Subsidiary to pay separation, severance, termination or similar-type benefits as a result of any transaction contemplated by this Agreement (either alone or upon the occurrence of any additional or subsequent event). Except as set forth on Schedule 4.19(b) of the Disclosure Schedules, no payments or benefits under any Plan or Contract will be considered “excess parachute payments” under Section 280G of the Code. No person is entitled to receive any tax gross-up or other similar payment as a result of the imposition of excise taxes under Section 4999 or Section 409A of the Code. Each of the Plans is subject only to the Laws of the United States or a political subdivision thereof.

(c) Each Plan has been operated in all material respects in accordance with its terms and the requirements of all applicable Laws. Each of the Company and each Company Subsidiary has performed all material obligations required to be performed by it under and is not in any material respect in default under or in material violation of, and neither the Company nor any Company Subsidiary has Knowledge of any default or violation by any party to, any Plan. No Action is pending or, to the Knowledge of the Company, threatened with respect to any Plan (other than claims for benefits in the ordinary course) and, to the Knowledge of the Company, no fact or event exists that could give rise to any such Action.

(d) Each Plan that is intended to be qualified under Section 401(a) of the Code or Section 401(k) of the Code has timely received a favorable determination letter, advisory letter or opinion letter from the IRS upon which the Company is entitled to rely under IRS pronouncements, that such plan is, and such plan and its related trust are in fact, qualified under Section 401(a) of the Code and the related trusts are exempt from federal income tax under Section 501(a) of the Code, and nothing has occurred with respect to the design or operation of any such Plan that could reasonably be expected to cause the loss of such qualification or exemption or the imposition of any material Liability or Lien, penalty, or Tax under ERISA or the Code.

(e) There has been no prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to any Plan. Neither the Company nor any Company Subsidiary has inurred any liability for any penalty or tax arising under Section 4971, 4972, 4980, 4980B or 6652 of the Code or any liability under Section 502 of ERISA. Neither the Company nor any Company Subsidiary has incurred any liability under, arising out of or by operation of Title IV of ERISA (other than liability for premiums to the Pension Benefit Guaranty Corporation arising in the ordinary course), including any liability in connection with (i) the termination or reorganization of any employee benefit plan subject to Title IV of ERISA or (ii) the withdrawal from any Multiemployer Plan or Multiple Employer Plan, and no fact or event exists that could give rise to any such liability. No reportable event (within the meaning of Section 4043 of ERISA) has occurred with respect to any Plan subject to Title IV of ERISA. No Plan had an accumulated funding deficiency (within the meaning of Section 302 of ERISA or Section 412 of the Code), whether or not waived, as of the most recently ended plan year of such Plan. None of the assets of the Company or any Company Subsidiary is the subject of any lien arising under Section 302(f) of ERISA or Section 412(n) of the Code; and the Company has not been required to post any security under Section 307 of ERISA or Section 401(a)(29) of the Code.

(f) With respect to any Plan that is an employee welfare benefit plan (within the meaning of Section 3(1) of ERISA), (i) each such plan for which contributions are claimed as deductions
under any provision of the Code is in compliance with all applicable requirements pertaining to such deduction, (ii) with respect to any welfare benefit fund (within the meaning of Section 419 of the Code) there is no disqualified benefit (within the meaning of Section 4976(b) of the Code) that would result in the imposition of a Tax under Section 4976(a) of the Code, (iii) any Plan that is a group health plan (within the meaning of Section 4980B(g)(2) of the Code) complies with all of the applicable requirements of Section 4980B of the Code, ERISA, Title XXII of the Public Health Service Act, the applicable provisions of the Social Security Act, and the Health Insurance Portability and Accountability Act of 1996 and (iv) no welfare benefit plan provides health or other benefits after an employee’s or former employee’s retirement or other termination of employment except as required by Section 4980B of the Code. Each of the Plans is in compliance with the Patient Protection and Affordable Care Act and its companion bill, the Health Care and Education Reconciliation Act of 2010, to the extent applicable.

(g) The consummation of the transactions contemplated by this Agreement by the ESOP Trustee will not involve any non-exempt transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which a Tax may be imposed pursuant to Section 4975(c) of the Code. To the Company’s Knowledge, the ESOP Trustee, and any predecessor ESOP trustee, has complied in all material respects with all of the responsibilities and duties imposed on the ESOP Trustee or any predecessor trustee under the ESOP and applicable Law in connection with the transactions contemplated by this Agreement. The performance of the ESOP Trustee’s duties under this Agreement will not violate any provision of the ESOP or ERISA, including any of the Trustee’s fiduciary obligations under ERISA or Section 4975 of the Code.

(h) At no time has the ESOP been subject to an audit or investigation by either the Internal Revenue Service or the Department of Labor, except for the review of the ESOP made by the Internal Revenue Service in connection with the ESOP’s application for a favorable IRS determination letter. As of the Closing Date, neither the Company, nor to the Company’s Knowledge, any trustee of the ESOP, has any knowledge of any proposed or threatened audit or investigation by the Internal Revenue Service or Department of Labor.

Section 4.20 Certain Employment and Labor Matters. (a) Neither the Company nor any Company Subsidiary is a party to any collective bargaining agreement or other labor union contract applicable to persons employed by the Company or any Company Subsidiary, and to the Knowledge of the Company currently there are no organizational campaigns, petitions or other unionization activities seeking recognition of a collective bargaining unit which could affect the Company or any Company Subsidiary; (b) there are no unfair labor practice complaints pending against the Company or any Company Subsidiary before the National Labor Relations Board or any other Governmental Authority; (c) each of the Company and each Company Subsidiary has complied in all material respects with all applicable Laws relating to the employment of labor, including those related to wages, hours, collective bargaining and the payment and withholding of Taxes and other sums; (d) there is no claim with respect to payment of wages, salary or overtime pay that is pending, or to the Knowledge of the Company, has been asserted or threatened, before any Governmental Authority with respect to any Persons currently or formerly employed by the Company or any Company Subsidiary; (e) there is no proceeding with respect to a violation of any occupational safety or health standard that is pending, or to the Knowledge of the Company, has been asserted or threatened with respect to the Company or any Company Subsidiary; (f) there is no charge of discrimination in employment or employment practices, for any reason, including
age, gender, race, religion or other legally protected category, which is pending, or to the Knowledge of the Company, has been asserted or threatened, before the United States Equal Employment Opportunity Commission, or any other Governmental Authority in any jurisdiction in which the Company or any Company Subsidiary has employed or currently employs any Person; and (g) no key employee has given notice to the Company or any Company Subsidiary that such employee intends to terminate his or her relationship with the Company or such Company Subsidiary, as applicable. Schedule 4.20(a) of the Disclosure Schedule forth the name, title, current annual salary rate or current hourly wage and bonuses of each present employee of the Company or any Company Subsidiary. The Company has complied with all Laws that could require overtime to be paid to any employee set forth on Schedule 4.20(a) of the Disclosure Schedule, and no employee has ever brought or, to the Knowledge of the Company, threatened to bring a claim for unpaid compensation or employee benefits, including overtime amounts. Substantially all employees of the Company or any Company Subsidiary classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified. Schedule 4.20(b) of the Disclosure Schedule forth the name and current rate of compensation of each current independent contractor of the Company or any Company Subsidiary. All independent contractors of the Company or any Company Subsidiary set forth on Schedule 4.20(b) of the Disclosure Schedule have been, and currently are, properly classified and treated by the Company as independent contractors and not as employees, including pursuant to the Plans.

Section 4.21 Certain Interests.

(a) No Seller or shareholder, officer or director of the Company or any Company Subsidiary and no relative or spouse (or relative of such spouse) who resides with, or is a dependent of, any Seller or any shareholder, officer or director of the Company or any Company Subsidiary:

(i) has any direct or indirect financial interest in any supplier or customer of the Company or any Company Subsidiary; provided, however, that the ownership of securities representing no more than two percent of the outstanding voting power of any supplier or customer and that are also listed on any national securities exchange, shall not be deemed to be a “financial interest” so long as the Person owning such securities has no other connection or relationship with such competitor, supplier or customer;

(ii) owns, directly or indirectly, in whole or in part, or has any other interest in any tangible or intangible property that the Company or any Company Subsidiary uses or has used in the conduct of its business or otherwise; or

(iii) has outstanding any Indebtedness to the Company or any Company Subsidiary; or

(iv) is or has been within the two years prior to the date hereof involved in any business arrangement or other contract (whether written or oral) with or relating to the Company or any Company Subsidiary (other than director, officer or employment relationships or as an equityholder of the Company).

(b) Except as set forth in Schedule 4.21(b) of the Disclosure Schedules, neither the Company nor any Company Subsidiary has Liability of any nature whatsoever to any Seller or to any
Section 4.22 Taxes.

(a)  (i) All material Tax Returns required to be filed by the Company or by any of the Company Subsidiaries (each, a “Taxpayer”, and collectively, the “Taxpayers”) have been timely filed (taking into account any valid extensions of time within which to file), and all such Tax Returns are true, complete and correct in all material respects; (ii) none of the Taxpayers is currently the beneficiary of any extension of time within which to file any material Tax Return, other than automatic statutory extensions of time to file Tax Returns obtained in the ordinary course of business; (iii) all material Taxes due and owing by any Taxpayer have been timely paid in full; (iv) no extensions or waivers of statutes of limitations have been given or requested with respect to any material Tax Return of any Taxpayer; (v) there are no ongoing audits, actions, assessments, suits, claims, investigations or other legal proceedings pending or proposed against or with respect to any Taxpayer by any Taxing Authority in respect of any material Tax or material Tax Return; and (vi) no power of attorney has been granted with respect to any matter relating to Taxes payable by or with respect to any Taxpayer that is currently in force.

(b)  No Taxpayer is a party to or bound by any Tax allocation, indemnification or sharing agreement (other than any such agreement entered into in the ordinary course of business the primary purpose of which does not relate to Taxes).

(c)  All material Taxes required to have been withheld and paid by any Taxpayer under applicable Law, including in connection with amounts paid or owing to any employee, independent contractor, creditor, shareholder or other third party, have been timely withheld and paid to the appropriate Taxing Authority, and all IRS Forms W-2 and 1099 and other applicable forms required with respect thereto have been properly completed and timely filed in all material respects.

(d)  There are no Encumbrances with respect to Taxes (other than Permitted Encumbrances) on any of the assets of the Company or any Company Subsidiary.

(e)  Since January 1, 2016, no claim has been made by a Taxing Authority in a jurisdiction where Tax Returns are not filed or Taxes are not paid by or with respect to any Taxpayer that such a Tax Return is required to be filed or such Taxes are required to be paid. No Taxpayer has had a permanent establishment (within the meaning of an applicable Tax treaty) or otherwise has an office or fixed place of business in any country other than the United States.

(f)  No Taxpayer has participated or engaged in any “reportable transaction” within the meaning of Treasury Regulations section 1.6011-4(b) (or any comparable, analogous or similar provision of non-U.S. Law).

(g)  With the exception of the consolidated group of which the Company is the common parent, no Taxpayer is or has ever been in the past ten (10) years a member of any U.S. federal “affiliated group” (as defined in Section 1504 of the Code) or state, local or non-U.S. consolidated, combined, unitary or analogous group and (ii) has any liability for Taxes of any other Person under
No Taxpayer shall be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (i) “closing agreement” as described in Section 7121 of the Code (or any analogous, comparable or similar provision of state, local or non-U.S. Law), (ii) intercompany transaction or excess loss account, in each case as described in Section 1502 of the Code and the Treasury Regulations thereunder (or any analogous, comparable or similar provision of state, local or non-U.S. Law), (iii) installment sale or open transaction disposition, (iv) prepaid amount received on or prior to the Closing Date, or (v) change of accounting method other than the change from the cash method of accounting to the accrual method of accounting as described in Section 7.04(d).

The Company has not distributed stock of another Person, or had its Shares distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 of the Code or Section 361 of the Code (or any analogous, comparable or similar provision of state, local or non-U.S. Law).

All related party transactions involving the Company or any Company Subsidiary are at arm’s length in compliance with Section 482 of the Code, the Treasury Regulations promulgated thereunder, and any comparable, analogous or similar provision of state, local or non-U.S. Law. Each Taxpayer has maintained in all respects all necessary documentation in connection with such related party transactions in accordance with Section 482 of the Code and the Treasury Regulations promulgated thereunder (or any comparable, analogous or similar provision of state, local or non-U.S. Law).

No closing agreements (as described in Section 7121 of the Code or any comparable, analogous or similar provision of state, local or non-U.S. Law), private letter rulings, technical advice memoranda or similar agreements or rulings have been entered into or requested by or with respect to any Taxpayer.

The Company is a small business corporation in accordance with Section 1361(b) of the Code and would be eligible to elect to be taxed as an S corporation under subchapter S of the Code.

As of the Tax Period ending September 30, 2020, the adjusted tax basis of the Company’s “amortizable section 197 intangibles” (as defined in Section 197 of the Code) was $26,300,000.

**Section 4.23 Insurance.** The Company and each Company Subsidiary maintains policies of fire and casualty, liability and other forms of insurance covering the Company and such Company Subsidiary, and their assets and properties as set forth on Schedule 4.23 of the Disclosure Schedules. All such policies are in full force and effect in all material respects and no notice of cancellation or termination has been received with respect to any such policy which has not been replaced on substantially similar terms prior to the date of such cancellation and are in such amounts and include such coverages as are customary for similarly situated businesses in the Company’s industry. There are
no unpaid claims by the Company or any Company Subsidiary pending under any of such insurance policies.

Section 4.24 Bank Accounts. Schedule 4.24 of the Disclosure Schedules lists the names and locations of all banks and other financial institutions with which the Company or any Company Subsidiary maintains an account (each, a “Bank Account”), or at which a Bank Account is maintained to which the Company or any Company Subsidiary has access as to which deposits are made on behalf of the Company or any Company Subsidiary, in each case listing the type of Bank Account, the Bank Account number therefor, and the names of all Persons authorized to draw thereupon or have access thereto and lists the locations of all safe deposit boxes used by the Company or any Company Subsidiary.

Section 4.25 Brokers. Except for Citizens Capital Markets no broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company or the Sellers.

Section 4.26 No Other Representation or Warranties. NONE OF THE COMPANY, ANY COMPANY SUBSIDIARY, ANY SELLER OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS OR OTHER REPRESENTATIVES HAS MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER RELATING TO THE COMPANY OR ANY COMPANY SUBSIDIARY OR THEIR BUSINESS OR OTHERWISE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN THIS ARTICLE IV AND IN ARTICLE III. Without limiting the generality of the foregoing, except for the representations and warranties contained in ARTICLE III and this ARTICLE IV (as modified by the Disclosure Schedules hereeto), the Sellers and the Company (i) make no other express or implied representation or warranty with respect to the Company, the Company Subsidiaries, or their business or operations or the transactions contemplated by this Agreement, and the Company and the Sellers disclaim any other representations or warranties, whether made by the Company or the Sellers or any of their respective Affiliates, and (ii) disclaim all liability and responsibility for any other representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Purchaser or its Affiliates or representatives (including the Confidential Information Presentation prepared by Citizens Capital Markets and any opinion, information, projection, document, material or advice that may have been or may be provided or made available to Purchaser or any of its representatives by the Company, the Sellers or any of their respective Affiliates or representatives, including in any online data room or management presentations).

ARTICLE V.

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to the Sellers as follows:

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Section 5.01 Organization and Authority of Purchaser. Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all necessary limited liability company power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. Purchaser is duly licensed or qualified to do business and is in good standing in each jurisdiction which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary, except to the extent that the failure to be so licensed, qualified or in good standing would not adversely affect the ability of Purchaser to carry out its obligations under, and to consummate the transactions contemplated by, this Agreement. The execution and delivery by Purchaser of this Agreement, the performance by Purchaser of its obligations hereunder and the consummation by Purchaser of the transactions contemplated hereby have been duly authorized by all requisite limited liability company action on the part of Purchaser. This Agreement has been duly executed and delivered by Purchaser, and (assuming due authorization, execution and delivery by the Sellers and the Company) this Agreement constitutes a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its respective terms, subject to the Enforceability Exceptions.

Section 5.02 No Conflict. Assuming the making and obtaining of all filings, notifications, consents, approvals, authorizations and other actions referred to in Section 5.03, the execution, delivery and performance by Purchaser of this Agreement does not and will not (a) violate, conflict with or result in the breach of any provision of the limited liability company agreement or certificate of formation of Purchaser, (b) conflict with or violate any Law or Governmental Order applicable to Purchaser or its respective assets, properties or businesses, or (c) conflict with, or result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, any note, bond, mortgage or indenture, contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which Purchaser is a party, except, in the case of clauses (b) and (c), as would not materially and adversely affect the ability of Purchaser to carry out its obligations under, and to consummate the transactions contemplated by, this Agreement.

Section 5.03 Governmental Consents and Approvals. The execution, delivery and performance by Purchaser of this Agreement does not and will not require any consent, approval, authorization or other order of, action by, filing with, or notification to any Governmental Authority, except (a) the premerger notification and waiting period requirements of the HSR Act and the requirements of the antitrust laws of any other relevant jurisdiction, or (b) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not prevent or materially delay the consummation by Purchaser of the transactions contemplated by this Agreement.

Section 5.04 Litigation. No Action by or against Purchaser is pending or, to the knowledge of Purchaser, threatened, which could affect the legality, validity or enforceability of this Agreement, or the consummation of the transactions contemplated hereby or thereby.

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Section 5.05 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Purchaser.

Section 5.06 Sufficient Funds and Solvency.

(a) Purchaser has sufficient funds or access to sufficient funds at Closing to satisfy its obligations hereunder, including remitting the Closing Purchase Price and any adjustments payable pursuant to Section 2.06 to the Sellers as required under this Agreement. Purchaser expressly acknowledges and agrees that the performance of its obligations under this Agreement is not in any way subject to the availability of financing or other financing related contingency.

(b) Purchaser is not entering into the transactions contemplated by this Agreement with the intent to hinder, delay or defraud either present or future creditors of the Sellers or the Company or any of the Company’s Affiliates. Assuming that the representations and warranties of the Company and the Sellers contained in this Agreement are true and correct in all material respects, at and immediately after the Closing Date, and after giving effect to the purchase of the Shares and the other transactions contemplated by this Agreement, Purchaser (a) will be solvent (in that both the fair value of its assets will not be less than the sum of its debts and that the present fair saleable value of its assets will not be less than the amount required to pay its debts and liabilities as they become absolute and matured); (b) will have adequate capital and liquidity with which to engage in its business; and (c) will not have incurred and does not plan to incur debts and liabilities beyond its ability to pay as they become absolute and matured.

Section 5.07 R&W Insurance Policy. On or prior to the date of this Agreement, Purchaser has obtained the R&W Insurance Policy and the R&W Insurance Policy has been bound in the name of Purchaser, subject only to those conditions required by the insurer to occur after the date hereof. Without limiting the generality of the preceding sentence, Purchaser has paid or caused to be paid all costs and expenses related to the R&W Insurance Policy which are required by the insurer as of the date hereof, including all required portions of the total premium, underwriting costs, brokerage commissions, and other fees and expenses of such policy. The R&W Insurance Policy includes a waiver of, and agreement not to pursue, subrogation claims against the Sellers or any Affiliates of the Sellers or any of their respective equityholders, officers, directors, employees, agents, advisors or representatives, except to the extent that any such Persons have committed Fraud.

Section 5.08 Investigation. Purchaser acknowledges that it has conducted its own independent investigation, review and analysis of the business, results of operations, prospects, condition (financial or otherwise) or assets of the Company and the Company Subsidiaries and acknowledges that it has been afforded full access to the books and records, facilities and personnel of the Company and the Company Subsidiaries for purposes of conducting a due diligence investigation and has conducted a full due diligence investigation of the Company and the Company Subsidiaries. Purchaser is knowledgeable about the industries in which the Company and the Company Subsidiaries operate and is capable of evaluating the merits and risks of the transactions contemplated by this Agreement, and is able to bear the substantial economic risk of such investment for an indefinite period of time. Purchaser acknowledges and agrees that: (a) in making the decision to enter into this Agreement and to consummate the transactions contemplated hereby, Purchaser has relied solely upon
the express representations and warranties set forth in ARTICLES III and IV of this Agreement (including the related portions of the Disclosure Schedules) and (b) none of the Sellers, the Company or any other Person has made any representation or warranty as to the Sellers, the Company or this Agreement, except as expressly set forth in ARTICLES III and IV of this Agreement (including the related portions of the Disclosure Schedules). Without limiting the generality of the foregoing, none of the Sellers, the Company or any other Person makes or has made any representation or warranty, either express or implied, as to any projection, forecast, statement or information made, communicated, or furnished (orally or in writing) to Purchaser or its Affiliates or representatives (including the Confidential Information Presentation prepared by Citizens Capital Markets and any opinion, information, projection, document, material or advice that may have been or may be provided or made available to Purchaser or any of its representatives by the Company, the Sellers or any of their respective Affiliates or representatives, including in any online data room or management presentations), except as expressly and specifically covered by a representation and warranty set forth in ARTICLE III or IV.

ARTICLE VI

ADDITIONAL AGREEMENTS

Section 6.01 Conduct of Business Prior to the Closing. The Sellers and the Company agree that between the date hereof and the Closing, the Company shall, and the Sellers shall cause the Company to, (i) conduct the business of the Company and the Company Subsidiaries in the ordinary course in all material respects and (ii) use its reasonable efforts to preserve intact in all material respects the business organization of the Company and the Company Subsidiaries. The Company and the Sellers covenant and agree that, between the date hereof and the Closing, without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), neither the Company nor the Sellers shall cause the Company or any Company Subsidiary to:

(a)    (i) issue or sell any ownership interests, capital stock, notes, bonds or other securities of the Company or any Company Subsidiary (or any option, warrant or other right to acquire the same), (ii) redeem any of the Shares of the Company, (iii) redeem any of the shares of capital stock of any Company Subsidiary, other than pursuant to the Company’s purchase of the capital stock of the Majority Owned Subsidiaries contemplated by Section 6.14, or (iv) declare, make or pay any dividends or distributions to the holders of the Shares or the capital stock of any Company Subsidiary, other than cash dividends or distributions declared, made or paid by the Company solely to the Sellers or by any Company Subsidiary to the Company;

(b)    incur any Indebtedness for borrowed money other than borrowings under the Company’s existing line of credit in the ordinary course of business;

(c )   amend or restate the articles of incorporation/organization or bylaws of the Company or any Company Subsidiary;

(d)    grant or announce any material increase in the salaries, bonuses or other benefits payable by the Company or any Company Subsidiary to any of the employees of the Company or any Company Subsidiary, other than as required by Law, pursuant to any plans, programs or
agreements existing on the date hereof, customary annual bonuses, or other ordinary increases consistent with the past practices of the Company or any Company Subsidiary;

(e) change any method of accounting or accounting practice or policy used by the Company or any Company Subsidiary, other than such changes required by GAAP or contemplated by Section 6.16;

(f) fail to exercise any rights of renewal with respect to any Leased Real Property that by its terms would otherwise expire;

(g) settle or compromise any material Claims of the Company or any Company Subsidiary;

(h) fail to maintain all Permits held by the Company and the Company Subsidiaries that are material to their businesses or comply in all material respects with all applicable Laws;

(i) fail to pay Indebtedness, Taxes or other obligations when due other than Taxes contested in good faith;

(j) terminate or make any change, modification or amendment to any Contract listed on Schedule 4.14 or Schedule 4.15 of the Disclosure Schedule, or any bid for any Material Contract or Government Contract, that would reasonably be expected to be adverse to the Company in any material respect;

(k) enter into any agreement that would constitute a “Material Contract” or “Government Contract” as defined herein (other than Government Contracts entered into pursuant to the bids listed on Schedule 4.15(b) of the Disclosure Schedule);

(l) hire or make any offer of employment to any candidate at a salary of $100,000 or greater (other than candidates who will be directly billed to customers);

(m) agree to take any of the actions specified in Section 6.01(a) through (l), except as contemplated by this Agreement; or

(n) to otherwise take any action that, if it was taken at any time between the date of the balance sheet included in the Interim Financial Statements and the date of this Agreement, would be required to be disclosed on Schedule 4.09 of the Disclosure Schedules pursuant to Section 4.09(h) – (l).

Section 6.02 Access to Information.

(a) From the date hereof until the Closing, the Company shall, and the Sellers shall cause the Company to, cause its officers, directors, employees, agents, representatives, accountants and counsel to: (i) afford the officers, employees, agents, accountants, counsel, financing sources and representatives of Purchaser reasonable access, during normal business hours, to the offices, properties, other facilities, books and records of the Company and the Company Subsidiaries and (ii) furnish to the
officers, employees, agents, accountants, counsel, financing sources and representatives of Purchaser such additional financial and operating data and other information regarding the assets, properties, liabilities and goodwill of the Company or the Company Subsidiaries (or legible copies thereof) as Purchaser may from time to time reasonably request; provided, however, that any such access or furnishing of information shall be conducted at Purchaser’s expense, during normal business hours, under the supervision of the Company’s personnel, in such a manner as not to interfere with the normal operations of the Company or any Company Subsidiary, and in compliance with applicable Law with respect to contracts and information that are classified. Notwithstanding the foregoing, Purchaser shall not contact any customer of the Company or any Company Subsidiary (including, for this purpose, any higher-tier subcontractor, ultimate prime contractor and ultimate Governmental Authority customer) in connection with this Agreement or the transactions contemplated hereby without the prior written consent of Sellers Representative.

(b) In order to facilitate the resolution of any claims made against or incurred by the Sellers or the Company prior to the Closing, for a period of five years after the Closing, Purchaser shall (i) retain the books and records relating to the Company and the Company Subsidiaries relating to periods prior to the Closing in a manner reasonably consistent with the prior practice of the Company and the Company Subsidiaries and (ii) upon reasonable notice, afford the officers, employees, agents and representatives of the Sellers reasonable access (including the right to make, at the Sellers’ expense, photocopies), during normal business hours, to such books and records.

(c) In order to facilitate the resolution of any claims made by or against or incurred by Purchaser or the Company or any Company Subsidiary after the Closing or for any other reasonable purpose, for a period of five years following the Closing, the Sellers shall (i) retain the books and records of such Person which relate to the Company and the Company Subsidiaries and their operations for periods prior to the Closing and which shall not otherwise have been delivered to Purchaser or the Company and (ii) upon reasonable notice, afford the officers, employees, agents and representatives of Purchaser or the Company reasonable access (including the right to make photocopies, at the expense of Purchaser or the Company), during normal business hours, to such books and records.

Section 6.03 Confidentiality.

(a) Subject to Section 11.03 hereof, the terms of the non-disclosure agreement dated as of March 13, 2020 (the “Confidentiality Agreement”) between the Company and Purchaser are hereby incorporated herein by reference and shall continue in full force and effect until the Closing, at which time such Confidentiality Agreement and the obligations of Purchaser under this Section 6.03 shall terminate. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement shall nonetheless continue in full force and effect.

(b) Nothing provided to Purchaser pursuant to Section 6.02(a) shall in any way amend or diminish Purchaser’s obligations under the Confidentiality Agreement. Purchaser acknowledges and agrees that any information provided to Purchaser pursuant to Section 6.02(a) or otherwise by the Sellers, the Company, or any officer, director, employee, agent, representative, accountant or counsel thereof shall be subject to the terms and conditions of the Confidentiality Agreement.
Between the Closing Date and the third anniversary of the Closing Date, each Seller and each of their respective Affiliates, employees, consultants, agents, members, shareholders, partners and advisors will hold in confidence information regarding the business, operations and affairs of the Company and the Company Subsidiaries (including trade secrets, confidential information and proprietary materials, which may include the following categories of information and materials: methods, procedures, computer programs and architecture, databases, customer information, lists and identities, employee lists and identities, pricing information, research, methodologies, contractual forms, and other information, whether tangible or intangible, which is not publicly available generally) (collectively, the “Confidential Information”) accessed or possessed by Seller, its Affiliates and its and their representatives and shall not use the Confidential Information. Notwithstanding the foregoing, any such Person may disclose Confidential Information as and to the extent required by applicable Law, so long as the disclosing party notifies (to the extent legally permissible) Purchaser in advance so that Purchaser can seek a protective order and uses commercially reasonable efforts to seek a protective order causing such information so disclosed to be kept confidential.

Section 6.04 Regulatory and Other Authorizations; Notices and Consents.

(a) Each party hereto shall use its reasonable best efforts to obtain authorizations, consents, orders and approvals of all Governmental Authorities and officials that may be or become necessary for its execution and delivery of, and the performance of its obligations pursuant to this Agreement and will cooperate fully with the other parties hereto in promptly seeking to obtain all such authorizations, consents, orders and approvals. Each party hereto agrees to make an appropriate filing, if necessary, pursuant to the HSR Act with respect to the transactions contemplated by this Agreement within five Business Days of the date hereof and to supply as promptly as practicable to the appropriate Governmental Authorities any additional information and documentary material that may be requested pursuant to the HSR Act. Notwithstanding the foregoing, the Sellers and the Company shall not be required to pay any fees or other payments to any Governmental Authorities in order to obtain any such authorization, consent, order or approval. Purchaser shall pay all filing fees required under the HSR Act.

(b) Without limiting the generality of Purchaser’s undertaking pursuant to Section 6.04(a), Purchaser agrees to use its reasonable best efforts to avoid or resolve antitrust issues asserted by any United States or non-United States governmental antitrust authority or any other party so as to enable the parties hereto to expeditiously close the transactions contemplated hereby no later than December 31, 2020 (the “Termination Date”).

(c) Each party to this Agreement shall promptly notify the other party of any communication it or any of its Affiliates receives from any Governmental Authority relating to the matters that are the subject of this Agreement and permit the other party to review in advance any proposed communication by such party to any Governmental Authority. Neither party to this Agreement shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry unless it consults with the other party in advance and, to the extent permitted by such Governmental Authority, gives the other party the opportunity to attend and participate at such meeting. Subject to the Confidentiality Agreement, the parties to this Agreement will coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other party may reasonably request in connection with the foregoing and in seeking
early termination of any applicable waiting periods including under the HSR Act. Subject to the Confidentiality Agreement, the parties to this Agreement will provide each other with copies of all correspondence, filings or communications between them or any of their representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to this Agreement and the transactions contemplated by this Agreement.

(d) The Company shall promptly give, and shall cause the Company Subsidiaries to give, such notices to third parties and use its commercially reasonable efforts to obtain such third party consents and estoppel certificates as Purchaser may reasonably require in connection with the transactions contemplated by this Agreement. Purchaser shall cooperate and use all reasonable efforts to assist the Company and the Company Subsidiaries in giving such notices and obtaining such consents and estoppel certificates.

Section 6.05 No Solicitation or Negotiation. The Sellers and the Company agree that between the date of this Agreement and the earlier of (a) the Closing and (b) the termination of this Agreement, none of the Sellers, the Company, or any of their respective Affiliates, officers, directors, representatives or agents will (i) solicit, initiate, consider, knowingly encourage or accept any other proposals or offers from any Person (A) relating to any acquisition or purchase of all or any portion of the Shares of the Company or the Company’s assets or (B) to enter into any merger, consolidation, business combination, recapitalization, reorganization or other extraordinary business transaction involving or otherwise relating to the Company or (ii) participate in any discussions, conversations, negotiations and other communications regarding, or furnish to any other Person any information with respect to, or otherwise cooperate in any way, assist or participate in, facilitate or encourage any effort or attempt by any other Person to seek to do any of the foregoing. The Sellers and the Company shall (x) immediately cease and cause to be terminated all existing discussions, conversations, negotiations and other communications with any Persons conducted heretofore with respect to any of the foregoing, (y) promptly (and in any event within one (1) Business Day of the date hereof) request any such Person to promptly return or destroy all confidential information concerning the Company and the Company Subsidiaries and (z) promptly (and in any event within one (1) Business Day of the date hereof) terminate all access previously granted to such Persons to any physical or electronic data room. The Sellers and the Company shall notify Purchaser promptly, and in any event, within twenty-four (24) hours, if any such proposal or offer, or any inquiry or other contact with any Person with respect thereto, is made.

Section 6.06 Restrictive Covenants

(a) Each Seller (other than the ESOT) agrees that, for the three (3) year period commencing on the Closing Date (the “Restricted Period”), such Person shall not (i) directly or indirectly provide, to any Governmental Authority or Person, any product or service that is directly competitive with the products or services sold by the Company or any Company Subsidiary as of the Closing Date; provided, however, that, for the purposes of this Section 6.06, ownership of securities having no more than two percent (2%) of the outstanding voting power of any publicly traded competitor shall not be deemed a violation of this Section 6.06, or (ii) intentionally interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company and the Company Subsidiaries and their respective customers or suppliers.
(b) As a separate and independent covenant, each Seller agrees that during the Restricted Period such Person will not directly or indirectly hire or induce or attempt to induce any officers, employees or independent contractors of the Company or any Company Subsidiary to leave the employ or service of the Company or such Company Subsidiary or violate the terms of their contracts, or any employment arrangements, with the Company or such Company Subsidiary; provided, however, that the foregoing will not prohibit (i) a general solicitation to the public of general advertising or the hiring or other retention of any person who responds to any such general solicitation, or (ii) the hiring of any person whose employment has been terminated by the Company, a Company Subsidiary or Purchaser at least six (6) months prior to such hiring.

(c) Each Seller acknowledges that the covenants set forth in this Section 6.06 are an essential element of this Agreement and that, but for the agreement of the Sellers to comply with these covenants, Purchaser would not have entered into this Agreement. Each Seller acknowledges that this Section 6.06 constitutes an independent covenant that shall not be affected by performance or nonperformance of any other provision of this Agreement by Purchaser.

Section 6.07 Charter Protections; Directors’ and Officers’ Liability Insurance.

(a) All rights to indemnification for acts or omissions occurring through the Closing now existing in favor of each Person who is now, or has been at any time prior to the date hereof or who becomes prior to the Closing Date, an officer or director of the Company or any Company Subsidiary as provided in its articles of incorporation/organization, bylaws or under applicable Law shall survive the transactions contemplated in this Agreement and shall continue in full force and effect in accordance with their terms.

(b) The Company shall obtain, prior to the Closing Date, with an effective date as of the Closing Date “tail” insurance policies with a claims period of six (6) years from the Closing Date with at least the same coverage and amounts, and containing terms and conditions that are not less advantageous to the directors and officers of the Company and the Company Subsidiaries, in each case with respect to claims arising out of or relating to events which occurred on or prior to the Closing Date (including in connection with the transactions contemplated by this Agreement). The cost of such tail policy shall either be paid by the Company prior to the Closing or included in Sellers Expenses.

(c) If Purchaser or any of its successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving entity of such consolidation or merger, or (ii) transfers or conveys all or substantially all of its properties and assets to any Person, then, in each such case, to the extent necessary, proper provision shall be made so that the successors and assigns of Purchaser assume the obligations set forth in this Section 6.07.

(d) The provisions of this Section 6.07 are intended to be for the benefit of, and shall be enforceable by, each Person who will have been a director or officer of the Company or a Company Subsidiary for all periods ending on or before the Closing and may not be changed without the consent of the Sellers Representative.

Section 6.08 Employee Matters. Purchaser shall, for a period of one (1) year immediately following the Closing Date, generally cause the Company to provide employees of the Company and the
Company Subsidiaries (the “Company Employees”) with (i) base salaries and bonus/commission opportunities comparable, in the aggregate, as in effect as of the date of this Agreement (together with any changes thereto on or prior to the Closing Date that are approved by Purchaser in accordance with the terms of this Agreement) to the Company Employees, and (ii) employee benefit plans and programs that are substantially comparable, in the aggregate, with the Plans provided by the Company to similarly situated employees as of the Closing Date. The Purchaser shall recognize the service of Company Employees with the Company and any Company Subsidiary prior to the Closing Date as service with Purchaser and its Affiliates in connection with any tax-qualified pension plan, 401(k) savings plan and welfare benefit plans and policies (including vacations and leave policies) maintained by Purchaser which are made available following the Closing Date by Purchaser to Company Employees for purposes of any waiting period, vesting, eligibility and benefit entitlement (but excluding benefit accruals). The parties hereto acknowledge and agree that the terms set forth in this Section 6.08 shall not create any right in any Company Employee or any other Person to any continued employment with the Company, any Company Subsidiary or Purchaser or any of their respective Affiliates or compensation or benefits of any nature or kind whatsoever.

Section 6.09 ESOP Matters

(a) As of the Closing, the ESOP Trustee shall have received the ESOP Fairness Opinion from its independent financial advisor.

(b) Prior to Closing, the Company shall adopt an amendment to the ESOP terminating the ESOP and providing for final allocations thereunder effective immediately prior to the Closing. Such amendments to the ESOP shall, among other necessary changes to effect the termination of the ESOP, provide for 100% vesting as required by law upon plan termination and for a distribution of the benefits due each participant thereunder as soon as reasonably practicable after Closing (the “Plan Amendment”). The Plan Amendment will by its terms become effective as of the Closing Date. The Plan, as amended, shall be referred to as the “Amended Plan”.

(c) The Company will continue as sponsor of the Amended Plan after the Closing Date until all distributions are complete in accordance with the Amended Plan. Promptly after the Closing, the Company will file an application requesting the Internal Revenue Service to issue a final determination letter (the “ESOP Termination Determination Letter”) with respect to the ESOP. Prior to the Closing, the Company shall secure fiduciary liability insurance with coverage until the ESOP is fully liquidated, and shall procure and pay the premiums for “tail” coverage thereafter, with no deductibles and on a claims made basis, covering the Company and its agents and plan administrators (the “Fiduciary Policy”). The Company shall cause the newly-appointed plan administrators to promptly arrange for update of ESOP participant account balances through the closing/plan termination date, payment of partial distributions (if any), and final distributions under the ESOP after receipt of the ESOP Termination Determination Letter. The Company shall pay all filing fees, costs and expenses associated with implementing the termination of the ESOP, including making participant distributions from the ESOP and those related to the ESOP Termination Determination Letter.

Section 6.10 Attorney-Client Privilege; Retention of Counsel. The parties acknowledge that Greenberg Traurig, LLP (“Counsel”) has represented the Sellers and the Company in connection
with the transactions contemplated by this Agreement. Purchaser and the Company agree that any attorney-client privilege, attorney work-product protection, and expectation of client confidence attaching as a result of Counsel’s representation of the Company or the Sellers in connection with the transactions contemplated by this Agreement, and all information and documents covered by such privilege or protection, shall belong to and be controlled by the Sellers and not the Company from and after the Closing, and shall not pass to or be claimed or used by Purchaser or, from and after the Closing, the Company. In no event will the Company or Purchaser after the Closing object to any Seller’s or the Sellers Representative retention of Counsel in connection with defending or prosecuting any claim relating to any Seller’s indemnification obligations under this Agreement or any alleged breach of this Agreement or any document or agreement entered into in connection with this Agreement.

**Section 6.11 R&W Insurance Policy.** Prior to the Closing, Purchaser shall maintain the R&W Insurance Policy as bound as of the date hereof and shall timely satisfy all conditions necessary for the continuation of coverage under the R&W Insurance Policy. Following the Closing, Purchaser shall not, without the written consent of the Sellers Representative, amend the subrogation provisions of the R&W Insurance Policy in a manner that is detrimental to the Sellers.

**Section 6.12 Sellers Representative.**

(a) Each Seller hereby designates and appoints the Sellers Representative as its representative, agent and attorney-in-fact for all purposes of this Agreement and the transactions contemplated hereby. This appointment and power of attorney shall be deemed to be coupled with an interest and all authority conferred hereby shall be irrevocable and shall not be subject to termination by operation of Law, whether by the death or incapacity or liquidation or dissolution of any Seller or the occurrence of any other event or events. The Sellers Representative is serving in the capacity as representative, agent and attorney-in-fact of such Sellers hereunder solely for purposes of administrative convenience.

(b) Without limiting the generality of Section 6.12(a), each Seller, among other things, hereby irrevocably agrees:

(i) to the taking by the Sellers Representative of any and all actions and the making of any decisions required or permitted to be taken by the Sellers under this Agreement.

(ii) to the exercise by the Sellers Representative of the power to: (A) agree to, investigate, negotiate, enter into settlements and compromises of and file suit, seek arbitration and comply with orders of courts and awards of arbitrators with respect to such obligations and claims; (B) resolve any claim or dispute under or made pursuant to this Agreement; and (C) take all actions necessary in the judgment of the Sellers Representative for the accomplishment of the foregoing, including, without limitation, execution on any Seller’s behalf of any agreement, instrument, or other document that, in the sole discretion of Sellers Representative, is necessary, desirable, or otherwise appropriate to effect any such settlement or compromise;

(iii) that the Purchaser Indemnified Parties shall be able to rely conclusively without further inquiry on the instructions and decisions of the Sellers Representative as to
the settlement of any claims for indemnification by any one or more Purchaser Indemnified Parties pursuant to ARTICLE IX and as to any other action taken by the Sellers Representative hereunder; and

(iv) that the Sellers Representative is authorized to receive and to accept on each Seller’s behalf any notice from any Person claiming to be a Purchaser Indemnified Party given in accordance with this Agreement (and any notice given to the Sellers Representative shall be deemed to have been given to each Seller).

(c) The Sellers’ representative appointed pursuant to this Section 6.12 may be changed, or a successor appointed, by the Sellers from time to time upon not fewer than 10 calendar days’ prior written notice to the Purchaser.

(d) The Sellers Representative shall not be liable for any act done or omitted hereunder as the Sellers’ representative, while acting in good faith and in the exercise of reasonable judgment. The Sellers Representative may, at the expense of the Sellers, consult with legal counsel (who may be former legal counsel for the Company) and any act done or omitted pursuant to the advice of counsel shall be conclusive evidence of such good faith. The Sellers shall indemnify and hold the Sellers Representative harmless on a pro rata basis in accordance with their respective Pro Rata Shares against any loss, liability or expense incurred without gross negligence or bad faith on the part of the Sellers Representative and arising out of or in connection with the acceptance or administration of his duties hereunder.

(e) The reasonable expenses incurred by the Sellers Representative (including legal, accounting and other professional expenses) while acting on behalf of the Sellers under the authorization granted in this Section 6.12 shall be borne by the Sellers on a pro rata basis in accordance with their respective Pro Rata Shares.

Section 6.13 Stockholder Approval re Section 280G. Prior to the Closing, the Company shall use commercially reasonable efforts to: (a) seek a stockholder vote pursuant to the exemption contained in Section 280G(b)(5)(A)(ii) of the Code and the applicable regulations promulgated thereunder (the “280G Stockholder Vote”) with respect to those Plans set forth in Section 4.19(b) of the Disclosure Schedules, and (b) cause, prior to any 280G Stockholder Vote, the “disqualified individuals” (as defined in Section 280G of the Code) to waive any payments in respect of the transactions contemplated by this Agreement that would not be deductible pursuant to Section 280G of the Code if the 280G Stockholder Vote fails the approval requirements set out in Section 280G(b)(5) of the Code. At least seven (7) Business Days prior to the Closing Date, the Company or the Sellers Representative shall provide the Purchaser for review and approval, copies of the Section 280G calculations, disclosure documents, waiver documents and any other documents to be provided to any Person pursuant to this Section 6.13.

Section 6.14 Closing of Stock Purchase Agreements re Majority Owned Subsidiaries. The Company shall consummate the purchase of all of the shares of capital stock owned by the minority shareholder of TATE prior to Closing. The Company shall comply with, and shall satisfy all the conditions to closing under, the Delta Bridge Stock Purchase Agreement as of immediately prior to the Closing. From and after the Closing, the Company shall have no further obligations or liabilities under such agreements.
Section 6.15 Facility Security Clearance. The Company and Company Subsidiary each have a facility security clearance (FCL). As promptly as practicable after the date of this Agreement, the Company will make all reasonable efforts to prepare and file with Defense Counterintelligence and Security Agency (DCSA) notification of a change in ownership pursuant to Section 1-302(g) of the National Industry Security Program Operating Manual (NISPOM). The Company and Purchaser will make all reasonable efforts to cooperate to timely file such notification of a change in ownership and to submit any information and reports required by the NISPOM; for example, notification of a change in key management personnel to DCSA or other regulations related to the Company’s Government Contracts in conjunction with the execution of this Agreement.

Section 6.16 Further Action. Each of the Sellers, the Company and Purchaser shall use all commercially reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable Law, and to execute and deliver such documents and other papers, as may be required to carry out the provisions of this Agreement and consummate and make effective the transactions contemplated hereby and thereby.

Section 6.17 Financial Statements. If Purchaser is required to file with the SEC financial statements of the Company pursuant to the requirements contained in SEC Regulation S-X, the Sellers and the Company prior to Closing shall use commercially reasonable efforts to assist Purchaser in the preparation of such financial statements and will provide Purchaser access to all books and records of the Company to the extent reasonably necessary for the preparation of such financial statements.

Section 6.18 Conveyance of Real Property. Prior to the Closing, the Company shall convey all of its fee simple interest in the property located at 126 and 128 Maxwell Street, Fayetteville, North Carolina 28301 which is currently being marketed for sale (the “Maxwell Street Property”) to a third party pursuant a purchase and sale agreement with covenants and indemnities mutually acceptable to Purchaser and Sellers (the “Real Property Purchase Agreement”).

ARTICLE VII

TAX MATTERS

Section 7.01 Straddle Periods. In the case of Taxes that are payable with respect to a Straddle Period, the portion of any such Tax that is allocable to the portion of the Straddle Period ending on the date of the Closing shall be:

(a) in the case of Taxes that are either (x) based upon or related to income or receipts or (y) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible) (other than conveyances pursuant to this Agreement, as provided under Section 7.06), deemed equal to the amount which would be payable (after giving effect to amounts which may be deducted from or offset against such Taxes) if the Tax Period ended on the date of the Closing; and

(b) in the case of Taxes imposed on a periodic basis with respect to the assets of the Company or any Company Subsidiary (excluding Taxes related solely to personal property), or

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otherwise measured by the level of any item, deemed to be the amount of such Taxes for the entire Straddle Period (after giving effect to amounts which may be deducted from or offset against such Taxes) (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), multiplied by a fraction the numerator of which is the number of days in the period ending on the date of the Closing and the denominator of which is the number of days in the entire Straddle Period.

(c) Any credit or refund resulting from an overpayment of Taxes for a Straddle Period shall be prorated based upon the method employed in this paragraph (b) taking into account the type of Tax to which the refund relates. All determinations necessary to effect the foregoing allocations shall be made in a manner consistent with prior practice of the Company or any Company Subsidiary, as applicable.

Section 7.02 Tax Refunds. Any Tax refund, credit or similar benefit (including any interest paid or credited with respect thereto) relating to Tax Periods (or portions of taxable periods) ending on or before the date of the Closing shall be the property of the Sellers other than the ESOT, and if received by Purchaser, the Company or any Company Subsidiary, shall be paid over promptly to the Sellers other than the ESOT, on a pro rata basis based on their respective Pro Rata Shares with the payment that otherwise would have been payable to the ESOT paid to the Rosenbaum Trust. Purchaser shall cause the Company or other relevant entity to file for and use commercially reasonable efforts to obtain and expedite the receipt of any refund to which the Sellers are entitled under this Section 7.02, including from the carryback of net operating losses to the maximum extent allowable under the CARES Act to any Tax Period ended on or prior to the Closing Date. Purchaser shall cause the filing (at Purchaser’s expense) of any refund claims from such carrybacks to be made within one hundred eighty (180) days from the Closing Date. Purchaser shall permit Sellers Representative to participate in (at Seller’s expense) the prosecution of any such refund claim.

Section 7.03 Contests.

(a) After the Closing, Purchaser shall promptly notify the Sellers Representative in writing of the proposed assessment or the commencement of any Tax audit or administrative or judicial proceeding or of any demand or claim on Purchaser, its Affiliates, or the Company or any Company Subsidiary which, if determined adversely to the taxpayer or after the lapse of time, could result in any Tax liability for the Sellers or be grounds for indemnification by the Sellers under ARTICLE IX. Such notice shall contain factual information (to the extent known to Purchaser, its Affiliates, or the Company) describing the asserted Tax liability in reasonable detail and shall include copies of any notice or other document received from any taxing authority in respect of any such asserted Tax liability. If Purchaser fails to give the Sellers Representative prompt notice of an asserted Tax liability as required by this Section 7.03, then the Sellers shall not have any obligation to indemnify for any loss arising out of such asserted Tax liability, but only to the extent that failure to give such notice results in a detriment to the Sellers.

(b) In the case of a Tax audit or administrative or judicial proceeding (a “Contest”) that relates to a Pre-Closing Tax Period, Purchaser shall have the sole right (at Seller’s expense) to control the conduct of such Contest. Purchaser shall notify Sellers Representative of any Contest, and shall keep Sellers Representative reasonably informed of the progress of such Contest,
including by providing Sellers Representative copies of any material correspondence with the taxing authority. However, in such case, none of Purchaser or the Company may settle or compromise any asserted liability that Sellers may be obligated to indemnify without prior written consent of the Sellers Representative; provided, however, that consent to settlement or compromise shall not be unreasonably withheld.

(c) With respect to Straddle Periods, Purchaser shall direct and control, through counsel of its own choosing, any Contest involving any asserted Tax liability. If the asserted Tax liability is one with respect to which indemnity may be sought from the Sellers pursuant to ARTICLE IX, the Sellers Representative may participate (at the Sellers’ expense) in such Contest, and neither Purchaser nor the Company may settle or compromise any asserted liability without the prior written consent of the Sellers Representative, which shall not be unreasonably withheld.

(d) Purchaser, the Sellers Representative and the Sellers agree to cooperate, and Purchaser agrees to cause the Company and the Company Subsidiaries to cooperate, in the defense against or compromise of any claim in any Contest.

Section 7.04 Preparation of Tax Returns; Payment of Taxes.

(a) Subject to Section 6.16, the Purchaser shall prepare and file (at Purchaser’s expense) all income Tax Returns relating to the Company or any Company Subsidiary for Tax Periods ending on or before the date of the Closing that are due after the Closing Date, and shall file such Tax Returns for (i) the Tax Period ended September 30, 2020 within one hundred fifty (150) days of Closing and (ii) the stub Tax Period thereafter ending on the Closing Date within one hundred eighty (180) days of the Closing, Sellers Representative shall have no less than fifteen (15) days to review and comment on such Tax Returns prior to filing. Except as otherwise provided in this Agreement, such Tax Returns shall be prepared on a basis consistent with those prepared for prior Tax Periods unless a different treatment of any item is required by Law. The Sellers shall pay (i) all Taxes imposed on or payable by the Company or any Company Subsidiary with respect to such Returns and (ii) with respect to Straddle Periods, Taxes imposed on the Company or any Company Subsidiary which are allocable pursuant to Section 7.01 to the portion of such period ending on the date of Closing, other than Taxes resulting from any act, transaction or omission of Purchaser or the Company occurring after the Closing that is not in the ordinary course of business. The amount of Taxes payable by the Sellers under this Section 7.04(a) shall be reduced to the extent taken into account in the calculation of Working Capital under Section 2.06.

(b) Purchaser shall prepare and file (cause the Company to prepare and file) all Tax Returns that relate to the Company or any Company Subsidiary for Tax Periods ending after the date of the Closing (including Straddle Periods); it being understood that all Taxes shown as due and payable on such Tax Returns shall be the responsibility of Purchaser, except for such Taxes which are the responsibility of the Sellers which the Sellers shall pay in accordance with this ARTICLE VII. Such Tax Returns shall be prepared on a basis consistent with those prepared for prior Tax Periods unless a different treatment of any item is required by Law. With respect to any Tax Return required to be filed with respect to the Company or any Company Subsidiary after the date of the Closing and as to which Taxes are allocable to the Sellers under Section 7.01 hereof, Purchaser shall provide the Sellers Representative and its authorized representative(s) with a copy of such completed Tax Return and a
statement (with which Purchaser will make available supporting schedules and information) certifying the amount of Tax shown on such Tax Return that is allocable to the Sellers pursuant to Section 7.01 at least thirty (30) calendar days prior to the due date (including any extension thereof) for filing of such Tax Return, and the Sellers Representative and its authorized representative(s) shall have the right to review and comment on such Tax Return and statement prior to the filing of such Tax Return. The amount of Tax shown on any such Tax Return that is allocable to the Sellers shall be reduced to the extent accrued and taken into account in the calculation of Working Capital pursuant to Section 2.06. The Sellers Representative and Purchaser agree to consult and to attempt in good faith to resolve any issues arising as a result of the review of such Tax Return and statement by the Sellers Representative or its authorized representative(s).

(c) Notwithstanding anything to the contrary herein, if the Sellers receive an assessment or other notice of Taxes due with respect to the Company for any taxable period, or portion of any Tax period ending on or before the date of the Closing for which the Sellers are not responsible, in whole or in part, then Purchaser shall pay such Taxes, or if the Sellers pay such Taxes, then Purchaser or the Company shall pay to the Sellers pro rata based on their respective Pro Rata Shares the amount of such Taxes for which the Sellers are not responsible within ten (10) calendar days following such payment. In the case of a Tax that is contested in accordance with the provisions of Section 7.03, payment of the Tax to the appropriate taxing authority will be considered to be due no earlier than the date a final determination to such effect is made by the appropriate taxing authority or court.

(d) In the preparation of the federal and state income Tax Returns under this Section 7.04 for the Tax Period ending on the Closing Date, the Sellers Representative shall cause the Company and the Company Subsidiaries to adopt the accrual method of tax accounting (in lieu of the cash method of accounting previously used) and shall elect pursuant to IRS Revenue Procedure 2015-13 to recognize the entire amount of any adjustment under Section 481 of the Code or other taxable income resulting from such adoption in the Company’s consolidated income tax return for such Tax Period.

Section 7.05 Tax Cooperation and Exchange of Information. The Sellers and Purchaser shall provide each other with such cooperation and information as either of them reasonably may request of the other (and Purchaser shall cause the Company and the Company Subsidiaries to provide such cooperation and information) in filing any Tax Return, amended Tax Return or claim for refund, determining a liability for Taxes or a right to a refund of Taxes or participating in or conducting any audit or other proceeding in respect of Taxes (including a Contest). Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with related work papers and documents relating to rulings or other determinations by taxing authorities. The Sellers and Purchaser shall make themselves (and their respective employees) reasonably available on a mutually convenient basis to provide explanations of any documents or information provided under this Section 7.05. Notwithstanding anything to the contrary in Section 6.02, the Sellers and Purchaser shall each retain all Tax Returns, work papers and all material records or other documents in its possession (or in the possession of its Affiliates) relating to Tax matters of the Company and the Company Subsidiaries for any Tax Period that includes the date of the Closing and for all prior Tax Periods until the later of (i) the expiration of the statute of limitations of the Tax Periods to which such Tax Returns and other documents relate, without regard to extensions or (ii) six (6) years following the due date (without extension) for such Tax Returns. After such time, before the Sellers or Purchaser shall dispose of any
such documents in its possession (or in the possession of its Affiliates), the other party shall be given an opportunity, after ninety (90) calendar days prior written notice, to remove and retain all or any part of such documents as such other party may select (at such other party’s expense). Any information obtained under this Section 7.05 shall be kept confidential, except as may be otherwise necessary in connection with the filing of Tax Returns or claims for refund or in conducting an audit or other proceeding.

Section 7.06 Conveyance Taxes. Purchaser, on the one hand, and the Sellers collectively on the other (pro rata on the basis of their respective Pro Rata Shares), shall each be liable for 50% of any Conveyance Taxes that may be imposed upon, or payable or collectible or incurred in connection with this Agreement and the transactions contemplated hereby. Purchaser and the Sellers agree to cooperate in the execution and delivery of all instruments and certificates necessary to enable Purchaser to comply with any pre-Closing filing requirements.

Section 7.07 Tax Covenants.

(a) Neither Purchaser nor any Affiliate of Purchaser shall take, or cause or permit the Company to take, any action or omit to take any action which could increase any Seller’s or any of their respective Affiliates’ liability for Taxes unless such action or omission is required by law.

(b) Neither Purchaser nor any Affiliate of Purchaser shall amend, refile or otherwise modify, or cause or permit the Company or any Company Subsidiary to amend, refile or otherwise modify, any Tax election or Tax Return with respect to any Pre-Closing Tax Period without the prior written consent of the Sellers Representative.

Section 7.08 Escrow. For income tax purposes, Purchaser and the Sellers agree to treat amounts held by the Escrow Agent as property of Sellers and to treat the payment of the Escrow Amount to the Sellers as installment payments under the installment obligation rules of Section 453 of the Code.

Section 7.09 Deduction of Company Transaction Expenses. All Tax Returns prepared pursuant to this ARTICLE VII shall treat all Company Transaction Expenses paid or accrued on or before the Closing Date as being incurred in a Pre-Closing Tax Period. “Company Transaction Expenses” mean the collective amount due and payable by the Company or the Sellers for all out of pocket costs and expenses incurred by the Company or by or on behalf the Sellers (to the extent such amount is not paid prior to the Closing) on account of the entry into this Agreement by the Sellers or the consummation of the transactions hereunder, including (a) Sellers Expenses and (b) any employee retention payments, stay bonuses or severance, termination, change in control, retention or similar payments or benefits payable to any employee of the Company, in each case as a result of the sale of the Shares to the Purchaser, and including related employer side payroll Taxes (the payments in this clause (b), the “Change in Control Payments”).

ARTICLE VIII
CONDITIONS TO CLOSING

Section 8.01 Conditions to Obligations of the Sellers. The obligations of the Sellers to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or written waiver of the Sellers Representative, at or prior to the Closing, of each of the following conditions:

(a) **Representations, Warranties and Covenants.** (i) The representations and warranties of Purchaser contained in ARTICLE V shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a material adverse effect on Purchaser’s ability to consummate the transactions contemplated hereby, and (ii) the covenants and agreements contained in this Agreement to be complied with by Purchaser on or before the Closing shall have been complied with in all material respects;

(b) **HSR Act.** Any waiting period (and any extension thereof) under the HSR Act and the antitrust laws of any other relevant jurisdiction applicable to the purchase of the Shares contemplated by this Agreement shall have expired or shall have been terminated; and

(c) **No Proceeding or Litigation.** No Action shall have been commenced by or before any Governmental Authority against any of the Sellers, the Company or Purchaser, seeking to restrain or materially and adversely alter the transactions contemplated by this Agreement which, in the reasonable, good faith determination of the Sellers Representative, is likely to render it impossible or unlawful to consummate such transactions.

Section 8.02 Conditions to Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Purchaser’s written waiver, at or prior to the Closing, of each of the following conditions:

(a) **Representations, Warranties and Covenants.** (i) The representations and warranties of the Company and the Sellers contained in this Agreement, as modified by the Disclosure Schedules, shall be true and correct in all respects as of the Closing Date as if made on and as of the Closing Date (or, if given as of a specific date, at and as of such date), except where such failures of such representations and warranties to be true and correct, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, provided that, the representations and warranties contained in Section 3.01 (Authorization), Section 3.02 (Execution and Delivery; Valid and Binding Agreement), Section 3.04 (Ownership of Shares), Section 3.06 (Brokers), Section 4.01 (Organization, Authority and Qualification of the Company), Section 4.02 (Execution and Delivery), Section 4.03 (Capitalization; Subsidiaries and Joint Ventures), and Section 4.25 (Brokers), as modified by the Disclosure Schedules, shall be true and correct in all respects on and as of the Closing; and (ii) the covenants and agreements contained in this Agreement to be complied with by the Company and the Sellers on or before the Closing shall have been complied with in all material respects;
(b) **HSR Act.** Any waiting period (and any extension thereof) under the HSR Act and the antitrust laws of any other relevant jurisdiction applicable to the purchase of the Shares contemplated by this Agreement shall have expired or shall have been terminated;

(c) **No Proceeding or Litigation.** No Action shall have been commenced by or before any Governmental Authority against any of the Sellers, the Company or Purchaser, seeking to restrain or materially and adversely alter the transactions contemplated by this Agreement which, in the reasonable, good faith determination of Purchaser, is likely to render it impossible or unlawful to consummate such transactions or which could have a Material Adverse Effect; **provided, however,** that the provisions of this **Section 8.02(c)** shall not apply if the Purchaser has directly or indirectly solicited or encouraged such Action.

(d) **Consents and Approvals.** Purchaser and the Sellers shall have received all authorizations, consents, orders and approvals of all Governmental Authorities and officials and all third party consents and estoppel certificates set forth in **Schedule 8.02(d)** of the Disclosure Schedules;

(e) **Minority Owner Stock Purchase Agreements.** The Delta Bridge Stock Purchase Agreement shall be in full force and effect, no breach thereunder shall have occurred and be continuing, and the conditions to closing thereunder shall have been satisfied or shall be capable of being satisfied, and the Company shall have consummated the TATE Stock Purchase Agreement, closed the transactions contemplated thereby and shall have become the sole shareholder of TATE;

(f) **Employee Retention Agreements.** The employees identified on **Section 8.02(f)** attached hereto shall have executed and delivered retention agreements with the Company, which shall include customary restrictive covenants;

(g) **Receipt, Termination and Release Agreements.** Each recipient of a Change in Control Payment shall have executed and delivered a Receipt, Termination and Release Agreement, in the form of Exhibit E attached hereto.

(h) **No Material Adverse Effect.** Since the date of this Agreement, there shall have been no Material Adverse Effect.

(i) **ESOP Matters.** Purchaser shall have received evidence that the ESOP Trustee, after consultation with independent advisors and in reliance on the ESOP Fairness Opinion, has, on behalf of the ESOT, as of the Closing Date (i) approved the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement, subject to the terms and conditions set forth herein, and (ii) determined that the sale of the ESOP Shares is in the best interest of the ESOP participants, and the consideration to be received by ESOT for the ESOP Shares pursuant to the transactions contemplated by this Agreement is not less than “adequate consideration” within the meaning of Section 3(18) of ERISA.

(j) **Real Property Purchase Agreement.** Consummation of the transactions contemplated in the Real Property Purchase Agreement shall have occurred, and the Company shall have conveyed its fee simple interest in the Maxwell Street Property.
ARTICLE IX

INDEMNIFICATION

Section 9.01 Survival of Representations and Warranties and Covenants.

(a) The representations and warranties of the Sellers or the Company contained in this Agreement shall survive the Closing until the eighteen month anniversary thereof; provided, that, for purposes of the R&W Insurance Policy, such representations and warranties shall survive for the applicable survival period set forth in such policy solely with respect to the available coverage under such policy; provided, however, that (A) the representations and warranties made pursuant to Section 3.01, Section 3.02, Section 3.04, Section 3.06, Section 4.01(a), Section 4.02, Section 4.03(a) and Section 4.25 (the “Surviving Representations”) shall survive until the fifth anniversary of the Closing and (B) the representations and warranties in Section 4.13 shall survive until the third anniversary of the Closing. Other covenants and agreements of the Sellers contained herein shall survive until performed in accordance with their terms. Notwithstanding the foregoing, if Purchaser provides notice of a claim to Sellers in accordance with the terms of this Agreement prior to the expiration of the applicable survival period set forth in this Section 9.01, then the applicable representations and warranties, covenants and/or agreements (as the case may be) shall survive as to such claim only until such claim has been finally resolved or adjudicated.

(b) The representations and warranties of Purchaser contained in this Agreement shall survive the Closing until the one-year anniversary of the Closing; provided, however, that the representations and warranties made pursuant to Section 5.01, Section 5.05, Section 5.06 and Section 5.07 shall survive until the expiration of the applicable statutes of limitations. The covenants of Purchaser contained in this Agreement that are to be performed prior to Closing shall terminate upon the Closing, and the other covenants and agreements of Purchaser and the Company contained herein shall survive until performed in accordance with their terms.

(c) Except with respect to claims for indemnification with respect to breaches of any representation or warranty referenced in Section 9.02(i) or Section 9.02(ii) that are governed by the terms of the R&W Insurance Policy, no claim for indemnification may be asserted against any party for breach of any representation, warranty, covenant or agreement contained herein, unless written notice of such claim is received by such party describing in reasonable detail the facts and circumstances with respect to the subject matter of such claim on or prior to the date on which the representation, warranty, covenant or agreement on which such claim is based ceases to survive as set forth in this Section 9.01.

Section 9.02 Indemnification of Purchaser. Subject to the terms and conditions of this ARTICLE IX, from and after the Closing, each Seller (other than the ESOT) shall severally, and not jointly, indemnify and hold harmless Purchaser and its Affiliates, officers, directors, employees and agents (each a "Purchaser Indemnified Party") from and against any and all Liabilities, losses, damages, claims, costs and expenses, interest, awards, judgments and penalties (including reasonable attorneys’ fees and expenses on claims) actually suffered or incurred by them (hereinafter a “Loss”), arising out of or resulting from:
Section 9.03 Indemnification of the Sellers. Subject to the terms and conditions of this ARTICLE IX, from and after the Closing, Purchaser shall indemnify and hold harmless the Sellers and their respective Affiliates, agents, heirs and personal representatives (each a “Seller Indemnified Party”) from and against any and all Losses, arising out of or resulting from:

(i) the breach of any representation or warranty made by Purchaser contained in this Agreement; or

(ii) the breach or non-fulfillment of any covenant or agreement by Purchaser contained in this Agreement, or any covenant or agreement contained in this Agreement to be performed by the Company after the Closing.

Section 9.04 R&W Insurance Policy.

(a) Except as set forth in Section 9.09 with respect to Fraud and except with respect to the Surviving Representations and the Certain Matters, notwithstanding anything to the contrary contained in this Agreement, (a) the R&W Insurance Policy shall be the sole and exclusive remedy of the Purchaser Indemnified Parties for any and all Losses that are sustained or incurred by any of the Purchaser Indemnified Parties by reason of, resulting from or arising out of any breach of or inaccuracy in any of the Company’s or any Seller’s representations or warranties contained in this Agreement or in any certificate or other instrument delivered pursuant to this Agreement (other than the Surviving Representations) and (b) the Company and the Sellers shall not have any other direct or indirect liability (derivative or otherwise) to any Purchaser Indemnified Party with respect to any breach of such representations and warranties of the Company or the Sellers.

(b) Section 9.04(a) shall apply regardless of whether: (i) Purchaser continues to maintain the R&W Insurance Policy following the Closing; (ii) the R&W Insurance Policy is revoked, cancelled or modified in any manner after issuance; (iii) any claim made by Purchaser under such R&W Insurance Policy is denied by the issuer thereof or (iv) Purchaser fails or refuses to make a claim, or fails to comply with the required claims procedures, under such R&W Insurance Policy. Without limiting the generality of the foregoing, any rights of any issuer of the R&W Insurance Policy, including any rights
of subrogation, shall not affect, expand or increase any liability or obligation of the Company or the Sellers to Purchaser Indemnified Parties or any other parties in connection with the transactions contemplated by this Agreement.

(c) With respect to any Losses for which a Purchaser Indemnified Party is entitled to indemnification under Section 9.02(i) and Section 9.02(ii), Purchaser shall use its commercially reasonable efforts to submit a claim to recover such Losses from the R&W Insurance Policy before seeking recovery for such Losses from the Sellers (subject to applicable limitations set forth in this ARTICLE IX).

Section 9.05 Limits on Liability.

(a) Except as set forth in Section 9.09 with respect to Fraud, notwithstanding anything to the contrary contained in this Agreement:

(i) the total aggregate liability of the Sellers under or in connection with this Agreement or the transactions contemplated hereby shall not exceed an amount equal to the Purchase Price less the aggregate R&W Insurance Policy limit;

(ii) the maximum liability of any Seller on account of any particular indemnifiable Loss arising under clause Section 9.02(ii) or Section 9.02(iv) shall not exceed such Seller’s Pro Rata Share of such Loss; and

(iii) the maximum amount required to be paid by any Seller pursuant to Section 9.02 is the portion of the Purchase Price actually received by such Seller.

(b) Notwithstanding anything herein to the contrary, no Seller shall have any indemnification obligations pursuant to Section 9.02 with respect to (i) a breach of any representation or warranty set forth in ARTICLE III made by or with respect to any other Seller, (ii) any other Seller’s individual covenants set forth in Section 6.06, (iii) Fraud committed by any other Seller of which such first Seller did not have actual knowledge; provided that, with respect to any breach or Fraud described in the foregoing clauses (i) or (ii), the indemnification obligation of the Seller who committed such breach or Fraud shall not be limited to their Pro Rata Share.

(c) For purposes of this ARTICLE IX, other than with respect to the representations and warranties contained in Section 4.09(ii), in determining whether there has been a breach of any representation or warranty and the amount of any Losses that are the subject matter of a claim for indemnification hereunder, each representation and warranty shall be read without regard and without giving effect to any materiality qualifications contained therein (including the terms “material”, “material adverse effect”, “Material Adverse Effect” or any similar terms).

(d) Notwithstanding anything herein to the contrary, any liability of the ESOP to indemnify a Purchaser Indemnified Party pursuant to and in accordance with this ARTICLE IX, but for this Section 9.05(d), shall be satisfied by the Principal Seller.
(e) Notwithstanding any provision herein to the contrary, no party shall be liable for punitive damages unless paid or payable to third parties in respect of a Third Party Claim as contemplated under Section 9.06.

(f) Notwithstanding any provision herein to the contrary: (i) the Certain Matters Escrow Amount shall be the sole and exclusive remedy of the Purchaser Indemnified Parties for any and all Losses that are sustained or incurred by any of the Purchaser Indemnified Parties by reason of, resulting from or arising out of the Certain Matters; and (ii) the maximum amount required to be paid by Sellers pursuant to the Certain Matters is the Certain Matters Escrow Amount.

Section 9.06 Indemnification Procedures.

(a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any action, suit, claim or other legal proceeding made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a representative of the foregoing (each, a “Third Party Claim”) against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim (except to the extent the insurer under the R&W Insurance Policy assumes the defense of such Third Party Claim pursuant to and in accordance with the R&W Insurance Policy) at the Indemnifying Party’s expense and by the Indemnifying Party’s own counsel, and the Indemnified Party shall cooperate in good faith in such defense. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 9.06(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right, at its own cost and expense, to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party’s right to control the defense thereof. If the Indemnifying Party elects not to compromise or defend such Third Party Claim or fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, the Indemnified Party may, subject to Section 9.06(b), pay, compromise, or defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. The Sellers and Purchaser shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Section 6.02) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.
(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), except as provided in this Section 9.06(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 9.06(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) Direct Claims. Any claim by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a “Direct Claim”) shall be asserted by the Indemnified Party giving the Indemnifying Party prompt written notice thereof. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 30 days after its receipt of such notice to respond in writing to such Direct Claim. During such 30-day period, the Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim. If the Indemnifying Party does not so respond within such 30-day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

Section 9.07 No Double Recovery; Use of Insurance. Notwithstanding anything herein to the contrary, no party or other Person entitled to indemnification under this ARTICLE IX shall be entitled to indemnification or reimbursement under any provision of this Agreement for any amount to the extent such party or its Affiliate has been indemnified or reimbursed for such amount under any other provision of this Agreement (including to the extent there has been a specific liability or reserve relating to such matter included in the calculation of the Purchase Price adjustments pursuant to Section 2.06) or any document executed in connection with this Agreement or otherwise. The amount of any
indemnification payable under this ARTICLE IX will be net of the receipt of any insurance proceeds paid to the Indemnified Party under any policies of insurance covering the Loss giving rise to the Claim. The Indemnified Party will use commercially reasonable efforts to collect any such insurance and will account to the Indemnifying Party therefor. If, at any time subsequent to the Indemnified Party receiving an indemnity payment for a Claim under this ARTICLE IX, the Indemnified Party receives payment in respect of the Loss underlying such Claim through recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any Claim, recovery, settlement or payment by or against another Person, the amount of such payment, less any costs, expenses or premiums incurred directly in connection therewith, will promptly be repaid by the Indemnified Party to the Indemnifying Party.

**Section 9.08 Treatment of Indemnity Payments Between the Parties.** Unless otherwise required by applicable Law, all indemnification payments shall constitute adjustments to the Purchase Price for all Tax purposes, and no party shall take any position inconsistent with such characterization.

**Section 9.09 Remedies.** The parties hereto acknowledge and agree that (a) following the Closing, except as set forth in Section 2.06 and Section 6.03, the remedies provided in this ARTICLE IX (and, with respect to Purchaser, the R&W Insurance Policy) shall be the sole and exclusive remedies of Purchaser and the Sellers for any breach by the other party of the representations and warranties in this Agreement and for any failure by the other party to perform and comply with any covenants and agreements in this Agreement, except for claims grounded in Fraud, and (b) anything herein to the contrary notwithstanding, no breach of any representation, warranty, covenant or agreement contained herein shall give rise to any right on the part of Purchaser or the Sellers, after the consummation of the purchase and sale of the Shares contemplated by this Agreement, to rescind this Agreement or any of the transactions contemplated hereby. Each party hereto shall use commercially reasonable efforts to mitigate its Losses.

**Section 9.10 Role of Sellers Representative.** Notwithstanding anything to the contrary in this Agreement, (a) to the extent that the provisions of this ARTICLE IX contemplate that a notice thereunder be given to the Sellers, such notice shall instead be given to the Sellers Representative and (b) to the extent that the provisions of this ARTICLE IX contemplate that an action or determination shall, or may be, taken or made thereunder by a Seller, such action or determination shall, or may be, taken or made thereunder solely by the Sellers Representative on behalf of such Sellers (and not by such Sellers directly).

**ARTICLE X**

**TERMINATION**

**Section 10.01 Termination.** This Agreement may be terminated at any time prior to the Closing:

(a) by either the Sellers Representative or Purchaser if the Closing shall not have occurred by the Termination Date; provided, however, that the right to terminate this Agreement under this Section 10.01(a) shall not be available to any party whose failure to fulfill any obligation under this
Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to such date; provided further, however, that, upon delivery of the written notice specified in Section 10.01(e)(iv), Purchaser shall not have the right to terminate this Agreement pursuant to this Section 10.01(a) until two (2) Business Days following the expiration of the three (3) Business Day period referenced in Section 10.01(e)(iv):

(b) by either the Sellers Representative or Purchaser in the event that any Governmental Authority shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable;

(c) by the Sellers Representative (if the Sellers are not then in breach of this Agreement in any material respect) if Purchaser shall have breached any of its representations, warranties, covenants or agreements contained in this Agreement which would give rise to the failure of a condition set forth in Section 8.01, which breach cannot be or has not been cured within thirty (30) calendar days after the giving of written notice by the Sellers Representative to Purchaser specifying such breach;

(d) by Purchaser (if Purchaser is not then in breach of this Agreement in any material respect) if the Sellers or the Company shall have breached any of their representations, warranties, covenants or agreements contained in this Agreement which would give rise to the failure of a condition set forth in Section 8.02, which breach cannot be or has not been cured within thirty (30) calendar days after the giving of written notice by Purchaser to the Sellers Representative specifying such breach;

(e) by the Sellers Representative if (i) the conditions set forth in Section 8.02 have been and continue to be satisfied or waived at the time the Closing is required to have occurred pursuant to Section 2.03 (other than those conditions that by their nature are to be satisfied at the Closing, but subject to such conditions being capable of being satisfied on such date), (ii) Purchaser failed to consummate the Closing on the date required pursuant to the terms of Section 2.03, (iii) Purchaser fails to consummate the Closing by the earlier of (A) three (3) Business Days after written notice is delivered by the Sellers Representative to Purchaser that the events set forth in clauses (i) and (ii) above have occurred and (B) the Termination Date, and (iv) the Sellers Representative has irrevocably confirmed to Purchaser in writing that the Sellers are prepared to consummate the Closing and that at all times during such three (3) Business Day-period referenced in clause (iii) above the Sellers stood ready, willing and able to consummate the Closing; or

(f) by the mutual written consent of the Sellers Representative and Purchaser.

Section 10.02 Effect of Termination. In the event of any termination of this Agreement as provided in Section 10.01, this Agreement shall forthwith become wholly void and of no further force and effect and there shall be no liability or obligation on the part of Purchaser, the Sellers or the Company or their respective officers or directors, except (a) as set forth in Section 6.03, Section 10.02, Section 11.01, Section 11.10, and Section 11.11, which shall remain in full force and effect, (b) with respect to Purchaser, pursuant to, and only in accordance with the terms of Section 10.03 and (c) except
as provided in Section 10.03, nothing herein shall relieve either party hereto from liability for any breach of this Agreement prior to such termination.

Section 10.03 Termination Fee.

(a) If, but only if, this Agreement is validly terminated by the Sellers Representative pursuant to Section 10.01(e) or Section 10.01(c), then Purchaser shall pay, or cause to be paid, to the Sellers (pro rata in accordance with their Pro Rata Shares) by wire transfer of immediately available funds to accounts designated in writing by the Sellers Representative the Termination Fee within five (5) Business Days following such termination. The parties hereto acknowledge and hereby agree that in no event shall any of Purchaser or its Affiliates be required to pay, or to cause to be paid, (A) the Termination Fee on more than one occasion or (B) both the Termination Fee and any other damages, other than any interest on the Termination Fee; provided, nothing in this Section 10.03 shall affect or diminish the respective rights, obligations and liability of the parties under Sections 6.03, 11.01, 11.10 and 11.11.

(b) The parties hereby acknowledge and agree that (i) the agreements contained in this Section 10.03 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the parties would not enter into this Agreement, and (ii) the Termination Fee payable by Purchaser pursuant to Section 10.03(a) (together with any amounts payable or indemnifiable pursuant to the last sentence of this Section 10.03(b)) is not a penalty, but is liquidated damages in a reasonable amount that will compensate the Sellers and their Affiliates for the efforts and resources expended and the opportunities foregone while negotiating this Agreement and in reliance upon this Agreement and on the expectation of the consummation of the transactions contemplated herein, and for the loss suffered by reason of the failure of such consummation, which amount would otherwise be uncertain and incapable of accurate determination. If Purchaser fails promptly to pay any amount due pursuant to this Section 10.03, it shall also pay any reasonable costs and expenses incurred by the Company in connection with enforcing this Agreement (including by legal action), together with interest on such unpaid amount, at a rate per annum, compounded monthly, equal to the Prime Rate, as reported in the print edition of The Wall Street Journal, Eastern Edition, on the date such amount was required to be paid (or, if unavailable, on the latest date prior to the payment due date on which such rate is available), calculated from the date such amount was required to be paid to (but excluding) the payment date.

(c) Notwithstanding anything to the contrary in this Agreement, Sellers’ right to receive payment of the Termination Fee pursuant to this ARTICLE X shall be the sole and exclusive remedy of the Company and the Sellers against Purchaser or any of its Affiliates or any of their respective stockholders, partners, members or representatives for any and all losses that may be suffered based upon, resulting from or arising out of the circumstances giving rise to such termination, and (ii) upon payment of the Termination Fee to the Sellers, none of Purchaser or any of its Affiliates or any of their respective stockholders, partners, members or representatives shall have any further liability or obligation relating to or arising out of Purchaser’s failure to consummate the transactions contemplated by this Agreement, whether or not the Company or the Sellers elect to terminate this Agreement. In no event shall the Company or the Sellers seek any (x) equitable relief or equitable remedies of any kind whatsoever or (y) money damages or any other recovery, judgment, or damages of any kind, including
consequential, indirect, or punitive damages, other than damages in an amount not in excess of the Termination Fee, in each case, relating to or arising out of Purchaser’s failure to consummate the transactions contemplated by this Agreement.

ARTICLE XI

GENERAL PROVISIONS

Section 11.01 Expenses. Except as otherwise expressly specified in this Agreement, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 11.02 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); or (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. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 11.02):

(a) if to Sellers:

Barbara Rosenbaum
Sellers Representative
9 Fairfield Drive
Lexington, Massachusetts 02420

with a copy to:

Greenberg Traurig, LLP
1750 Tysons Boulevard
Suite 1000
McLean, Virginia 22102
Attention: Mark Wishner

Fiorello Vicencio, Jr.
Email: WishnerM@gtlaw.com
      VicencioR@gtlaw.com

(b) if to the Company at or prior to the Closing:

CENTRA Technology, Inc.
4121 Wilson Blvd.
Section 11.03 Public Announcements. Neither party hereto shall make, or cause to be made, any press release or public announcement or disclosure in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party unless otherwise required by Law or applicable stock exchange regulation or applicable regulations of the SEC, and the parties hereto shall cooperate as to the timing and contents of any such press release, public announcement or communication.

Section 11.04 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to
either party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement 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.

**Section 11.05 Entire Agreement.** This Agreement (including the Disclosure Schedules, the other schedules and exhibits hereto), the Escrow Agreement, the Confidentiality Agreement, and the R&W Insurance Policy constitute the entire agreement of the parties hereto with respect to the subject matter hereof and thereof and supersede all prior agreements and undertakings, both written and oral, among the parties hereto with respect to the subject matter hereof and thereof.

**Section 11.06 Assignment.** This Agreement may not be assigned by operation of law or otherwise without the express written consent of the Sellers and Purchaser (which consent may be granted or withheld in the sole discretion of the Sellers or Purchaser); provided, however, that Purchaser may assign this Agreement or any of its rights and obligations hereunder to one or more Affiliates of Purchaser without the consent of Seller; provided, further, that no such assignment by Purchaser shall release Purchaser from any liability or obligation under this Agreement.

**Section 11.07 Amendment.** This Agreement may not be amended or modified except by an instrument in writing signed by the Seller Representative, the Company and Purchaser.

**Section 11.08 Waiver.** The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

**Section 11.09 No Third Party Beneficiaries.** Except for the provisions of ARTICLE IX and Section 6.07 relating to indemnified parties, this Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and 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, including any rights of employment for any specified period, under or by reason of this Agreement.

**Section 11.10 Governing Law; Submission to Jurisdiction.**

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contracts executed in and to be performed in the State of Delaware, without regard to conflicts of laws principles.

(b) The parties hereto hereby irrevocably submit to the exclusive jurisdiction of any federal or state court located within the State of Delaware over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action proceeding related thereto may be
heard and determined in such courts. 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 11.11 Waiver of Jury Trial. Each of the parties hereto hereby waives to the fullest extent permitted by applicable law any right it may have to a trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement. Each of the parties hereto hereby (a) certifies that no representative, agent or attorney of the 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 has been induced to enter into this Agreement and the transactions contemplated by this Agreement, as applicable, by, among other things, the mutual waivers and certifications in this Section 11.11.

Section 11.12 Attorneys’ Fees. In the event that any party hereto institutes any Action against another party in respect of a matter arising out of or relating to this Agreement, the prevailing party in the Action shall be entitled to receive, in addition to all other damages to which it may be entitled, the reasonable costs incurred by such party in connection with such Action, including reasonable attorneys’ fees and expenses and court costs.

Section 11.13 Counterparts. This Agreement may be executed and delivered (including by facsimile transmission or electronic communications by portable document format (.pdf)) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

Section 11.14 Disclosure Schedules. The Disclosure Schedules have been arranged for purposes of convenience only, in sections corresponding to the Sections of ARTICLE III and ARTICLE IV. Any exception or qualification set forth in the Disclosure Schedules with respect to a particular representation or warranty contained in ARTICLE III or ARTICLE IV of the Agreement shall be deemed to be an exception or qualification with respect to all other applicable representations and warranties contained in ARTICLE III or ARTICLE IV of the Agreement to which such exception or qualification is reasonably apparent on its face to be applicable, whether or not such exception or qualification is so numbered. To the extent that any representation or warranty contained in ARTICLE III or ARTICLE IV of the Agreement is limited or qualified by the materiality of the matters to which the representation or warranty is given, the inclusion of any matter in the Disclosure Schedules does not constitute a determination by the Company or the Sellers that such matters are material. In addition, under no circumstances shall the disclosure of any matter in the Disclosure Schedules where a representation or warranty in ARTICLE III or ARTICLE IV of the Agreement is limited or qualified by the materiality of the matters to which the representation or warranty is given imply that any other undisclosed matter having a greater value or other significance is material.

[SIGNATURE PAGES FOLLOW]
IN WITNESS WHEREOF, the parties hereto have caused this Stock Purchase Agreement to be executed as of the date first written above.

PURCHASER:

Pacific Architects and Engineers, LLC

By: /s/ John Heller
Name: John Heller
Title: President and Chief Executive Officer

[Signature page to Stock Purchase Agreement]
IN WITNESS WHEREOF, the parties hereto have caused this Stock Purchase Agreement to be executed as of the date first written above.

COMPANY:

CENTRA Technology, Inc.

By:  /s/ Jack Barry
Name:  Jack Barry
Title:  Chief Operating Officer

[Signature page to Stock Purchase Agreement]
IN WITNESS WHEREOF, the parties hereto have caused this Stock Purchase Agreement to be executed as of the date first written above.

SELLERS:

Harold Rosenbaum 2011 Revocable Trust

By:  /s/ Barbara Rosenbaum
    Barbara Rosenbaum
    Trustee

Rosenbaum Family Foundation, Inc.

By:  /s/ Barbara Rosenbaum
    Barbara Rosenbaum
    President

(1) Children’s Trust f/b/o Linda Anne Rosenbaum Duska; (2) Children’s Trust f/b/o Sharon Rosenbaum Harris; (3) Children’s Trust f/b/o Amy Debra Rosenbaum; (4) Grandchildren’s Trust f/b/o Rebecca Elizabeth Harris; (5) Grandchildren’s Trust f/b/o Rachel Casey Harris; (6) Grandchildren’s Trust f/b/o Samuel Joseph Duska; (7) Grandchildren’s Trust f/b/o Jacob Ethan Duska; (8) Grandchildren’s Trust f/b/o Jessica Louise Duska; (9) Grandchildren’s Trust f/b/o Sarah Rose Duska; (10) Grandchildren’s Trust f/b/o Louis Allen Lahey; (11) Grandchildren’s Trust f/b/o Hannah Paige Lahey; and (12) Grandchildren’s Trust f/b/o Alice Evelyn Lahey

By: Rosenbaum Family 2019 Irrevocable Trust

By:  /s/ John McClellan
    John McClellan
    Trustee

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IN WITNESS WHEREOF, the parties hereto have caused this Stock Purchase Agreement to be executed as of the date first written above.

SELLERS:

CENTRA Technology, Inc. Employee Stock Ownership Trust

By:  /s/ Diane Colpitts
Name: Diane Colpitts
Title: Trustee

/s/ Matthew Partan
Matthew Partan

/s/ Lee Zinser
Lee Zinser

[Signature page to Stock Purchase Agreement]
IN WITNESS WHEREOF, the parties hereto have caused this Stock Purchase Agreement to be executed as of the date first written above.

SELLERS REPRESENTATIVE:

/s/ Barbara Rosenbaum
Barbara Rosenbaum

[Signature page to Stock Purchase Agreement]
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Exhibit E
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Certain Matters
Amended and Restated FIRST LIEN TERM LOAN CREDIT AGREEMENT

among

PAE HOLDING CORPORATION, as the EXISTING LEAD BORROWER,

PAE INCORPORATED, as the CLOSING DATE LEAD BORROWER,

THE SUBSIDIARY BORROWERS PARTY HERETO

VARIOUS LENDERS

and

BANK OF AMERICA, N.A.,
as ADMINISTRATIVE AGENT

Dated as of October 20, 2016
Amended and Restated on October 19, 2020

BANK OF AMERICA, N.A.,
CITIZENS BANK, NATIONAL ASSOCIATION
TRUIST BANK
MORGAN STANLEY SENIOR FUNDING, INC.

and

STIFEL BANK & TRUST
as JOINT LEAD ARRANGERS AND BOOKRUNNERS
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EXHIBIT N     Form of First Lien/Second Lien Intercreditor Agreement
THIS amended and restated FIRST LIEN TERM LOAN CREDIT AGREEMENT, dated as of October 19, 2020, among PAE HOLDING CORPORATION (the “Existing Lead Borrower”), PAE INCORPORATED (the “Closing Date Lead Borrower”), each Subsidiary Borrower party hereto from time to time, the Lenders party hereto from time to time and BANK OF AMERICA, N.A., as the Administrative Agent. All capitalized terms used herein and defined in Section 1 are used herein as therein defined.

W IT N E S S E T H:

WHEREAS, on the Original Closing Date, a credit agreement (the “Existing Credit Agreement”) was entered into among the Existing Lead Borrower, Shay Intermediate Holding II Corporation ("Holdings"), the Subsidiary Borrowers party thereto, the Guarantors party thereto, the Lenders party thereto and Bank of America, N.A. as the Administrative Agent;

WHEREAS, the Borrowers have requested that the Lenders make Initial Term Loans hereunder in the amount of $740,000,000 under this Agreement on the Closing Date;

WHEREAS, the Borrowers have requested that the Lenders provide Delayed Draw Term Loan Commitments hereunder in the amount of $150,000,000 under this Agreement;

WHEREAS, the proceeds of the Initial Term Loans borrowed on the Closing Date together with the proceeds of the revolving loans under the ABL Credit Agreement will be used by the Lead Borrower: (i) to finance the repayment of all amounts outstanding under the Existing Credit Agreement, (ii) to finance the repayment of all amounts outstanding under the Second Lien Credit Agreement, (iii) to finance the prepayment of certain amounts outstanding under the ABL Credit Agreement, (iv) to fund acquisition consideration for Permitted Acquisitions, (v) for ongoing working capital and other general corporate purposes and (vi) to pay the Transaction Costs;

WHEREAS, the proceeds of the Delayed Draw Term Loans will be used by the Lead Borrower to fund acquisition consideration for Permitted Acquisitions and to pay related transaction costs and expenses;

WHEREAS, the parties hereto have agreed to amend and restate the Existing Credit Agreement in its entirety;

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

Section 1. Definitions and Accounting Terms

1.01 Defined Terms

As used in this Agreement, the following terms shall have the following meanings:

“ABL Collateral Agent” shall mean Bank of America, N.A., as collateral agent under the ABL Credit Agreement or any successor thereto acting in such capacity.

“ABL Credit Agreement” shall mean (i) that certain asset-based revolving credit agreement, dated as of the Original Closing Date, as the same may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof (including by reference to the ABL Intercreditor Agreement) and thereof, among Holdings, the Lead Borrower, the other borrowers party thereto, certain lenders party thereto and Bank of America, as the administrative agent, and (ii) any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any Indebtedness or other financial accommodation that has been incurred to refinance (subject to the limitations set forth herein (including by reference to the ABL Intercreditor Agreement)) in whole or in part the Indebtedness and other obligations outstanding under (x) the credit agreement referred to in clause (i) of this definition or (y) any subsequent ABL Credit Agreement, unless such agreement or instrument expressly provides that it is not intended to
be and is not an ABL Credit Agreement hereunder. Any reference to the ABL Credit Agreement hereunder shall be deemed a reference to any ABL Credit Agreement then in existence.

"ABL Intercreditor Agreement" shall mean that certain Intercreditor Agreement in the form of Exhibit M, dated as of the Original Closing Date, by and among the Collateral Agent and the ABL Collateral Agent, as may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof.

"Acquired Entity or Business" shall mean either (x) the assets constituting a business, division, product line, manufacturing facility or distribution facility of any Person not already a Subsidiary of the Lead Borrower, which assets shall, as a result of the respective acquisition, become assets of the Lead Borrower or a Restricted Subsidiary of the Lead Borrower (or assets of a Person who shall be merged with and into the Lead Borrower or a Restricted Subsidiary of the Lead Borrower) or (y) a majority of the Equity Interests of any such Person, which Person shall, as a result of the respective acquisition, become a Restricted Subsidiary of the Lead Borrower (or shall be merged with and into the Lead Borrower or a Restricted Subsidiary of the Lead Borrower).

"Additional Intercreditor Agreement" shall mean an intercreditor agreement among the Collateral Agent and one or more Junior Representatives for holders of Permitted Junior Debt providing that, inter alia, the Liens on the Collateral in favor of the Collateral Agent (for the benefit of the Secured Creditors) shall be senior to such Liens in favor of the Junior Representatives (for the benefit of the holders of Permitted Junior Debt), as such intercreditor agreement may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof. The Additional Intercreditor Agreement shall be in a form customary at such time for transactions of the type contemplated thereby and reasonably satisfactory to the Administrative Agent and the Lead Borrower (it being understood that the terms of the ABL Intercreditor Agreement and First Lien/Second Lien Intercreditor Agreement, as applicable, are reasonably satisfactory).

"Additional Security Documents" shall have the meaning provided in Section 9.12(a).

"Adjusted Consolidated Working Capital" shall mean, at any time, Consolidated Current Assets less Consolidated Current Liabilities at such time.

"Administrative Agent" shall mean Bank of America, in its capacity as Administrative Agent for the Lenders hereunder, and shall include any successor to the Administrative Agent appointed pursuant to Section 12.10.

"Administrative Questionnaire" shall mean an Administrative Questionnaire in substantially the form of Exhibit D or any other form approved by the Administrative Agent.

"Affected Financial Institution" shall mean (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; provided, however, that neither the Administrative Agent nor any Lender (nor any Affiliate thereof) shall be considered an Affiliate of the Lead Borrower or any Subsidiary thereof as a result of this Agreement, the extensions of credit hereunder or its actions in connection therewith.

"Agents" shall mean the Administrative Agent, the Collateral Agent and any other agent with respect to the Credit Documents, including, without limitation, the Lead Arrangers.
“Agreement” shall mean this Amended and Restated First Lien Term Loan Credit Agreement, as modified, supplemented, amended, restated (including any amendment and restatement hereof), extended or renewed from time to time.

“Anti-Corruption Laws” shall mean all laws, rules, and regulations of any jurisdiction applicable to the Lead Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption, including the Patriot Act.

“Applicable Commitment Fee” shall mean for any day with respect to any Delayed Draw Term Loan Commitments, (x) from the Closing Date through the date that is 30 days following the Closing Date, 0%, (y) from the date that is 31 days following the Closing Date through the date that is 60 days following the Closing Date, 50% of the then Applicable Margin for LIBO Rate Term Loans, and (iii) thereafter, 100% of the then Applicable Margin for LIBO Rate Term Loans.

“Applicable Increased Term Loan Spread” shall mean, with respect to any then outstanding Initial Term Loans at the time of the provision of any new Tranche of Incremental Term Loans pursuant to Section 2.15 or any Permitted Pari Passu Notes which are subject to an Effective Yield that is greater than the Effective Yield applicable to such Initial Term Loans by more than 0.50%, the margin per annum (expressed as a percentage) mutually determined by the Administrative Agent and the Lead Borrower in good faith (and notified by the Administrative Agent to the Lenders) as the margin per annum required to cause the Effective Yield applicable to such then existing Initial Term Loans to equal (i) the Effective Yield applicable to such new Tranche of Incremental Term Loans or Permitted Pari Passu Notes, as applicable, minus (ii) 0.50%. Each mutual determination of the “Applicable Increased Term Loan Spread” by the Administrative Agent and the Lead Borrower shall be conclusive and binding on all Lenders absent manifest error.

“Applicable Margin” shall mean a percentage per annum equal to, in the case of Initial Term Loans and Delayed Draw Term Loans maintained as (a) Base Rate Term Loans, 3.50% and (b) LIBO Rate Term Loans, 4.50%.

The Applicable Margins for any Tranche of Incremental Term Loans shall be (i) in the case of Incremental Term Loans added to an existing Tranche, the same as the Applicable Margins for such existing Tranche, and (ii) otherwise, as specified in the applicable Incremental Term Loan Commitment Agreement.

On and after the date of such incurrence of any Indebtedness which gives rise to a determination of a new Applicable Increased Term Loan Spread, the Applicable Margins for the Initial Term Loans shall be the higher of (x) the Applicable Increased Term Loan Spread for such Type of Initial Term Loans and (y) the Applicable Margin for such Type of Initial Term Loans as otherwise determined above.

The Applicable Margins for any Tranche of Refinancing Term Loans shall be as specified in the applicable Refinancing Term Loan Amendment. The Applicable Margins for any Tranche of Extended Term Loans shall be as specified in the applicable Extension Amendment.

“Applicable Prepayment Percentage” shall mean, at any time, 50%; provided that, if at any time the Consolidated First Lien Net Leverage Ratio as of the last day of the fiscal year for which the Applicable Prepayment Percentage is calculated (as set forth in an officer’s certificate delivered pursuant to Section 9.01(e) for such fiscal year) is (i) less than or equal to 3.25 to 1.00 and greater than 2.75 to 1.00, the Applicable Prepayment Percentage shall instead be 25%, and (ii) less than or equal to 2.75 to 1.00, the Applicable Prepayment Percentage shall instead be 0%.

“Approved Fund” shall mean 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) an existing Lender, (b) an Affiliate of an existing Lender or (c) an entity or an Affiliate of an entity that administers or manages an existing Lender.
“Asset Sale” shall mean any sale, transfer or other disposition of all or any part of the property or assets of the Borrower or any of its Restricted Subsidiaries, including any disposition of property to a Delaware Divided LLC pursuant to a Delaware LLC Division, or entry into any Sale-Leaseback Transaction by the Borrower or any of its Restricted Subsidiaries, in each case, pursuant to Sections 10.02(ii), or (xii).

“Assignment and Assumption Agreement” shall mean an Assignment and Assumption Agreement substantially in the form of Exhibit K (appropriately completed) or such other form as shall be acceptable to the Administrative Agent.

“Auction” shall have the meaning set forth in Section 2.19(a).

“Auction Manager” shall have the meaning set forth in Section 2.19(a).

“Available Amount” shall mean, on any date (the “Determination Date”), an amount equal to:

(a) the sum of, without duplication:

(i) Cumulative Retained Excess Cash Flow Amount; plus

(ii) 100% of the aggregate net cash proceeds and the fair market value of property (other than cash) received by the Lead Borrower since the Closing Date as a contribution to its common equity capital or from the issue or sale of the Equity Interests of the Lead Borrower (excluding, without duplication, Qualified Preferred Stock, Equity Interests sold to a Restricted Subsidiary of the Lead Borrower or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Lead Borrower or a Restricted Subsidiary of the Lead Borrower or to the extent applied to any other basket or exception under this Agreement), or from the issue or sale of Qualified Preferred Stock of the Lead Borrower or debt securities of the Lead Borrower, in each case that have been converted into or exchanged for Equity Interests of the Lead Borrower (other than Qualified Preferred Stock and convertible or exchangeable Equity Interests or debt securities sold to a Restricted Subsidiary of the Lead Borrower); provided that in each case, such amount will not exceed the amount of the Investment initially made using the Available Amount; plus

(iii) 100% of the aggregate amount of cash proceeds and the fair market value of property (other than cash) received by the Lead Borrower or a Restricted Subsidiary of the Lead Borrower from (A) the sale or disposition (other than to the Lead Borrower or a Restricted Subsidiary of the Lead Borrower) of Investments made after the Closing Date the permissibility of which was contingent upon the utilization of the Available Amount and from repayments, repurchases and redemptions of such Investments from the Lead Borrower and its Restricted Subsidiaries by any Person (other than the Lead Borrower or its Restricted Subsidiaries) but only up to the original amount invested and only to the extent such proceeds are not required to be applied as a mandatory prepayment pursuant to Section 5.02; (B) a return, profit, distribution or similar amounts from an Investment made after the Closing Date the permissibility of which was contingent upon the utilization of the Available Amount, to the extent that such amounts were not otherwise included in the Consolidated Net Income of the Lead Borrower for such period, (C) the sale (other than to the Lead Borrower or any of its Restricted Subsidiaries) of the Equity Interests of an Unrestricted Subsidiary; (D) a distribution or dividend from an Unrestricted Subsidiary, to the extent that such amounts were not otherwise included in the Consolidated Net Income of the Lead Borrower for such period; and (E) any Investment that was made after the Closing Date in a Person that is not a subsidiary at such time that subsequently becomes a Restricted Subsidiary of the Lead Borrower; provided that in each case, such amount will not exceed the amount of the Investment initially made using the Available Amount; plus

(iv) in the event that any Unrestricted Subsidiary of the Lead Borrower designated as such after the Closing Date is redesignated as a Restricted Subsidiary or has been merged or
(v) the amount of Retained Declined Proceeds;

minus (b) the sum of:

(i) the aggregate amount of the consideration paid by the Lead Borrower and its Restricted Subsidiaries in reliance upon the Available Amount under Section 9.14(a) in connection with Permitted Acquisitions consummated on or after the Closing Date and on or prior to the Determination Date;

(ii) the aggregate amount of all Dividends made by the Lead Borrower and its Restricted Subsidiaries pursuant to Section 10.03(xiii) on or after the Closing Date and on or prior to the Determination Date;

(iii) the aggregate amount of all Investments made by the Lead Borrower and its Restricted Subsidiaries pursuant to Section 10.05(xviii) on or after the Closing Date and on or prior to the Determination Date; and

(iv) the aggregate amount of repayments, repurchases, redemptions or defeasances of Indebtedness pursuant to Section 10.07(a)(i) or Section 10.07(b)(i) on or after the Closing Date and on or prior to the Determination Date

"Available Unused Commitment" shall mean, with respect to a Delayed Draw Term Loan Lender at any time, an amount equal to the applicable undrawn Delayed Draw Term Loan Commitment of such Delayed Draw Term Loan Lender at such time.

"Bail-In Action" shall mean 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" shall mean, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank of America" shall mean Bank of America, N.A., together with its successors.

"Bankruptcy Code" shall have the meaning provided in Section 11.05.

"Base Rate" shall mean, for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1% (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate", and (c) the LIBO Rate for a LIBO Rate Term Loan with a one month Interest Period commencing on such day plus 1.00%. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is
used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change. Notwithstanding the foregoing, the Base Rate shall not at any time be less than 2.00% per annum.

“Base Rate Term Loan” shall mean each Term Loan which is designated or deemed designated as a Term Loan bearing interest at the Base Rate by the Lead Borrower at the time of the incurrence thereof or conversion thereto.

“Beneficial Ownership Certification” shall mean a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” shall mean 31 C.F.R. § 1010.230.

“Benefit Plan” shall mean any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) 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”.

“Beneficiary” shall mean each beneficiary of the Trust under the Trust Agreement.

“Beneficiary Certificate” shall mean a certificate regarding beneficial ownership required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” shall mean 31 C.F.R. § 1010.230.

“Benefit Plan” shall mean any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) 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”.

“Borrower Materials” shall have the meaning provided in Section 9.01.

“Borrowers” shall mean, collectively the Lead Borrower and each Subsidiary Borrower.

“Borrowing” shall mean the borrowing of the same Type of Term Loan pursuant to a single Tranche by the Borrowers from all the Lenders having Commitments with respect to such Tranche on a given date (or resulting from a conversion or conversions on such date), having, in the case of LIBO Rate Term Loans, the same Interest Period; provided that any Incremental Term Loans incurred pursuant to Section 2.01(b) shall be considered part of the related Borrowing of the then outstanding Tranche of Term Loans (if any) to which such Incremental Term Loans are added pursuant to, and in accordance with the requirements of, Section 2.15(c).

“Business Day” shall mean (i) for all purposes other than as covered by clause (ii) below, any day except Saturday, Sunday and any day which shall be in New York City a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close and (ii) with respect to all notices and determinations in connection with, and payments of principal and interest on, LIBO Rate Term Loans, any day which is a Business Day described in clause (i) above and which is also a day for trading by and between banks in the New York or London interbank Eurodollar market.

“Capital Expenditures” shall mean, with respect to any Person, all expenditures by such Person which should be capitalized in accordance with U.S. GAAP and, without duplication, the amount of Capitalized Lease Obligations incurred by such Person; provided that Capital Expenditures shall not include (i) the purchase price paid in connection with a Permitted Acquisition, (ii) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for such existing equipment being traded in at such time, (iii) expenditures made in leasehold improvements, to the extent reimbursed by the landlord, (iv) expenditures to the extent that they are actually paid for by a third party (excluding any Credit Party or any of its Restricted Subsidiaries) and for which no Credit Party or any of its Restricted Subsidiaries has provided or is required to provide or incur, directly or indirectly, any consideration or monetary obligation to such third party or any other Person (whether before, during or after such period) and (v) property, plant and equipment taken in settlement of accounts.

“Capitalized Lease Obligations” shall mean, with respect to any Person, all rental obligations of such Person which, under U.S. GAAP, are or will be required to be capitalized on the books of such Person, in each case taken at the amount thereof accounted for as indebtedness in accordance with U.S. GAAP.
“Cash Equivalents” shall mean:

(i) U.S. Dollars, Canadian dollars, pounds sterling, euros, the national currency of any participating member state of the European Union or, in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business;

(ii) readily marketable direct obligations of any member of the European Economic Area, Switzerland, or Japan, or any agency or instrumentality thereof or obligations unconditionally guaranteed by the full faith and credit of such country, and, at the time of acquisition thereof, having a credit rating of at least AA- (or the equivalent grade) by Moody’s or Aa3 by S&P;

(iii) marketable general obligations issued by any state of the United States or any political subdivision thereof or any instrumentality thereof that are guaranteed by the full faith and credit of such state, and, at the time of acquisition thereof, having a credit rating of at least AA- (or the equivalent grade) by Moody’s or Aa3 by S&P;

(iv) securities or any other evidence of Indebtedness or readily marketable direct obligations issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (provided that the full faith and credit of the United States is pledged in support of those securities), in such case having maturities of not more than twelve months from the date of acquisition;

(v) certificates of deposit and eurodollar time deposits with maturities of twenty-four months or less from the date of acquisition, bankers’ acceptances with maturities not exceeding twenty-four months and overnight bank deposits, in each case, with any Lender party to this Agreement or any commercial bank or trust company having, or which is the principal banking subsidiary of a bank holding company having, a long-term unsecured debt rating of at least “A” or the equivalent thereof from S&P or “A2” or the equivalent thereof from Moody’s;

(vi) repurchase obligations with a term of not more than thirty days for underlying securities of the types described in clauses (iv) and (v) above entered into with any financial institution meeting the qualifications specified in clause (v) above;

(vii) commercial paper having one of the two highest ratings obtainable from Moody’s or S&P and, in each case, maturing within twenty-four months after the date of acquisition; and

(viii) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (i) through (vii) of this definition.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as the same has been amended and may hereafter be amended from time to time, 42 U.S.C. § 9601 et seq.

“CFC” shall mean a Subsidiary of the Lead Borrower that is a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“Change of Control” shall be deemed to occur if:

(a) at any time after the Closing Date, any person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date) (but excluding any employee benefit plan of such person and its Subsidiaries and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan), shall have, directly or indirectly, acquired beneficial ownership of Equity Interests
representing 35% or more of the aggregate voting power represented by the issued and outstanding Equity Interests of the Lead Borrower, or

(b) a “change of control” (or similar event) shall occur in any document pertaining to (I) the ABL Credit Agreement and (II) the definitive agreements pursuant to which any Refinancing Notes or Indebtedness permitted under Section 10.04(xxvii) or (xxix) was issued or incurred, in each case of this subclause (III) with an aggregate outstanding principal amount in respect of such series of Refinancing Notes or other Indebtedness in excess of the Threshold Amount.

“Closing Date” shall mean October 19, 2020.

“Closing Date Lead Borrower” shall have the meaning provided in the first paragraph of this Agreement.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” shall mean all property (whether real, personal or otherwise) with respect to which any security interests have been granted (or purported to be granted) pursuant to any Security Document (including any Additional Security Documents), including, without limitation, all Pledge Agreement Collateral and all “Collateral” as described in the Security Agreement; provided that no mortgages shall be required with respect to any real estate.

“Collateral Agent” shall mean the Administrative Agent acting as collateral agent for the Secured Creditors pursuant to the Security Documents.

“Commitment” shall mean any of the commitments of any Lender, whether an Initial Term Loan Commitment, Delayed Draw Term Loan Commitment, Extended Term Loan Commitment, Refinancing Term Loan Commitment or an Incremental Term Loan Commitment of such Lender.

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

“Consolidated Current Assets” shall mean, at any time, the consolidated current assets of the Lead Borrower and its Restricted Subsidiaries at such time (other than cash and Cash Equivalents, amounts related to current or deferred Taxes based on income or profits, assets held for sale, loans to third parties that are permitted under this Agreement, pension assets, deferred bank fees and derivative financial instruments).

“Consolidated Current Liabilities” shall mean, at any time, the consolidated current liabilities of the Lead Borrower and its Restricted Subsidiaries at such time (other than the current portion of any Indebtedness under this Agreement, the current portion of any other long-term Indebtedness which would otherwise be included therein, accruals of Interest Expense (excluding Interest Expense that is due and unpaid), accruals for current or deferred Taxes based on income or profits, accruals of any costs or expenses related to restructuring reserves to the extent permitted to be included in the calculation of Consolidated EBITDA and the current portion of pension liabilities).

“Consolidated Depreciation and Amortization Expense” shall mean, with respect to any Person, for any period, the total amount of depreciation and amortization expense, including (i) amortization of deferred financing fees and debt issuance costs, commissions, fees and expenses, (ii) amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits and (iii) amortization of intangibles (including goodwill and organizational costs) (excluding any such adjustment to the extent that it represents an accrual of or reserve for cash expenditures in any future period except to the extent such adjustment is subsequently reversed), in each case of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with U.S. GAAP.

“Consolidated EBITDA” shall mean, with respect to any Person for any period, Consolidated Net Income of such Person for such period; plus (without duplication)
(i) provision for taxes based on income, profits or capital (including state franchise taxes and similar taxes in the nature of income tax) of such Person and its Restricted Subsidiaries for such period, franchise taxes and foreign withholding taxes, in each case, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; plus

(ii) Consolidated Depreciation and Amortization Expense of such Person and its Restricted Subsidiaries for such period, to the extent such expenses were deducted in computing such Consolidated Net Income; plus

(iii) the Fixed Charges of such Person and its Restricted Subsidiaries for such period, to the extent that such Fixed Charges were deducted in computing such Consolidated Net Income; plus

(iv) any other consolidated non-cash charges of such Person and its Restricted Subsidiaries for such period, to the extent that such consolidated non-cash charges were included in computing such Consolidated Net Income; provided that if any such non-cash charge represents an accrual or reserve for anticipated cash charges in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period; plus

(v) any losses from foreign currency transactions (including losses related to currency remeasurements of Indebtedness) of such Person and its Restricted Subsidiaries for such period, to the extent that such losses were taken into account in computing such Consolidated Net Income; plus

(vi) (A) the Specified Permitted Adjustments and (B) any cost savings, operating expense reductions, operating improvements and synergies permitted to be added back to this definition pursuant to the definition of “Pro Forma Cost Savings” (including, without limitation, costs and expenses incurred after the Closing Date related to employment of terminated employees incurred by such Person during such period to the extent such costs and expenses were deducted in computing Consolidated Net Income) and, in the case of this subclause (B), subject to the “Cost Savings Cap” (as defined in the definition of “Pro Forma Cost Savings”); plus

(vii) losses in respect of post-retirement benefits of such Person, as a result of the application of ASC 715, Compensation-Retirement Benefits, to the extent that such losses were deducted in computing such Consolidated Net Income; plus

(viii) the amount of fees and expenses incurred by such Person pursuant to Section 10.06(xii) hereunder; plus

(ix) capitalized consulting fees and organization costs; plus

(x) any impact related to the application of purchase accounting in connection with any Permitted Acquisition or Permitted Joint Venture; plus

(xi) any contingent or deferred payments (including Earnout Payments, noncompete payments and consulting payments) made to sellers in Permitted Acquisitions or any acquisitions or Investments consummated prior to the Closing Date; plus

(xii) any proceeds from business interruption insurance received by such Person during such period, to the extent the associated losses arising out of the event that resulted in the payment of such business interruption insurance proceeds were included in computing Consolidated Net Income; minus

(xiii) the amount of any gain in respect of post-retirement benefits as a result of the application of ASC 715, to the extent such gains were taken into account in computing such Consolidated Net Income; minus
(xiv) any gains from foreign currency transactions (including gains related to currency remeasurements of Indebtedness) of such Person and its Restricted Subsidiaries for such period, to the extent that such gains were taken into account in computing such Consolidated Net Income; minus

(xv) non-cash gains increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business and other than reversals of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period, in each case, on a consolidated basis and determined in accordance with U.S. GAAP.

“Consolidated First Lien Net Leverage Ratio” shall mean, at any time, the ratio of (i) Consolidated First Lien Secured Debt at such time to (ii) Consolidated EBITDA for the Test Period then most recently ended for which Section 9.01 Financials were required to have been delivered. If the Consolidated First Lien Net Leverage Ratio is being determined for a given Test Period, Consolidated First Lien Secured Debt shall be measured on the last day of such Test Period, with Consolidated EBITDA being determined for such Test Period.

“Consolidated First Lien Secured Debt” shall mean, at any time, (i) the sum of all Consolidated Indebtedness at such time that is secured by a Lien on any assets of the Lead Borrower or any of its Restricted Subsidiaries less (ii) the sum of (x) the aggregate principal amount of any Indebtedness of the Lead Borrower and its Restricted Subsidiaries at such time that is subordinated in right of payment to the Obligations and, without duplication, (y) the aggregate principal amount of Indebtedness of the Lead Borrower and its Restricted Subsidiaries at such time that is secured by Liens on the assets of the Lead Borrower and its Restricted Subsidiaries that are junior to the Lien securing the Obligations, and (z) the aggregate amount of unrestricted cash and Cash Equivalents (in each case, free and clear of all Liens, other than nonconsensual Liens permitted by Section 10.01 and Liens created under the ABL Credit Agreement and the credit documents related thereto, any Credit Document and any Permitted Junior Debt Documents (to the extent that such cash and Cash Equivalents also secure the Indebtedness hereunder on a senior priority basis)) included on the consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries at such time, in each case, calculated on a Pro Forma Basis.

“Consolidated Indebtedness” shall mean, at any time, the sum of (without duplication) (i) all Capitalized Lease Obligations of the Lead Borrower and its Restricted Subsidiaries, (ii) all Indebtedness of the Lead Borrower and its Restricted Subsidiaries of the type described in clause (i)(A) of the definition of “Indebtedness” and (iii) all Contingent Obligations of the Lead Borrower and its Restricted Subsidiaries of the type described in clause (i)(A) of the definition of “Indebtedness” and (iii) all Contingent Obligations of the Lead Borrower and its Restricted Subsidiaries in respect of Indebtedness of any third Person of the type referred to in the preceding clauses (i) and (ii), in each case, determined on a consolidated basis in accordance with U.S. GAAP and calculated on a Pro Forma Basis; provided that Consolidated Indebtedness shall not include Indebtedness in respect of any Refinancing Notes, Permitted Pari Passu Notes or Permitted Junior Notes that have been defeased or satisfied and discharged in accordance with the applicable indenture or with respect to which the required deposit has been made in connection with a call for repurchase or redemption to occur within the time period set forth in the applicable indenture, in each case to the extent such transactions are permitted by Section 10.07(a).

“Consolidated Net Income” shall mean, with respect to any specified Person for any period, the aggregate of the net income (loss) of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with U.S. GAAP; provided that:

(i) any after-tax effect of all extraordinary, nonrecurring or unusual gains or losses or income or expenses (including related to the Transaction) or any restructuring charges or reserves, including, without limitation, any expenses related to any reconstruction, reconfiguration or reconfiguration of fixed assets for alternate uses, retention, severance, system establishment cost, contract termination costs, costs to consolidate facilities and relocate employees, advisor fees and other out of pocket costs and non-cash charges to assess and execute operational improvement plans and restructuring programs, will be excluded;
(ii) any expenses, costs or charges incurred, or any amortization thereof for such period, in connection with any equity issuance, Investment, acquisition (including Permitted Acquisition), disposition, recapitalization or incurrence or repayment of Indebtedness permitted under this Agreement, including a refinancing thereof (in each case whether or not successful) (including any such costs and charges incurred in connection with the Transaction), and all gains and losses realized in connection with any business disposition or any disposition of assets outside the ordinary course of business or the disposition of securities or the early extinguishment of Indebtedness, together with any related provision for taxes on any such gain, loss, income or expense will be excluded;

(iii) the net income (or loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be excluded, provided that the income of such Person will be included to the extent of the amount of dividends or similar distributions paid in cash (or converted to cash) to the specified Person or a Restricted Subsidiary of the Person;

(iv) the net income (or loss) of any Person and its Restricted Subsidiaries will be calculated without deducting the income attributed to, or adding the losses attributed to, the minority equity interests of third parties in any non-Wholly-Owned Restricted Subsidiary except to the extent of the dividends paid in cash (or convertible into cash) during such period on the shares of Equity Interests of such Restricted Subsidiary held by such third parties;

(v) solely for the purpose of determining the amount available under clause (a)(i)(B) of the definition of Available Amount, the net income (but not loss) of any Restricted Subsidiary (other than any Guarantor) will be excluded to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of that net income is not at the date of determination permitted without any prior governmental approval (that has not been obtained) or, directly or indirectly, by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Restricted Subsidiary or its stockholders, unless such restrictions with respect to the payment of dividends or similar distributions have been legally waived; provided that the Consolidated Net Income of such Person will be increased by the amount of dividends or distributions or other payments actually paid in cash (or converted to cash) by any such Restricted Subsidiary to such Person in respect of such period, to the extent not already included therein;

(vi) the cumulative effect of any change in accounting principles will be excluded;

(vii) (a) any non-cash expenses resulting from the grant or periodic remeasurement of stock options, restricted stock grants or other equity incentive programs (including any stock appreciation and similar rights) and (b) any costs or expenses incurred pursuant to any management equity plan or stock option plan or other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent, in the case of clause (b), that such costs or expenses are funded with cash proceeds contributed to the common equity capital of the Lead Borrower or a Restricted Subsidiary of the Lead Borrower, will be excluded;

(viii) the effect of any non-cash impairment charges or write-ups, write-downs or write-offs of assets or liabilities resulting from the application of U.S. GAAP and the amortization of intangibles arising from the application of U.S. GAAP, including pursuant to ASC 805, Business Combinations, ASC 350, Intangibles-Goodwill and Other, or ASC 360, Property, Plant and Equipment, as applicable, will be excluded;

(ix) any net after-tax income or loss from disposed, abandoned or discontinued operations and any net after-tax gains or losses on disposed, abandoned or discontinued, transferred or closed operations will be excluded;

(x) any increase in amortization or depreciation, or effect of any adjustments to inventory, property, plant or equipment, software, goodwill and other intangibles, debt line items, deferred revenue or
rent expense, any one time cash charges (such as purchased in process research and development or capitalized manufacturing profit in inventory) or any other effects, in each case, resulting from purchase accounting in connection with the Transaction or any other acquisition prior to or following the Closing Date will be excluded;

(xi) an amount equal to the tax distributions actually made to the holders of the Equity Interests of such Person or any direct or indirect parent of such Person in respect of such period in accordance with Section 10.03(vi) will be included as though such amounts had been paid as income taxes directly by such person;

(xii) unrealized gains and losses relating to foreign currency transactions, including those relating to mark-to-market of Indebtedness resulting from the application of U.S. GAAP, including pursuant to ASC 830, Foreign Currency Matters, (including any net loss or gain resulting from hedge arrangements for currency exchange risk) will be excluded;

(xiii) any net gain or loss from Obligations or in connection with the early extinguishment of obligations under Interest Rate Protection Agreements or Other Hedging Agreements (including of ASC 815, Derivatives and Hedging) will be excluded;

(xiv) the amount of any restructuring, business optimization, acquisition and integration costs and charges (including, without limitation, retention, severance, systems establishment costs, excess pension charges, information technology costs, rebranding costs, contract termination costs, including future lease commitments, costs related to the start-up, closure or relocation or consolidation of facilities and costs to relocate employees) will be excluded; and

(xv) accruals and reserves that are established or adjusted within 12 months after the Closing Date that are so required to be established as a result of the Transaction in accordance with U.S. GAAP shall be excluded.

“Consolidated Senior Secured Debt” shall mean, at any time, (i) the sum of all Consolidated Indebtedness at such time that is secured by a Lien on any assets of the Lead Borrower or any of its Restricted Subsidiaries less (ii) the sum of (x) the aggregate principal amount of any Indebtedness of the Lead Borrower and its Restricted Subsidiaries at such time that is subordinated in right of payment to the Obligations and (y) the aggregate amount of unrestricted cash and Cash Equivalents (in each case, free and clear of all Liens, other than nonconsensual Liens permitted by Section 10.01 and Liens created under the ABL Credit Agreement and the credit documents related thereto, any Credit Document and any Permitted Junior Debt Documents (to the extent that such cash and Cash Equivalents also secure the Indebtedness hereunder on a senior priority basis)) included on the consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries at such time, in each case, calculated on a Pro Forma Basis.

“Consolidated Senior Secured Net Leverage Ratio” shall mean, at any time, the ratio of (i) Consolidated Senior Secured Debt at such time to (ii) Consolidated EBITDA of the Lead Borrower and its Restricted Subsidiaries for the Test Period then most recently ended for which Section 9.01 Financials were required to have been delivered. If the Consolidated Senior Secured Net Leverage Ratio is being determined for a given Test Period, Consolidated Senior Secured Debt shall be measured on the last day of such Test Period, with Consolidated EBITDA being determined for such Test Period.

“Consolidated Total Assets” shall mean, as of any date of determination, the amount that would, in conformity with U.S. GAAP, be set forth opposite the caption “total assets” (or any like caption) on a consolidated balance sheet of the Lead Borrower and the Restricted Subsidiaries at such date.

“Consolidated Total Net Leverage Ratio” shall mean, at any time, the ratio of (x) Consolidated Indebtedness at such time, less the aggregate amount of (a) the aggregate amount of unrestricted cash and Cash Equivalents (in each case, free and clear of all Liens, other than nonconsensual Liens permitted by Section 10.01 and
Liens created under the ABL Credit Agreement and the credit documents related thereto, any Credit Document and any Permitted Junior Debt Documents (to the extent that such cash and Cash Equivalents also secure the Indebtedness hereunder on a senior priority basis) included on the consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries at such time to (y) Consolidated EBITDA of the Lead Borrower and its Restricted Subsidiaries for the Test Period then most recently ended for which Section 9.01 Financials were required to have been delivered, in each case, calculated on a Pro Forma Basis. If the Consolidated Total Net Leverage Ratio is being determined for a given Test Period, Consolidated Indebtedness shall be measured on the last day of such Test Period, with Consolidated EBITDA being determined for such Test Period.

“Contingent Obligation” shall mean, as to any Person, any obligation of such Person as a result of such Person being a general partner of any other Person, unless the underlying obligation is expressly made non-recourse as to such general partner, and any obligation of such Person guaranteeing or intended to guarantee any Indebtedness (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, any such obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (x) for the purchase or payment of any such primary obligation or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

“Contract Consideration” shall have the meaning provided to such term in the definition of “Excess Cash Flow”.

“Cost Savings Cap” shall have the meaning provided to such term in the definition of “Pro Forma Cost Savings”.

“Covered Entity” shall have the meaning assigned to such term in Section 13.26(b).

“Credit Agreement Party” shall mean each of the Borrowers.

“Credit Documents” shall mean this Agreement, each Note, each Subsidiaries Guaranty, each Security Document, the ABL Intercreditor Agreement, any First Lien/Second Lien Intercreditor Agreement, any Additional Intercreditor Agreement, any Pari Passu Intercreditor Agreement, each Incremental Term Loan Commitment Agreement, each Refinancing Term Loan Amendment, each Extension Amendment, the Guaranty Reaffirmation, Intercreditor Reaffirmation, the Pledge Reaffirmation and the Security Agreement Reaffirmation.

“Credit Event” shall mean the making of any Term Loan.

“Credit Party” shall mean each Borrower and each Subsidiary Guarantor.

“Cumulative Retained Excess Cash Flow Amount” shall mean, at any date, an amount (which shall not be less than zero in the aggregate) determined on a cumulative basis equal to (i) the aggregate cumulative sum of the Retained Percentage multiplied by Excess Cash Flow for all Excess Cash Flow Payment Periods ending after the Closing Date and prior to such date minus (ii) the cumulative amount by which amounts that would otherwise be payable under Section 5.2(e) have been reduced as a result of the voluntary prepayment of any Term Loans.

“Debarment/Suspension Event” shall mean that any Credit Party has been debarred or suspended from contracting with the Federal government pursuant to Federal Acquisition Regulation subpart 9.4, for a period
exceeding 30 consecutive days, with respect to matters representing over 25% of the consolidated revenues of the Lead Borrower and its Restricted Subsidiaries at the time of such debarment or suspension.

“Debtor Relief Laws” shall mean 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.

“Declined Proceeds” shall have the meaning assigned to such term in Section 5.02(k).

“Default” shall mean any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

“Defaulting Lender” shall mean, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Lead Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Lead 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 Business Days after written request by the Administrative Agent or the Lead Borrower, to confirm in writing to the Administrative Agent and the Lead 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 Lead Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of (A) a proceeding under any Debtor Relief Law or (B) a Bail-In Action, or (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; 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 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 Lead Borrower and each other Lender promptly following such determination.

“Delaware Divided LLC” shall mean any Delaware LLC which has been formed upon consummation of a Delaware LLC Division.

“Delaware LLC” shall mean any limited liability company organized or formed under the laws of the State of Delaware.

“Delaware LLC Division” shall mean the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.
“Delayed Draw Term Facility,” shall mean, collectively, the Delayed Draw Term Loans and the Delayed Draw Term Loan Commitments.

“Delayed Draw Term Loan Commitment Expiration Date” shall mean the earlier of (i) the date on which all Delayed Draw Term Loan Commitments are reduced to zero, (ii) the date that is six months following the Closing Date and (iii) the Delayed Draw Termination Date.

“Delayed Draw Term Loan Commitments” shall mean, with respect to each Lender, the commitment of such Lender to make Delayed Draw Term Loans pursuant to Section 2.01(c). The amount of each Lender’s Delayed Draw Term Loan Commitment as of the Closing Date is set forth on Schedule 2.01. The aggregate amount of the Delayed Draw Term Loan Commitments as of the Closing Date is $150,000,000.

“Delayed Draw Term Loan Funding Date” shall have meaning assigned to such term in Section 2.01(c).

“Delayed Draw Term Loan Lender” shall mean a Lender with a Delayed Draw Term Loan Commitment or with outstanding Delayed Draw Term Loans.

“Delayed Draw Term Loans” shall mean the Term Loans made by the Lenders to the Borrower pursuant to Section 2.01(c).

“Delayed Draw Termination Date” shall mean the date on which (a) all Delayed Draw Term Loan Commitments shall have been terminated and (b) the principal of and interest on each Delayed Draw Term Loan, all fees and all other expenses with respect thereto shall have been paid in full (other than in respect of contingent indemnification and expense reimbursement claims not then due and payable).

“Designated Interest Rate Protection Agreement” shall mean each Interest Rate Protection Agreement and Other Hedging Agreements entered into by the Lead Borrower or any of its Restricted Subsidiaries with a Guaranteed Creditor secured by the Security Documents. It is hereby understood that an Interest Rate Protection Agreement may not be a Designated Interest Rate Protection Agreement to the extent it is similarly treated as such under the ABL Credit Agreement. Notwithstanding the foregoing, in no event shall any agreement evidencing any Excluded Swap Obligation constitute a Designated Interest Rate Protection Agreement.

“Designated Non-cash Consideration” shall mean the fair market value of non-cash consideration received by the Lead Borrower or one of its Restricted Subsidiaries in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an officers’ certificate, setting forth the basis of such valuation, less the amount of cash and Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

“Designated Treasury Services Agreement” shall mean each Treasury Services Agreement entered into by the Lead Borrower or any of its Restricted Subsidiaries with a Guaranteed Creditor secured by the Security Documents. It is hereby understood that a Treasury Services Agreement may not be a Designated Treasury Services Agreement to the extent it is similarly treated as such under the ABL Credit Agreement.

“Disqualified Lender” shall mean certain competitors of the Lead Borrower and its Subsidiaries identified in writing by the Lead Borrower to the Administrative Agent and the Lenders from time to time (other than bona fide fixed income investors or debt funds); provided that the foregoing shall not apply (x) retroactively to disqualify any parties that have previously acquired an assignment or participation interest in any Loans to the extent that any such party was not a Disqualified Lender at the time of the applicable assignment or participation, as the case may be or (y) to any bona fide fixed income investors or debt funds.

“Dividend” shall mean, with respect to any Person, that such Person has declared or paid a dividend, distribution or returned any equity capital to its stockholders, partners or members or authorized or made any other distribution, payment or delivery of property (other than common equity of such Person) or cash to its stockholders, partners or members as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for a
consideration any shares of any class of its capital stock or any partnership or membership interests outstanding on or after the Closing Date (or any options or warrants issued by such Person with respect to its Equity Interests), or set aside any funds for any of the foregoing purposes.

“Dodd-Frank and Basel III” shall have the meaning set forth in Section 2.10(d).

“Domestic Subsidiary” shall mean, as to any Person, any Subsidiary of such Person incorporated or organized under the laws of the United States, any state thereof or the District of Columbia.

“Earnout Payments” shall mean payments made by the Lead Borrower and/or any of its Restricted Subsidiaries under a contractual arrangement entered into with a seller in connection with the Original Acquisition or a Permitted Acquisition as part of the consideration given to such seller for such Acquisition or Permitted Acquisition where the amounts of such payments are based upon, and are dependent upon, the business acquired pursuant to such Acquisition or Permitted Acquisition achieving meaningful revenue, earnings or other performance target levels agreed upon in good faith by the Lead Borrower and such seller.

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

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

“EEA Resolution Authority” shall mean any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegate) having responsibility for the resolution of any EEA Financial Institution.

“Effective Yield” shall mean, as to any Term Loan or other Indebtedness, the effective yield on such Term Loan or other Indebtedness as determined by the Administrative Agent, taking into account the applicable interest rate margins, any interest rate floors or similar devices and all fees, including upfront or similar fees or original issue discount (amortized over the shorter of (x) the Weighted Average Life to Maturity of such Term Loan or other Indebtedness and (y) the four years following the date of incurrence thereof) payable generally to lenders or holders providing such Term Loan or other Indebtedness, but excluding any arrangement, structuring, commitment, underwriting or other fees payable in connection therewith that are not generally shared with the relevant lenders or holders and customary consent fees paid generally to consenting lenders or holders; provided that in the case of any fixed rate Indebtedness, the “Effective Yield” thereof shall be translated to what the Effective Yield would be if such fixed rate Indebtedness were floating rate Indebtedness in a manner reasonably satisfactory to the Administrative Agent. Each determination of the “Effective Yield” by the Administrative Agent shall be conclusive and binding on all Lenders absent manifest error.

“Eligible Transferee” shall mean and include any existing Lender, any Approved Fund or any commercial bank, an insurance company, a finance company, a financial institution, any fund that invests in loans or any other “accredited investor” (as defined in Regulation D of the Securities Act) but in any event excluding (i) any natural person, (ii) any Disqualified Lender and (iii) except to the extent provided in Sections 2.19, 2.20 and 13.04(c), each Borrower and their respective Subsidiaries and Affiliates.

“Environment” shall mean ambient air, indoor air, surface water, groundwater, drinking water, land surface and sub-surface strata and natural resources such as wetlands, flora and fauna.

“Environmental Claims” shall mean any and all administrative, regulatory or judicial actions, suits, demands, demand letters, directives, claims, liens, notices of noncompliance or violation, investigations and/or proceedings relating in any way to any Environmental Law or any permit issued, or any approval given, under any
such Environmental Law, including, without limitation, (a) any and all Environmental Claims by governmental or regulatory authorities for enforcement, investigation, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Environmental Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief arising out of or relating to an alleged injury or threat of injury to human health, safety or the Environment due to the presence of Hazardous Materials, including any Release or threat of Release of any Hazardous Materials.


“Equity Interests” of any Person shall mean any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and, unless the context indicates otherwise, the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Agreement and any successor Section thereof.

“ERISA Affiliate” shall mean each person (as defined in Section 3(9) of ERISA) which together with the Lead Borrower or a Restricted Subsidiary of the Lead Borrower would be deemed to be a “single employer” within the meaning of Section 414(b) or (c) of the Code and solely with respect to Section 412 of the Code, Sections 414(b), (c), (m) or (o) of the Code.

“ERISA Event” shall mean (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder, but excluding any event for which the 30-day notice period is waived, with respect to a Plan, (b) any failure to make a required contribution to any Plan that would result in the imposition of a Lien or other encumbrance or the failure to satisfy the minimum funding standards set forth in Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA, or the arising of such a Lien or encumbrance, with respect to a Plan, (c) the incurrence by the Lead Borrower, a Restricted Subsidiary of the Lead Borrower, or an ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or the withdrawal or partial withdrawal (including under Section 4062(e) of ERISA) of any of the Lead Borrower, a Restricted Subsidiary of the Lead Borrower, or an ERISA Affiliate from any Plan or Multiemployer Plan, (d) the filing of a notice of intent to terminate a Plan, the treatment of a Plan amendment as a termination under Section 4041 of ERISA, or the receipt by the Lead Borrower, a Restricted Subsidiary of the Lead Borrower, or an ERISA Affiliate from the PBGC or a plan administrator of any notice of intent to terminate any Plan or Multiemployer Plan or to appoint a trustee to administer any Plan, (e) the adoption of any amendment to a Plan that would require the provision of security pursuant to the Code, ERISA or other applicable law, (f) the receipt by the Lead Borrower, a Restricted Subsidiary of the Lead Borrower, or an ERISA Affiliate of any written notice concerning statutory liability arising from the withdrawal or partial withdrawal of the Lead Borrower, a Restricted Subsidiary of the Lead Borrower, or an ERISA Affiliate from a Multiemployer Plan or a written determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA, (g) the occurrence of any non-exempt “prohibited transaction” (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to which the Lead Borrower or any Restricted Subsidiary is a “disqualified person” (within the meaning of Section 4975 of the Code) or with respect to which the Lead Borrower or any Restricted Subsidiary would reasonably be
expected to have liability, (h) the occurrence of any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of any Plan or the appointment of a trustee to administer any Plan, (i) the filing of any request for or receipt of a minimum funding waiver under Section 412(c) of the Code with respect to any Plan or Multiemployer Plan, (j) a determination that any Plan is in “at-risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code), (k) the receipt by the Lead Borrower, a Restricted Subsidiary of the Lead Borrower or any ERISA Affiliate of any notice, that a Multiemployer Plan is, or is expected to be, in endangered or critical status under Section 305 of ERISA, or (l) any other extraordinary event or condition with respect to a Plan or Multiemployer Plan which would reasonably be expected to result in a Lien or any acceleration of any statutory requirement to fund all or a substantial portion of the unfunded accrued benefit liabilities of such plan.

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

“Event of Default” shall have the meaning provided in Section 11.

“Excess Cash Flow” shall mean, for any period, the remainder of (a) the sum of, without duplication, (i) Consolidated Net Income for such period and (ii) the decrease, if any, in Adjusted Consolidated Working Capital from the first day to the last day of such period (but excluding any such decrease in Adjusted Consolidated Working Capital arising from a Permitted Acquisition or dispositions of any Person by the Lead Borrower and/or the Restricted Subsidiaries during such period), minus (b) the sum of, without duplication, (i) the aggregate amount of all Capital Expenditures made by the Lead Borrower and its Restricted Subsidiaries during such period to the extent financed with Internally Generated Cash, (ii) without duplication of amounts deducted pursuant to clause (iii) below, the aggregate amount of all cash payments made in respect of all Permitted Acquisitions consummated by and other Investments permitted under Section 10.05 made by the Lead Borrower and its Restricted Subsidiaries during such period, in each case to the extent financed with Internally Generated Cash, (iii) without duplication of amounts deducted from Excess Cash Flow in prior periods, the aggregate consideration required to be paid in cash by the Lead Borrower or any of its Restricted Subsidiaries pursuant to binding contracts (the “Contract Consideration”) entered into prior to or during such period relating to Permitted Acquisitions, Investments or Capital Expenditures to be consummated or made during the period of four consecutive fiscal quarters of the Lead Borrower following the end of such period, provided that to the extent the aggregate amount of Internally Generated Cash actually utilized to finance such Permitted Acquisitions, Investments or Capital Expenditures during such period of four consecutive fiscal quarters is less than the Contract Consideration, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such period of four consecutive fiscal quarters, (iv) Dividends made in cash during such fiscal year to the extent paid for with Internally Generated Cash, (v) (A) the aggregate amount of Scheduled Repayments set forth in Section 5.02(a)(i) and other permanent principal payments of Indebtedness of the Lead Borrower and its Restricted Subsidiaries during such period (other than voluntary prepayments of Term Loans made pursuant to Section 5.01(a) and repayments of revolving loans under the ABL Credit Agreement or any Indebtedness secured by a Lien on the Collateral ranking senior or pari passu with the Lien on the Collateral securing the Indebtedness hereunder, in each case, to the extent accompanied by a permanent reduction in commitments therefor) in each case to the extent paid for with Internally Generated Cash and (B) prepayments and repayments of Term Loans pursuant to Sections 5.02(d) or 5.02(f) to the extent the Asset Sale or Recovery Event giving rise to such prepayment or repayment resulted in an increase to Consolidated Net Income (but not in excess of the amount of such increase), (vi) the portion of Transaction Costs and other transaction costs and expenses related to items (i)-(v) above paid in cash during such fiscal year not deducted in determining Consolidated Net Income, (vii) the aggregate amount of all non-cash gains to the extent included in

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Consolidated Net Income for such period (excluding any non-cash gains to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income in any prior period).

“Excess Cash Flow Payment Date” shall mean the date occurring 10 Business Days after the date on which the Lead Borrower’s annual audited financial statements are required to be delivered pursuant to Section 9.01(b) (commencing with the fiscal year ending December 31, 2021).

“Excess Cash Flow Payment Period” shall mean, with respect to any Excess Cash Flow Payment Date, the immediately preceding fiscal year of the Lead Borrower; provided that, notwithstanding the foregoing, the initial Excess Cash Flow Payment Period shall only include the period from January 1, 2021 through December 31, 2021.

“Excluded Collateral” shall have the meaning assigned to such term in the Security Agreement.

“Excluded Subsidiary” shall mean any Subsidiary of the Lead Borrower (other than a Subsidiary Borrower) that is (a) a Foreign Subsidiary, (b) an Unrestricted Subsidiary, (c) a FSHCO, (d) not a Wholly-Owned Subsidiary of the Lead Borrower or one or more of its Wholly-Owned Restricted Subsidiaries, (e) an Immaterial Subsidiary that is designated as such by the Lead Borrower in a certificate of a Responsible Officer of the Lead Borrower delivered to the Administrative Agent, (f) established or created pursuant to Section 10.05(xi) and meeting the requirements of the proviso thereto; provided that such Subsidiary shall only be an Excluded Subsidiary for the period immediately prior to such acquisition, (g) prohibited by applicable law, rule, regulation from guaranteeing the facilities under this Agreement, or which would require governmental (including regulatory) consent, approval, license or authorization to provide a guarantee in each case, unless, such consent, approval, license or authorization has been received (but without obligation to seek the same), in each case so long as the Administrative Agent shall have received a certification from the Lead Borrower’s general counsel or a Responsible Officer of the Lead Borrower as to the existence of such prohibition or consent, approval, license or authorization requirement, (h) prohibited from guaranteeing the Obligations by any contractual obligation in existence (x) on the Closing Date or (y) at the time of the acquisition of such Subsidiary after the Closing Date (to the extent such prohibition was not entered into in contemplation of such acquisition), (i) a Subsidiary with respect to which a guarantee by it of the Obligations would result in a material adverse tax consequence to the Lead Borrower or the Restricted Subsidiaries, as reasonably determined by the Lead Borrower in consultation with the Administrative Agent, (j) a not-for-profit Subsidiary, (k) any other Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent (confirmed in writing by notice to the Lead Borrower), the cost or other consequences (including any adverse tax consequences) of guaranteeing the Obligations shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (l) any Subsidiary regulated as an insurance company, (m) any Special Purpose Securitization Subsidiary, and (n) any Domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary that is a CFC or FSHCO; provided that, notwithstanding the above, (x) if a Subsidiary executes the Subsidiaries Guaranty as a “Subsidiary Guarantor” then it shall not constitute an “Excluded Subsidiary” (unless released from its obligations under the Subsidiaries Guaranty of such Guarantor, any Swap Obligation if, and to the extent that, such Swap Obligation (or any Subsidiaries Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the Subsidiaries Guaranty of such Guarantor becomes effective with respect to such Swap Obligation or (y) as it relates to all or a portion of the grant by such Guarantor of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect 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).
any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Guarantor becomes 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 Subsidiaries Guaranty or security interest is or becomes illegal.

“Excluded Taxes” shall mean, with respect to the Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of any Credit Party under any Credit Document, (a) income Taxes imposed on (or measured by) its net income and franchise (and similar) Taxes imposed on it in lieu of income Taxes, either pursuant to the laws of the jurisdiction in which such recipient is organized or in which the principal office or applicable lending office of such recipient is located (or any political subdivision thereof) or as a result of any other present or former connection between it and the jurisdiction imposing such Tax (other than a connection arising from such Administrative Agent, Lender or other 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 Credit Document, or sold or assigned an interest in any Term Loan or Credit Document), (b) any branch profits Taxes under Section 884(a) of the Code or any similar Tax imposed by any jurisdiction described in clause (a) above, (c) in the case of a Lender (other than an assignee pursuant to a request by a Borrower under Section 2.13), any U.S. federal withholding Tax that (i) is imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that such recipient (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Credit Parties with respect to such withholding tax pursuant to Section 5.04(a), (d) any Taxes attributable to such recipient’s failure to comply with Section 5.04(b) or Section 5.04(c), (e) any Taxes imposed under FATCA and (f) U.S. federal backup withholding Taxes pursuant to Code Section 3406.
“Extended Term Loan Commitment” shall mean, collectively, the Extended Initial Term Loan Commitments, the Extended Incremental Term Loan Commitments, the Refinancing Term Loan Commitments or one or more commitments hereunder to convert Extended Term Loans under an Existing Term Loan Tranche of a given Extension Series pursuant to an Extension Amendment.

“Extended Term Loan Maturity Date” shall mean, with respect to any Tranche of Extended Term Loans, the date specified in the applicable Extension Amendment.

“Extended Term Loans” shall mean, collectively, the Extended Existing Term Loans, Extended Initial Term Loans, Extended Incremental Term Loans or the Refinancing Term Loans as the context may require.

“Extending Term Loan Lender” shall have the meaning provided in Section 2.14(c).

“Extension” shall mean any establishment of Extended Term Loan Commitments and Extended Term Loans pursuant to Section 2.14 and the applicable Extension Amendment.

“Extension Amendment” shall have the meaning provided in Section 2.14(d).

“Extension Election” shall have the meaning provided in Section 2.14(c).

“Extension Request” shall have the meaning provided in Section 2.14(a).

“Extension Series” shall have the meaning provided in Section 2.14(a).

“Fair Value” shall mean the amount at which the assets (both tangible and intangible), in their entirety, of the Lead Borrower and its Subsidiaries taken as a whole would change hands between an independent willing buyer and a willing seller, within a commercially reasonable period of time, each having reasonable knowledge of the relevant facts, with neither being under any compulsion to act.

“FATCA” shall mean 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 thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code as of the date of this Agreement (or any such amended or successor version), any intergovernmental agreements between a non-U.S. jurisdiction and the United States with respect to any of the foregoing and any Requirement of Law adopted and any agreements entered into pursuant to any such intergovernmental agreement.

“Federal Funds Rate” shall mean, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be the rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“Fees” shall mean all amounts payable pursuant to or referred to in Section 4.01.

“First Lien/Second Lien Intercreditor Agreement” shall mean an Intercreditor Agreement in the form of Exhibit N, by and among the Collateral Agent and the Second Lien Collateral Agent (as defined therein), as may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof.
“Fixed Charges” shall mean, with respect to any specified Person for any period, the sum, without duplication, of:

(1) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued, to the extent such expense was deducted in computing Consolidated Net Income, including, without limitation, amortization of original issue discount, the interest component of all payments associated with Capitalized Lease Obligations, and the net of the effect of all payments made or received pursuant to Interest Rate Protection Agreements (but excluding any non-cash interest expense attributable to the mark-to-market valuation of Interest Rate Protection Agreements or other derivatives pursuant to U.S. GAAP) and excluding amortization or write-off of deferred financing fees and expensing of any other financing fees, including any expensing of bridge or commitment fees and the non-cash portion of interest expense resulting from the reduction in the carrying value under purchase accounting of the Borrowers’ outstanding Indebtedness; provided that, for purposes of calculating consolidated interest expense, no effect will be given to the discount and/or premium resulting from the bifurcation of derivatives under ASC 815, *Derivatives and Hedging*, as a result of the terms of the Indebtedness to which such consolidated interest expense applies; plus

the consolidated interest expense of such Person and its Restricted Subsidiaries that was capitalized during such period; minus

(2) the consolidated interest income of such Person and its Restricted Subsidiaries for such period, whether received or accrued, to the extent such income was included in determining Consolidated Net Income.

“Foreign Asset Sale” shall have the meaning provided in *Section 5.02(j).*

“Foreign Pension Plan” shall mean any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States by the Lead Borrower or any one or more of its Restricted Subsidiaries primarily for the benefit of employees of the Lead Borrower or such Restricted Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

“Foreign Recovery Event” shall have the meaning provided in *Section 5.02(j).*

“Foreign Subsidiaries” shall mean each Subsidiary of the Lead Borrower that is not a Domestic Subsidiary.

“FSHCO” shall mean any Domestic Subsidiary that has no material assets other than Equity Interests, or Equity Interests and Indebtedness in one or more Foreign Subsidiaries that are CFCs.

“Governmental Authority” shall mean the government of the United States of America, any other nation or any political subdivision thereof, whether state, provincial 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.

“Guaranteed Creditors” shall mean and include (x) each of the Administrative Agent, the Collateral Agent and the Lenders and (y) any Person that was the Administrative Agent, any Lender and any Affiliate of the Administrative Agent or any Lender (even if the Administrative Agent or such Lender subsequently ceases to be the Administrative Agent or a Lender under this Agreement for any reason) at the time of entry into a particular Interest Rate Protection Agreement, Other Hedging Agreement or Treasury Services Agreement, and their subsequent assigns, if any, whether now in existence or hereafter arising.

“Guaranty Reaffirmation” shall have the meaning provided in *Section 6.10.*
“Guarantor” shall mean and include the Borrowers and each Subsidiary Guarantor.

“Hazardous Materials” shall mean (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous waste,” “hazardous materials,” “extremely hazardous substances,” “restricted hazardous waste,” “toxic substances,” “toxic pollutants,” “contaminants,” or “pollutants,” or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance regulated under any Environmental Law.

“Holdings” shall have the meaning provided in the recitals to this Agreement.

“Immaterial Subsidiary” shall mean any Restricted Subsidiary of the Lead Borrower that, as of the date of the most recent financial statements required to be delivered pursuant to Section 9.01(a) or (b), does not have, when taken together with all other Immaterial Subsidiaries, (a) assets in excess of 5.0% of Consolidated Total Assets; or (b) revenues for the period of four consecutive fiscal quarters ending on such date in excess of 5.0% of the combined revenues of the Lead Borrower and the Restricted Subsidiaries for such period; provided that in no event shall a Subsidiary Borrower be considered an Immaterial Subsidiary.

“Incremental Term Loan” shall have the meaning provided in Section 2.01(b).

“Incremental Term Loan Borrowing Date” shall mean, with respect to each Incremental Term Loan, each date on which Incremental Term Loans are incurred pursuant to Section 2.01(b), which date shall be the date of the effectiveness of the respective Incremental Term Loan Commitment Agreement pursuant to which such Incremental Term Loans are to be made.

“Incremental Term Loan Commitment” shall mean, for each Lender, any commitment to make Incremental Term Loans provided by such Lender pursuant to Section 2.15 on a given Incremental Term Loan Borrowing Date, in such amount as agreed to by such Lender in the Incremental Term Loan Commitment Agreement delivered pursuant to Section 2.15, as the same may be terminated pursuant to Sections 4.02 and/or 11.

“Incremental Term Loan Commitment Agreement” shall mean each Incremental Term Loan Commitment Agreement in the form of Exhibit L (appropriately completed and with such modifications (not inconsistent with Section 2.15 or the other relevant provisions of this Agreement) as may be approved by the Administrative Agent) executed in accordance with Section 2.15.

“Incremental Term Loan Commitment Requirements” shall mean, with respect to any provision of an Incremental Term Loan Commitment on a given Incremental Term Loan Borrowing Date, the satisfaction of each of the following conditions: (a) no Event of Default then exists or would result therefrom (provided, that with respect to any Incremental Term Loan Commitment requested with respect to any Limited Condition Transaction, such requirement shall be limited to the absence of an Event of Default pursuant to Section 11.01 or Section 11.05 (it being understood that the Lenders providing such Incremental Term Loan Commitment may impose as a condition to funding any Incremental Term Loan Commitment the absence of any additional Events of Default, which may be waived at the discretion of such Lenders providing such Incremental Term Loan Commitment); (b) all representations and warranties contained herein and in the other Credit Documents shall be true and correct in all material respects with the same effect as though such representations and warranties had been made on the Incremental Term Loan Borrowing Date (it being understood and agreed that (x) any representation or warranty which 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 (y) any representation or warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct in all respects on such date) (provided, that with respect to any Incremental Term Loan Commitment requested with respect to any Limited Condition Transaction, such requirement shall be limited to customary “certain funds” requirements if otherwise agreed by the Lenders providing such Incremental Term Loan Commitment); (c) the delivery by the relevant Credit Parties of such technical amendments, modifications and/or supplements to the respective Security Documents as are reasonably
requested by the Administrative Agent to ensure that the additional Obligations to be incurred pursuant to the Incremental Term Loan Commitments are secured by, and entitled to the benefits of, the relevant Security Documents, and each of the Lenders hereby agrees to, and authorizes the Collateral Agent to enter into, any such technical amendments, modifications or supplements and (d) the delivery by the Lead Borrower, to the Administrative Agent of an officer’s certificate executed by a Responsible Officer certifying as to compliance with preceding clauses (a) and (b).

"Incremental Term Loan Lender” shall have the meaning provided in Section 2.15(b).

"Indebtedness” shall mean, as to any Person, without duplication, (i) all indebtedness (including principal, interest, fees and charges) of such Person (A) for borrowed money or (B) for the deferred purchase price of property or services, (ii) the maximum amount available to be drawn under all letters of credit, bankers’ acceptances and similar obligations issued for the account of such Person and all unpaid drawings in respect of such letters of credit, bankers’ acceptances and similar obligations, (iii) all Indebtedness of the types described in clause (i), (ii), (iv), (v), (vi) or (vii) of this definition secured by any Lien on any property owned by such Person, whether or not such Indebtedness has been assumed by such Person (provided that, if the Person has not assumed or otherwise become liable in respect of such Indebtedness, such Indebtedness shall be deemed to be in an amount equal to the lesser of (x) the aggregate unpaid amount of Indebtedness secured by such Lien and (y) the fair market value of the property to which such Lien relates as determined in good faith by such Person), (iv) the aggregate amount of all Capitalized Lease Obligations of such Person, (v) all Contingent Obligations of such Person, (vi) all obligations under any Interest Rate Protection Agreement, any Other Hedging Agreement, any Treasury Services Agreement or under any similar type of agreement, (vii) to the extent not otherwise included in this definition, the principal amount of any Indebtedness outstanding of such Person, (viii) all Off-Balance Sheet Liabilities of such Person. Notwithstanding the foregoing, Indebtedness shall not include (a) trade payables and accrued expenses incurred by any Person in accordance with customary practices and in the ordinary course of business of such Person, (b) trade related letters of credit and trade related guarantees incurred in the ordinary course of business or (c) Earnout Payments except to the extent that the liability on account of any such Earnout Payments becomes fixed and is required by U.S. GAAP to be reflected as a liability on the consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries.

"Indemnified Person” shall have the meaning provided in Section 13.01.

"Indemnified Taxes” shall mean Taxes other than (i) Excluded Taxes and (ii) Other Taxes.

"Initial Incremental Term Loan Maturity Date” shall mean, for any Tranche of Incremental Term Loans, the final maturity date set forth for such Tranche of Incremental Term Loans in the Incremental Term Loan Commitment Agreement relating thereto, provided that the initial final maturity date for all Incremental Term Loans of a given Tranche shall be the same date.

"Initial Maturity Date for Initial Term Loans” shall mean October 19, 2027.

"Initial Term Loan” shall mean the Term Loans made on the Closing Date pursuant to Section 2.01(a).

"Initial Term Loan Commitment” shall mean, for each Lender, the amount set forth opposite such Lender’s name in Schedule 2.01 directly below the column entitled “Initial Term Loan Commitment,” as the same may be terminated pursuant to Sections 4.02 and/or 11.

"Initial Tranche” shall have the meaning provided in the definition of the term “Tranche”.

"Intellectual Property,” shall have the meaning provided in Section 8.20.
“Intercreditor Reaffirmation” shall have the meaning provided in Section 6.07.

“Interest Determination Date” shall mean, with respect to any LIBO Rate Term Loan, the second Business Day prior to the commencement of any Interest Period relating to such LIBO Rate Term Loan.

“Interest Expense” shall mean the aggregate consolidated interest expense (net of interest income) of the Lead Borrower and its Restricted Subsidiaries in respect of Indebtedness determined on a consolidated basis in accordance with U.S. GAAP, including amortization or original issue discount on any Indebtedness and amortization of all fees payable in connection with the incurrence of such Indebtedness, including, without limitation, the interest portion of any deferred payment obligation and the interest component of any Capitalized Lease Obligations, and, to the extent not included in such interest expense, any losses on hedging obligations or other derivative instruments entered into for the purpose of hedging interest rate risk, net of interest income and gains on such hedging obligations, and costs of surety bonds in connection with financing activities.

“Interest Payment Date” shall mean (a) with respect to any Base Rate Term Loan, the last day of each March, June, September and December and (b) with respect to any LIBO Rate Term Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a 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.

“Interest Period” shall have the meaning provided in Section 2.09.

“Interest Rate Protection Agreement” shall mean any interest rate swap agreement, interest rate cap agreement, interest collar agreement, interest rate hedging agreement or other similar agreement or arrangement.

“Internally Generated Cash” shall mean cash generated from the Lead Borrower and its Restricted Subsidiaries’ operations and not representing (i) a reinvestment by the Lead Borrower or any Restricted Subsidiaries of the Net Sale Proceeds of any Asset Sale or Net Insurance Proceeds of any Recovery Event, (ii) the proceeds of any issuance of any Equity Interests or any Indebtedness of the Lead Borrower or any Restricted Subsidiary or (iii) any credit received by the Lead Borrower or any Restricted Subsidiary with respect to any trade in of property for substantially similar property or any “like kind exchange” of assets.

“Investments” shall have the meaning provided in Section 10.05.

“ISDA Definitions” shall mean 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.

“Joint Venture” shall mean any Person other than an individual or a Subsidiary of the Lead Borrower (i) in which the Lead Borrower or any of its Restricted Subsidiaries holds or acquires an ownership interest (by way of ownership of Equity Interests or other evidence of ownership) and (ii) which is engaged in a business permitted by Section 10.09.

“Junior Representative” shall mean, with respect to any series of Permitted Junior Debt, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Permitted Junior Debt is issued, incurred or otherwise obtained and each of their successors in such capacities.

“Latest Maturity Date” shall mean, at any time, the latest Maturity Date applicable to any Term Loan hereunder at such time, including the latest maturity date of any Incremental Term Loan, Refinancing Term Loan, Extended Term Loan or Delayed Draw Term Loans, in each case as extended in accordance with this Agreement from time to time.
“LCT Election” shall have the meaning provided in Section 1.03.

“LCT Test Date” shall have the meaning provided in Section 1.03.

“Lead Borrower” shall mean (i) prior to the Closing Date, the Existing Lead Borrower and (ii) on and after the Closing Date, the Closing Date Lead Borrower.

“Lead Arrangers” shall mean, collectively, Bank of America, N.A., Citizens Bank, National Association, Truist Bank, Morgan Stanley Senior Funding, Inc., Stifel Bank & Trust in their respective capacities as joint lead arrangers and bookrunners for this Agreement.

“Lender” shall mean each financial institution listed on Schedule 2.01, as well as any Person that becomes a “Lender” hereunder pursuant to Section 2.13, 2.15, 2.18 or 13.04(b).

“LIBO Rate” shall mean:

(a) for any Interest Period with respect to a LIBO Rate Term Loan, the rate per annum equal to the London Interbank Offered Rate ("LIBOR") or a comparable or successor rate, which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time, the “LIBOR Screen Rate”) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period; and

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

provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent. Notwithstanding any of the foregoing, the LIBO Rate shall not at any time be less than 0.75% per annum.

“LIBO Rate Term Loan” shall mean each Term Loan designated as such by the Lead Borrower at the time of the incurrence thereof or conversion thereto.

“LIBOR Replacement Date” has the meaning specified in Section 2.10(e).

“LIBOR Successor Rate” has the meaning specified in Section 2.10(e).

“LIBOR Successor Rate Conforming Changes” shall mean, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of Business Day, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Credit Document).
“Lien” shall mean any mortgage, pledge, hypothecation, collateral assignment, security deposit arrangement, encumbrance, deemed or statutory trust, security conveyance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, and any lease having substantially the same effect as any of the foregoing).

“Limited Condition Transaction” shall mean any acquisition (including by way of merger) or similar Investment (including the assumption or incurrence of Indebtedness), the making of any Dividend and/or the making of any voluntary or optional payment or prepayment on or redemption or acquisition for value of any Indebtedness subject to Section 10.07(a).

“Loans” shall mean the loans made by the Lenders to the Lead Borrower pursuant to this Agreement.

“Location” of any Person shall mean such Person’s “location” as determined pursuant to Section 9-307 of the Uniform Commercial Code of the State of New York.

“Majority Lenders” of any Tranche shall mean those Non-Defaulting Lenders which would constitute the Required Lenders under, and as defined in, this Agreement if all outstanding Obligations of the other Tranches under this Agreement were repaid in full and all Commitments with respect thereto were terminated.

“Margin Stock” shall have the meaning provided in Regulation U.

“Material Adverse Effect” shall mean (i) a material adverse effect on the business, assets, financial condition or results of operations of the Lead Borrower and their Restricted Subsidiaries taken as a whole, (ii) a material and adverse effect on the rights and remedies of the Administrative Agent and Lenders, taken as a whole, under the Credit Documents and (iii) a material and adverse effect on the ability of the Credit Parties, taken as a whole, to perform their payment obligations under the Credit Documents.

“Maturity Date” shall mean (a) with respect to any Initial Term Loans that have not been extended pursuant to Section 2.14, the Initial Maturity Date for Initial Term Loans, (b) with respect to any Incremental Term Loans that have not been extended pursuant to Section 2.14, the Initial Incremental Term Loan Maturity Date applicable thereto and (c) with respect to any Tranche of Extended Term Loans or Extended Term Loan Commitments, the Extended Term Loan Maturity Date applicable thereto. For the avoidance of doubt, the parties understand that no waiver of any Default, Event of Default or mandatory prepayment shall constitute an extension of the Maturity Date.

“Minimum Borrowing Amount” shall mean $1,000,000.

“Moody’s” shall mean Moody’s Investors Service, Inc.

“Multiemployer Plan” shall mean a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA under which the Lead Borrower or a Restricted Subsidiary of the Lead Borrower has any obligation or liability, including on account of an ERISA Affiliate.

“NAIC” shall mean the National Association of Insurance Commissioners.

“Net Debt Proceeds” shall mean, with respect to any incurrence of Indebtedness for borrowed money, the gross cash proceeds (net of underwriting discounts and commissions and other reasonable costs associated therewith) received by the respective Person from such incurrence.

“Net Insurance Proceeds” shall mean, with respect to any Recovery Event, an amount in cash equal to the gross cash proceeds (net of reasonable costs and any taxes incurred in connection with such Recovery Event) received by the respective Person in connection with such Recovery Event.

“Net Sale Proceeds” shall mean, with respect to any Asset Sale (including, without limitation, any cash or Cash Equivalents received upon the sale or other disposition of any Designated Non-cash Consideration received in
any Asset Sale), an amount in cash equal to the gross cash proceeds (including any cash received by way of deferred payment pursuant to a promissory note, receivable or otherwise, but only as and when received) received from such Asset Sale, net of the reasonable costs of, and expenses associated with, such Asset Sale (including fees and commissions, payments of unassumed liabilities relating to the assets sold and required payments of any Indebtedness or other obligations (other than Indebtedness secured pursuant to the Security Documents) which is secured by the assets which were sold), and the incremental taxes paid or payable as a result of such Asset Sale.

“**No Undisclosed Information Representation**” shall mean, with respect to any Person, a representation that such Person is not in possession of any material non-public information with respect to the Lead Borrower or any of its Subsidiaries that has not been disclosed to the Lenders generally (other than those Lenders who have elected to not receive any non-public information with respect to the Lead Borrower or any of its Subsidiaries), and if so disclosed could reasonably be expected to have a material effect upon, or otherwise be material to, the market price of the applicable Term Loan, or the decision of an assigning Lender to sell, or of an assignee to purchase, such Term Loan.

“**Non-Defaulting Lender**” shall mean and include each Lender other than a Defaulting Lender.

“**Note**” shall mean each Term Note.

“**Notice of Borrowing**” shall have the meaning provided in **Section 2.03**.

“**Notice of Conversion/Continuation**” shall have the meaning provided in **Section 2.06(a)**.

“**Notice Office**” shall mean the office of the Administrative Agent at 901 Main Street, Dallas, Texas 75202-3714, or such other office as the Administrative Agent may designate to the Lead Borrower from time to time.

“**Obligations**” shall mean (x) all now existing or hereafter arising debts, obligations, covenants, and duties of payment or performance by any Credit Party of every kind, matured or unmatured, direct or contingent, owing, arising, due, or payable to any Lender, Agent or Indemnified Person by any Credit Party arising out of this Agreement or any other Credit Document, including, without limitation, all obligations to repay principal or interest (including interest, fees and other amounts accruing during any proceeding under any Debtor Relief Laws, regardless of whether allowed or allowable in such proceeding) on the Term Loans, and to pay interest, fees, costs, charges, expenses, professional fees, and all sums chargeable to any Credit Party or for which any Credit Party is liable as indemnitor under the Credit Documents, whether or not evidenced by any note or other instrument and (y) liabilities and indebtedness of the Lead Borrower or any of its Restricted Subsidiaries owing under any Designated Interest Rate Protection Agreement or Designated Treasury Services Agreement (with respect to any Guarantor, other than any Excluded Swap Obligation of such Guarantor) entered into by the Lead Borrower or any of its Restricted Subsidiaries, whether now in existence or hereafter arising, and, in each case of clauses (x) and (y), the due performance and compliance with all terms, conditions and agreements contained therein. Notwithstanding anything to the contrary contained above, (x) obligations of any Credit Party under any Designated Interest Rate Protection Agreement or Designated Treasury Services Agreement shall be secured and guaranteed pursuant to the Credit Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (y) any release of Collateral or Guarantors effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Designated Interest Rate Protection Agreement or Designated Treasury Services Agreement.

“**Off-Balance Sheet Liabilities**” of any Person shall mean (i) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (ii) any liability of such Person under any Sale-Leaseback Transactions that do not create a liability on the balance sheet of such Person, (iii) any obligation under a Synthetic Lease or (iv) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person.
“Open Market Purchase” shall have the meaning provided in Section 2.20(a).

“Original Acquisition” shall mean the transactions contemplated by the Original Acquisition Agreement.

“Original Acquisition Agreement” shall mean the Agreement and Plan of Merger, dated as of January 14, 2016, among Shay Intermediate Holding II Corporation, Shay Merger Corporation, the Lead Borrower and LG PAE, L.P., as the stockholder representative.

“Original Closing Date” shall mean October 20, 2016.

“Other Hedging Agreements” shall mean any foreign exchange contracts, currency swap agreements, commodity agreements or other similar arrangements, or arrangements designed to protect against fluctuations in currency values or commodity prices.

“Other Taxes” shall mean any and all present or future stamp, court or documentary, intangible, recording, filing or property Taxes or similar Taxes arising from any payment made under, from the execution, delivery, registration, performance or enforcement of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document except any such Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.13) that are imposed as a result of any present or former connection between the relevant Lender and the jurisdiction imposing such Tax (other than a connection arising from such Lender 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 Credit Document, or sold or assigned an interest in any Term Loan or Credit Document).

“Pari Passu Intercreditor Agreement” shall mean an intercreditor agreement among the Administrative Agent, the Collateral Agent and one or more Pari Passu Representatives for holders of Permitted Pari Passu Notes (or Permitted Refinancing Indebtedness in respect thereof) providing that, inter alia, the Liens on the Collateral (as defined in the Security Documents) in favor of the Collateral Agent (for the benefit of the Secured Creditors) shall be pari passu with such Liens in favor of the Pari Passu Representatives (for the benefit of the holders of Permitted Pari Passu Notes (or Permitted Refinancing Indebtedness in respect thereof)), as such intercreditor agreement may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof. The Pari Passu Intercreditor Agreement shall be in a form customary at such time for transactions of the type contemplated thereby and otherwise reasonably satisfactory to the Administrative Agent and the Lead Borrower (it being understood that the terms of the ABL Intercreditor Agreement and any First Lien/Second Lien Intercreditor Agreement, as applicable, are reasonably satisfactory).

“Pari Passu Representative” shall mean, with respect to any series of Permitted Pari Passu Notes (or Permitted Refinancing Indebtedness in respect thereof), the trustee, collateral agent, security agent or similar agent under the indenture or other agreement pursuant to which such Permitted Pari Passu Notes (or Permitted Refinancing Indebtedness in respect thereof) are issued and each of their successors in such capacities.

“Participant Register” shall have the meaning provided in Section 13.04(a).

“Patriot Act” shall have the meaning provided in Section 13.17.

“Payment Office” shall mean the office of the Administrative Agent located at 901 Main Street, Dallas, Texas 75202-3714, or such other office as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

“PBGC” shall mean the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

“Perfection Certificate” shall have the meaning provided in the Security Agreement.
“Permitted Acquisition” shall mean the acquisition by the Lead Borrower or any of its Restricted Subsidiaries of an Acquired Entity or Business; provided that (in each case) (A) the Acquired Entity or Business acquired is in a business permitted by Section 10.09 and (B) all applicable requirements of Section 9.14 are satisfied.

“Permitted Investment” shall mean any Investment permitted by Section 10.05.

“Permitted Joint Venture” shall mean (a) any joint venture (i) in which the Lead Borrower or any of its Subsidiaries hold equity interests that represent less than 80% of the ordinary voting power and aggregate equity value represented by the issued and outstanding equity interests in such joint venture and (ii) that is engaged in a business permitted under Section 10.09 and (b) each Existing Joint Venture unless and until it becomes a Wholly-Owned Subsidiary.

“Permitted Junior Debt” shall mean and include (i) any Permitted Junior Notes and (ii) any Permitted Junior Loans.

“Permitted Junior Debt Documents” shall mean and include the Permitted Junior Notes Documents and the Permitted Junior Loan Documents.

“Permitted Junior Loan Documents” shall mean, after the execution and delivery thereof, each agreement, document or instrument relating to the incurrence of Permitted Junior Loans, in each case as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

“Permitted Junior Loans” shall mean any Indebtedness of the Lead Borrower or any Restricted Subsidiary in the form of unsecured or secured loans; provided that in any event, unless the Required Lenders otherwise expressly consent in writing prior to the issuance thereof, (i) except as provided in clause (v) below, no such Indebtedness, to the extent incurred by any Credit Party, shall be secured by any asset of the Lead Borrower or any of its Subsidiaries, (ii) no such Indebtedness, to the extent incurred by any Credit Party, shall be guaranteed by any Person other than the Borrowers or a Subsidiary Guarantor, (iii) no such Indebtedness shall be subject to scheduled amortization or have a final maturity, in either case prior to the date occurring ninety-one (91) days following the then Latest Maturity Date, (iv) any “asset sale” mandatory prepayment provision or offer to prepay covenant included in the agreement governing such Indebtedness, to the extent incurred by any Credit Party, shall provide that the Lead Borrower or the respective Subsidiary shall be permitted to repay obligations, and terminate commitments, under this Agreement before prepaying or offering to prepay such Indebtedness, (v) in the case of any such Indebtedness incurred by a Credit Party that is secured (a) such Indebtedness is secured by only assets comprising Collateral on a junior-lien basis relative to the Liens on such Collateral securing the Obligations of the Credit Parties, and not secured by any property or assets of the Lead Borrower or any of its Subsidiaries other than the Collateral, (b) the security agreements relating to such Indebtedness are substantially the same as the Security Documents (with such differences as are reasonably satisfactory to the Administrative Agent) and (c) a Junior Representative acting on behalf of the holders of such Indebtedness shall have become party to the Additional Intercreditor Agreement; provided that if such Indebtedness is the initial incurrence of Permitted Junior Debt by the Lead Borrower that is secured by assets of the Lead Borrower or any other Credit Party, then the Lead Borrower, the Subsidiary Borrowers, the Subsidiary Guarantors, the Administrative Agent, the Collateral Agent and the Junior Representative for such Indebtedness shall have executed and delivered the Additional Intercreditor Agreement and (vi) in respect of any such Indebtedness of a Credit Party, the representations and warranties, covenants, and events of default, taken as a whole, shall be no more onerous in any material respect than the related provisions contained in this Agreement; provided that (w) any such terms may be more onerous to the extent they take effect after the Latest Maturity Date of the Term Loans, and (x) in the event that any agreement evidencing such Indebtedness contains financial maintenance covenants, this Agreement shall be amended in a manner reasonably acceptable to the Administrative Agent to add any such financial covenants as are not then contained in this Agreement, and shall be set back from any financial covenants in this Agreement by at least 15% or such lesser cushion as may be acceptable to the Administrative Agent (provided that a certificate of a Responsible Officer of the Lead Borrower delivered to the Administrative Agent in good faith at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Lead Borrower has determined in good
faith that such terms and conditions satisfy the requirement set out in the foregoing clause (vi), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent provides notice to the Lead Borrower of an objection during such five Business Day period (including a reasonable description of the basis upon which it objects). The incurrence of Permitted Junior Loans shall be deemed to be a representation and warranty by the Lead Borrower that all conditions thereto have been satisfied in all material respects and that same is permitted in accordance with the terms of this Agreement, which representation and warranty shall be deemed to be a representation and warranty for all purposes hereunder, including, without limitation, Sections 7 and 11.

“Permitted Junior Notes” shall mean any Indebtedness of the Lead Borrower or any Restricted Subsidiary evidenced by a note security and incurred pursuant to one or more issuances of such notes; provided that in any event, unless the Required Lenders otherwise expressly consent in writing prior to the issuance thereof, (i) except as provided in clause (viii) below, no such Indebtedness, to the extent incurred by any Credit Party, shall be secured by any asset of the Lead Borrower or any of its Subsidiaries, (ii) no such Indebtedness, to the extent incurred by any Credit Party, shall be guaranteed by any Person other than the Borrowers or any Subsidiary Guarantor, (iii) no such Indebtedness shall be subject to scheduled amortization or have a final maturity, in either case prior to the date occurring ninety-one (91) days following the then Latest Maturity Date, (iv) any “asset sale” offer to purchase covenant included in the indenture governing such Indebtedness, to the extent incurred by any Credit Party, shall be provided that the Lead Borrower or the respective Subsidiary shall be permitted to repay obligations, and terminate commitments, under this Agreement before offering to purchase such Indebtedness, (v) the indenture governing such Indebtedness shall not include any financial maintenance covenants, (vi) the “default to other indebtedness” event of default contained in the indenture governing such Indebtedness shall provide for a “cross-acceleration” rather than a “cross-default,” (vii) in the case of any such Indebtedness incurred by a Credit Party that is secured (a) such Indebtedness is secured by only assets comprising Collateral on a junior-lien basis relative to the Liens on such Collateral securing the Obligations of the Credit Parties, and not secured by any property or assets of the Lead Borrower or any of its Subsidiaries other than the Collateral (as defined in the Security Documents), (b) such Indebtedness (and the Liens securing the same) are permitted by the terms of the Additional Intercreditor Agreement; provided that if such Indebtedness is the initial issue of Permitted Junior Notes by the Lead Borrower that is secured by assets of the Lead Borrower or any other Credit Party, the covenants and defaults, taken as a whole, contained in the indenture governing such Indebtedness shall not be more onerous in any material respect than those contained in the corresponding provisions in this Agreement, except, in the case of any such Indebtedness that is secured as provided in preceding clause (vii), with respect to covenants and defaults relating to the Collateral (provided that a certificate of a Responsible Officer of the Lead Borrower delivered to the Administrative Agent in good faith at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Lead Borrower has determined in good faith that such terms and conditions satisfy the requirement set out in the foregoing clause (viii), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent provides notice to the Lead Borrower of an objection during such five Business Day period (including a reasonable description of the basis upon which it objects)). The issuance of Permitted Junior Notes shall be deemed to be a representation and warranty by the Lead Borrower that all conditions thereto have been satisfied in all material respects and that same is permitted in accordance with the terms of this Agreement, which representation and warranty shall be deemed to be a representation and warranty for all purposes hereunder, including, without limitation, Sections 7 and 11.

“Permitted Junior Notes Documents” shall mean, after the execution and delivery thereof, each Permitted Junior Notes Indenture, and the Permitted Junior Notes, in each case as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.
“Permitted Junior Notes Indenture” shall mean any indenture or similar agreement entered into in connection with the issuance of Permitted Junior Notes, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

“Permitted Liens” shall have the meaning provided in Section 10.01.

“Permitted Pari Passu Notes” shall mean any Indebtedness of the Lead Borrower or any Restricted Subsidiary in the form of notes and incurred pursuant to one or more issuances of such notes; provided that, (i) no such Indebtedness shall be guaranteed by any Person other than the Lead Borrower, the Subsidiary Borrowers or any Subsidiary Guarantor, (ii) no such Indebtedness shall be subject to scheduled amortization or have a final maturity, in either case prior to the Latest Maturity Date as of the date such Indebtedness was incurred, (iii) any “asset sale” offer to purchase covenant included in the indenture governing such Indebtedness, to the extent incurred by any Credit Party, shall provide that the Lead Borrower or the respective Subsidiary shall be permitted to repay obligations, and terminate commitments, under this Agreement on a pro rata or greater basis with such Indebtedness from asset sale proceeds, (iv) [reserved], (v) the indenture governing such Indebtedness shall not include any financial maintenance covenants, (vi) the “default to other indebtedness” event of default contained in the indenture governing such Indebtedness shall provide for a “cross-acceleration” or a “cross-acceleration” and “cross-payment default” rather than a “cross-default,” (vii) (a) such Indebtedness is secured only by assets comprising Collateral on a pari passu basis relative to the Liens on such Collateral securing the Obligations of the Credit Parties, and not secured by any property or assets of the Lead Borrower or any of its Subsidiaries other than the Collateral, (b) the security agreements relating to such Indebtedness are substantially the same as the Security Documents (with such differences as are reasonably satisfactory to the Administrative Agent) and (c) a Pari Passu Representative acting on behalf of the holders of such Indebtedness shall have become party to the Pari Passu Intercreditor Agreement; provided that if such Indebtedness is the initial issue of Permitted Pari Passu Notes by the Lead Borrower, then the Lead Borrower, the Subsidiary Borrowers, the Subsidiary Guarantors, the Administrative Agent, the Collateral Agent and the Pari Passu Representative for such Indebtedness shall have executed and delivered the Pari Passu Intercreditor Agreement, and (viii) the negative covenants and events of defaults, taken as a whole, contained in the indenture governing such Indebtedness shall not be more onerous in any material respect than those contained in the corresponding provisions in this Agreement; provided that any such terms may be more onerous to the extent they take effect after the Latest Maturity Date as of the date such Indebtedness was incurred (provided that a certificate of a Responsible Officer of the Lead Borrower delivered to the Administrative Agent delivered to the Administrative Agent at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Lead Borrower has determined in good faith that such terms and conditions satisfy the requirement set out in the foregoing clause (viii), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent provides notice to the Lead Borrower of an objection during such five Business Day period (including a reasonable description of the basis upon which it objects)).

“Permitted Pari Passu Notes Documents” shall mean, after the execution and delivery thereof, each Permitted Pari Passu Notes Indenture, and the Permitted Pari Passu Notes, in each case as the same may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof.

“Permitted Pari Passu Notes Indenture” shall mean any indenture or similar agreement entered into in connection with the issuance of Permitted Pari Passu Notes, as the same may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof.

“Permitted Refinancing Indebtedness” shall mean (x) Indebtedness incurred by the Lead Borrower or any Restricted Subsidiary which serves to extend, replace, refund, refinance, renew or defease (“Refinance”) any Indebtedness, including any previously issued Permitted Refinancing Indebtedness, so long as:

1. the principal amount of such new Indebtedness does not exceed (a) the principal amount of Indebtedness being so extended, replaced, refunded, refinanced, renewed or defeased (such Indebtedness, the “Refinanced Debt”), plus (b) any accrued and unpaid interest on such Refinanced Debt,
plus (c) the amount of any tender or redemption premium paid thereon or any penalty or premium required to be paid under the terms of the instrument or documents governing such Refinanced Debt and any costs, fees and expenses incurred in connection with the issuance of such new Indebtedness and the Refinancing of such Refinanced Debt;

(2) such Permitted Refinancing Indebtedness has a:

(a) Weighted Average Life to Maturity at the time such Indebtedness is incurred that is not less than the remaining Weighted Average Life to Maturity of the applicable Refinanced Debt; and

(b) final scheduled maturity date equal to or later than the final scheduled maturity date of the Refinanced Debt (or, if earlier, the date that is 91 days after the Latest Maturity Date as of the date such Indebtedness was incurred);

(3) to the extent such Permitted Refinancing Indebtedness Refinances Indebtedness that is (a) expressly subordinated in right of payment to the Obligations (other than Indebtedness assumed or acquired in an acquisition and not created in contemplation thereof), such Permitted Refinancing Indebtedness is subordinated to the Obligations on terms that are, taken as a whole, not materially less favorable to the Lenders than the subordination terms applicable to the Refinanced Debt, (b) secured by Liens that are subordinated to the Liens securing the Obligations, such Permitted Refinancing Indebtedness is (i) unsecured or (ii) secured by Liens that are pari passu with the Liens securing the Obligations, such Permitted Refinancing Indebtedness is (i) unsecured or (ii) secured by Liens that are pari passu or subordinated to the Liens that secure the Obligations on terms that are, taken as a whole, not materially less favorable to the Lenders than the Collateral sharing provisions applicable to the Refinanced Debt; and

(4) subject to Section 10.01(vi), such Permitted Refinancing Indebtedness shall not be secured by any assets or property of the Lead Borrower or any Restricted Subsidiary that does not secure the Refinanced Debt being Refinanced (plus improvements and accessions thereon and proceeds in respect thereof);

provided that (a) Permitted Refinancing Indebtedness will not include Indebtedness of a Restricted Subsidiary of the Lead Borrower that is not a Subsidiary Guarantor that refinances Indebtedness of the Lead Borrower or a Subsidiary Guarantor, (b) clause (2) of this definition will not apply to any Refinancing of any Indebtedness under clause (iii) or (v) of Section 10.04.

“Permitted Securitization Documents” shall mean all documents and agreements evidencing, relating to or otherwise governing a Permitted Securitization Financing.

“Permitted Securitization Financing” shall mean one or more transactions pursuant to which (i) Securitization Assets or interests therein are sold or transferred to or financed by one or more Special Purpose Securitization Subsidiaries, and (ii) such Special Purpose Securitization Subsidiaries finance (or refinance) their acquisition of such Securitization Assets or interests therein, or the financing thereof, by selling or borrowing against Securitization Assets (including conduit and warehouse financings) and any hedging agreements entered into in connection with such Securitization Assets; provided that recourse to the Lead Borrower or any Subsidiary (other than the Special Purpose Securitization Subsidiary) in connection with such transactions shall be limited to the extent customary (as determined by the Lead Borrower in good faith) for similar transactions in the applicable jurisdictions (including, to the extent applicable, in a manner consistent with the delivery of a “true sale”/“absolute transfer” opinion with respect to any transfer by the Lead Borrower or any Subsidiary (other than a Special Purpose Securitization Subsidiary)).
“Person” shall mean any individual, partnership, joint venture, firm, corporation, association, limited liability company, trust or other enterprise or any government or political subdivision or any agency, department or instrumentality thereof.

“Plan” shall mean any “pension plan” as defined in Section 3(2) of ERISA other than a Foreign Pension Plan or a Multiemployer Plan, which is subject to Title IV of ERISA or Section 412 of the Code and is (i) maintained or contributed to by (or to which there is an obligation to contribute of) the Lead Borrower or a Restricted Subsidiary of the Lead Borrower or (ii) with respect to which the Lead Borrower or a Restricted Subsidiary of the Lead Borrower has any liability, including, for greater certainty, liability arising from an ERISA Affiliate.

“Platform” shall mean IntraLinks, Syndtrak, ClearPar, or a substantially similar electronic transmission system.

“Pledge Agreement” shall mean that certain First Lien Pledge Agreement, dated as of the Original Closing Date, among the Existing Lead Borrower, the Collateral Agent, the Subsidiary Borrowers from time to time thereto and the Guarantors from time to time party thereto, as may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof.

“Pledge Agreement Collateral” shall mean all of the “Collateral” as defined in the Pledge Agreement and all other Equity Interests or other property similar to that pledged (or purported to have been pledged) pursuant to the Pledge Agreement and which is pledged (or purported to be pledged) pursuant to one or more Additional Security Documents.

“Pledge Reaffirmation” shall have the meaning provided in Section 6.08.

“Pledgee” shall have the meaning provided in the Pledge Agreement.

“Pre-Adjustment Successor Rate” has the meaning specified in Section 2.10(e).

“Present Fair Saleable Value” shall mean the amount that could be obtained by an independent willing seller from an independent willing buyer if the assets of the Lead Borrower and its Subsidiaries taken as a whole are sold as a going concern with reasonable promptness in an arm’s-length transaction under present conditions for the sale of comparable business enterprises insofar as such conditions can be reasonably evaluated.

“Prime Rate” shall mean the rate which the Administrative Agent announces from time to time as its prime lending rate, the Prime Rate to change when and as such prime lending rate changes. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer by the Administrative Agent, which may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

“Pro Forma Basis” shall mean, with respect to the calculation of any test, financial ratio, basket or covenant under this Agreement, including the Consolidated First Lien Net Leverage Ratio, Consolidated Senior Secured Net Leverage Ratio, the Consolidated Total Net Leverage Ratio and the calculation of Consolidated Total Assets, of any Person and its Restricted Subsidiaries, as of any date, that pro forma effect will be given to the Transaction, any acquisition, merger, consolidation, Investment, any issuance, incurrence, assumption or repayment of Indebtedness (including Indebtedness issued, incurred or assumed or repaid or redeemed as a result of, or to finance, any relevant transaction and for which any such test, financial ratio, basket or covenant is being calculated) (but excluding the identifiable proceeds of any Indebtedness being incurred substantially simultaneously therewith or as part of the same transaction or series of related transactions for purposes of netting cash to calculate the applicable ratio), any issuance or redemption of preferred stock, all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division, segment or operating unit, any operational change (including the entry into any material contract or arrangement) or any designation of a Restricted Subsidiary to an Unrestricted Subsidiary or of an Unrestricted Subsidiary to a Restricted Subsidiary, in each case that have occurred during the
four consecutive fiscal quarter period of such Person being used to calculate such test, financial ratio, basket or covenant (the “Reference Period”), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a Person who became a Restricted Subsidiary of the subject Person or was merged or consolidated with or into the subject Person or any other Restricted Subsidiary of the subject Person after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period.

For purposes of making any computation referred to above:

(1) if any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date for which a determination under this definition is made had been the applicable rate for the entire period (taking into account any Interest Rate Protection Agreements or Other Hedging Agreements applicable to such Indebtedness if such Interest Rate Protection Agreements or Other Hedging Agreements has a remaining term in excess of 12 months);

(2) interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer, in his or her capacity as such and not in his or her personal capacity, of the Lead Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with U.S. GAAP;

(3) interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, an eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Lead Borrower may designate; and

(4) interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period.

Any pro forma calculation may include, without limitation, adjustments calculated in accordance with Regulation S-X under the Securities Act; provided that any such adjustments that consist of reductions in costs and other operating improvements or synergies (whether added pursuant to this definition, the definition “Pro Forma Cost Savings” or otherwise added to Consolidated Net Income or Consolidated EBITDA) shall be calculated in accordance with, and satisfy the requirements specified in, the definition of “Pro Forma Cost Savings”.

“Pro Forma Cost Savings” shall mean, without duplication of any amounts referenced in the definition of “Pro Forma Basis,” an amount equal to the amount of cost savings, operating expense reductions, operating improvements (including the entry into any material contract or arrangement) and acquisition synergies, in each case, projected in good faith to be realized (calculated on a pro forma basis as though such items had been realized on the first day of such period) as a result of actions taken on or prior to, or to be taken by the Lead Borrower (or any successor thereto) or any Restricted Subsidiary within 24 months of, the date of such pro forma calculation, net of the amount of actual benefits realized or expected to be realized during such period that are otherwise included in the calculation of Consolidated EBITDA from such action; provided that such cost savings, operating expense reductions, operating improvements and synergies are factually supportable and reasonably identifiable (as determined in good faith by a responsible financial or accounting officer, in his or her capacity as such and not in his or her personal capacity, of the Lead Borrower (or any successor thereto)) and are reasonably anticipated to be realized within 24 months after the date of such pro forma calculation; provided, further, that (i) the aggregate amount added in respect of the foregoing proviso (or otherwise added to Consolidated Net Income or Consolidated EBITDA) shall not exceed with respect to any four quarter period 25% of Consolidated EBITDA for such period (calculated after giving effect to any such adjustments) (such limitation, the “Cost Savings Cap”) and (ii) the aggregate amount added in respect of the foregoing proviso (or otherwise added to Consolidated Net Income or Consolidated EBITDA) shall no longer be permitted to be added back to the extent the cost savings, operating expense reductions, operating improvements and synergies have not been achieved within 24 months of the action or event giving rise to such cost savings, operating expense reductions, operating improvements and synergies.
“Projections” shall mean the detailed projected consolidated financial statements of the Lead Borrower and its Subsidiaries (after giving effect to the Transaction) delivered to the Administrative Agent on or prior to the Closing Date.

“PTE” shall mean 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 Lender” shall have the meaning provided in Section 9.01.

“Public Side Information” shall have the meaning provided in Section 9.01(j).

“Qualified Preferred Stock” shall mean any preferred capital stock of the Lead Borrower so long as the terms of any such preferred capital stock (x) do not contain any mandatory put, redemption, repayment, sinking fund or other similar provision prior to the 91st day after the Latest Maturity Date at as of the date such Qualified Preferred Stock was issued other than (i) provisions requiring payment solely (or with provisions permitting the Lead Borrower, as applicable, to opt to make payment solely) in the form of common Equity Interests or Qualified Preferred Stock of the Lead Borrower, as applicable, (ii) provisions requiring payment solely as a result of a change of control or asset sale, so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale are subject to the payment in full of all Obligations in cash (other than unasserted contingent indemnification obligations) or such payment is otherwise permitted by this Agreement (including as a result of a waiver or amendment hereunder) and (iii) with respect to preferred capital stock issued to any plan for the benefit of employees of the Lead Borrower, as applicable, or its Subsidiaries or by any such plan to such employees, provisions requiring the repurchase thereof in order to satisfy applicable statutory or regulatory obligations and (y) give the Lead Borrower the option to elect to pay such dividends or distributions on a non-cash basis or otherwise do not require the cash payment of dividends or distributions at any time that such cash payment is not permitted under this Agreement or would result in a Default or Event of Default hereunder.

“Real Property” of any Person shall mean, collectively, the right, title and interest of such Person (including any leasehold, mineral or other estate) in and to any and all land, improvements and fixtures owned, leased or operated by such Person, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“Receivables Assets” shall mean accounts receivable (including any bills of exchange) and related assets and property from time to time originated, acquired or otherwise owned by the Lead Borrower or any Subsidiary.

“Recovery Event” shall mean the receipt by the Lead Borrower or any of its Restricted Subsidiaries of any cash insurance proceeds or condemnation awards payable (i) by reason of theft, loss, physical destruction, damage, taking or any other similar event with respect to any property or assets of the Lead Borrower or any of its Restricted Subsidiaries (but not by reason of any loss of revenues or interruption of business or operations caused thereby) and (ii) under any policy of insurance required to be maintained under Section 9.03, in each case to the extent such proceeds or awards do not constitute reimbursement or compensation for amounts previously paid by the Lead Borrower or any of its Restricted Subsidiaries in respect of any such event.

“Reference Period” shall have the meaning provided in the definition of the term “Pro Forma Basis”.

“Refinanced Debt” shall have the meaning provided in the definition of the term “Permitted Refinancing Indebtedness”.

“Refinancing Effective Date” shall have the meaning specified in Section 2.18(a).

“Refinancing Note Documents” shall mean the Refinancing Notes, the Refinancing Notes Indenture and all other documents executed and delivered with respect to the Refinancing Notes or Refinancing Notes Indenture, as in
effect on Refinancing Effective Date and as the same may be amended, modified and/or supplemented from time to time in accordance with the terms hereof and thereof.

“Refinancing Notes” shall mean Permitted Junior Notes or Permitted Pari Passu Notes (or Indebtedness that would constitute Permitted Junior Debt or Permitted Pari Passu Notes except as a result of a failure to comply with any maturity or amortization requirement applicable thereto), in each case, that constitute Permitted Refinancing Indebtedness in respect of any Term Loans.

“Refinancing Notes Indenture” shall mean the indenture entered into with respect to the Refinancing Notes and pursuant to which same shall be issued.

“Refinancing Term Loan Amendment” shall have the meaning specified in Section 2.18(c).

“Refinancing Term Loan Commitments” shall mean one or more commitments hereunder to convert Initial Term Loans or Incremental Term Loans under an Existing Initial Term Loan Tranche or Existing Incremental Term Loan Tranche into a new Tranche of Refinancing Term Loans or Refinancing Term Loans under an existing Tranche of Refinancing Term Loans.

“Refinancing Term Loan Lender” shall have the meaning specified in Section 2.18(b).

“Refinancing Term Loans” shall have the meaning specified in Section 2.18(a).

“Register” shall have the meaning provided in Section 13.15.

“Regulation D” shall mean Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof establishing reserve requirements.

“Regulation T” shall mean Regulation T of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

“Regulation U” shall mean Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

“Regulation X” shall mean Regulation X of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

“Rejection Notice” shall have the meaning assigned to such term in Section 5.02(k).

“Related Adjustment” shall mean, in determining any LIBOR Successor Rate, the first relevant available alternative set forth in the order below that can be determined by the Administrative Agent applicable to such LIBOR Successor Rate:

(A) the spread adjustment, or method for calculating or determining such spread adjustment, that has been selected or recommended by the Relevant Governmental Body for the relevant Pre-Adjustment Successor Rate (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto) and which adjustment or method (x) is published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion or (y) solely with respect to Term SOFR, if not currently published, which was previously so recommended for Term SOFR and published on an information service acceptable to the Administrative Agent; or

(B) the spread adjustment that would apply (or has previously been applied) to the fallback rate for a derivative transaction referencing the ISDA Definitions (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto).
“Related Party” shall mean (a) with respect to Platinum Equity Advisors, LLC, (i) any investment fund controlled by or under common control with Platinum Equity Advisors, LLC, any officer or director of the foregoing persons, or any entity controlled by any of the foregoing persons and (ii) any spouse or lineal descendant (including by adoption or stepchildren) of the officers and directors referred to in clause (a)(i); and (b) with respect to any officer of the Lead Borrower or its Subsidiaries, (i) any officer or director of the foregoing persons or any spouse or lineal descendant (including by adoption and stepchildren) of such officer and (ii) any trust, corporation or partnership or other entity, in each case to the extent not an operating company, of which an 80% or more controlling interest is held by the beneficiaries, stockholders, partners or owners who are the officer, any of the persons described in (b)(i) above or any combination of these identified relationships and (c) with respect to any Agent, such Agent’s Affiliates and the respective directors, officers, employees, agents and advisors of such Agent and such Agent’s Affiliates.

“Release” shall mean actively or passively disposing, discharging, injecting, spilling, pumping, leaking, leaching, dumping, emitting, escaping, emptying, pouring, seeping, migrating or the like, of any Hazardous Materials into, through or upon the Environment or within, from or into any building, structure, facility or fixture.

“Relevant Governmental Body” shall mean the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York.

“Replaced Lender” shall have the meaning provided in Section 2.13.

“Replacement Lender” shall have the meaning provided in Section 2.13.

“Repricing Transaction” shall mean (1) the incurrence by the Lead Borrower or any of its Restricted Subsidiaries of any Indebtedness in the form of term loans (including, without limitation, any new or additional term loans under this Agreement (including Refinancing Term Loans), whether incurred directly or by way of the conversion of Initial Term Loans into a new tranche of replacement term loans under this Agreement) (i) having an Effective Yield that is less than the Effective Yield for Initial Term Loans, (ii) the proceeds of which are used to prepay (or, in the case of a conversion, deemed to prepay or replace), in whole or in part, outstanding principal of Initial Term Loans or (2) any effective reduction in the Applicable Margin for Initial Term Loans (e.g., by way of amendment, waiver or otherwise) (with such determination to be made in the reasonable judgment of the Administrative Agent, consistent with generally accepted financial practices), in each case, to the extent the primary purpose of such incurrence or reduction is to reduce the Effective Yield applicable to the Initial Term Loans; provided that any prepayment, replacement or amendment in connection with a Change of Control or acquisition or Investment not permitted by this Agreement or permitted but with respect to which the Lead Borrower has determined in good faith that this Agreement will not provide sufficient flexibility for the operation of the combined business following consummation thereof shall not constitute a Repricing Transaction.

“Required Delayed Draw Term Lenders” shall mean Non-Defaulting Lenders, the sum of whose Available Unused Commitments as of any date of determination represent more than 50% of the total Available Unused Commitments at such time.

“Required Lenders” shall mean Non-Defaulting Lenders, the sum of whose outstanding principal of Term Loans and Available Unused Commitments as of any date of determination represent greater than 50% of the sum of all outstanding principal of Term Loans and total Available Unused Commitments of Non-Defaulting Lenders at such time.

“Requirement of Law” or “Requirements of Law” shall mean, with respect to any Person, (i) the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person and (ii) any statute, law, treaty, rule, regulation, order, decree, writ, injunction or determination of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.
“Resolution Authority” shall mean an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“Responsible Officer” shall mean, with respect to any Person, its chief financial officer, chief executive officer, president, or any vice president, managing director, treasurer, controller or other officer of such Person having substantially the same authority and responsibility and, solely for purposes of notices given to Article II, any other officer or employee of the applicable Credit 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 Credit Party designated in or pursuant to an agreement between the applicable Credit Party and the Administrative Agent; provided that, with respect to compliance with financial covenants, “Responsible Officer” shall mean the chief financial officer, treasurer or controller of the Lead Borrower, or any other officer of the Lead Borrower having substantially the same authority and responsibility.

“Restricted Subsidiary” shall mean each Subsidiary of the Lead Borrower other than any Unrestricted Subsidiaries.

“Retained Declined Proceeds” shall have the meaning assigned to such term in Section 5.02(k).

“Retained Percentage” shall mean, with respect to any Excess Cash Flow Payment Period (a) 100% minus (b) the Applicable Prepayment Percentage with respect to such Excess Cash Flow Payment Period.

“Returns” shall have the meaning provided in Section 8.09.

“S&P” shall mean Standard & Poor’s Ratings Services, a division of the McGraw Hill Company, Inc., and any successor owner of such division.

“Sale-Leaseback Transaction” shall mean any arrangements with any Person providing for the leasing by the Lead Borrower or any of its Restricted Subsidiaries of real or personal property which has been or is to be sold or transferred by the Lead Borrower or such Restricted Subsidiary to such Person or to any other Person to whom funds have been or are to be advanced by such Person in connection therewith.

“Sanctioned Country” shall mean, at any time, a country, region or territory which is, or whose government is, the target of any Sanctions (currently, Iran, Sudan, Syria, North Korea, Cuba and the Crimea region of Ukraine).

“Sanctioned Person” shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or by the United Nations Security Council, the European Union or any EU member state or Her Majesty’s Treasury of the United Kingdom, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person controlled by any such Person.

“Sanctions” shall mean comprehensive economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom.

“Scheduled Repayment” shall have the meaning provided in Section 5.02(a).

“SEC” shall have the meaning provided in Section 9.01(g).

“Second Lien Credit Agreement” shall mean that certain Second Lien Term Loan Credit Agreement, dated as of the Original Closing Date, among Holdings, the Lead Borrower, certain Subsidiaries of the Borrower from time to time party thereto, the lenders from time to time party thereto, and Bank of America, as administrative agent, as modified, supplemented, amended, restated (including any amendment and restatement thereof), extended or renewed from time to time.
“Section 9.01 Financials” shall mean the annual and quarterly financial statements required to be delivered pursuant to Sections 9.01(a) and (b).

“Secured Creditors” shall have the meaning assigned that term in the respective Security Documents.

“Securities Act” shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.


“Securitization Assets” shall mean any of the following assets (or interests therein) from time to time originated, acquired or otherwise owned by the Lead Borrower or any Subsidiary or in which the Lead Borrower or any Subsidiary has any rights or interests, in each case, without regard to where such assets or interests are located: (a) Receivables Assets, (b) franchise fees, royalties and other similar payments made related to the use of trade names and other Intellectual Property, business support, training and other services, (c) revenues related to distribution and merchandising of the products of the Lead Borrower and its Subsidiaries, (d) rents, real estate taxes and other non-royalty amounts due from franchisees, (e) Intellectual Property rights relating to the generation of any of the types of assets listed in this definition, (f) parcels of or interests in Real Property, together with all appurtenant fixtures and equipment, incidental to the ownership, lease or operation thereof, (g) any Equity Interests of any Special Purpose Securitization Subsidiary or any Subsidiary of a Special Purpose Securitization Subsidiary and any rights under any limited liability company agreement, trust agreement, shareholders agreement, organization or formation documents or other agreement entered into in furtherance of the organization of such entity, (h) any equipment, contractual rights with unaffiliated third parties, website domains and associated property and rights necessary for a Special Purpose Securitization Subsidiary to operate in accordance with its stated purposes; (i) any rights and obligations associated with gift card or similar programs, and (j) other assets and property (or proceeds of such assets or property) to the extent customarily included in securitization transactions of the relevant type in the applicable jurisdictions (as determined by the Lead Borrower in good faith).

“Security Agreement” mean that certain First Lien Security Agreement, dated as of the Original Closing Date, among the Existing Lead Borrower, the Collateral Agent, the Subsidiary Borrowers from time to time thereto and the Guarantors from time to time party thereto as may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof.

“Security Agreement Reaffirmation” shall have the meaning provided in Section 6.09.

“Security Document” shall mean and include each of the Security Agreement, the Pledge Agreement and, after the execution and delivery thereof, each Additional Security Document.

“Similar Business” shall mean any business and any services, activities or businesses incidental, or reasonably related or similar to, or complementary to any line of business engaged in by the Lead Borrower and its Restricted Subsidiaries on the Closing Date (after giving effect to the Transaction) or any business activity that is a reasonable extension, development or expansion thereof or ancillary thereto.

“SOFR” with respect to any Business Day shall mean the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York’s website (or any successor source) at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day and, in each case, that has been selected or recommended by the Relevant Governmental Body.

“Solvent” and “Solvency” shall mean, with respect to any Person on any date of determination, that on such date (i) the Fair Value of the assets of such Person and its Subsidiaries on a consolidated basis, is greater than the total amount of liabilities, including contingent liabilities, of such Person and its Subsidiaries, on a consolidated basis (it being understood that the amount of contingent liabilities at any time shall be computed as the amount that,
in 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); (ii) the Present Fair Saleable Value of the assets of such Person and its Subsidiaries on a consolidated basis, is greater than the total amount of liabilities, including contingent liabilities, of such Person and its Subsidiaries on a consolidated basis (it being understood that the amount of contingent liabilities at any time shall be computed as the amount that, in 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); (iii) such Person and its Subsidiaries on a consolidated basis are able to pay their debts and liabilities (including, without limitation, contingent and subordinated liabilities) as they become absolute and mature in the ordinary course of business on their respective stated maturities and are otherwise “solvent” within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances; and (iv) such Person and its Subsidiaries on a consolidated basis will have adequate capital with which to conduct the business they are presently conducting and reasonably anticipate conducting.

“Special Purpose Securitization Subsidiary” shall mean (i) a direct or indirect Subsidiary of the Lead Borrower established in connection with a Permitted Securitization Financing for the acquisition of Securitization Assets or interests therein, and which is organized in a manner (as determined by the Lead Borrower in good faith) intended to reduce the likelihood that it would be substantively consolidated with any of Borrowers or any of the Subsidiaries (other than Special Purpose Securitization Subsidiaries) in the event the Borrowers or any such Subsidiary becomes subject to a proceeding under the Title 11 of the United States Code (or other insolvency law) and (ii) any subsidiary of a Special Purpose Securitization Subsidiary.

“Specified Permitted Adjustments” shall mean all adjustments to Consolidated EBITDA identified in the confidential information memorandum for the Initial Term Loans dated October 1, 2020 to the extent such adjustments, without duplication, continue to be applicable to the reference period (it being understood that such adjustments shall be calculated net of the amount of actual benefits realized or expected to be realized during reference period that are otherwise included in the calculation of Consolidated EBITDA).

“Subsidiaries Guaranty” shall mean that certain First Lien Subsidiaries Guaranty, dated as of the Original Closing Date, among the Existing Lead Borrower, the Administrative Agent, the Subsidiary Borrowers from time to time thereto and the Guarantors from time to time party thereto as may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof.

“Subsidiary” shall mean, as to any Person, (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more Subsidiaries of such Person and (ii) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a 50% Equity Interest at the time.

“Subsidiary Borrowers” shall mean each Credit Party set forth on Schedule 1.01B (and any successor thereto).

“Subsidiary Guarantor” shall mean each Restricted Subsidiary of the Lead Borrower in existence on the Closing Date (after giving effect to the Transaction) other than any Excluded Subsidiary, as well as each Restricted Subsidiary of the Lead Borrower established, created or acquired after the Closing Date which becomes a party to the Subsidiaries Guaranty in accordance with the requirements of this Agreement or the provisions of the Subsidiaries Guaranty.

“Swap Obligation” shall mean, 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.
“Synthetic Lease” shall mean a lease transaction under which the parties intend that (i) the lease will be treated as an “operating lease” by the lessee and (ii) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

“Taxes” shall mean any and all present or future taxes, levies, imposts, duties, deductions, charges, fees, assessments, liabilities or withholdings imposed by any Governmental Authority in the nature of a tax, including interest, penalties and additions to tax with respect thereto.

“Term Loan Commitment” shall mean, for each Lender, its Initial Term Loan Commitment, its Refinancing Term Loan Commitment, its Extended Term Loan Commitment, its Incremental Term Loan Commitment or its Delayed Draw Term Loan Commitment.

“Term Loan Percentage” of a Tranche of Term Loans shall mean, at any time, a fraction (expressed as a percentage), the numerator of which is equal to the aggregate outstanding principal amount of all Term Loans of such Tranche at such time and the denominator of which is equal to the aggregate outstanding principal amount of all Term Loans of all Tranches at such time.

“Term Loans” shall mean the Initial Term Loans, each Incremental Term Loan made pursuant to Section 2.01(b), each Refinancing Term Loan, each Extended Term Loan of a given Extension Series and each Delayed Draw Term Loans.

“Test Period” shall mean each period of four consecutive fiscal quarters of the Lead Borrower (in each case taken as one accounting period).

“Term SOFR” shall mean the forward-looking term rate for any period that is approximately (as determined by the Administrative Agent) as long as any of the Interest Period options set forth in the definition of “Interest Period” and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion.

“Threshold Amount” shall mean $50,000,000.

“Total Commitment” shall mean, at any time, the sum of the Total Initial Term Loan Commitment and the Total Incremental Term Loan Commitment.

“Total Incremental Term Loan Commitment” shall mean, at any time, the sum of the Incremental Term Loan Commitments of each of the Lenders with such a Commitment at such time.

“Total Initial Term Loan Commitment” shall mean, at any time, the sum of the Initial Term Loan Commitments of each of the Lenders at such time.

“Tranche” shall mean the respective facilities and commitments utilized in making Initial Term Loans or Incremental Term Loans made pursuant to one or more tranches designated pursuant to the respective Incremental Term Loan Commitment Agreements in accordance with the relevant requirements specified in Section 2.15 (collectively, the “Initial Tranches” and, each, an “Initial Tranche”), and after giving effect to the Extension pursuant to Section 2.14, shall include any group of Extended Term Loans pursuant to Extended Term Loan Commitments, extended, directly or indirectly, from the same Initial Tranche and having the same Maturity Date, interest rate and fees and after giving effect to any Refinancing Term Loan Amendment pursuant to Section 2.18, shall include any group of Refinancing Term Loans refinancing, directly or indirectly, the same Initial Tranche having the same Maturity Date, interest rate and fees; provided that that only in the circumstances contemplated by Section 2.18(b), Refinancing Term Loans may be made part of a then existing Tranche of Term Loans; provided further that only in the circumstances contemplated by Section 2.15(c), Incremental Term Loans may be made part of a then existing Tranche of Term Loans.
“Transaction” shall mean, collectively, (i) the repayment of all amounts outstanding under the Existing Credit Agreement, (ii) the repayment of all amounts outstanding under the Second Lien Credit Agreement, (iii) the entering into of the Credit Documents and the incurrence of the Initial Term Loans on the Closing Date, (iii) the entering into the amendment to the ABL Credit Agreement and the initial borrowings thereunder (if any), (iv) the funding of acquisition consideration for Permitted Acquisitions, and (v) the payment of all Transaction Costs.

“Transaction Costs” shall mean the fees, premiums and expenses payable by the Lead Borrower and its Subsidiaries in connection with the transactions described in clauses (i) through (v) of the definition of “Transaction”.

“Treasury Services Agreement” shall mean any agreement relating to treasury, depositary and cash management services or automated clearinghouse transfer of funds.

“Type” shall mean the type of Term Loan determined with regard to the interest option applicable thereto, i.e., whether a Base Rate Term Loan or a LIBO Rate Term Loan.

“UCC” shall mean the Uniform Commercial Code as from time to time in effect in the relevant jurisdiction.

“UK Financial Institution” shall mean any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form 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” shall mean the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unfunded Pension Liability” of any Plan subject to Title IV of ERISA shall mean the amount, if any, by which the present value of the accumulated plan benefits under the Plan determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all plan assets of such Plan.

“United States” and “U.S.” shall each mean the United States of America.

“Unrestricted Subsidiary” shall mean (i) on the Closing Date, each Subsidiary of the Borrower listed on Schedule 1.01 and (ii) any other Subsidiary of the Borrower designated by the board of directors of the Borrower as an Unrestricted Subsidiary pursuant to Section 9.16 subsequent to the Closing Date, in each case, except to the extent redesignated as a Restricted Subsidiary in accordance with such Section 9.16; provided, however, that no Subsidiary Borrower shall be designated as an Unrestricted Subsidiary.

“U.S. Dollars” and the sign “$” shall each mean freely transferable lawful money (expressed in dollars) of the United States.

“U.S. GAAP” shall mean generally accepted accounting principles in the United States of America as in effect from time to time; provided that determinations made pursuant to this Agreement in accordance with U.S. GAAP are subject (to the extent provided therein) to Section 13.07(a).

“U.S. Tax Compliance Certificate” shall have the meaning provided in Section 5.04(c).

“Weighted Average Life to Maturity” shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing (i) the then outstanding principal amount of such Indebtedness into (ii) the product obtained by multiplying (x) the amount of each then remaining installment or other required scheduled payments of principal, including payment at final maturity, in respect thereof, by (y) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment.
“Wholly-Owned Domestic Subsidiary” shall mean, as to any Person, any Wholly-Owned Subsidiary of such Person which is a Domestic Subsidiary of such person.

“Wholly-Owned Foreign Subsidiary” shall mean, as to any Person, any Wholly-Owned Subsidiary of such Person which is a Foreign Subsidiary of such Person.

“Wholly-Owned Restricted Subsidiary” shall mean, as to any Person, any Wholly-Owned Subsidiary of such Person which is a Restricted Subsidiary of such Person.

“Wholly-Owned Subsidiary” shall mean, as to any Person, (i) any corporation 100% of whose capital stock is at the time owned by such Person and/or one or more Wholly-Owned Subsidiaries of such Person and (ii) any partnership, association, joint venture or other entity in which such Person and/or one or more Wholly-Owned Subsidiaries of such Person owns 100% of the Equity Interests at such time (other than, in the case of a Foreign Subsidiary with respect to preceding clauses (i) or (ii), director’s qualifying shares and/or other nominal amounts of shares required to be held by Persons other than the Lead Borrower and its Subsidiaries under applicable law).

“Write-Down and Conversion Powers” shall mean, (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 Terms Generally and Certain Interpretive Provisions

The definitions in Section 1.01 shall apply equally to both 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”; and the words “asset” and “property” shall be construed as having 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. 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 of this Agreement unless the context shall otherwise require. All references herein to Sections, paragraphs, clauses, subclauses, Exhibits and Schedules shall be deemed references to Sections, paragraphs, clauses and subclauses of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. All references herein to documents, instruments and other agreements (including the Credit Documents and organizational documents) shall be deemed to include all subsequent amendments, restatements, amendments and restatements, supplements and other modifications thereto, but only to the extent that such amendments, restatements, amendments and restatements, supplements and other modifications are not prohibited by any Credit Document and (b) references to any law, statute, rule or regulation shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).
Limited Condition Transactions

Notwithstanding anything to the contrary in this Agreement, in connection with any action being taken in connection with a Limited Condition Transaction, for purposes of:

(i) determining compliance with any provision of this Agreement which requires the calculation of any financial ratio or test, including the Consolidated First Lien Net Leverage Ratio, Consolidated Senior Secured Net Leverage Ratio and Consolidated Total Net Leverage Ratio (and, for the avoidance of doubt, any financial ratio set forth in Section 2.15(a)); or

(ii) testing availability under baskets set forth in this Agreement (including baskets determined by reference to Consolidated EBITDA or Consolidated Total Assets); or

(iii) determining other compliance with this Agreement (including the determination that no Default or Event of Default (or any type of Default or Event of Default) has occurred, is continuing or would result therefrom);

in each case, at the option of the Lead Borrower (the Lead Borrower’s election to exercise such option in connection with any Limited Condition Transaction, an “LCT Election”), the date of determination of whether any such action is permitted hereunder shall be made (1) in the case of any acquisition (including by way of merger) or similar Investment (including the assumption or incurrence of Indebtedness in connection therewith), at the time of (or on the basis of the Section 9.01 Financials for the most recently ended Test Period at the time of) either (x) the execution of the definitive agreement with respect to such acquisition or Investment or (y) the consummation of such acquisition or Investment, (2) in the case of any Dividend, at the time of (or on the basis of the Section 9.01 Financials for the most recently ended Test Period at the time of) (x) the declaration of such Dividend or (y) the making of such Dividend and (3) in the case of any voluntary or optional payment or prepayment on or redemption or acquisition for value of any Indebtedness subject to Section 10.07(a), at the time of (or on the basis of the Section 9.01 Financials for the most recently ended Test Period at the time of) (x) delivery of irrevocable (which may be conditional) notice with respect to such payment or prepayment or redemption or acquisition of such Indebtedness or (y) the making of such voluntary or optional payment or prepayment on or redemption or acquisition for value of any Indebtedness (the “LCT Test Date”), and if, for the Limited Condition Transaction (and the other transactions to be entered into in connection therewith), the Lead Borrower or any of its Restricted Subsidiaries would have been permitted to take such action on the relevant LCT Test Date in compliance with such ratio, test or basket, such ratio, test or basket shall be deemed to have been complied with. For the avoidance of doubt, if the Lead Borrower has made an LCT Election and any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date would have failed to have been complied with as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in Consolidated EBITDA or Consolidated Total Assets of the Lead Borrower or the Person subject to such Limited Condition Transaction, or prior to the consummation of the relevant action, such baskets, tests or ratios will not be deemed to have failed to have been complied with as a result of such fluctuations. If the Lead Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any calculation of any ratio, test or basket availability with respect to the incurrence of Indebtedness or Liens, the making of any Permitted Investment, mergers, the conveyance, lease or other transfer of all or substantially all of the assets of the Lead Borrower, the prepayment, redemption, purchase, defeasance or other satisfaction of Indebtedness, or the designation of an Unrestricted Subsidiary (each, a “Subsequent Transaction”) following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement or irrevocable notice for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, for purposes of determining whether such Subsequent Transaction is permitted under this Agreement, any such ratio, test or basket shall be required to be satisfied on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated. The Lead Borrower shall be deemed to have made an LCT Election with respect to any Permitted Acquisitions subject to a letter of intent as of the Closing Date.
Section 2.  **Amount and Terms of Credit.**

2.01  **The Commitments.**

(a) Subject to and upon the terms and conditions set forth herein, each Lender with an Initial Term Loan Commitment severally agrees to make an Initial Term Loan or Initial Term Loans to the Borrowers, which Initial Term Loans (i) shall be incurred by the Borrowers pursuant to a single drawing on the Closing Date, (ii) shall be denominated in U.S. Dollars, (iii) shall except as hereinafter provided, at the option of the Lead Borrower, be incurred and maintained as, and/or converted into, one or more Borrowings of Base Rate Term Loans or LIBO Rate Term Loans, provided that except as otherwise specifically provided in Section 2.10(b), all Initial Term Loans comprising the same Borrowing shall at all times be of the same Type, and (iv) shall be made by each such Lender in that aggregate principal amount which does not exceed the Initial Term Loan Commitment of such Lender on the Closing Date (before giving effect to the termination thereof pursuant to Section 4.02(a)). Once repaid, Initial Term Loans may not be reborrowed. All Borrowers shall be jointly and severally liable as borrowers for all Term Loans regardless of which Borrower receives the proceeds thereof.

(b) Subject to and upon the terms and conditions set forth herein, each Lender with an Incremental Term Loan Commitment from time to time severally agrees to make term loans (each, an “Incremental Term Loan” and, collectively, the “Incremental Term Loans”) to the Borrowers, which Incremental Term Loans (i) shall be incurred pursuant to a single drawing on the applicable Incremental Term Loan Borrowing Date, (ii) shall be denominated in U.S. Dollars, (iii) shall, except as hereinafter provided, at the option of the Lead Borrower, be incurred and maintained as, and/or converted into one or more Borrowings of Base Rate Term Loans or LIBO Rate Term Loans; provided that all Incremental Term Loans of a given Tranche made as part of the same Borrowing shall at all times consist of Incremental Term Loans of the same Type, and (iv) shall not exceed for any such Incremental Term Loan Lender at any time of any incurrence thereof, the Incremental Term Loan Commitment of such Incremental Term Loan Lender for such Tranche (before giving effect to the termination thereof on such date pursuant to Section 4.02(b)). Once repaid, Incremental Term Loans may not be reborrowed.

(c) Subject to the terms and conditions set forth herein, each Lender having a Delayed Draw Term Loan Commitment agrees to make Delayed Draw Term Loans in the form of additional Term Loans in U.S. Dollars to the Borrowers from time to time on up to three separate occasions (the date on which such Delayed Draw Term Loans are made, the “Delayed Draw Term Loan Funding Date”) after the Closing Date and prior to the Delayed Draw Term Loan Commitment Expiration Date in an aggregate principal amount not to exceed its Delayed Draw Term Loan Commitment; provided that (i) each Delayed Draw Term Loan made to the Borrowers shall result in an immediate and permanent reduction in the Delayed Draw Term Loan Commitment of each Delayed Draw Term Loan Lender in an amount equal to the aggregate principal amount of the Delayed Draw Term Loans made by such Delayed Draw Term Loan Lender on such date, (ii) the Initial Term Loans and the Delayed Draw Term Loans (if and when funded) shall have the same terms and shall be treated as a single fungible Tranche of Term Loans for all purposes (other than for U.S. federal and applicable state and local income tax purposes) under this Agreement and the other Credit Documents, except that interest on the Delayed Draw Term Loans shall commence to accrue from the applicable date of funding and (iii) each such Lender shall fund, on any funding date of any Delayed Draw Term Loans, its proportionate share of the aggregate amount of such Delayed Draw Term Loans funded on such funding date, such that it holds an equal pro rata share of the Initial Term Loans and each Delayed Draw Term Loan outstanding as of such funding date.

2.02  **Minimum Amount of Each Borrowing**

The aggregate principal amount of each Borrowing of Term Loans under any Tranche shall not be less than the Minimum Borrowing Amount. More than one Borrowing may occur on the same date, but at no time shall there be outstanding more than eight (8) Borrowings of LIBO Rate Term Loans in the aggregate for all Tranches of Term Loans.

2.03  **Notice of Borrowing**
Whenever the Borrowers desire to make a Borrowing of Term Loans hereunder, the Lead Borrower shall give the Administrative Agent at its Notice Office at least one Business Day’s prior written notice (or telephonic notice promptly confirmed in writing) of each Borrowing of Base Rate Term Loans to be made hereunder and at least three Business Days’ (or such shorter period as the Administrative Agent shall agree in its sole and absolute discretion) prior written notice (or telephonic notice promptly confirmed in writing) of each LIBO Rate Term Loan to be made hereunder, provided that (in each case) any such notice shall be deemed to have been given on a certain day only if given before 12:00 Noon (New York City time) on such day (or such later time as the Administrative Agent shall agree in its sole and absolute discretion); provided further that, if the Borrowers wish to request LIBO Rate Loans having an Interest Period other than one, two, three or six months in duration as provided in the definition of “Interest Period,” the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four Business Days prior to the requested date of such Borrowing, conversion or continuation, whereupon the Administrative Agent shall give prompt notice to each Lender with a Commitment of the relevant Tranche of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 11:00 a.m., three Business Days before the requested date of such Borrowing, conversion or continuation, the Administrative Agent shall notify the Lead Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by such Lenders. Each such notice (each, a “Notice of Borrowing”), except as otherwise expressly provided in Section 2.11, shall be irrevocable and shall be in writing, or by telephone promptly confirmed in writing by or on behalf of the Borrowers, in the form of Exhibit A-1 or such other form as may be approved by the Administrative Agent including any form on an electronic platform or electronic transmission as shall be approved by the Administrative Agent, appropriately completed by a Responsible Officer of the relevant Borrower, appropriately completed to specify: (i) the aggregate principal amount of the Term Loans to be made pursuant to such Borrowing, (ii) the date of such Borrowing (which shall be a Business Day), (iii) whether the respective Borrowing shall consist of Initial Term Loans, Incremental Term Loans or Refinancing Term Loans, (iv) whether the Term Loans being made pursuant to such Borrowing are to be initially maintained as Base Rate Term Loans or LIBO Rate Term Loans and (v) in the case of LIBO Rate Term Loans, the Interest Period to be initially applicable thereto. The Administrative Agent shall promptly give each Lender of the Tranche specified in the respective Notice of Borrowing, notice of such proposed Borrowing, of such Lender’s proportionate share thereof (determined in accordance with Section 2.07) and of the other matters required by the immediately preceding sentence to be specified in the Notice of Borrowing.

2.04 Disbursement of Funds

No later than 1:00 P.M. (New York City time) on the date specified in each Notice of Borrowing, each Lender with a Commitment of the relevant Tranche will make available its pro rata portion (determined in accordance with Section 2.07) of each such Borrowing requested to be made on such date. All such amounts will be made available in U.S. Dollars and in immediately available funds at the Payment Office, and the Administrative Agent will make available to the Borrowers at the Payment Office the aggregate of the amounts so made available by the Lenders. Unless the Administrative Agent shall have been notified by any Lender prior to the date of any Borrowing that such Lender does not intend to make available to the Administrative Agent such Lender’s portion of any Borrowing to be made on such date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date of Borrowing and the Administrative Agent may (but shall not be obligated to), in reliance upon such assumption, make available to the Borrowers a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent’s demand therefor, the Administrative Agent shall promptly notify the Lead Borrower and the Borrowers shall immediately pay such corresponding amount to the Administrative Agent. The Administrative Agent also shall be entitled to recover on demand from such Lender or the Borrowers interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrowers until the date such corresponding amount is recovered by the Administrative Agent, at a rate per annum equal to (i) if recovered from such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking rules on interbank compensation and (ii) if recovered from the Borrowers, the rate of interest applicable to the relevant Borrowing, as determined pursuant to Section 2.08. Nothing in this Section 2.04 shall be deemed to relieve any Lender from its obligation to make Term Loans hereunder or to prejudice any rights.
which the Borrowers may have against any Lender as a result of any failure by such Lender to make Term Loans hereunder.

2.05 Notes

(a) Each Borrower’s obligation to pay the principal of, and interest on, the Term Loans made by each Lender shall be evidenced in the Register maintained by the Administrative Agent pursuant to Section 13.15 and shall, if requested by such Lender, also be evidenced by a promissory note duly executed and delivered by the Borrowers substantially in the form of Exhibit B, with blanks appropriately completed in conformity herewith (each, a “Term Note”).

(b) Each Lender will note on its internal records the amount of each Term Loan made by it and each payment in respect thereof and prior to any transfer of any of its Notes will endorse on the reverse side thereof the outstanding principal amount of Term Loans evidenced thereby. Failure to make any such notation or any error in such notation shall not affect the Borrowers’ obligations in respect of such Term Loans.

(c) Notwithstanding anything to the contrary contained above in this Section 2.05 or elsewhere in this Agreement, Notes shall only be delivered to Lenders which at any time specifically request the delivery of such Notes. No failure of any Lender to request or obtain a Note evidencing its Term Loans to the Borrowers shall affect or in any manner impair the joint and several obligations of the Borrowers to pay the Term Loans (and all related Obligations) incurred by the Borrowers which would otherwise be evidenced thereby in accordance with the requirements of this Agreement, and shall not in any way affect the security or guaranties therefor provided pursuant to the various Credit Documents. Any Lender which does not have a Note evidencing its outstanding Term Loans shall in no event be required to make the notations otherwise described in the preceding clause (d). At any time when any Lender requests the delivery of a Note to evidence any of its Term Loans, the Borrowers shall promptly execute and deliver to the respective Lender the requested Note in the appropriate amount or amounts to evidence such Term Loans.

2.06 Interest Rate Conversions

The Borrowers shall have the option to convert, on any Business Day, all or a portion equal to at least the Minimum Borrowing Amount of the outstanding principal amount of Term Loans of a given Tranche made pursuant to one or more Borrowings of one or more Types of Term Loans, into a Borrowing (of the same Tranche) of another Type of Term Loan, provided that (i) except as otherwise provided in Section 2.11, (x) LIBO Rate Term Loans may be converted into Base Rate Term Loans only on the last day of an Interest Period applicable to the Term Loans being converted and no such partial conversion of LIBO Rate Term Loans may be converted into Base Rate Term Loans only on the last day of an Interest Period applicable to the Term Loans being converted and no such partial conversion of LIBO Rate Term Loans, as the case may be, shall reduce the outstanding principal amount of such LIBO Rate Term Loans, made pursuant to a single Borrowing to less than the Minimum Borrowing Amount, (ii) unless the Required Lenders otherwise agree, Base Rate Term Loans may only be converted into LIBO Rate Term Loans if no Event of Default is in existence on the date of the conversion, and (iii) no conversion pursuant to this Section 2.06 shall result in a greater number of Borrowings of LIBO Rate Term Loans than is permitted under Section 2.02. Such conversion shall be effected by the Lead Borrower by giving the Administrative Agent at the Notice Office prior to 12:00 Noon (New York City time) at least three Business Days’ prior notice (in the case of any conversion to or continuation of LIBO Rate Term Loans) or one Business Day’s notice (in the case of any conversion to or continuation of Base Rate Term Loans) (each, a “Notice of Conversion/Continuation”) in the form of Exhibit A-2, appropriately completed to specify the Term Loans of a given Tranche to be so converted, the Borrowing or Borrowings pursuant to which such Term Loans were incurred and, if to be converted into LIBO Rate Term Loans, the Interest Period to be initially applicable thereto. The Administrative Agent shall give each Lender prompt notice of any such proposed conversion affecting any of its Term Loans.

2.07 Pro Rata Borrowings

All Borrowings of Term Loans under this Agreement shall be incurred from the Lenders pro rata on the basis of such Lenders’ Commitments as the case may be. No Lender shall be responsible for any default by any other Lender of its obligation to make Term Loans hereunder, and each Lender shall be obligated to make the
Term Loans provided to be made by it hereunder, regardless of the failure of any other Lender to make its Term Loans hereunder.

2.08 Interest

(a) Each Borrower agrees, jointly and severally, to pay interest in respect of the unpaid principal amount of each Base Rate Term Loan (including with respect to any LIBO Rate Term Loan converted into a Base Rate Term Loan pursuant to Section 2.06 or 2.09) made to the Borrowers hereunder from the date of Borrowing thereof (or, in the circumstances described in the immediately preceding parenthetical, from the date of conversion of the respective LIBO Rate Term Loan into a Base Rate Term Loan) until the earlier of (i) the maturity thereof (whether by acceleration or otherwise) and (ii) the conversion of such Base Rate Term Loan to a LIBO Rate Term Loan pursuant to Section 2.06 or 2.09, as applicable, at a rate per annum which shall be equal to the sum of the Applicable Margin plus the Base Rate, as in effect from time to time.

(b) Each Borrower agrees, jointly and severally, to pay interest in respect of the unpaid principal amount of each LIBO Rate Term Loan made to the Borrowers from the date of Borrowing thereof until the earlier of (i) the maturity thereof (whether by acceleration or otherwise) and (ii) the conversion of such LIBO Rate Term Loan to a Base Rate Term Loan pursuant to Section 2.06 or 2.09, as applicable, at a rate per annum which shall, during each Interest Period applicable thereto, be equal to the sum of the Applicable Margin plus the applicable LIBO Rate for such Interest Period.

(c) Upon the occurrence and during the continuance of any Event of Default under Section 11.01 (x) overdue principal and, to the extent permitted by law, overdue interest in respect of each Term Loan shall bear interest at a rate per annum equal to (i) for Base Rate Term Loans and associated interest, 2.00% per annum in excess of the Applicable Margin for Base Rate Term Loans plus the Base Rate, (ii) for LIBO Rate Term Loans and associated interest, 2.00% per annum in excess of the Applicable Margin for LIBO Rate Term Loans plus the LIBO Rate and (y) overdue amounts with respect to fees shall bear interest at a rate per annum equal to 2.00% per annum in excess of the Applicable Margin for Base Rate Term Loans plus the Base Rate, each as in effect from time to time, in each case with such interest to be payable on demand.

(d) Accrued (and theretofore unpaid) interest shall be calculated daily and payable (i) on each Interest Payment Date and (ii) on (w) the date of any conversion of a LIBO Rate Term Loan to a Base Rate Term Loan (on the amount so converted) prior to the last day of the Interest Period applicable thereto, (x) the date of any prepayment or repayment thereof (on the amount prepaid or repaid), (y) at maturity (whether by acceleration or otherwise) and (z) after such maturity, on demand.

(e) Upon each Interest Determination Date, the Administrative Agent shall determine the LIBO Rate for each Interest Period applicable to the respective LIBO Rate Term Loans and shall promptly notify the Lead Borrower and the Lenders thereof. Each such determination shall, absent manifest error, be final and conclusive and binding on all parties hereto.

(f) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Base Rate at times when the Base Rate is based on the Prime 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 Base Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

2.09 Interest Periods

At the time the Lead Borrower gives any Notice of Borrowing or Notice of Conversion/Continuation in respect of the making of, or conversion into, any LIBO Rate Term Loan (in the case of the initial Interest Period applicable thereto) or prior to 12:00 Noon (New York City time) on the third Business Day prior to the expiration of an Interest Period applicable to such LIBO Rate Term Loan (in the case of any subsequent Interest Period), the Lead Borrower shall have the right to elect the interest period (each, an “Interest Period”) applicable to
such LIBO Rate Term Loan, which Interest Period shall, at the option of the Lead Borrower be a one, two, three or six month period, or, if agreed to by all Lenders, a twelve month period, or, if agreed to by the Administrative Agent a period less than one month; provided that (in each case):

(i) all LIBO Rate Term Loans comprising a Borrowing shall at all times have the same Interest Period;

(ii) the initial Interest Period for any LIBO Rate Term Loan shall commence on the date of Borrowing of such LIBO Rate Term Loan (including, in the case of LIBO Rate Term Loans, the date of any conversion thereto from a Borrowing of Base Rate Term Loans and each Interest Period occurring thereafter in respect of such LIBO Rate Term Loan shall commence on the day on which the next preceding Interest Period applicable thereto expires;

(iii) if any Interest Period for a LIBO Rate Term Loan begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of such calendar month;

(iv) if any Interest Period for a LIBO Rate Term Loan would otherwise expire on a day which is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided, however, that if any Interest Period for a LIBO Rate Term Loan would otherwise expire on a day which is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day;

(v) unless the Required Lenders otherwise agree, no Interest Period for a LIBO Rate Term Loan may be selected at any time when a Default or an Event of Default is then in existence; and

(vi) no Interest Period in respect of any Borrowing of any Tranche of Term Loans shall be selected which extends beyond the Maturity Date therefor.

With respect to any LIBO Rate Term Loans, at the end of any Interest Period applicable to a Borrowing thereof, the Lead Borrower may elect to split the respective Borrowing of a single Type under a single Tranche into two or more Borrowings of different Types under such Tranche or combine two or more Borrowings under a single Tranche into a single Borrowing of the same Type under such Tranche, in each case, by having the Lead Borrower give notice thereof together with its election of one or more Interest Periods, in each case so long as each resulting Borrowing (x) has an Interest Period which complies with the foregoing requirements of this Section 2.09, (y) has a principal amount which is not less than the Minimum Borrowing Amount applicable to Borrowings of the respective Type and Tranche, and (z) does not cause a violation of the requirements of Section 2.02. If by 12:00 Noon (New York City time) on the third Business Day prior to the expiration of any Interest Period applicable to a Borrowing of LIBO Rate Term Loans, the Lead Borrower has failed to elect, or is not permitted to elect, a new Interest Period to be applicable to such LIBO Rate, the Lead Borrower shall be deemed to have elected in the case of LIBO Rate Term Loans, to convert such LIBO Rate Term Loans into Base Rate Term Loans with such conversion to be effective as of the expiration date of such current Interest Period.

2.10 Increased Costs, Illegality, Inability to Determine Rates, etc.

(a) In the event that any Lender shall have determined (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto but, with respect to clause (i) below, may be made only by the Administrative Agent):

(i) on any Interest Determination Date that, by reason of any changes arising after the date of this Agreement affecting the interbank Eurodollar market, adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided for in the definition of LIBO Rate;
(ii) at any time, that such Lender shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to any LIBO Rate Term Loan because of any change since the Closing Date in any applicable law or governmental rule, regulation, order, guideline or request (whether or not having the force of law) or in the official interpretation or administration thereof and including the introduction of any new law or governmental rule, regulation, order, official guideline or request, such as, but not limited to: (A) any additional Tax imposed on any Lender (except Indemnified Taxes or Other Taxes indemnified under Section 5.04 or any Excluded Taxes) or (B) a change in official reserve requirements, but, in all events, excluding reserves required under Regulation D to the extent included in the computation of the LIBO Rate; or

(iii) at any time, that the making or continuance of any LIBO Rate Term Loan has been made (x) unlawful by any law or governmental rule, regulation or order, (y) impossible by compliance by any Lender in good faith with any governmental request (whether or not having force of law) or (z) impracticable as a result of a contingency occurring after the Closing Date which materially and adversely affects the interbank Eurodollar market;

then, and in any such event, such Lender (or the Administrative Agent, in the case of clause (i) above) shall promptly give notice (by telephone promptly confirmed in writing) to the Lead Borrower and, except in the case of clause (i) above, to the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each of the other Lenders). Thereafter (x) in the case of clause (i) above, LIBO Rate Term Loans shall no longer be available until such time as the circumstances giving rise to such notice by the Administrative Agent no longer exist, and any Notice of Borrowing or Notice of Conversion/Continuation given by the Lead Borrower with respect to LIBO Rate Term Loans which have not yet been incurred (including by way of conversion) shall be deemed rescinded by the Borrowers, (y) in the case of clause (ii) above, the Borrowers agree, jointly and severally, to pay to such Lender, upon such Lender’s written request therefor, such additional amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion shall determine) as shall be required to compensate such Lender for such increased costs or reductions in amounts received or receivable hereunder (a written notice setting forth the additional amounts owed to such Lender, showing in reasonable detail the basis for the calculation thereof, shall be submitted to the Borrowers by such Lender and shall, absent manifest error, be final and conclusive and binding on all the parties hereto), (z) in the case of clause (iii) above, the Borrowers shall take one of the actions specified in Section 2.10(b) as promptly as possible and, in any event, within the time period required by law.

(b) At any time that any LIBO Rate Term Loan is affected by the circumstances described in Section 2.10(a)(ii), the Lead Borrower may, and in the case of a LIBO Rate Term Loan affected by the circumstances described in Section 2.10(a)(iii), the Lead Borrower shall, either (x) if the affected LIBO Rate Term Loan is then being made initially or pursuant to a conversion, cancel such Borrowing by giving the Administrative Agent telephonic notice (confirmed in writing) on the same date that the Lead Borrower was notified by the affected Lender or the Administrative Agent pursuant to Section 2.10(a)(ii) or (iii) or (y) if the affected LIBO Rate Term Loan is then outstanding, upon at least three Business Days’ written notice to the Administrative Agent, require the affected Lender to convert such LIBO Rate Term Loan into a Base Rate Term Loan, provided that if more than one Lender is affected at any time, then all affected Lenders must be treated the same pursuant to this Section 2.10(b).

(c) If any Lender determines that after the Closing Date the introduction of or any change in any applicable law or governmental rule, regulation, order, guideline, directive or request (whether or not having the force of law) concerning capital or liquidity requirements, or any change in interpretation or administration thereof by the NAIC or any Governmental Authority, central bank or comparable agency, will have the effect of increasing the amount of capital or liquidity required or expected to be maintained by such Lender or any corporation controlling such Lender based on the existence of such Lender’s Commitments hereunder or its obligations hereunder, then the Borrowers, jointly and severally, agree to pay to such Lender, upon its written demand therefor, such additional documented amounts as shall be required to compensate such Lender or such other corporation for the increased cost to such Lender or such other corporation or the reduction in the rate of return to such Lender or such other corporation as a result of such increase of capital. In determining such additional amounts, each Lender will act reasonably and in good faith and will use averaging and attribution methods which are reasonable, provided
that such Lender’s determination of compensation owing under this Section 2.10(c) shall, absent manifest error, be final and conclusive and binding on all the parties hereto. Each Lender, upon determining that any additional amounts will be payable pursuant to this Section 2.10(c), will give prompt written notice thereof to the Lead Borrower, which notice shall show in reasonable detail the basis for calculation of such additional amounts.

(d) Notwithstanding anything in this Agreement 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 regulatory authorities, in each case pursuant to Basel III ((x) and (y) collectively referred to as “Dodd-Frank and Basel III”), shall be deemed to be a change after the Closing Date in a requirement of law or government rule, regulation or order, regardless of the date enacted, adopted, issued or implemented (including for purposes of this Section 2.10).

Notwithstanding the above, a Lender will not be entitled to demand compensation for any increased cost or reduction set forth in this Section 2.10 at any time if it is not the general practice and policy of such Lender to demand such compensation from similarly situated borrowers in similar circumstances at such time.

(e) Notwithstanding anything to the contrary in this Agreement or any other Credit Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Lead Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Lead Borrower) that the Lead Borrower or Required Lenders (as applicable) have determined, that:

(ii) adequate and reasonable means do not exist for ascertaining LIBOR for any Interest Period hereunder or any other tenors of LIBOR, including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(iii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide LIBOR after such specific date (such specific date, the “Scheduled Unavailability Date”); or

(iv) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over such administrator has made a public statement announcing that all Interest Periods and other tenors of LIBOR are no longer representative; or

(v) syndicated loans currently being executed, or that include language similar to that contained in this Section 2.10, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR;

then, in the case of clauses (i)-(iii) above, on a date and time determined by the Administrative Agent (any such date, the “LIBOR Replacement Date”), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and shall occur reasonably promptly upon the occurrence of any of the events or circumstances under clauses (i), (ii) or (iii) above and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, LIBOR will be replaced hereunder and under any Credit Document with, subject to the proviso below, the first available alternative set forth in the order below for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Credit Document (the “LIBOR Successor Rate”; and any such rate before giving effect to the Related Adjustment, the “Pre-Adjustment Successor Rate”):
(x) Term SOFR plus the Related Adjustment; and

(y) SOFR plus the Related Adjustment;

and in the case of clause (iv) above, the Lead Borrower and Administrative Agent may amend this Agreement solely for the purpose of replacing LIBOR under this Agreement and under any other Credit Document in accordance with the definition of “LIBOR Successor Rate” and such amendment will become effective at 5:00 p.m., on the fifth Business Day after the Administrative Agent shall have notified all Lenders and the Lead Borrower of the occurrence of the circumstances described in clause (iv) above unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to the implementation of a LIBOR Successor Rate pursuant to such clause;

provided that, if the Administrative Agent determines that Term SOFR has become available, is administratively feasible for the Administrative Agent and would have been identified as the Pre-Adjustment Successor Rate in accordance with the foregoing if it had been so available at the time that the LIBOR Successor Rate then in effect was so identified, and the Administrative Agent notifies the Lead Borrower and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Pre-Adjustment Successor Rate shall be Term SOFR and the LIBOR Successor Rate shall be Term SOFR plus the relevant Related Adjustment.

The Administrative Agent will promptly (in one or more notices) notify the Lead Borrower and each Lender of (x) any occurrence of any of the events, periods or circumstances under clauses (i) through (iii) above, (y) a LIBOR Replacement Date and (z) the LIBOR Successor Rate.

Any LIBOR Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any LIBOR Successor Rate as so determined would otherwise be less than 0.75%, the LIBOR Successor Rate will be deemed to be 0.75% for the purposes of this Agreement and the other Credit Documents.

In connection with the implementation of a LIBOR Successor Rate, the Administrative Agent will have the right to make LIBOR Successor Rate Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit Document, any amendments implementing such LIBOR Successor Rate Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such LIBOR Successor Rate Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

If the events or circumstances of the type described in 3.03(c)(i)-(iii) have occurred with respect to the LIBOR Successor Rate then in effect, then the successor rate thereto shall be determined in accordance with the definition of “LIBOR Successor Rate.”

(f) Notwithstanding anything to the contrary herein, (i) after any such determination by the Administrative Agent or receipt by the Administrative Agent of any such notice described under Section 2.10(e)(i)-(iii), as applicable, if the Administrative Agent determines that none of the LIBOR Successor Rates is available or prior to the LIBOR Replacement Date, (ii) if the events or circumstances described in Section 2.10(e)(iv) have occurred but none of the LIBOR Successor Rates is available, or (iii) if the events or circumstances of the type described in Section 2.10(e)(i)-(iii) have occurred with respect to the LIBOR Successor Rate then in effect and the Administrative Agent determines that none of the LIBOR Successor Rates is available, then in each case, the Administrative Agent and the Lead Borrower may amend this Agreement solely for the purpose of replacing LIBOR or any then current LIBOR Successor Rate in accordance with this Section 2.10 at the end of any Interest Period,
relevant interest payment date or payment period for interest calculated, as applicable, with another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any Related Adjustments and any other mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a LIBOR Successor Rate. Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

If, at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, no LIBOR Successor Rate has been determined in accordance with clauses (e) or (f) of this Section 2.10 and the circumstances under clauses (e)(i) or (e)(iii) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Lead Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBO Rate Term Loan shall be suspended, (to the extent of the affected LIBO Rate Term Loan, Interest Periods, interest payment dates or payment periods), and (y) the LIBO Rate Term Loan component shall no longer be utilized in determining the Base Rate, until the LIBOR Successor Rate has been determined in accordance with clauses (e) or (f). Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion from or into a LIBO Rate Term Loan (to the extent of the affected LIBO Rate Term Loan, Interest Periods, interest payment dates or payment periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Term Loans (subject to the foregoing clause (y)) in the amount specified therein.

2.11 Compensation

The Borrowers, jointly and severally, agree to compensate each Lender, upon its written request (which request shall set forth in reasonable detail the basis for requesting such compensation and the calculation of the amount of such compensation), for all losses, expenses and liabilities (including, without limitation, any loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund its LIBO Rate Term Loans but excluding loss of anticipated profits (and without giving effect to the minimum “LIBO Rate”)) which such Lender may sustain: (i) if for any reason (other than a default by such Lender or the Administrative Agent) a Borrowing of, or conversion from or into, LIBO Rate Term Loans does not occur on a date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation; (ii) if any prepayment or repayment (including any prepayment or repayment made pursuant to Section 5.01, Section 5.02 or as a result of an acceleration of the Term Loans pursuant to Section 11) or conversion of any of its LIBO Rate Term Loans occurs on a date which is not the last day of an Interest Period with respect thereto; (iii) if any prepayment of any LIBO Rate Term Loans is not made on any date specified in a notice of prepayment given by the Lead Borrower; or (iv) as a consequence of any other default by the Borrowers to repay LIBO Rate Term Loans when required by the terms of this Agreement or any Note held by such Lender.

2.12 Change of Lending Office

Each Lender agrees that on the occurrence of any event giving rise to the operation of Section 2.10(a)(ii) or (iii), Section 2.10(c) or Section 5.04 or Section 13.01(a)(i) with respect to such Lender, it will, if requested by the Lead Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Term Loans affected by such event, provided that such designation is made on such terms that such Lender and its lending office suffer no economic, legal or regulatory disadvantage, with the object of avoiding the consequence of the event giving rise to the operation of such Section. Nothing in this Section 2.12 shall affect or postpone any of the obligations of the Borrowers or the right of any Lender provided in Sections 2.10, 5.04 and 13.01(a)(ii).
2.13 Replacement of Lenders

(x) If any Lender becomes a Defaulting Lender, (y) upon the occurrence of an event giving rise to the operation of Section 2.10(a)(i) or (iii), Section 2.10(c) or Section 5.04 or Section 13.01(a)(i) with respect to such Lender or (z) in the case of a refusal by a Lender to consent to certain proposed changes, waivers, discharges or terminations with respect to this Agreement which have been approved by the Required Lenders as (and to the extent) provided in Section 13.12(b), the Lead Borrower shall have the right, if no Event of Default then exists (or, in the case of preceding clause (z), will exist immediately after giving effect to such replacement), to replace such Lender (the “Replaced Lender”) with one or more other Eligible Transferees, none of whom shall constitute a Defaulting Lender at the time of such replacement (collectively, the “Replacement Lender”) and each of whom shall be required to be reasonably acceptable to the Administrative Agent (to the extent the Administrative Agent’s consent would be required for an assignment to such Replacement Lender pursuant to Section 13.04); provided that (i) at the time of any replacement pursuant to this Section 2.13, the Replacement Lender shall enter into one or more Assignment and Assumption Agreements pursuant to Section 13.04(b) (and with all fees payable pursuant to said Section 13.04(b) to be paid by the Replacement Lender and/or the Replaced Lender (as may be agreed to at such time by and among the Lead Borrower, the Replacement Lender and the Replaced Lender) pursuant to which the Replacement Lender shall acquire all of the Commitments and outstanding Term Loans of, the Replaced Lender and, in connection therewith, shall pay to (x) the Replaced Lender in respect thereof an amount equal to the sum of (I) an amount equal to the principal of, and all accrued interest on, all outstanding Term Loans of the respective Replaced Lender under each Tranche with respect to which such Replaced Lender is being replaced and (II) an amount equal to all accrued, but theretofore unpaid, Fees owing to the Replaced Lender pursuant to Section 4.01 and (ii) all obligations of the Borrowers due and owing to the Replaced Lender at such time (other than those specifically described in clause (i) above in respect of which the assignment purchase price has been, or is concurrently being, paid) shall be paid in full to such Replaced Lender concurrently with such replacement. Upon receipt by the Replaced Lender of all amounts required to be paid to it pursuant to this Section 2.13, the Administrative Agent shall be entitled (but not obligated) and authorized to execute an Assignment and Assumption Agreement on behalf of such Replaced Lender, and any such Assignment and Assumption Agreement so executed by the Administrative Agent and the Replacement Lender shall be effective for purposes of this Section 2.13 and Section 13.04. Upon the execution of the respective Assignment and Assumption Agreement, the payment of amounts referred to in clauses (i) and (ii) above, recordation of the assignment on the Register pursuant to Section 13.15 and, if so requested by the Replacement Lender, delivery to the Replacement Lender of the appropriate Note or Notes executed by the Borrowers, (x) the Replacement Lender shall become a Lender hereunder and the Replaced Lender shall cease to constitute a Lender hereunder, except with respect to indemnification provisions under this Agreement (including, without limitation, Sections 2.10, 2.11, 5.04, 12.07 and 13.01), which shall survive as to such Replaced Lender with respect to facts and circumstances occurring prior to the effective date of such replacement. In connection with any replacement of Lenders pursuant to, and as contemplated by, this Section 2.13, each Borrower hereby irrevocably authorizes the Lead Borrower to take all necessary action, in the name of such Borrower, as described above in this Section 2.13 in order to effect the replacement of the respective Lender or Lenders in accordance with the preceding provisions of this Section 2.13.

2.14 Extended Term Loans

(a) Notwithstanding anything to the contrary in this Agreement, subject to the terms of this Section 2.14, the Lead Borrower may at any time and from time to time when no Event of Default then exists request that all or a portion of the Initial Term Loans, the Extended Term Loans or any Tranche of Incremental Term Loans (each, an “Existing Initial Term Loan Tranche,” “Existing Extended Term Loan Tranche” and “Existing Incremental Term Loan Tranche,” respectively), together with any related outstandings, be converted to extend the scheduled maturity date(s) of any payment of principal with respect to all or any portion of the principal amount (and related outstandings) of such Initial Term Loans, Extended Term Loans or Incremental Term Loans (any such Term Loans which have been so converted, “Extended Initial Term Loans,” “Extended Existing Term Loans” and “Extended Incremental Term Loans,” respectively) and to provide for other terms consistent with this Section 2.14. In order to establish any Extended Term Loans, the Lead Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Term Loan Tranche) (each, an “Extension Request”) setting forth the proposed terms of the Extended Term Loans to be established, which shall
(x) be identical as offered to each Lender under the relevant Existing Term Loan Tranche (including as to the proposed interest rates and fees payable) and
(y) be identical to the Term Loans under the relevant Existing Term Loan Tranche from which such Extended Term Loans are to be converted, except that:
(i) all or any of the scheduled amortization payments of principal of the Extended Term Loans may be delayed to later dates than the scheduled
amortization payments of principal of the Term Loans of such Existing Term Loan Tranche to the extent provided in the applicable Extension Amendment;
(ii) the Effective Yield with respect to the Extended Term Loans (whether in the form of interest rate margin, upfront fees, original issue discount or
otherwise) may be different than the Effective Yield for the Term Loans of such Existing Term Loan Tranche to the extent provided in the applicable
Extension Amendment; (iii) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Latest Maturity
Date that is in effect on the effective date of the applicable Extension Amendment (immediately prior to the establishment of such Extended Term Loans);
(iv) Extended Term Loans may have mandatory prepayment terms which provide for the application of proceeds from mandatory prepayment events to be
made first to prepay the Term Loans under the Existing Term Loan Tranche from which such Extended Term Loans have been converted before applying
any such proceeds to prepay such Extended Term Loans; and (v) Extended Term Loans may have optional prepayment terms (including call protection and
terms which allow Term Loans under the relevant Existing Term Loan Tranche from which such Extended Term Loans have been converted to be
optionally prepaid prior to the prepayment of such Extended Term Loans) as may be agreed by the Lead Borrower and the Lenders thereof; provided that
no Extended Term Loans may be optionally prepaid prior to the date on which all Term Loans with an earlier final stated maturity (including Term Loans
under the Existing Term Loan Tranche from which such Term Loans were converted) are repaid in full, unless such optional prepayment is accompanied by
a pro rata optional prepayment of such other Term Loans; provided, however, that (A) in no event shall the final maturity date of any Extended Term Loans
of a given Extension Series at the time of establishment thereof be earlier than the then Latest Maturity Date of any other Term Loans hereunder and (B)
the Weighted Average Life to Maturity of any Extended Term Loans of a given Extension Series at the time of establishment thereof shall be no shorter
than the remaining Weighted Average Life to Maturity of any other Tranche of Term Loans then outstanding. Any Extended Term Loans converted
pursuant to any Extension Request shall be designated a series (each, an “Extension Series”) of Extended Term Loans, as applicable, for all purposes of this
Agreement; provided that any Extended Term Loans converted from an Existing Term Loan Tranche may, to the extent provided in the applicable
Extension Amendment, be designated as an increase in any previously established Extension Series with respect to such Existing Term Loan Tranche.

(b) [Reserved]

c) The Lead Borrower shall provide the applicable Extension Request at least ten (10) Business Days prior to the date on which Lenders under
the Existing Term Loan Tranche are requested to respond, and shall agree to such procedures, if any, as may be established by, or acceptable to, the
Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.14. No Lender shall have any obligation to agree to have
any of its Term Loans of any Existing Term Loan Tranche converted into Extended Term Loans pursuant to any Extension Request. Any Lender (each, an
“Extending Term Loan Lender”) wishing to have all or a portion of its Term Loans under the Existing Term Loan Tranche subject to such Extension
Request converted into Extended Term Loans shall notify the Administrative Agent (each, an “Extension Election”) on or prior to the date specified in such
Extension Request of the amount of its Term Loans under the Existing Term Loan Tranche which it has elected to request be converted into Extended Term
Loans (subject to any minimum denomination requirements imposed by the Administrative Agent). Any Lender that does not respond to the Extension
Request on or prior to the date specified therein shall be deemed to have rejected such Extension Request. In the event that the aggregate principal amount
of Term Loans under the applicable Existing Term Loan Tranche exceeds the amount of Extended Term Loans requested pursuant to such Extension
Request, Term Loans of such Existing Term Loan Tranche, subject to such Extension Elections shall either (i) be converted to Extended Term Loans of
such Existing Term Loan Tranche on a pro rata basis based on the aggregate principal amount of Term Loans of such Existing Term Loan Tranche included
in such Extension Elections or (ii) to the extent such option is expressly set forth in the applicable Extension Request, be converted to Extended Term
Loans upon an increase in the amount of Extended Term Loans so that such excess does not exist.
provisions in the definitive passu plus shall not exceed the sum of (x) the greater of $175,000,000 and 100.0% of Consolidated EBITDA for the most recently ended four fiscal quarter period,

Term Loan Commitments provided pursuant to this Commitment thereunder (including Eligible Transferees who will become Lenders) of at least $25,000,000, (v) the aggregate amount of all Incremental Incremental Term Loan Commitment Agreement shall be in a minimum aggregate amount for all Lenders which provide an Incremental Term Loan Commitments shall be denominated in U.S. Dollars, (iv) the amount of Incremental Term Loan Commitments made available pursuant to a given Incremental Term Loan Commitment Agreement shall be in a minimum aggregate amount for all Lenders which provide an Incremental Term Loan Commitment thereunder (including Eligible Transferees who will become Lenders) of at least $25,000,000, (v) the aggregate amount of all Incremental Term Loan Commitments provided pursuant to this Section 2.15 after the Closing Date and all Indebtedness incurred pursuant to Section 10.04(xxvii) shall not exceed the sum of (x) the greater of $175,000,000 and 100.0% of Consolidated EBITDA for the most recently ended four fiscal quarter period, plus (y) the sum of all voluntary prepayments of Term Loans, Refinancing Notes and Indebtedness incurred pursuant to Section 10.04(xxvii) that ranks pari passu with the Term Loans (limited, in the case of any voluntary prepayment in accordance with the provisions of Section 2.19 or Section 2.20 or similar provisions in the definitive

2.15 Incremental Term Loan Commitments

(a) The Lead Borrower shall have the right, in consultation and coordination with the Administrative Agent as to all of the matters set forth below in this Section 2.15, but without requiring the consent of any of the Lenders, to request at any time and from time to time that one or more Lenders (and/or one or more other Persons which are Eligible Transferees and which will become Lenders) provide Incremental Term Loan Commitments to the Borrowers and, subject to the terms and conditions contained in this Agreement and in the relevant Incremental Term Loan Commitment Agreement, make Incremental Term Loans incurred pursuant thereto; it being understood and agreed, however, that (i) no Lender shall be obligated to provide an Incremental Term Loan Commitment as a result of any such request by the Lead Borrower, (ii) any Lender (including any Eligible Transferee who will become a Lender) may so provide an Incremental Term Loan Commitment without the consent of any other Lender, (iii) each Tranche of Incremental Term Loan Commitments so extended shall cease to be a part of the Tranche they were a part of immediately prior to the Extension.

(e) Extensions consummated by the Borrowers pursuant to this Section 2.14 shall not constitute voluntary or mandatory payments or prepayments for purposes of this Agreement. The Administrative Agent and the Lenders hereby consent to each Extension and the other transactions contemplated by this Section 2.14 (including, for the avoidance of doubt, payment of any interest or fees in respect of any Extended Term Loans on such terms as may be set forth in the applicable Extension Request) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Sections 5.01, 5.02, 5.03, 13.02 or 13.06) or any other Credit Document that may otherwise prohibit any Extension or any other transaction contemplated by this Section 2.14, provided that such consent shall not be deemed to be an acceptance of any Extension Request.

(f) Each of the parties hereto hereby agrees that this Agreement and the other Credit Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of any Extended Term Loans incurred pursuant thereto, (ii) modify the Scheduled Repayments set forth in Section 5.02(a)(i) with respect to any Existing Term Tranche subject to an Extension Election to reflect a reduction in the principal amount of the Term Loans thereunder in an amount equal to the aggregate principal amount of the Extended Term Loans converted pursuant to the applicable Extension (with such amount to be applied ratably to reduce Scheduled Repayments of such Term Loans required pursuant to Section 5.02(g)(i)), (iii) make such other changes to this Agreement and the other Credit Documents consistent with the provisions and intent of Section 13.12(q)(i), (iv) establish new Tranches or sub-Tranches in respect of Term Loans so extended and such technical amendments as may be necessary in connection with the establishment of such new Tranches or sub-Tranches, in each case on terms consistent with this Section 2.14, and (v) effect such other amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Lead Borrower, to effect the provisions of this Section 2.14, and each Lender hereby expressly authorizes the Administrative Agent to enter into any such Extension Amendment.
documentation with respect to such Refinancing Notes or other Indebtedness, to the cash payment made by any Credit Party or Restricted Subsidiary therefor) (in each case other than with the proceeds of long-term Indebtedness (other than Indebtedness under the ABL Credit Agreement)) in each case prior to the date of incurrence of any such Incremental Term Loan Commitments plus (z) an unlimited amount so long as the Consolidated First Lien Net Leverage Ratio, determined on a Pro Forma Basis as of such date would not exceed 3.75 to 1.00 (it being understood and agreed that the Lead Borrower may elect to use clause (z) above prior to clauses (x) or (y) above or any combination thereof, and any portion of any Incremental Term Loans incurred in reliance on clause (x) above shall be reclassified, as the Lead Borrower may elect from time to time, as incurred under clause (z) above if the Lead Borrower meets the ratio set forth therein at such time on a Pro Forma Basis); (vi) the proceeds of all Incremental Term Loans incurred by the Borrowers may be used for any purpose not prohibited under this Agreement, (vii) each Incremental Term Loan Commitment Agreement shall specifically designate, with the approval of the Administrative Agent, the Tranche of the Incremental Term Loan Commitments being provided thereunder (which Tranche shall be a new Tranche i.e., not the same as any existing Tranche of Incremental Term Loans, Incremental Term Loan Commitments or other Term Loans, unless the requirements of Section 2.15(c) are satisfied), (viii) if to be incurred as a new Tranche of Incremental Term Loans, such Incremental Term Loans shall have the same terms as each other Tranche of Term Loans as in effect immediately prior to the effectiveness of the relevant Incremental Term Loan Agreement, except as to purpose (which is subject to the requirements of preceding clause (vi)) and optional prepayment provisions and mandatory prepayment provisions (which are governed by Section 5.02; provided that each new Tranche of Incremental Term Loans shall be entitled to share in mandatory prepayments on a pro rata basis with all other Tranches of Term Loans (unless the holders of the Incremental Term Loans of any Tranche agree to take a lesser share of any such prepayments)); provided, however, that (I) the maturity and amortization of such Tranche of Incremental Term Loans may differ, so long as such Tranche of Incremental Term Loans shall have (a) a Maturity Date of no earlier than the Latest Maturity Date as of the date such Indebtedness was incurred and (b) a Weighted Average Life to Maturity of no less than the Weighted Average Life to Maturity as then in effect for the Tranche of then outstanding Term Loans with the then longest Weighted Average Life to Maturity, (II) the Effective Yield applicable to such Tranche of Incremental Term Loans may differ from that applicable to the then outstanding Tranches of Term Loans, with the Effective Yield applicable thereto to be specified in the respective Incremental Term Loan Commitment Agreement; provided, however, that if the Effective Yield for any such Incremental Term Loans exceeds the Effective Yield then applicable to any then outstanding Initial Term Loans by more than 0.50% per annum, the Applicable Margins for all then outstanding Initial Term Loans shall be increased as of such date in accordance with the requirements of the definition of “Applicable Margin” and (III) such Tranche of Incremental Term Loans may have other terms (other than those described in preceding clauses (I) and (II)) that may differ from those of other Tranches of Term Loans, including, without limitation, as to the application of optional or voluntary prepayments among the Incremental Term Loans and the existing Term Loans and such other differences as may be reasonably satisfactory to the Administrative Agent, (ix) all Incremental Term Loans (and all interest, fees and other amounts payable thereon) incurred by the Borrowers shall be Obligations of the Borrowers under this Agreement and the other applicable Credit Documents and shall be secured by the Security Agreements, and guaranteed under the Subsidiaries Guaranty, on a pari passu basis with all other Term Loans secured by the Security Agreement and guaranteed under the Subsidiaries Guaranty, (x) each Lender (including any Eligible Transferee who will become a Lender) agreeing to provide an Incremental Term Loan Commitment pursuant to an Incremental Term Loan Commitment Agreement shall, subject to the satisfaction of the relevant conditions set forth in this Agreement, make Incremental Term Loans under the Tranche specified in such Incremental Term Loan Commitment Agreement as provided in Section 2.01(b) and such Term Loans shall thereafter be deemed to be Incremental Term Loans under such Tranche for all purposes of this Agreement and the other applicable Credit Documents and (xi) all Incremental Term Loan Commitment Requirements are satisfied.

(b) At the time of the provision of Incremental Term Loan Commitments pursuant to this Section 2.15, the Borrowers, the Administrative Agent and each such Lender or other Eligible Transferee which agrees to provide an Incremental Term Loan Commitment (each, an “Incremental Term Loan Lender”) shall execute and deliver to the Administrative Agent an Incremental Term Loan Commitment Agreement substantially in the form of Exhibit L (appropriately completed), with the effectiveness of the Incremental Term Loan Commitment provided therein to occur on the date on which (w) a fully executed copy of such Incremental Term Loan Commitment Agreement shall have been delivered to the Administrative Agent, (x) all fees required to be paid in connection therewith at the time of such effectiveness shall have been paid (including, without limitation, any agreed
upon upfront or arrangement fees owing to the Administrative Agent to the extent it served as the arranger for the Incremental Term Loan Commitments), (y) all Incremental Term Loan Commitment Requirements are satisfied, and (z) all other conditions set forth in this Section 2.15 shall have been satisfied. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Incremental Term Loan Commitment Agreement, and at such time, (i) Schedule 2.01 shall be deemed modified to reflect the revised Incremental Term Loan Commitments of the affected Lenders and (ii) to the extent requested by any Incremental Term Loan Lender, Term Notes will be issued at the Borrowers’ expense to such Incremental Term Loan Lender, to be in conformity with the requirements of Section 2.05 (with appropriate modification) to the extent needed to reflect the new Incremental Term Loans made by such Incremental Term Loan Lender.

(c) Notwithstanding anything to the contrary contained above in this Section 2.15, the Incremental Term Loan Commitments provided by an Incremental Term Loan Lender or Incremental Term Loan Lenders, as the case may be, pursuant to each Incremental Term Loan Commitment Agreement shall constitute a new Tranche, which shall be separate and distinct from the existing Tranches pursuant to this Agreement; provided that, with the consent of the Administrative Agent, the parties to a given Incremental Term Loan Commitment Agreement may specify therein that the Incremental Term Loans made pursuant thereto shall constitute part of, and be added to, an existing Tranche of Term Loans, in any case so long as the following requirements are satisfied:

(i) the Incremental Term Loans to be made pursuant to such Incremental Term Loan Commitment Agreement shall have the same Borrower, the same Maturity Date and the same Applicable Margins as the Tranche of Term Loans to which the new Incremental Term Loans are being added;

(ii) the new Incremental Term Loans shall have the same Scheduled Repayment dates as then remain with respect to the Tranche to which such new Incremental Term Loans are being added (with the amount of each Scheduled Repayment applicable to such new Incremental Term Loans to be the same (on a proportionate basis) as is theretofore applicable to the Tranche to which such new Incremental Term Loans are being added, thereby increasing the amount of each then remaining Scheduled Repayment of the respective Tranche proportionately; and

on the date of the making of such new Incremental Term Loans, and notwithstanding anything to the contrary set forth in Section 2.09, such new Incremental Term Loans shall be added to (and form part of) each Borrowing of outstanding Term Loans of the applicable Tranche on a pro rata basis (based on the relative sizes of the various outstanding Borrowings), so that each Lender holding Term Loans under the respective Tranche of Term Loans participates in each outstanding Borrowing of Term Loans of the respective Tranche (after giving effect to the incurrence of such new Incremental Term Loans pursuant to Section 2.01(b)) on a pro rata basis. To the extent the provisions of preceding clause (iii) require that Lenders making new Incremental Term Loans add such Incremental Term Loans to the then outstanding Borrowings of LIBO Rate Term Loans of such Tranche, it is acknowledged that the effect thereof may result in such new Incremental Term Loans having short Interest Periods (i.e., an Interest Period that began during an Interest Period then applicable to outstanding LIBO Rate Term Loans of such Tranche and which will end on the last day of such Interest Period). All determinations by any Lender pursuant to the immediately preceding sentence shall, absent manifest error, be final and conclusive and binding on all parties hereto.

2.16 [Reserved]

2.17 [Reserved]

2.18 Refinancing Term Loans
(a) The Lead Borrower may from time to time by written notice to the Administrative Agent elect to request the establishment of one or more additional Tranches of Term Loans under this Agreement ("Refinancing Term Loans"), which refinance, renew, replace, defease or refund all or any portion of one or more Tranches of Term Loans under this Agreement selected by the Lead Borrower; provided, that such Refinancing Term Loans may not be in an amount greater than the aggregate principal amount of the Term Loans being refinanced, renewed, replaced, defeased or refunded plus unpaid accrued interest and premium (if any) thereon and upfront fees, original issue discount, underwriting discounts, fees, commissions and expenses incurred in connection with the Refinancing Term Loans; provided that such aggregate principal amount may also be increased to the extent such additional amount is capable of being incurred at such time pursuant to Section 2.15 and such excess incurrence shall for all purposes hereof be an incurrence under the relevant subclauses of Section 2.15. Each such notice shall specify the date (each, a "Refinancing Effective Date") on which the Lead Borrower proposes that the Refinancing Term Loans shall be made, which shall be a date not less than three (3) Business Days after the date on which such notice is delivered to the Administrative Agent; provided that:

(i) the Weighted Average Life to Maturity of such Refinancing Term Loans shall not be shorter than the remaining Weighted Average Life to Maturity of the Term Loans being refinanced and the Refinancing Term Loans shall not have a final maturity before the Maturity Date applicable to the Term Loans being refinanced;

(ii) such Refinancing Term Loans shall have pricing (including interest rates, fees and premiums), amortization, optional prepayment, mandatory prepayment (so long as such Refinancing Term Loans are not entitled to participate on a greater than pro rata basis in any mandatory prepayment than the then outstanding Term Loans) and redemption terms as may be agreed to by the Lead Borrower and the relevant Refinancing Term Loan Lenders (as defined below);

(iii) such Refinancing Term Loans shall not be guaranteed by any Person other than the Borrowers or a Subsidiary Guarantor;

(iv) in the case of any such Refinancing Term Loans that are secured such Refinancing Term Loans are secured only by assets comprising Collateral, and not secured by any property or assets of the Lead Borrower or any of its Subsidiaries other than the Collateral;

(v) all other terms applicable to such Refinancing Term Loans (except as set forth above) shall (I) be substantially identical to, or (II) (taken as a whole) be otherwise not materially more favorable to the Refinancing Term Loan Lenders than those applicable to the then outstanding Term Loans, except to the extent such covenants and other terms apply solely to any period after the Latest Maturity Date as of the date such Indebtedness was incurred (provided that a certificate of a Responsible Officer of the Lead Borrower delivered to the Administrative Agent in good faith at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Lead Borrower has determined in good faith that such terms and conditions satisfy the requirement set out in the foregoing clause (v), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent provides notice to the Lead Borrower of an objection during such five Business Day period (including a reasonable description of the basis upon which it objects)).

(b) The Lead Borrower may approach any Lender or any other Person that would be an Eligible Transferee of Term Loans to provide all or a portion of the Refinancing Term Loans (a "Refinancing Term Loan Lender"); provided that any Lender offered or approached to provide all or a portion of the Refinancing Term Loans may elect or decline, in its sole discretion, to provide a Refinancing Term Loan. Any Refinancing Term Loans made on any Refinancing Effective Date shall be designated a series of Refinancing Term Loans for all purposes of this Agreement; provided that any Refinancing Term Loans may, to the extent provided in the applicable Refinancing Term Loan Amendment and subject to the restrictions set forth in clause (a) above, be designated as an increase in any previously established Tranche of Term Loans.
(c) The Administrative Agent and the Lenders hereby consent to the transactions contemplated by Section 2.18(a) (including, for the avoidance of doubt, the payment of interest, fees, amortization or premium in respect of the Refinancing Term Loans on the terms specified by the Lead Borrower) and hereby waive the requirements of this Agreement or any other Credit Document that may otherwise prohibit any transaction contemplated by Section 2.18(a). The Refinancing Term Loans shall be established pursuant to an amendment to this Agreement among the Borrowers and the Refinancing Term Loan Lenders providing such Refinancing Term Loans (a "Refinancing Term Loan Amendment") which shall be consistent with the provisions set forth in Section 2.18(a). Each Refinancing Term Loan Amendment shall be binding on the Lenders, the Administrative Agent, the Credit Parties party thereto and the other parties hereto without the consent of any other Lender and the Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Credit Documents as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Lead Borrower, to effect the provisions of Section 2.18 including such technical amendments as may be necessary or appropriate in connection therewith and to adjust the amortization schedule in Section 5.02(a) (insofar as such schedule relates to payments due to Lenders the Term Loans of which are refinanced with the proceeds of Refinancing Term Loans; provided that no such amendment shall reduce the pro rata share of any such payment that would have otherwise been payable to the Lenders, the Term Loans of which are not refinanced with the proceeds of Refinancing Term Loans). The Administrative Agent shall be permitted, and each is hereby authorized, to enter into such amendments with the Borrowers to effect the foregoing.

2.19 Reverse Dutch Auction Repurchases

(a) Notwithstanding anything to the contrary contained in this Agreement or any other Credit Document, the Lead Borrower, on behalf of the other Borrowers, may, at any time and from time to time, conduct reverse Dutch auctions in order to purchase Term Loans of a particular Tranche (each, an "Auction") (each such Auction to be managed exclusively by the Administrative Agent or any other bank or another investment bank of recognized standing selected by the Lead Borrower (with the consent of the Administrative Agent or such other bank or investment bank) following consultation with the Administrative Agent (in such capacity, the "Auction Manager"); provided that the Administrative Agent shall have no obligation to act as the Auction Manager), so long as the following conditions are satisfied:

(i) each Auction shall be conducted in accordance with the procedures, terms and conditions set forth in this Section 2.19(a) and Schedule 2.19(a);

(ii) no Default or Event of Default shall have occurred and be continuing on the date of the delivery of each auction notice and at the time of purchase of Term Loans in connection with any Auction;

(iii) the minimum principal amount (calculated on the face amount thereof) of all Term Loans that the Lead Borrower offers to purchase in any such Auction shall be no less than $2,500,000 (unless another amount is agreed to by the Administrative Agent);

(iv) the Lead Borrower shall not use the proceeds of any borrowing under the ABL Credit Agreement to finance any such repurchase;

(v) the aggregate principal amount (calculated on the face amount thereof) of all Term Loans so purchased by the Lead Borrower shall automatically be cancelled and retired by the Lead Borrower on the settlement date of the relevant purchase (and may not be resold);

(vi) no more than one Auction may be ongoing at any one time;

(vii) the Lead Borrower shall make the No Undisclosed Information Representation; and

(viii) at the time of each purchase of Term Loans through an Auction, the Lead Borrower shall have delivered to the Auction Manager an officer’s certificate of a Responsible Officer certifying as to compliance with preceding clauses (ii), (iv) and (vii).
(b) The Lead Borrower must terminate an Auction if it fails to satisfy one or more of the conditions set forth above which are required to be met at the time which otherwise would have been the time of purchase of Term Loans pursuant to such Auction. If the Lead Borrower commences any Auction (and all relevant requirements set forth above which are required to be satisfied at the time of the commencement of such Auction have in fact been satisfied), and if at such time of commencement the Lead Borrower believes in good faith that all required conditions set forth above which are required to be satisfied at the time of the purchase of Term Loans pursuant to such Auction shall be satisfied, then the Lead Borrower shall have no liability to any Lender for any termination of such Auction as a result of its failure to satisfy one or more of the conditions set forth above which are required to be met at the time which otherwise would have been the time of purchase of Term Loans pursuant to such Auction, and any such failure shall not result in any Default or Event of Default hereunder. With respect to all purchases of Term Loans made by the Lead Borrower pursuant to this Section 2.19, (x) the Lead Borrower shall pay on the settlement date of each such purchase all accrued and unpaid interest (except to the extent otherwise set forth in the relevant offering documents), if any, on the purchased Term Loans up to the settlement date of such purchase and (y) such purchases (and the payments made by the Lead Borrower and the cancellation of the purchased Term Loans, in each case in connection therewith) shall not constitute voluntary or mandatory payments or prepayments for purposes of Sections 5.01, 5.02 or 13.06. At the time of purchases of Term Loans pursuant to an Auction, the then remaining Scheduled Repayments set forth in Section 5.02 shall be reduced by the aggregate principal amount (taking the face amount thereof) of Term Loans repurchased pursuant to such Auction, with such reduction to be applied to such Scheduled Repayments on a pro rata basis (based on the then remaining principal amount of each such Scheduled Repayments).

(c) The Administrative Agent and the Lenders hereby consent to the Auctions and the other transactions contemplated by this Section 2.19 (provided that no Lender shall have an obligation to participate in any such Auctions) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Sections 5.01, 5.02 and 13.06 (it being understood and acknowledged that purchases of the Term Loans by the Lead Borrower contemplated by this Section 2.19 shall not constitute Investments by the Lead Borrower)) or any other Credit Document that may otherwise prohibit any Auction or any other transaction contemplated by this Section 2.19. The Auction Manager acting in its capacity as such hereunder shall be entitled to the benefits of the provisions of Section 12 and Section 13.01 mutatis mutandis as if each reference therein to the “Administrative Agent” were a reference to the Auction Manager, and the Administrative Agent shall cooperate with the Auction Manager as reasonably requested by the Auction Manager in order to enable it to perform its responsibilities and duties in connection with each Auction.

2.20 Open Market Purchases.

(a) Notwithstanding anything to the contrary contained in this Agreement or any other Credit Document, the Lead Borrower or any of its Restricted Subsidiaries may, at any time and from time to time, make open market purchases of Term Loans (each, an “Open Market Purchase”), so long as the following conditions are satisfied:

(i) no Default or Event of Default shall have occurred and be continuing on the date of such Open Market Purchase;

(ii) the aggregate principal amount (calculated on the face amount thereof) of all Term Loans so purchased by the Lead Borrower or any of its Restricted Subsidiaries shall automatically be cancelled and retired by the Borrowers on the settlement date of the relevant purchase (and may not be resold);

(iii) the aggregate principal amount of all Term Loans purchased pursuant to this Section 2.20 shall not exceed 20% of the original aggregate outstanding principal amount of the Term Loans;

(iv) the Lead Borrower or any of its Restricted Subsidiaries shall not use the proceeds of any borrowing under the ABL Credit Agreement to finance any such repurchase;

(v) each Borrower shall make the No Undisclosed Information Representation; and
(vi) at the time of each purchase of Term Loans through Open Market Purchases, the Lead Borrower shall have delivered to the Administrative Agent an officer’s certificate of a Responsible Officer certifying as to compliance with preceding clauses (i), (iv) and (v).

(b) With respect to all purchases of Term Loans made by the Lead Borrower pursuant to this Section 2.20, (x) the Lead Borrower shall pay on the settlement date of each such purchase all accrued and unpaid interest, if any, on the purchased Term Loans up to the settlement date of such purchase (except to the extent otherwise set forth in the relevant purchase documents as agreed by the respective selling Lender) and (y) such purchases (and the payments made by the Lead Borrower and the cancellation of the purchased Term Loans, in each case in connection therewith) shall not constitute voluntary or mandatory payments or prepayments for purposes of Sections 5.01, 5.02 or 13.06. At the time of purchases of Term Loans pursuant to any Open Market Purchase, the then remaining Scheduled Repayments set forth in Section 5.02(a)(i) shall be reduced by the aggregate principal amount (taking the face amount thereof) of Term Loans repurchased pursuant to such Open Market Purchase, with such reduction to be applied to such Scheduled Repayments on a pro rata basis (based on the then remaining principal amount of each such Scheduled Repayments).

(c) The Administrative Agent and the Lenders hereby consent to the Open Market Purchases contemplated by this Section 2.20 and hereby waive the requirements of any provision of this Agreement (including, without limitation, Sections 5.01, 5.02 and 13.06 (it being understood and acknowledged that purchases of the Term Loans by any Borrower contemplated by this Section 2.20 shall not constitute Investments by such Borrower)) or any other Credit Document that may otherwise prohibit any Open Market Purchase by this Section 2.20.

Section 3. [Reserved]

Section 4. Fees; Reductions of Commitment

4.01 Fees

(a) The Borrowers shall, jointly and severally, pay to the Administrative Agent for distribution to each Incremental Term Loan Lender such fees and other amounts, if any, as are specified in the relevant Incremental Term Loan Commitment Agreement, with the fees and other amounts, if any, to be payable on the relevant Incremental Term Loan Borrowing Date.

(b) The Borrowers, jointly and severally, agree to pay to the Administrative Agent such fees as may be agreed to in writing from time to time by the Lead Borrower or any of its Subsidiaries and the Administrative Agent.

(c) At the time of the effectiveness of any Repricing Transaction that is consummated prior to the date that is six months after the Closing Date, the Borrowers, jointly and severally, agree to pay to the Administrative Agent, for the ratable account of each Lender with outstanding Initial Term Loans that are repaid or prepaid (and/or converted) pursuant to such Repricing Transaction (including each Lender that withholds its consent to such Repricing Transaction and is replaced as a non-consenting Lender under Section 2.13), a fee in an amount equal to 1.00% of (x) in the case of a Repricing Transaction of the type described in clause (1) of the definition thereof, the aggregate principal amount of all Initial Term Loans prepaid (or converted) by the Borrowers in connection with such Repricing Transaction and (y) in the case of a Repricing Transaction of the type described in clause (2) of the definition thereof, the aggregate principal amount of all Initial Term Loans outstanding with respect to the Borrowers on such date that are subject to an effective reduction of the Applicable Margin pursuant to such Repricing Transaction. Such fees shall be due and payable upon the date of the effectiveness of such Repricing Transaction.

(d) The Borrowers shall, jointly and severally, pay to each Lender (other than any Defaulting Lender), through the Administrative Agent, on the date that is three Business Days after each Scheduled Repayment Date (commencing on the last day of the first full fiscal quarter of the Lead Borrower after the Closing Date) and on Delayed Draw Term Loan Commitment Expiration Date, a commitment fee (a “Delayed Draw Commitment Fee”)
on the daily amount of the applicable Available Unused Commitment of such Lender during the preceding quarter (or other period commencing with the
Closing Date or ending with Delayed Draw Term Loan Commitment Expiration Date) at a rate equal to the Applicable Commitment Fee, accrued up to the
Scheduled Repayment Date. All Commitment Fees shall be computed on the basis of the actual number of days elapsed in a year of 360 days. The Delayed
Draw Commitment Fee due to each Lender shall commence to accrue on the Closing Date and shall cease to accrue on the Delayed Draw Term Loan
Commitment Expiration Date.

4.02 Mandatory Reduction of Commitments

(a) In addition to any other mandatory commitment reductions pursuant to this Section 4.02, the Total Incremental Term Loan Commitment
pursuant to an Incremental Term Loan Commitment Agreement (and the Incremental Term Loan Commitment of each Lender with such a Commitment)
shall terminate in its entirety on the Incremental Term Loan Borrowing Date for such Total Incremental Term Loan Commitment (after giving effect to the
incurrence of the relevant Incremental Term Loans on such date).

(b) Each reduction to the Total Initial Term Loan Commitment and the Total Incremental Term Loan Commitment under a given Tranche
pursuant to this Section 4.02 as provided above (or pursuant to Section 5.02) shall be applied proportionately to reduce the Initial Term Loan Commitment
or the Incremental Term Loan Commitment under such Tranche, as the case may be, of each Lender with such a Commitment.

(c) Unless previously terminated, the Delayed Draw Term Loan Commitments of each Lender shall terminate on the earlier of the making of the
Delayed Draw Term Loans that reduces the Delayed Draw Term Loan Commitments of such Lender to zero or the Delayed Draw Term Loan Commitment
Expiration Date.

4.03 Voluntary Reduction of Commitments

The Borrowers may at any time, or from time to time reduce, the Delayed Draw Term Loan Commitments; provided, that each reduction of
Delayed Draw Term Loan Commitments shall be in an amount that is an integral multiple of $100,000 and not less than $1,000,000 (or, if less, the
remaining amount of the Delayed Draw Term Loan Commitments). The Lead Borrower shall notify the Administrative Agent in writing of any reduction
of Delayed Draw Term Loan Commitments at least three Business Days prior to the date of such reduction. Each such notice shall specify the date of such
reduction and provide the amount of such reduction. The Administrative Agent will promptly notify the Lenders of the contents of the Lead Borrower’s
reduction notice and of such Lender’s pro rata share of any reduction. Each such notice shall be irrevocable; provided, that any such notice of reduction
pursuant to this Section 4.03 may state that it is conditioned upon the occurrence or non-occurrence of any event specified therein (including the
effectiveness of other credit facilities, the occurrence of a Change of Control or any similar event), in which case such notice may be revoked by the Lead
Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any reduction of
Delayed Draw Term Loan Commitments shall be permanent.

Section 5. Prepayments; Payments; Taxes

5.01 Voluntary Prepayments

(a) The Borrowers shall have the right to prepay the Term Loans, without premium or penalty (other than as provided in Section 4.01(c)), in
whole or in part at any time and from time to time on the following terms and conditions: (i) the Lead Borrower shall give the Administrative Agent at its
Notice Office written notice (or telephonic notice promptly confirmed in writing) of its intent to prepay the Term Loans, whether such Term Loans are
Initial Term Loans or Incremental Term Loans of a given Tranche, the amount of the Term Loans to be prepaid, the Types of Term Loans to be repaid, the
manner in which such prepayment shall apply to reduce the Scheduled Repayments set forth in Section 5.02(a)(i) and, in the case of LIBO Rate Term
Loans, the specific Borrowing or Borrowings pursuant to which made, which notice shall be given by the Lead Borrower (x) prior to 12:00 Noon (New
York City time) at least one Business Day prior to the date of such prepayment in the case of Term Loans maintained as Base Rate Term Loans and (y)
prior to 12:00 Noon (New York City time) at least three
Business Days prior to the date of such prepayment in the case of LIBO Rate Term Loans (or, in the case of clause (x) and (y), shorter period as the Administrative Agent shall agree in its sole and absolute discretion), and be promptly transmitted by the Administrative Agent to each of the Lenders; (ii) each partial prepayment of Term Loans pursuant to this Section 5.01(a) shall be in an aggregate principal amount of at least $1,000,000 or such lesser amount as is acceptable to the Administrative Agent; provided that if any partial prepayment of LIBO Rate Term Loans made pursuant to any Borrowing shall reduce the outstanding principal amount of LIBO Rate Term Loans made pursuant to such Borrowing to an amount less than the Minimum Borrowing Amount, then if such Borrowing is a Borrowing of LIBO Rate Term Loans, such Borrowing shall automatically be converted into a Borrowing of Base Rate Term Loans and any election of an Interest Period with respect thereto given by the Lead Borrower shall have no force or effect; (iii) each prepayment pursuant to this Section 5.01(a) in respect of any Term Loans made pursuant to a Borrowing shall be applied pro rata among such Term Loans; provided that it is understood and agreed that this clause (iii) may be modified as expressly provided in Section 2.14 in connection with an Extension Amendment; and (iv) each prepayment of principal of Term Loans of a given Tranche pursuant to this Section 5.01(a) may state that it is conditioned upon the occurrence or non-occurrence of any event specified therein (including the effectiveness of other credit facilities, the occurrence of a Change of Control or any similar event), in which case such notice may be revoked by the Lead Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

(b) In the event (i) of a refusal by a Lender to consent to certain proposed changes, amendments, waivers, discharges or terminations with respect to this Agreement which have been approved by the Required Lenders as (and to the extent) provided in Section 13.12(b), or (ii) any Lender becomes a Defaulting Lender, Borrowers may, upon five Business Days’ prior written notice from the Lead Borrower to the Administrative Agent at the Notice Office (which notice the Administrative Agent shall promptly transmit to each of the Lenders) repay all Term Loans, together with accrued and unpaid interest, Fees and other amounts owing to such Lender in accordance with, and subject to the requirements of, said Section 13.12(b), so long as the consents, if any, required under Section 13.12(b) in connection with the repayment pursuant to clause (b) have been obtained. Each prepayment of any Term Loan pursuant to this Section 5.01(b) shall reduce the then remaining Scheduled Repayments set forth in Section 5.02(a)(i) of the applicable Tranche of Term Loans on a pro rata basis (based upon the then remaining unpaid principal amounts of such Scheduled Repayments of the respective Tranche after giving effect to all prior reductions thereto).

5.02 Mandatory Repayments

(a) In addition to any other mandatory repayments pursuant to this Section 5.02, the Borrowers, jointly and severally, shall be required to repay to the Administrative Agent for the ratable account of the Lenders (i) on the last Business Day of each March, June, September and December, commencing with March 31, 2021, an aggregate principal amount of Initial Term Loans equal to 0.25% of the aggregate principal amount of Initial Term Loans outstanding on the Closing Date, and (ii) on the Initial Maturity Date for Initial Term Loans, the aggregate principal amount of all Initial Term Loans outstanding on such date (each such repayment described in clauses (i) and (ii), as the same may be reduced as provided in this Agreement, including in Section 2.19, 2.20, 5.01 or 5.02(g), or as a result of the application of prepayments in connection with any Extension as provided in Section 2.14, a “Scheduled Repayment”, and the date of each such Scheduled Repayment, a “Scheduled Repayment Date”).

(b) (I) In addition to any other mandatory repayments pursuant to this Section 5.02, the Borrowers shall be required to make, with respect to each new Tranche (i.e., other than Initial Term Loans, which are addressed in the preceding clause (a)) of Term Loans to the extent then outstanding, scheduled amortization payments of such Tranche of Term Loans to the extent, and on the dates and in the principal amounts, set forth in the Incremental Term Loan Commitment Agreement, Refinancing Term Loan Amendment or Extension Amendment applicable thereto; and
(II) in the event that any Delayed Draw Term Loans are made, the Borrower shall repay such Delayed Draw Term Loans on each Scheduled Repayment Date (commencing on the last day of the first full fiscal quarter of the Lead Borrower after the funding date of such Delayed Draw Term Loans) in an aggregate principal amount of such Delayed Draw Term Loans equal to (A) in the case of quarterly payments due prior to the applicable Delayed Draw Term Loan Commitment Expiration Date, an amount equal to 0.25% of the aggregate principal amount of such Delayed Draw Term Loans outstanding immediately after the funding date of such Delayed Draw Term Loans and (B) in the case of such payment due on the applicable Delayed Draw Term Loan Commitment Expiration Date, an amount equal to the then unpaid principal amount of such Delayed Draw Term Loans outstanding; provided that, as necessary to cause such Delayed Draw Term Loans to be fungible with the then-existing Term Loans, such amortization rate will be adjusted on each subsequent funding of Delayed Draw Term Loans (as to such successive Delayed Draw Term Loans) such that the Delayed Draw Term Loans would amortize in equal quarterly installments calculated using the same annual percentage of amortization applicable to the outstanding principal amount of such then-existing Term Loans in effect immediately prior to the funding of such Delayed Draw Term Loans.

(c) In addition to any other mandatory repayments pursuant to this Section 5.02, within five Business Days following each date on or after the Closing Date upon which the Lead Borrower or any of its Restricted Subsidiaries receives any cash proceeds from any issuance or incurrence of Indebtedness (other than Indebtedness permitted to be incurred pursuant to Section 10.04 (other than Refinancing Term Loans and Refinancing Notes, an amount equal to 100% of the Net Debt Proceeds therefrom shall be applied as a mandatory repayment in accordance with the requirements of Sections 5.02(g) and (h)).

(d) In addition to any other mandatory repayments pursuant to this Section 5.02, within five Business Days following each date on or after the Closing Date upon which the Lead Borrower or any of its Restricted Subsidiaries receives any Net Sale Proceeds from any Asset Sale, an amount equal to 100% of the Net Sale Proceeds therefrom shall be applied as a mandatory repayment in accordance with the requirements of Sections 5.02(g) and (h); provided, however, with respect to no more than $10,000,000 in the aggregate of such Net Sale Proceeds received by the Lead Borrower and its Restricted Subsidiaries in any fiscal year of the Lead Borrower, such Net Sale Proceeds shall not be required to be so applied or used to make mandatory repayments of Term Loans if no Event of Default then exists. Notwithstanding the foregoing, the Lead Borrower may apply all or a portion of such Net Sale Proceeds (i) in the case of ABL Collateral (as defined in the ABL Intercreditor Agreement), to prepay Indebtedness under the ABL Credit Agreement or any other Indebtedness secured by Liens ranking senior to the Liens securing the Indebtedness hereunder on such ABL Collateral (as defined in the Intercreditor Agreement) and in the case of revolving borrowings, to the extent accompanied by permanent reductions in commitments with respect thereto or (ii) to reinvest in the purchase of assets useful in the business of the Lead Borrower and its Restricted Subsidiaries within 12 months following the date of receipt of such Net Sale Proceeds (or, if within such 12-month period, the Lead Borrower or any of its Restricted Subsidiaries enters into a binding commitment to so reinvest such Net Sale Proceeds, within 180 days following such 12-month period during which the Lead Borrower so committed to such plan of reinvestment); provided, further, that if within 12 months (or, to the extent applicable, 18 months) after the date of receipt by the Lead Borrower or its Restricted Subsidiaries of such Net Sale Proceeds, the Lead Borrower or its Restricted Subsidiaries have not so used all or a portion of such Net Sale Proceeds otherwise required to be applied as a mandatory repayment pursuant to this sentence, the remaining portion of such Net Sale Proceeds shall be applied as a mandatory repayment in accordance with the requirements of Sections 5.02(g) and (h) on the last day of such 12-month (or, to the extent applicable, 18-month) period.

(e) In addition to any other mandatory repayments pursuant to this Section 5.02, on each Excess Cash Flow Payment Date, an amount equal to the remainder of (i) the Applicable Prepayment Percentage of the Excess Cash Flow for the related Excess Cash Flow Payment Period less (ii) the aggregate amount of all (x) voluntary prepayments of Term Loans, Refinancing Notes and Indebtedness incurred pursuant to Section 10.04(xxvii) that rank pari passu with the Term Loans (limited, in the case of any voluntary prepayment in accordance with the provisions of Section 2.19 or Section 2.20 or similar provisions in the definitive documentation with respect to such Refinancing Notes or other Indebtedness, to the cash payment made by any Credit Party or Restricted Subsidiary therefor) and (y) prepayments of revolving loans under the ABL Credit Agreement or any other Indebtedness
secured by a Lien on the Collateral ranking pari passu with the Lien on the Collateral securing the ABL Credit Agreement or senior or pari passu with the Lien on the Collateral securing the Indebtedness hereunder, in each case, to the extent accompanied by a permanent reduction in commitments therefor and not financed with the incurrence of other long-term Indebtedness (other than Indebtedness under the ABL Credit Agreement), during such Excess Cash Flow Payment Period shall be applied as a mandatory repayment in accordance with the requirements of Sections 5.02(g) and (h).

(f) In addition to any other mandatory repayments pursuant to this Section 5.02, within 10 days following each date on or after the Closing Date upon which the Lead Borrower or any of its Restricted Subsidiaries receives any Net Insurance Proceeds from any Recovery Event, an amount equal to 100% of the Net Insurance Proceeds from such Recovery Event shall be applied as a mandatory repayment in accordance with the requirements of Section 5.02(g) and (h); provided, however, with respect to no more than $10,000,000 in the aggregate of such Net Insurance Proceeds received by the Lead Borrower and its Restricted Subsidiaries in any fiscal year of the Lead Borrower, such Net Insurance Proceeds shall not give rise to a mandatory repayment if no Event of Default then exists. Notwithstanding the foregoing, the Lead Borrower may apply such Net Insurance Proceeds (i) in the case of ABL Collateral (as defined in the ABL Intercreditor Agreement), to prepay Indebtedness under the ABL Credit Agreement or any other Indebtedness secured by Liens ranking senior to the Liens securing the Indebtedness hereunder on such ABL Collateral (as defined in the Intercreditor Agreement) and in the case of revolving borrowings, to the extent accompanied by permanent reductions in commitments with respect thereto or (ii) to reinvest in the purchase of assets useful in the business of the Lead Borrower and its Restricted Subsidiaries within 12 months following the date of receipt of such proceeds (or, if within such 12-month period, the Lead Borrower or any of its Restricted Subsidiaries enters into a binding commitment to so reinvest in such Net Sale Proceeds, within 18 months following the date of receipt of such proceeds) (and, in connection therewith, shall thereafter promptly provide such other information with respect to such reinvestment as the Administrative Agent may from time to time reasonably request); provided, further, that if within 12 months (or, to the extent applicable, 18 months) after the date of receipt of the Lead Borrower or any of its Restricted Subsidiaries of such Net Insurance Proceeds, the Lead Borrower or any of its Restricted Subsidiaries have not so used all or a portion of such Net Insurance Proceeds otherwise required to be applied as a mandatory repayment pursuant to this sentence, the remaining portion of such Net Insurance Proceeds shall be applied as a mandatory repayment in accordance with the requirements of Sections 5.02(g) and (h) on the last day of such 12-month (or, to the extent applicable, 18-month) period, as the case may be.

(g) Each amount required to be applied pursuant to Sections 5.02(c), (d), (e) and (f) in accordance with this Section 5.02(g) shall be applied to repay the outstanding principal amount of Term Loans, with each Tranche of then outstanding Term Loans to be allocated its Term Loan Percentage of each amount so required to be applied; provided that to the extent any Permitted Pari Passu Notes (or any Permitted Refinancing Indebtedness in respect thereof that is secured on a pari passu basis with the Obligations) requires any mandatory prepayment or repurchase from any Net Sale Proceeds or Net Insurance Proceeds that would otherwise be required to be applied to prepay Term Loans in accordance with clause (d) or (f) above, up to a pro rata portion (based on the aggregate principal amount of Term Loans and such pari passu secured Indebtedness then outstanding) of such Net Sale Proceeds or Net Insurance Proceeds may be applied to prepay or repurchase such pari passu secured Indebtedness in lieu of prepaying Term Loans as provided above. Prepayments pursuant to Section 5.02(c) shall be applied to the Tranche or Tranches of Term Loans selected by the Lead Borrower. Except as otherwise provided below, all repayments of outstanding Term Loans of a given Tranche pursuant to Sections 5.02(c), (d), (e) and (f) (and applied pursuant to this clause (g)) shall be applied to reduce the Scheduled Repayments set forth in Section 5.02(g)(i) of the applicable Tranche in direct order of maturity of such Scheduled Repayments.

(h) With respect to each repayment of Term Loans required by this Section 5.02, the Lead Borrower may (subject to the priority payment requirements of Section 5.02(q)) designate the Types of Term Loans of the applicable Tranche which are to be repaid and, in the case of LIBO Rate Term Loans, the specific Borrowing or Borrowings of the applicable Tranche pursuant to which such LIBO Rate Term Loans were made, provided that: (i) repayments of LIBO Rate Term Loans pursuant to this Section 5.02 may only be made on the last day of an Interest Period applicable thereto unless all such LIBO Rate Term Loans of the applicable Tranche with Interest Periods ending on such date of required repayment and all Base Rate Term Loans of the applicable Tranche have been paid in full; and (ii) each repayment of any Term Loans made pursuant to a Borrowing shall be applied pro rata among
such Term Loans. In the absence of a designation by the Lead Borrower as described in the preceding sentence, the Administrative Agent shall, subject to the above, make such designation in its sole discretion.

(i) In addition to any other mandatory repayments pursuant to this Section 5.02, all then outstanding Term Loans of any Tranche of Term Loans shall be repaid in full on the Maturity Date for such Tranche of Term Loans.

(j) Notwithstanding any other provisions of this Section 5.02, (i) to the extent that any or all of the Net Sale Proceeds of any Asset Sale by a Foreign Subsidiary (a “Foreign Asset Sale”), the Net Insurance Proceeds of any Recovery Event incurred by a Foreign Subsidiary (a “Foreign Recovery Event”) or Excess Cash Flow attributable to Foreign Subsidiaries are prohibited or delayed by applicable local law or applicable organizational documents of such Foreign Subsidiary from being repatriated to the United States, the portion of such Net Sale Proceeds, Net Insurance Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Initial Term Loans at the times provided in this Section 5.02 but may be retained by the applicable Foreign Subsidiary so long, but only so long, as the applicable local law or applicable organizational documents of such Foreign Subsidiary will not permit repatriation to the United States (the relevant Borrower hereby agreeing to use all commercially reasonable efforts to overcome or eliminate any such restrictions on repatriation and/or minimize any such costs of prepayment and/or use the other cash sources of such Borrower and its Restricted Subsidiaries to make the relevant prepayment), and if within one year following the date on which the respective prepayment would otherwise have been required such repatriation of any of such affected Net Sale Proceeds, Net Insurance Proceeds or Excess Cash Flow is permitted under the applicable local law or applicable organizational documents of such Foreign Subsidiary, such repatriation will be immediately effected and such repatriated Net Sale Proceeds, Net Insurance Proceeds or Excess Cash Flow will be promptly (and in any event not later than two Business Days after such repatriation) applied (net of additional taxes payable or reserved against as a result thereof and additional costs relating to such repatriation) to the repayment of the Initial Term Loans pursuant to this Section 5.02 or (ii) to the extent that such Borrower has reasonably determined in good faith that repatriation of any of or all the Net Sale Proceeds of any Foreign Asset Sale, Net Insurance Proceeds of any Foreign Asset Sale or Foreign Recovery Event or Foreign Subsidiary Excess Cash Flow would have material adverse tax cost consequences with respect to such Net Sale Proceeds, Net Insurance Proceeds or Excess Cash Flow, such Net Sale Proceeds, Net Insurance Proceeds or Excess Cash Flow so affected may be retained by the applicable Foreign Subsidiary.

(k) The Lead Borrower shall notify the Administrative Agent in writing of any mandatory repayment of Term Loans required to be made pursuant to Section 5.02(d) or (f) at least three Business Days prior to the date of such repayment. Each such notice shall specify the date of such repayment and provide the amount of such repayment. The Administrative Agent will promptly notify the Lenders of the contents of the Lead Borrower’s repayment notice and of such Lender’s pro rata share of any repayment. Each Lender may reject all of its pro rata share of any mandatory repayment (such declined amounts, the “Declined Proceeds”) of Term Loans required to be made pursuant to Section 5.02(d), (e) or (f) by providing written notice (each, a “Rejection Notice”) to the Administrative Agent and the Lead Borrower no later than 5:00 P.M. (New York City time) on the Business Day after the date of such Lender’s receipt of notice from the Administrative Agent regarding such repayment. Each Rejection Notice from a given Lender shall specify the principal amount of the mandatory repayment of Term Loans to be rejected by such Lender. If a Lender fails to deliver such Rejection Notice to the Administrative Agent within the time frame specified above or such Rejection Notice fails to specify the principal amount of the Term Loans to be rejected, any such failure will be deemed an acceptance of the total amount of such mandatory repayment of Term Loans to which such Lender is otherwise entitled. Any Declined Proceeds may be retained by the Lead Borrower in accordance with this Agreement (“Retained Declined Proceeds”).

5.03 Method and Place of Payment

Except as otherwise specifically provided herein, all payments under this Agreement and under any Note shall be made to the Administrative Agent or the account of the Lender or Lenders entitled thereto not later than 2:00 pm (New York City time) on the date when due and shall be made in U.S. Dollars in immediately available funds at the Payment Office of the Administrative Agent shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Any payment received after such time
on such date shall, at the option of the Administrative Agent, be deemed to have been received on the next Business Day. Whenever any payment to be made hereunder or under any Note shall be stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest shall be payable at the applicable rate during such extension.

5.04 Net Payments

(a) All payments made by or on account of any Credit Party under any Credit Document shall be made free and clear of, and without deduction or withholding for, any Taxes, except as required by applicable law. If any Taxes are required to be withheld or deducted from such payments, then the Credit Parties jointly and severally agree that (i) to the extent such deduction or withholding is on account of an Indemnified Tax or Other Tax, the sum payable shall be increased as necessary so that after making all required deductions or withholdings (including deduction or withholdings applicable to additional sums payable under this Section 5.04), the Administrative Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the applicable withholding agent will make such deductions or withholdings, and (iii) the applicable withholding agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law. In addition, the Credit Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law. The Credit Parties will furnish to the Administrative Agent within 45 days after the date the payment by any of them of any Indemnified Taxes or Other Taxes is due pursuant to applicable law certified copies of tax receipts evidencing such payment by the applicable Credit Party. The Credit Parties jointly and severally agree to indemnify and hold harmless the Administrative Agent and each Lender, and reimburse the Administrative Agent and each Lender, within 10 days of written request therefor, for the amount of any Indemnified Taxes (including any Indemnified Taxes imposed on amounts payable under this Section 5.04) payable or paid by the Administrative Agent or such Lender or required to be withheld or deducted from a payment to the Administrative Agent or such Lender, and any Other Taxes, and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority.

(b) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to the Lead Borrower and the Administrative Agent, at the time or times reasonably requested by the Lead Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Lead Borrower or the Administrative Agent, certifying as to any entitlement of such Lender to an exemption from, or a reduced rate of, withholding Tax. In addition, each Lender shall deliver to the Lead Borrower and the Administrative Agent, at the time or times reasonably requested by the Lead Borrower or the Administrative Agent, such other documentation prescribed by applicable law or reasonably requested by the Lead Borrower or the Administrative Agent as will enable the Lead Borrower or the Administrative Agent to determine whether such Lender is subject to backup withholding or information reporting requirements. Each Lender shall, whenever a lapse in time or change in circumstances renders such documentation (including any specific documents required below in Section 5.04(c)) expired, obsolete or inaccurate in any respect, deliver promptly to the Lead Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Lead Borrower or the Administrative Agent) or promptly notify the Lead Borrower and the Administrative Agent in writing of its inability to do so.

(c) Without limiting the generality of the foregoing: (x) each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) shall deliver to the Lead Borrower and the Administrative Agent on or prior to the Closing Date or, in the case of a Lender that is an assignee or transferee of an interest under this Agreement pursuant to Section 2.13 or 13.04(b) (unless the relevant Lender was already a Lender hereunder immediately prior to such assignment or transfer), on the date of such assignment or transfer to such Lender, (i) two accurate and complete signed copies of Internal Revenue Service Form W-8BEN (or successor form) or Form W-8BEN-E (or successor form) claiming eligibility for benefits of an income tax treaty to which the United States is a party or Form W-8ECI (or successor form), or (ii) in the case of a Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of “portfolio interest,” a certificate substantially in the form of Exhibit C (any such certificate, a “U.S. Tax Compliance Certificate”) and two accurate and complete signed copies of Internal Revenue Service Form W-8BEN (or successor

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(form) or W-8BEN-E (or successor form) certifying to such Lender’s entitlement as of such date to a complete exemption from U.S. withholding tax with respect to payments of interest to be made under this Agreement and under any Note; or (iii) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership or a participating Lender), two accurate and complete signed copies of Internal Revenue Service Form W-8IMY (or successor form) of the Lender, accompanied by Form W-8ECI, Form W-8BEN, Form W-8BEN-E, U.S. Tax Compliance Certificate, Form W-8IMY, and/or any other required information (or successor or other applicable form) from each beneficial owner that would be required under this Section 5.04(c) if such beneficial owner were a Lender (provided that, if the Lender is a partnership for U.S. federal income Tax purposes (and not a participating Lender), and one or more beneficial owners are claiming the portfolio interest exemption), the U.S. Tax Compliance Certificate may be provided by such Lender on behalf of such beneficial owners; (y) Each Lender that is a United States person, as defined in Section 7701(a)(30) of the Code, shall deliver to the Lead Borrower and the Administrative Agent, at the times specified in Section 5.04(b), two accurate and complete signed copies of Internal Revenue Service Form W-9, or any successor form that such Person is entitled to provide at such time, in order to qualify for an exemption from United States back-up withholding requirements; and (z) if any payment made to a Lender under any Credit 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 Sections 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Lead Borrower and the Administrative Agent, at the time or times prescribed by applicable law and at such time or times reasonably requested by the Lead 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 Lead Borrower or the Administrative Agent as may be necessary for the Lead Borrower or the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender’s obligations under FATCA or to determine, if necessary, the amount to deduct and withhold from such payment. Solely for purposes of this Section 5.04(c)(z), “FATCA” shall include any amendment made to FATCA after the Closing Date.

Notwithstanding any other provision of this Section 5.04, a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(d) If the Administrative Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Credit Parties or with respect to which a Credit Party has paid additional amounts pursuant to Section 5.04(a), it shall pay to the relevant Credit Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Credit Party under Section 5.04(a) with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses, including any Taxes, of the Administrative Agent or such Lender, as the case may be, and, without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the relevant Credit Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Credit Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 5.04(d), in no event will the Administrative Agent or any Lender be required to pay any amount to any Credit Party pursuant to this Section 5.04(d) to the extent that such payment would place the Administrative Agent or such Lender in a less favorable position (on a net after-Tax basis) than such party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. Nothing in this Section 5.04(d) shall be construed to obligate the Administrative Agent or any Lender to disclose its Tax returns or any other information regarding its Tax affairs or computations to any Person or otherwise to arrange its Tax affairs in any manner other than as it determines in its sole discretion.

Section 6. Conditions Precedent to Credit Events on the Closing Date

The obligation of each Lender to make Initial Term Loans on the Closing Date is subject at the time of the making of such Term Loans to the satisfaction or waiver of the following conditions:
6.01 **Closing Date; Credit Documents; Notes**

On or prior to the Closing Date, each Borrower, the Administrative Agent and each Lender on the date hereof shall have signed a counterpart of this Agreement (whether the same or different counterparts) and shall have delivered (by electronic transmission or otherwise) the same to the Administrative Agent or, in the case of the Lenders, shall have given to the Administrative Agent telephonic (confirmed in writing), written or telex notice (actually received) at such office that the same has been signed and mailed to it.

6.02 **Reserved**

6.03 **Opinions of Counsel**

On the Closing Date, the Administrative Agent shall have received the executed opinion of Morgan, Lewis & Bockius LLP, counsel to the Credit Parties, which shall be in form and substance reasonably satisfactory to the Administrative Agent.

6.04 **Corporate Documents; Proceedings, etc**

(a) On the Closing Date, the Administrative Agent shall have received a certificate from each Credit Party, dated the Closing Date, signed by a Responsible Officer of such Credit Party, and attested to by the Secretary or any Assistant Secretary of such Credit Party, in the form of Exhibit E with appropriate insertions, together with copies of the certificate or articles of incorporation and by-laws (or equivalent organizational documents), as applicable, of such Credit Party and the resolutions of such Credit Party referred to in such certificate, and each of the foregoing shall be in form and substance reasonably satisfactory to the Administrative Agent.

(b) On the Closing Date, the Administrative Agent shall have received good standing certificates and bring-down telegrams or facsimiles, if any, for the Credit Parties which the Administrative Agent or the Lead Arranger reasonably may have requested, certified by proper Governmental Authorities.

6.05 **Refinancing**

(a) The Lead Borrower and its Subsidiaries shall have repaid in full all Indebtedness outstanding under the Existing Credit Agreement, together with all accrued but unpaid interest, fees and other amounts owing thereunder (other than contingent indemnification obligations not yet due and payable) and all commitments to lend or make other extensions of credit thereunder shall have been terminated.

(b) The Lead Borrower and its Subsidiaries shall have repaid in full all Indebtedness outstanding under the Second Lien Credit Agreement, together with all accrued but unpaid interest, fees and other amounts owing thereunder (other than contingent indemnification obligations not yet due and payable) and (i) all commitments to lend or make other extensions of credit thereunder shall have been terminated and (ii) all security interests in respect of, and Liens securing, the Indebtedness and other obligations thereunder created pursuant to the security documentation relating thereto shall have been terminated and released (or arrangements therefor reasonably satisfactory to the Administrative Agent shall have been made), and the Administrative Agent shall have received all such releases as may have been reasonably requested by the Administrative Agent, which releases shall be in form and substance reasonably satisfactory to Administrative Agent, including, without limiting the foregoing, (a) proper termination statements (Form UCC-3 or the appropriate equivalent) for filing under the UCC or equivalent statute or regulation of each jurisdiction where a financing statement or application for registration (Form UCC-1 or the appropriate equivalent) was filed with respect to Holdings or any of its Subsidiaries in connection with the security interests created with respect to the Existing Credit Agreement and (b) terminations or reassignments of any security interest in, or Lien on, any patents, trademarks, copyrights, or similar interests of Holdings or any of its Subsidiaries. The Borrowers or the relevant parent company thereof shall have satisfied and discharged all Indebtedness contemplated under the definition of “Second Lien Credit Agreement”.

6.06 **No Default**
No Default or Event of Default shall exist on the Closing Date after giving effect to the Transaction.

6.07 **Intercreditor Agreement**

On the Closing Date, each Credit Party shall have duly authorized, executed and delivered to the Administrative Agent a reaffirmation and joinder agreement relating to the ABL Intercreditor Agreement (the "Intercreditor Reaffirmation").

6.08 **Pledge Agreement**

On the Closing Date, each Credit Party shall have (i) duly authorized, executed and delivered to the Collateral Agent a reaffirmation and joinder agreement relating to the Pledge Agreement (the "Pledge Reaffirmation") and (ii) delivered to the Collateral Agent, as Pledgee thereunder, all of the Pledge Agreement Collateral (in the case of Equity Interests), if any, referred to therein and then owned by such Credit Party together with executed and undated endorsements for transfer, in the case of Equity Interests constituting certificated Pledge Agreement Collateral, along with evidence that all other actions necessary, to perfect (to the extent required in the Pledge Agreement) the security interests in Equity Interests purported to be created by the Pledge Agreement have been taken.

6.09 **Security Agreements**

On the Closing Date, each Credit Party shall have duly authorized, executed and delivered to the Collateral Agent a reaffirmation and joinder agreement relating to the Security Agreement (the "Security Agreement Reaffirmation"), covering all of such Credit Party’s present and future Collateral referred to therein, and shall have delivered to the Collateral Agent:

(i) proper financing statements (Form UCC-1 or the equivalent) authorized for filing under the UCC or other appropriate filing offices of each jurisdiction as may be reasonably necessary or desirable to perfect the security interests purported to be created by the Security Agreement;

(ii) (x) certified copies of a recent date of requests for information or copies (Form UCC-1), or equivalent reports as of a recent date, listing all effective financing statements that name the Lead Borrower or any other Credit Party as debtor and that are filed in the jurisdictions referred to in clause (i) above, together with copies of such other financing statements that name the Lead Borrower or any other Credit Party as debtor (none of which shall cover any of the Collateral except to the extent evidencing Permitted Liens, (y) United States Patent and Trademark Office and United States Copyright Office searches reasonably requested by the Administrative Agent and (z) reports as of a recent date listing all effective tax and judgment liens with respect to the Lead Borrower or any other Credit Party in each jurisdiction as the Agents may reasonably require; and

(iii) a duly authorized and executed Perfection Certificate.

6.10 **Subsidiaries Guaranty**

On the Closing Date, each Subsidiary Guarantor shall have duly authorized, executed and delivered to the Administrative Agent a joinder and reaffirmation agreement relating to the Subsidiaries Guaranty (the "Guaranty Reaffirmation"), guaranteeing all of the obligations of the Borrowers as more fully provided therein.

6.11 **Financial Statements; Pro Forma Balance Sheets; Projections**

On or prior to the Closing Date, the Administrative Agent shall have received (i) unaudited consolidated balance sheets and related statements of income and cash flows for the Lead Borrower and its consolidated Subsidiaries for each fiscal quarter of Lead Borrower and its consolidated Subsidiaries ended after the close of its June 30, 2020 fiscal quarter and at least 45 days prior to the Closing Date and (ii) a pro forma consolidated balance
sheet of Lead Borrower and its consolidated Subsidiaries as of the last day of the most recently ended fiscal quarter ended at least 45 days prior to the Closing Date (after giving effect to the Transaction), and related pro forma consolidated income statement for Lead Borrower and its consolidated Subsidiaries for the most recently ended four fiscal quarter periods ended at least 45 days prior to the Closing Date prepared as if the Transaction had occurred at the beginning of such period, which pro forma financial statements need not meet the requirements of Regulation S-X of the Securities Act.

6.12 Solvency Certificate

On the Closing Date, the Administrative Agent shall have received a solvency certificate from the chief financial officer or treasurer of the Lead Borrower substantially in the form of Exhibit I.

6.13 Fees, etc

On the Closing Date, the Borrowers shall have paid to the Agents and each Lender all costs, fees and expenses (including, without limitation, legal fees and expenses) to the extent invoiced at least three Business Days prior the Closing Date and other compensation payable to the Agents or such Lender or otherwise payable in respect of the Transaction to the extent then due.

6.14 Representation and Warranties

The representations and warranties contained in Section 8 of this Agreement and in each other Credit Document shall be true and correct in all material respects on the Closing Date (in each case, any representation or warranty that is qualified as to “materiality” or similar language shall be true and correct in all respects on the Closing Date).

6.15 KYC and Beneficial Ownership Information

The Administrative Agent and the Lenders shall have received from the Credit Parties, at least three Business Days prior to the Closing Date, (i) all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, in each case to the extent requested in writing, and (ii) if the Lead Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, the Administrative Agent or any Lender that requests a Beneficial Ownership Certification shall have received a Beneficial Ownership Certification in relation to such Borrower at least three Business Days before the Closing Date, in each case to the extent reasonably requested in writing at least 10 Business Days prior to the Closing Date (provided that, upon the execution and delivery by such Lender of its signature page to this Amendment, the condition set forth in this clause (ii) shall be deemed to be satisfied).

6.16 Borrowing Notice

Prior to the making of the Initial Term Loan on the Closing Date, the Administrative Agent shall have received a Notice of Borrowing meeting the requirements of Section 2.03.

6.17 Officer’s Certificate

On the Closing Date, the Lead Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Lead Borrower certifying as to the satisfaction of the conditions in Section 6.06, Section 6.14 and Section 6.18.

6.18 Material Adverse Effect

Since December 31, 2019, there has occurred no fact, event of circumstance which has had or would reasonably be expected to have a Material Adverse Effect.
Section 7. Conditions Precedent to all Credit Events after the Closing Date

(a) The obligation of each Lender to make Term Loans after the Closing Date shall be subject to the satisfaction or waiver of the conditions set forth in Section 2.15 or Section 2.18, as applicable.

(b) Notwithstanding anything to the contrary in this Agreement, the obligations of each Lender with a Delayed Draw Term Loan Commitment to fund the Delayed Draw Term Loans on each Delayed Draw Term Loan Funding Date (but not the establishment, which shall only be subject to the conditions set forth in Section 6) shall be subject to the satisfaction or waiver of the following conditions:

   (i) after giving effect to the Borrowings on the requested Delayed Draw Term Loan Funding Date and the use of proceeds thereof, calculated on a pro forma basis as of the end of the most recently ended Test Period, the Consolidated First Lien Net Leverage Ratio shall not exceed 4.25 to 1.00; provided that the cash proceeds of the Borrowings of such Delayed Draw Term Loans on the Delayed Draw Term Loan Funding Date shall not be netted from Indebtedness for purposes of calculating compliance with such Consolidated First Lien Net Leverage Ratio (provided that to the extent the proceeds of any such Delayed Draw Term Loans are used to prepay principal, interest, fees and other amounts owing under Indebtedness for borrowed money in connection with the Permitted Acquisition, pro forma effect shall be given to such repayment of Indebtedness and all other appropriate pro forma adjustments);

   (ii) as of the applicable Delayed Draw Term Loan Funding Date, no Event of Default shall have occurred and be continuing;

   (iii) The representations and warranties contained in Section 8 of this Agreement and in each other Credit Document shall be true and correct in all material respects on the Delayed Draw Term Loan Funding Date (in each case, any representation or warranty that is qualified as to “materiality” or similar language shall be true and correct in all respects on the Delayed Draw Term Loan Funding Date);

   (iv) the proceeds of such Borrowing of Delayed Draw Term Loans shall be used solely in accordance with Section 8.08(b); and

   (v) the Administrative Agent shall have received a Borrowing Request in accordance with the requirements hereof.

Section 8. Representations, Warranties and Agreements

In order to induce the Lenders to enter into this Agreement and to make the Term Loans, each Borrower, as applicable, makes the following representations, warranties and agreements, in each case after giving effect to the Transaction.

8.01 Organizational Status

The Lead Borrower and each of its Restricted Subsidiaries (i) is a duly organized and validly existing corporation, partnership, limited liability company or unlimited liability company, as the case may be, in good standing under the laws of the jurisdiction of its organization, (ii) has the corporate, partnership, limited liability company or unlimited holding company power and authority, as the case may be, to own its property and assets and to transact the business in which it is engaged and presently proposes to engage and (iii) is, to the extent such concepts are applicable under the laws of the relevant jurisdiction, duly qualified and is authorized to do business and is in good standing in each jurisdiction where the ownership, leasing or operation of its property or the conduct of its business requires such qualifications except, in the case of clauses (ii) and (iii) hereof, for failures to be so qualified which, individually and in the aggregate, have not had, and would not reasonably be expected to have, a Material Adverse Effect.

8.02 Power and Authority
Each Credit Party thereof has the corporate, partnership, limited liability company or unlimited liability company power and authority, as the case may be, to execute, deliver and perform the terms and provisions of each of the Credit Documents to which it is party and has taken all necessary corporate, partnership, limited liability company or unlimited liability company action, as the case may be, to authorize the execution, delivery and performance by it of each of such Credit Documents. Each Credit Party thereof has duly executed and delivered each of the Credit Documents to which it is party, and each of such Credit Documents constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors’ rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

8.03 No Violation

Neither the execution, delivery or performance by any Credit Party of the Credit Documents to which it is a party, nor compliance by it with the terms and provisions thereof, (i) will contravene any provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or governmental instrumentality, (ii) will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (except for Permitted Liens) upon any of the property or assets of any Credit Party or any of its Restricted Subsidiaries pursuant to the terms of, any indenture, mortgage, deed of trust, credit agreement or loan agreement, or any other material agreement, contract or instrument, in each case to which any Credit Party or any of its respective Restricted Subsidiaries is a party or by which it or any of its property or assets is bound or to which it may be subject (except, in the case of preceding clauses (i) and (ii), other than in the case of any contravention, breach, default and/or conflict, that would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect) or (iii) will violate any provision of the certificate or articles of incorporation, certificate of formation, limited liability company agreement or by-laws (or equivalent organizational documents), as applicable, of any Credit Party or any of its respective Restricted Subsidiaries.

8.04 Approvals

Except to the extent the failure to obtain or make the same would not reasonably be expected to have a Material Adverse Effect, no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except for (x) those that have otherwise been obtained or made on or prior to the Closing Date and which remain in full force and effect on the Closing Date and (y) filings which are necessary to perfect the security interests created under the Security Documents), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to be obtained or made by, or on behalf of, any Credit Party to authorize, or is required to be obtained or made by, or on behalf of, any Credit Party in connection with, the execution, delivery and performance of any Credit Document.

8.05 Financial Statements; Financial Condition; Projections

(a) (i) The consolidated balance sheets of the Lead Borrower and its consolidated Subsidiaries for the fiscal period ended December 31, 2019, and the related consolidated statements of income, cash flows and retained earnings of the Lead Borrower and its consolidated Subsidiaries for each such fiscal year present fairly in all material respects the consolidated financial position of the Lead Borrower and its consolidated Subsidiaries at the dates of such balance sheets and the consolidated results of the operations of the Lead Borrower and its consolidated Subsidiaries for the periods covered thereby. All of the foregoing historical financial statements have been audited by Ernst & Young LLP and prepared in accordance with U.S. GAAP consistently applied.

(ii) All unaudited financial statements of the Lead Borrower and its Subsidiaries furnished to the Administrative Agent on or prior to the Closing Date pursuant to clause (i) of Section 6.11, have been prepared in accordance with U.S. GAAP consistently applied by the Lead Borrower, except as otherwise noted therein, subject to normal year-end audit adjustments (all of which are of a recurring nature and none of which, individually or in the aggregate, would be material) and the absence of footnotes.
The pro forma consolidated balance sheet of the Lead Borrower furnished to the Administrative Agent pursuant to clause (ii) of Section 6.11 has been prepared as of June 30, 2020 as if the Transaction and the financing therefor had occurred on such date. Such pro forma consolidated balance sheet presents a good faith estimate of the pro forma consolidated financial position of the Lead Borrower as of June 30, 2020. The pro forma consolidated income statement of the Lead Borrower furnished to the Administrative Agent pursuant to clause (ii) of Section 6.11 has been prepared for the four fiscal quarters ended June 30, 2020, as if the Transaction and the financing therefor had occurred on the first day of such four-quarter period. Such pro forma consolidated income statement presents a good faith estimate of the pro forma consolidated income statement of the Lead Borrower as if the Transaction and the financing therefor had occurred on the first day of such four-quarter period.

(b) On the Closing Date, the Lead Borrower and its Subsidiaries, on a consolidated basis, are Solvent after giving effect to the consummation of the Transaction and the related financing transactions (including the incurrence of all Term Loans).

(c) The Projections have been prepared in good faith and are based on assumptions that were believed by the Lead Borrower to be reasonable at the time made and at the time delivered to the Administrative Agent.

(d) Since December 31, 2019 there has been no Material Adverse Effect, and there has been no change, event or occurrence that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

8.06 Litigation

There are no actions, suits or proceedings or, to the knowledge of any Credit Party, governmental investigations pending or, to the knowledge of any Credit Party, threatened (i) with respect to the Transaction or any Credit Document or (ii) that either individually or in the aggregate, have had, or would reasonably be expected to have, a Material Adverse Effect.

8.07 True and Complete Disclosure

(a) All written information (taken as a whole) furnished by or on behalf of any Credit Party in writing to the Administrative Agent or any Lender (including, without limitation, all such written information contained in the Credit Documents) for purposes of or in connection with this Agreement, the other Credit Documents or any transaction contemplated herein or therein does not, and all other such written information (taken as a whole) hereafter furnished by or on behalf of any Credit Party in writing to the Administrative Agent or any Lender will not, on the date as of which such written information is dated or certified and on the Closing Date, contain any material misstatement of fact or omit to state any material fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such written information was provided.

(b) Notwithstanding anything to the contrary in the foregoing clause (g) of this Section 8.07, none of the Credit Parties makes any representation, warranty or covenant with respect to any information consisting of statements, estimates, forecasts and projections regarding the future performance of the Lead Borrower or any of its Subsidiaries, or regarding the future condition of the industries in which they operate other than that such information has been (and in the case of such information furnished after the Closing Date, will be) prepared in good faith based upon assumptions believed to be reasonable at the time of preparation thereof (it being understood and agreed that projections are not to be viewed as facts, projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Credit Parties, no assurances can be given that any particular projection will be realized and that actual results during the period or periods covered by such projections may differ from projected results, and such differences may be material).

8.08 Use of Proceeds; Margin Regulations
(a) All proceeds of the Initial Term Loans incurred on the Closing Date will be used by the Borrowers to finance the Transaction and pay related Transaction Costs.

(b) All proceeds of the Delayed Draw Term Facility will be used by the Borrowers after the Closing Date for to fund acquisition consideration for Permitted Acquisitions and to pay related transaction costs and expenses.

(c) All proceeds of Incremental Term Loans will be used for the purpose set forth in Section 2.15(a).

(d) No part of any Credit Event (or the proceeds thereof) will be used to purchase or carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock. Neither the making of any Term Loan nor the use of the proceeds thereof nor the occurrence of any other Credit Event will violate the provisions of Regulation T, Regulation U or Regulation X of the Board of Governors of the Federal Reserve System.

(e) The Lead Borrower will not request any Borrowing, and the Borrowers shall not use, and shall procure that their respective Subsidiaries and each of their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

8.09 Tax Returns and Payments

Except, in each case, as would not reasonably be expected to result in a Material Adverse Effect, since April 4, 2011, (i) the Lead Borrower and each of its Restricted Subsidiaries has timely filed or caused to be timely filed with the appropriate taxing authority all Tax returns, statements, forms and reports for taxes (the “Returns”) required to be filed by, or with respect to the income, properties or operations of, the Lead Borrower and/or any of its Restricted Subsidiaries, and (ii) the Lead Borrower and each of its Restricted Subsidiaries have paid all Taxes payable by them, other than those that are being contested in good faith by appropriate proceedings and fully provided for as a reserve on the financial statements of the Lead Borrower and its Restricted Subsidiaries in accordance with U.S. GAAP.

8.10 ERISA

(a) No ERISA Event has occurred or is reasonably expected to occur that would reasonably be expected to result in a Material Adverse Effect. Each Plan is in compliance in form and operation with its terms and with the applicable provisions of ERISA, the Code and other applicable law, except for such non-compliance that would not reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to result in a Material Adverse Effect, each Plan (and each related trust, if any) which is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service or is in the form of a prototype document that is the subject of a favorable opinion letter.

(b) There exists no Unfunded Pension Liability with respect to any Plan, except as would not reasonably be expected to have a Material Adverse Effect.

(c) If each of the Lead Borrower, each Restricted Subsidiary of the Lead Borrower and each ERISA Affiliate were to withdraw from all Multiemployer Plans in a complete withdrawal as of the date this assurance is given, the aggregate withdrawal liability that would be incurred by the Lead Borrower and its Restricted Subsidiaries would not reasonably be expected to have a Material Adverse Effect.
(d) There are no actions, suits or claims pending against or involving a Plan (other than routine claims for benefits) or, to the knowledge of the Lead Borrower or any Restricted Subsidiary of the Lead Borrower, threatened, which would reasonably be expected to be asserted successfully against any Plan and, if so asserted successfully, would reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(e) The Lead Borrower, any Restricted Subsidiary of the Lead Borrower and any ERISA Affiliate have made all material contributions to or under each Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, the terms of such Plan or Multiemployer Plan, respectively, or any contract or agreement requiring contributions to a Plan or Multiemployer Plan except where any failure to comply, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(f) Except as would not reasonably be expected to have a Material Adverse Effect: (i) each Foreign Pension Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities; (ii) all contributions required to be made with respect to a Foreign Pension Plan have been timely made; and (iii) neither the Lead Borrower nor any of its Restricted Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Foreign Pension Plan.

8.11 The Security Documents

(a) The provisions of the Security Agreement are effective to create in favor of the Collateral Agent for the benefit of the Secured Creditors a legal, valid and enforceable security interest (except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors’ rights and by equitable principles (regardless of whether enforcement is sought in equity or at law) in all right, title and interest of the Credit Parties in the Collateral (as described in the Security Agreement), and upon (i) the timely and proper filing of financing statements listing each applicable Credit Party, as a debtor, and the Collateral Agent, as secured creditor, in the secretary of state’s office (or other similar governmental entity) of the jurisdiction of organization of such Credit Party, (ii) sufficient identification of commercial tort claims (as applicable), (iii) execution of a control agreement establishing the Collateral Agent’s “control” (within the meaning of the New York UCC) with respect to any deposit account, (iv) the recordation of the Patent Security Agreement, if applicable, and the Trademark Security Agreement, if applicable, in each case in the United States Patent and Trademark Office and (v) the Copyright Security Agreement, if applicable, in the form attached to the Security Agreement (other than Collateral in which a security interest cannot be perfected under the UCC as in effect at the relevant time in the relevant jurisdiction or by the taking of the foregoing actions), subject to no other Liens other than Permitted Liens, in each case, to the extent perfection can be accomplished under applicable law through these actions.

(b) The provisions of the Pledge Agreement are effective to create in favor of the Collateral Agent for the benefit of the Secured Creditors a legal, valid and enforceable security interest (except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors’ rights and by equitable principles (regardless of whether enforcement is sought in equity or at law) in all right, title and interest of the Credit Parties in the Collateral (as described in the Pledge Agreement), upon the timely and proper filing of financing statements listing each applicable Credit Party, as a debtor, and Collateral Agent, as secured creditor, in the secretary of state’s office (or other similar governmental entity) of the jurisdiction of organization of such Credit Party, the security interests created under the Pledge Agreement in favor of the Collateral Agent, as Pledgee, for the benefit of the Secured Creditors, constitute perfected (to the extent provided in the Pledge Agreement) security interests in the Collateral (as described in the Pledge Agreement (other than Collateral in which a security interest cannot be perfected under the UCC as in effect at the relevant time in the relevant jurisdiction or by the taking of the foregoing actions), subject to no other Liens other than Permitted Liens, in each case, to the extent perfection can be accomplished under applicable law through these actions.
8.13 **Capitalization**

All outstanding shares of capital stock of the Lead Borrower have been duly and validly issued and are fully paid and non-assessable (other than any assessment on the shareholders of the Lead Borrower that may be imposed as a matter of law) and are owned by Holdings. All outstanding shares of capital stock of each Subsidiary Borrower are owned directly or indirectly by the Lead Borrower. The Lead Borrower does not have outstanding any capital stock or other securities convertible into or exchangeable for its capital stock or any rights to subscribe for or to purchase, or any options for the purchase of, or any agreement providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to, its capital stock.

8.14 **Subsidiaries**

On and as of the Closing Date and after giving effect to the consummation of the Transaction, the Lead Borrower has no Subsidiaries other than those Subsidiaries listed on Schedule 8.14. Schedule 8.14 correctly sets forth, as of the Closing Date and after giving effect to the Transaction, the percentage ownership (direct and indirect) of the Lead Borrower in each class of capital stock of each of its Subsidiaries and also identifies the direct owner thereof.

8.15 **Anti-Corruption Laws; Sanctioned Persons**

The Lead Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Lead Borrower and its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and Lead Borrower and its Subsidiaries and their respective officers and employees, and to the knowledge of the Lead Borrower, its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Lead Borrower, any of its Subsidiaries or any of their respective directors, officers or employees, or (b) to the knowledge of the Lead Borrower, any agent of the Lead Borrower or any of its Subsidiaries that will act in any capacity in connection with or benefit from any credit facility established hereby, is a Sanctioned Person. No Borrowing or use of proceeds thereof will be used for a purpose that would violate Anti-Corruption Laws or applicable Sanctions.

8.16 **Investment Company Act**

None of the Lead Borrower or any of its Restricted Subsidiaries is an “investment company” within the meaning of the Investment Company Act of 1940, as amended, required to be registered as such.

8.18 **Environmental Matters**

(a) The Lead Borrower and each of its Restricted Subsidiaries are in compliance with all applicable Environmental Laws and the requirements of any permits issued under such Environmental Laws. To the knowledge of any Credit Party, there are no pending or threatened Environmental Claims against the Lead Borrower or any of its Restricted Subsidiaries or any Real Property owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries (including any such claim arising out of the ownership, lease or operation by the Lead Borrower or any of its Restricted Subsidiaries of any Real Property formerly owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries but no longer owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries). There are no facts, circumstances, conditions or occurrences with respect to the business or operations of the Lead Borrower or any of its Restricted Subsidiaries, or to the knowledge of any Credit Party, any Real Property owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries (including any Real Property formerly owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries).
Borrower or any of its Restricted Subsidiaries but no longer owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries) that
would be reasonably expected (i) to form the basis of an Environmental Claim against the Lead Borrower or any of its Restricted Subsidiaries or (ii) to
cause any Real Property owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries to be subject to any restrictions on the
ownership, lease, occupancy or transferability of such Real Property by the Lead Borrower or any of its Restricted Subsidiaries under any applicable
Environmental Law.

(b) To the knowledge of any Credit Party, except as would not reasonably be expected to have a Material Adverse Effect, Hazardous Materials
have not at any time been generated, used, treated or stored on, or transported to or from, or Released on or from, any Real Property owned, leased or
operated by the Lead Borrower or any of its Restricted Subsidiaries where such generation, use, treatment, storage, transportation or Release has (i)
violated or would be reasonably expected to violate any applicable Environmental Law, (ii) give rise to an Environmental Claim or (iii) give rise to
liability under any applicable Environmental Law.

(c) Notwithstanding anything to the contrary in this Section 8.18, the representations and warranties made in this Section 8.18 shall be untrue
only if the effect of any or all conditions, violations, claims, restrictions, failures and noncompliances of the types described above would, either
individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

8.19 Labor Relations

Except as set forth in Schedule 8.19 or except to the extent the same, either individually or in the aggregate, had and would not
reasonably be expected to have a Material Adverse Effect, (a) there are no strikes, lockouts, slowdowns or other labor disputes pending against the Lead
Borrower or any of its Restricted Subsidiaries or, to the knowledge of each Credit Party, threatened against the Lead Borrower or any of its Restricted
Subsidiaries, (b) to the knowledge of each Credit Party, there are no questions concerning union representation with respect to the Lead Borrower or any of
its Restricted Subsidiaries, (c) the hours worked by and payments made to employees of the Lead Borrower or any of its Restricted Subsidiaries have not
been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local, or foreign law dealing with such matters and (d) to the
knowledge of each Credit Party, no wage and hour department investigation has been made of the Lead Borrower or any of its Restricted Subsidiaries.

8.20 Intellectual Property

Each of the Lead Borrower and each of its Restricted Subsidiaries owns or has the right to use all the patents, trademarks, domain names,
service marks, trade names, copyrights, inventions, trade secrets, formulas, proprietary information and know-how of any type and other intellectual
property, whether or not written (including, but not limited to, rights in computer programs and databases) (collectively, “Intellectual Property”), used or
held for use in or otherwise necessary for the present conduct of its business, without any known conflict with, infringement or violation of the Intellectual
Property rights of others, except for such failures to own or have the right to use and/or conflicts, infringements or violations as have not had, and would
not reasonably be expected to have, a Material Adverse Effect.

8.21 Legal Names; Type of Organization; Jurisdiction of Organization; etc

Schedule 8.21 contains for each Credit Party, as of the Closing Date, (i) the exact legal name of such Credit Party, (ii) the type of
organization of such Credit Party, (iii) the jurisdiction of organization of such Credit Party, (iv) such Credit Party’s Location and (v) the organizational
identification number (if any) of such Credit Party. To the extent that such Credit Party does not have an organizational identification number on the
Closing Date and later obtains one, such Credit Party shall promptly thereafter notify the Collateral Agent of such organizational identification number and
shall take all actions reasonably satisfactory to the Collateral Agent to the extent necessary to maintain the security interest of the Collateral Agent in the
Collateral intended to be granted pursuant to the Security Documents fully perfected and in full force and effect.

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8.22 **Affected Financial Institution**

No Credit Party is an Affected Financial Institution.

**Section 9. Affirmative Covenants**

Each Borrower and each of its Restricted Subsidiaries hereby covenants and agrees that on and after the Closing Date and until the Term Loans and Notes (in each case together with interest thereon), Fees and all other Obligations (other than any indemnification obligations arising hereunder which are not then due and payable and obligations in respect of Interest Rate Protection Agreements, Other Hedging Agreements or Treasury Services Agreements) incurred hereunder and thereunder, are paid in full.

9.01 **Information Covenants**

The Lead Borrower will furnish to the Administrative Agent for distribution to each Lender:

(a) **Quarterly Financial Statements.** Within 45 days after the close of each of the first three quarterly accounting periods in each fiscal year of the Lead Borrower (and within 60 days for the fiscal quarter ending September 30, 2020), (i) the consolidated balance sheet of the Lead Borrower and its Subsidiaries as at the end of such quarterly accounting period and the related consolidated statements of operations and of changes in shareholder’s equity (deficit) and statement of cash flows for such quarterly accounting period and for the elapsed portion of the fiscal year ended with the last day of such quarterly accounting period, in each case setting forth comparative figures for the corresponding quarterly accounting period in the prior fiscal year, all of which shall be certified by the chief financial officer of the Lead Borrower that they fairly present in all material respects in accordance with U.S. GAAP the financial condition of the Lead Borrower and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes, and (ii) management’s discussion and analysis of the important operational and financial developments during such quarterly accounting period. If the Lead Borrower has filed (within the time period required above) a Form 10-Q with the SEC for any fiscal quarter described above, then to the extent that such quarterly report on Form 10-Q contains any of the foregoing items, the Lenders shall accept such Form 10-Q in lieu of such items.

(b) **Annual Financial Statements.** Within 120 days after the close of each fiscal year of the Lead Borrower, (i) the consolidated balance sheet of the Lead Borrower and its Subsidiaries as at the end of such fiscal year and the related consolidated statements of operations and of changes in shareholder’s equity (deficit) and statement of cash flows for such fiscal year setting forth comparative figures for the preceding fiscal year and certified, in the case of consolidated financial statements, by Ernst & Young LLP or any one of the “Big 4” public accounting firms or other independent certified public accountants of recognized national standing reasonably acceptable to the Administrative Agent, together with an opinion of such accounting firm (which opinion shall be without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit (other than as a result of an upcoming maturity date under the any Tranche of Term Loans under this Agreement or the Maturity Date (as defined in the ABL Credit Agreement) under the ABL Credit Agreement occurring within one year from the time such opinion is delivered or any potential inability to satisfy the financial covenants set forth in Section 10.11 of the ABL Credit Agreement on a future date or in a future period)) which demonstrates that such statements fairly present in all material respects in accordance with U.S. GAAP the financial condition of the Lead Borrower and its Subsidiaries as of the date indicated and the results of their operations and changes in their cash flows for the periods indicated, and (ii) management’s discussion and analysis of the important operational and financial developments during such fiscal year. If the Borrower has filed (within the time period required above) a Form 10-K with the SEC for any fiscal year described above, then to the extent that such annual report on Form 10-K contains any of the foregoing items, the Lenders shall accept such Form 10-K in lieu of such items.

(c) **Reporting.** Notwithstanding the foregoing, the obligations referred to in Sections 9.01(a) and 9.01(b) above may be satisfied with respect to financial information of the Lead Borrower and its Subsidiaries by

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furnishing the Lead Borrower’s Form 10-K or 10-Q filed with the SEC (and the public filing of such report with the SEC shall constitute delivery under this Section 9.01); provided that to the extent such information is in lieu of information required to be provided under Section 9.01(b) (it being understood that such information may be audited at the option of the Lead Borrower), such materials are accompanied by a report and opinion of Ernst & Young LLP or any one of the “Big 4” public accounting firms or other independent certified public accountants of recognized national standing firm reasonably acceptable to the Administrative Agent, which report and opinion (a) will be prepared in accordance with generally accepted auditing standards and (b) will be without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit (other than as a result of an upcoming maturity date under the any Tranche of Term Loans under this Agreement or the Maturity Date (as defined in the ABL Credit Agreement) under the ABL Credit Agreement occurring within one year from the time such opinion is delivered or any potential inability to satisfy the financial covenants set forth in Section 10.11 of the ABL Credit Agreement on a future date or in a future period)).

(d) [Reserved],

(e) Officer’s Certificates. At the time of the delivery of the Section 9.01 Financials, a compliance certificate from a Responsible Officer of the Lead Borrower substantially in the form of Exhibit J, certifying on behalf of the Lead Borrower that, to such Responsible Officer’s knowledge after due inquiry, no Default or Event of Default has occurred and is continuing or, if any Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof, which certificate shall (i) if delivered with the financial statements required by Section 9.01(b), set forth in reasonable detail the amount of (and the calculations required to establish the amount of) Excess Cash Flow for the applicable Excess Cash Flow Payment Period, and (ii) certify that there have been no changes to Schedules 3(a), 2(b), 9, 11(a), 11(b), 12, 13 and 14 of the Perfection Certificate, in each case since the Closing Date or, if later, since the date of the most recent certificate delivered pursuant to this Section 9.01(e), or if there have been any such changes, a list in reasonable detail of such changes (but, in each case with respect to this clause (ii), only to the extent that such changes are required to be reported to the Collateral Agent pursuant to the terms of such Security Documents) and whether the Lead Borrower and the other Credit Parties have otherwise taken all actions required to be taken by them pursuant to such Security Documents in connection with any such changes.

(f) Notice of Default, Litigation and Material Adverse Effect. Promptly after any officer of the Lead Borrower or any of its Subsidiaries obtains knowledge thereof, notice of (i) the occurrence of any event which constitutes a Default or an Event of Default or any default or event of default under the ABL Credit Agreement or any refinancing thereof, any Permitted Pari Passu Notes Documents or any Permitted Junior Debt or other debt instrument in excess of the Threshold Amount, (ii) any litigation, or governmental investigation or proceeding pending against the Lead Borrower or any of its Subsidiaries (x) which, either individually or in the aggregate, has had, or would reasonably be expected to have, a Material Adverse Effect or (y) with respect to any Credit Document or (iii) any other event, change or circumstance that has had, or would reasonably be expected to have, a Material Adverse Effect.

(g) Other Reports and Filings. Promptly after the filing or delivery thereof, copies of (i) all financial information, proxy materials and reports, if any, which the Lead Borrower or any of its Subsidiaries shall publicly file with the Securities and Exchange Commission or any successor thereto (the “SEC”), (ii) reports or other information furnished to, or notices received from, holders of Indebtedness the aggregate principal amount of which is equal to or in excess of the Threshold Amount, solely to the extent that substantially similar information has not been provided to the Lenders, (iii) with reasonable promptness, such other information or documents (financial or otherwise) as the Administrative Agent on its own behalf or on behalf of the Required Lenders may reasonably request from time to time and (iv) with reasonable promptness, such other information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act and the Beneficial Ownership Regulation.

(h) Environmental Matters. Promptly after any officer of the Lead Borrower or any of its Subsidiaries obtains knowledge thereof, notice of one or more of the following environmental matters to the extent that such
environmental matters, either individually or when aggregated with all other such environmental matters, would reasonably be expected to have a Material Adverse Effect:

(i) any pending or threatened Environmental Claim against the Lead Borrower or any of its Subsidiaries or any Real Property owned, leased or operated by the Lead Borrower or any of its Subsidiaries;

(ii) any condition or occurrence on or arising from any Real Property owned, leased or operated by the Lead Borrower or any of its Subsidiaries that (a) results in noncompliance by the Lead Borrower or any of its Subsidiaries with any applicable Environmental Law or (b) would reasonably be expected to form the basis of an Environmental Claim against the Lead Borrower or any of its Subsidiaries or any such Real Property;

(iii) any condition or occurrence on any Real Property owned, leased or operated by the Lead Borrower or any of its Subsidiaries that could reasonably be expected to cause such Real Property to be subject to any restrictions on the ownership, lease, occupancy, use or transferability by the Lead Borrower or any of its Subsidiaries of such Real Property under any Environmental Law; and

(iv) the taking of any removal or remedial action in response to the actual or alleged presence of any Hazardous Material on any Real Property owned, leased or operated by the Lead Borrower or any of its Subsidiaries as required by any Environmental Law or any governmental or other administrative agency and all notices received by the Lead Borrower or any of its Subsidiaries from any government or governmental agency under, or pursuant to, CERCLA which identify the Lead Borrower or any of its Subsidiaries as potentially responsible parties for remediation costs or which otherwise notify the Lead Borrower or any of its Subsidiaries of potential liability under CERCLA.

All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial action and the Lead Borrower’s or such Subsidiary’s response thereto.

(i) Notices to Holders. Promptly after the sending, filing or receipt thereof, the Lead Borrower will provide to the Administrative Agent any material notices provided to, or received from, holders of (I) Refinancing Notes, Permitted Pari Passu Notes, Permitted Junior Debt or other Indebtedness, in each case of this clause (II), with a principal amount in excess of the Threshold Amount or (III) the indebtedness evidenced by the ABL Credit Agreement (including, for the avoidance of doubt, any notices relating to an actual or purported default or event of default thereunder and any notices to the extent the action or occurrence described therein would reasonably be expected to be materially adverse to the interests of the Lenders, but excluding any administrative notices or regular reporting requirements thereunder).

(j) Financial Statements of Unrestricted Subsidiaries. Simultaneously with the delivery of each set of Section 9.01 Financials, the related consolidating financial statements reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements.

Documents required to be delivered pursuant to Section 9.1 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Lead Borrower posts such documents, or provides a link thereto on the Lead Borrower’s website on the Internet; or (ii) on which such documents are posted on the Lead Borrower’s behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that (i) the Lead Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Lead Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Lead Borrower shall notify the Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor
compliance by the Lead 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 Borrowers hereby acknowledge that (a) the Administrative Agent and/or the Lead Arrangers will make available to the Lenders materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on the Platform and (b) certain of the Lenders (each, a “Public Lender”) may have personnel who do not wish to receive material non-public information with respect to the Borrowers or their respective 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 Lead 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 (w) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Lead Borrower shall be deemed to have authorized the Administrative Agent, the Lead Arrangers 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 Borrowers or its respective securities for purposes of United States Federal and state securities laws (providing, however, that to the extent such Borrower Materials constitute Public Side Information, they shall be treated as set forth in Section 13.16); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information”; and (z) the Administrative Agent and the Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.”

9.02 Books, Records and Inspections; Conference Calls

(a) The Lead Borrower will, and will cause each of its Restricted Subsidiaries to, keep proper books of record and accounts in which full, true and correct entries in conformity with U.S. GAAP and all material Requirements of Law shall be made of all dealings and transactions in relation to its business and activities. The Lead Borrower will, and will cause each of its Restricted Subsidiaries to, permit officers and designated representatives of the Administrative Agent or any Lender to visit and inspect, under guidance of officers of the Lead Borrower or such Restricted Subsidiary, any of the properties of the Lead Borrower or such Restricted Subsidiary, and to examine the books of account of the Lead Borrower or such Restricted Subsidiary and discuss the affairs, finances and accounts of the Lead Borrower or such Restricted Subsidiary with, and be advised as to the same by, its and their officers and independent accountants, all upon reasonable prior notice and at such reasonable times and intervals and to such reasonable extent as the Administrative Agent or any such Lender may reasonably request; provided that the Administrative Agent shall give the Lead Borrower an opportunity to participate in any discussions with its accountants; provided further that in the absence of the existence of an Event of Default, (i) only the Administrative Agent on behalf of the Lenders may exercise the rights of the Administrative Agent and the Lenders under this Section 9.02 and (ii) the Administrative Agent shall not exercise its inspection rights under this Section 9.02 more often than two times during any fiscal year and only one such time shall be at the Lead Borrower’s expense; provided, further, however, that when an Event of Default exists, the Administrative Agent or any Lender and their respective designees may do any of the foregoing at the expense of the Lead Borrower at any time during normal business hours and upon reasonable advance notice.

(b) The Lead Borrower will, within 30 days after the date of the delivery (or, if later, required delivery) of the quarterly and annual financial information pursuant to Sections 9.01(a) and (b), hold a conference call or teleconference, at a time selected by the Lead Borrower and reasonably acceptable to the Administrative Agent, with all of the Lenders that choose to participate, to review the financial results of the previous fiscal quarter or fiscal year, as the case may be, of the Lead Borrower (it being understood that any such call may be combined with any similar call held for any of the Borrowers’ other lenders or security holders).

9.03 Maintenance of Property; Insurance

(a) The Lead Borrower will, and will cause each of its Restricted Subsidiaries to, (i) keep all tangible property necessary to the business of and owned by the Lead Borrower and its Restricted Subsidiaries in good
working order and condition, ordinary wear and tear, casualty and condemnation excepted, (ii) maintain with financially sound and reputable insurance companies insurance on all such property and against all such risks as is consistent and in accordance with industry practice for companies similarly situated owning similar properties and engaged in similar businesses as the Lead Borrower and its Restricted Subsidiaries, and (iii) furnish to the Administrative Agent, upon its request therefor, full information as to the insurance carried. The provisions of this Section 9.03 shall be deemed supplemental to, but not duplicative of, the provisions of any Security Documents that require the maintenance of insurance.

(b) [Reserved].

(c) The Lead Borrower will, and will cause each of its Restricted Subsidiaries to, at all times keep its property insured in favor of the Collateral Agent, and all policies or certificates (or certified copies thereof) with respect to such insurance (and any other insurance maintained by the Lead Borrower and/or such Restricted Subsidiaries) (i) shall be endorsed to the Collateral Agent’s reasonable satisfaction for the benefit of the Collateral Agent (including, without limitation, by naming the Collateral Agent as loss payee and/or additional insured), (ii) if agreed by the insurer (which agreement the Lead Borrower shall use commercially reasonable efforts to obtain), shall state that such insurance policies shall not be canceled without at least 30 days’ prior written notice thereof (or, with respect to non-payment of premiums, 10 days’ prior written notice) by the respective insurer to the Collateral Agent; provided, that the requirements of this Section 9.03(c) shall not apply to (x) insurance policies covering (1) directors and officers, fiduciary or other professional liability, (2) employment practices liability, (3) workers compensation liability, (4) automobile and aviation liability, (5) health, medical, dental and life insurance, and (6) such other insurance policies and programs as the Collateral Agent may approve; and (y) self-insurance programs and (iii) shall be deposited with the Collateral Agent.

(d) If the Lead Borrower or any of its Restricted Subsidiaries shall fail to maintain insurance in accordance with this Section 9.03, or the Lead Borrower or any of its Restricted Subsidiaries shall fail to so endorse and deposit all policies or certificates with respect thereto, after any applicable grace period, the Administrative Agent shall have the right (but shall be under no obligation) to procure such insurance, and the Credit Parties jointly and severally agree to reimburse the Administrative Agent for all reasonable costs and expenses of procuring such insurance.

9.04 Existence; Franchises

The Lead Borrower will, and will cause each of its Restricted Subsidiaries to, do or cause to be done, all things necessary to preserve and keep in full force and effect its existence and, in the case of the Lead Borrower and its Restricted Subsidiaries, its and their franchises, licenses and permits in each case to the extent material; provided, however, that nothing in this Section 9.04 shall prevent (i) sales of assets and other transactions by the Lead Borrower or any of its Restricted Subsidiaries in accordance with Section 10.02, (ii) the abandonment by the Lead Borrower or any of its Restricted Subsidiaries of any franchises, licenses or permits that the Lead Borrower reasonably determines are no longer material to the operations of the Lead Borrower and its Restricted Subsidiaries taken as a whole or (iii) the withdrawal by the Lead Borrower or any of its Restricted Subsidiaries of its qualification as a foreign corporation, partnership, limited liability company or unlimited liability company, as the case may be, in any jurisdiction if such withdrawal would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

9.05 Compliance with Statutes, etc.

The Lead Borrower will, and will cause each Subsidiary to, comply with all contractual obligations (excluding Indebtedness), including, without limitation, any contracts with Governmental Authorities or any other government department or agency, applicable laws, statutes, regulations and orders of, and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, (including laws with respect to embargoed persons, anti-money laundering and anti-terrorism laws) and writs injunctions, decrees and judgments, in respect of the conduct of its business and the ownership of its property, other than those the non-compliance with which could not reasonably be expected to have a Material Adverse Effect.
9.06 **Compliance with Environmental Laws**

The Lead Borrower will comply, and will cause each of its Restricted Subsidiaries to comply, with all Environmental Laws and permits applicable to, or required by, the ownership, lease or use of Real Property now or hereafter owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries, except such noncompliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and will promptly pay or cause to be paid all costs and expenses incurred in connection with such compliance, and will keep or cause to be kept all such Real Property free and clear of any Liens imposed pursuant to such Environmental Laws (other than Liens imposed on leased Real Property resulting from the acts or omissions of the owner of such leased Real Property or of other tenants of such leased Real Property who are not within the control of the Lead Borrower). Except as have not had, and would not reasonably be expected to have, a Material Adverse Effect, neither the Lead Borrower nor any of its Restricted Subsidiaries will generate, use, treat, store, Release or dispose of, or permit the generation, use, treatment, storage, Release or disposal of Hazardous Materials on any Real Property now or hereafter owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries, or transport or permit the transportation of Hazardous Materials to or from any such Real Property, except for Hazardous Materials generated, used, treated, stored, Released or disposed of at any such Real Properties or transported to or from such Real Properties in compliance with all applicable Environmental Laws.

9.07 **ERISA**

As soon as possible and, in any event, within ten (10) Business Days after the Lead Borrower or any Restricted Subsidiary of the Lead Borrower knows of the occurrence of any of the following, the Lead Borrower will deliver to the Administrative Agent a notice setting forth the full details as to such occurrence and the action, if any, that the Lead Borrower or any Restricted Subsidiary is required or proposes to take, together with any notices required or proposed to be given or filed by the Lead Borrower or any Restricted Subsidiary or, to the knowledge of the Lead Borrower, the Plan administrator or any ERISA Affiliate to or with the PBGC or any other Governmental Authority, or a Plan participant (other than notices relating to an individual participant’s benefits) and any notices received by the Lead Borrower or any Restricted Subsidiary from the PBGC or any other Governmental Authority, or a Plan participant (other than notices relating to an individual participant’s benefits) with respect thereto: that (a) an ERISA Event has occurred that is reasonably expected to result in a Material Adverse Effect; (b) there has been an increase in Unfunded Pension Liabilities since the date the representations hereunder are given, or from any prior notice, as applicable, in either case, which is reasonably expected to result in a Material Adverse Effect; (c) there has been an increase in the withdrawal liability under Section 4201 of ERISA that would be incurred by the Lead Borrower or any Restricted Subsidiary, if the Lead Borrower, any Restricted Subsidiary of the Lead Borrower and the ERISA Affiliates were to withdraw completely from any and all Multiemployer Plans which is reasonably expected to result in a Material Adverse Effect; (d) the Lead Borrower, any Restricted Subsidiary of the Lead Borrower or any ERISA Affiliate adopts, or commences contributions to, any Plan subject to Section 412 of the Code, or adopts any amendment to a Plan subject to Section 412 of the Code which is reasonably expected to result in a Material Adverse Effect, (e) a contribution required to be made with respect to a Foreign Pension Plan has not been timely made which failure is reasonably likely to result in a Material Adverse Effect; or (f) a Foreign Pension Plan has been or is reasonably expected to be terminated, reorganized, partitioned or declared insolvent and such event is reasonably expected to result in a Material Adverse Effect. The Lead Borrower will also deliver to the Administrative Agent, upon request by the Administrative Agent, a complete copy of the most recent annual report (on Internal Revenue Service Form 5500-series, including, to the extent required, the related financial and actuarial statements and opinions and other supporting statements, certifications, schedules and information) filed with the Internal Revenue Service or other Governmental Authority of each Plan that is maintained or sponsored by the Lead Borrower or a Restricted Subsidiary.

9.08 **End of Fiscal Years; Fiscal Quarters**

The Lead Borrower will cause (i) its, and each of its Restricted Subsidiaries’ fiscal years to end on or near December 31 of each year and (ii) each of its, and each of its Restricted Subsidiaries’ fiscal quarters to end on or near March 31, June 30, September 30 and December 31.
9.09 Debarment/Suspension Event

Promptly, and in any event within five Business Days after the Lead Borrower obtains knowledge thereof, the Lead Borrower shall notify the Administrative Agent and the Agents of the occurrence of any Debarment/Suspension Event and, during the continuation of any Debarment/Suspension Event, shall promptly (a) deliver or otherwise provide to the Administrative Agent all information relating to such debarment or suspension (including, without limitation, certain financial information) as the Administrative Agent may reasonably request and (b) upon request of the Administrative Agent, provide reasonable access to the Administrative Agent to senior management of the Credit Parties and regulatory counsel to the Credit Parties that is engaged with respect to such debarment or suspension for purposes of discussing such debarment or suspension; provided that none of any Borrower or any other Subsidiary will be required to disclose or permit the discussion of any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective designees) is prohibited by law or any contractual obligation or (iii) that is subject to attorney client or similar privilege or constitutes attorney work product.

9.10 Payment of Taxes

Except as would not reasonably be expected to result in a Material Adverse Effect, the Lead Borrower will pay and discharge, and will cause each of its Subsidiaries to pay and discharge, all material Taxes imposed upon it or upon its income or profits or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all material lawful claims which, if unpaid, might become a Lien or charge upon any properties of the Lead Borrower or any of its Subsidiaries not otherwise permitted under Section 10.01(i); provided that neither the Lead Borrower nor any of its Subsidiaries shall be required to pay any such Tax which is being contested in good faith and by appropriate proceedings if it has maintained adequate reserves with respect thereto in accordance with U.S. GAAP.

9.11 Use of Proceeds

Each Borrower will use the proceeds of the Term Loans only as provided in Section 8.08.

9.12 Additional Security; Further Assurances; etc.

(a) The Lead Borrower will, and will cause each of the other Credit Parties that are Restricted Subsidiaries of the Lead Borrower to, grant to the Collateral Agent for the benefit of the Secured Creditors security interests in such assets of the Lead Borrower and such other Credit Parties that are Restricted Subsidiaries of the Lead Borrower as are not covered by the original Security Documents and as may be reasonably requested from time to time by the Administrative Agent or the Required Lenders (collectively, as may be amended, modified or supplemented from time to time, the “Additional Security Documents”); provided that (i) the pledge of the outstanding capital stock of any FSHCO or Foreign Subsidiary directly owned by the Lead Borrower or a Domestic Subsidiary that is a Credit Party shall be limited to (x) no more than sixty-five percent (65%) of the total combined voting power for all classes of the voting Equity Interests of such FSHCO or Foreign Subsidiary directly owned by the Lead Borrower or a Domestic Subsidiary that is a Credit Party shall be limited to (x) no more than sixty-five percent (65%) of the total combined voting power for all classes of the voting Equity Interests of such FSHCO or Foreign Subsidiary that is a CFC and (y) one-hundred percent (100%) of the non-voting Equity Interests of such FSHCO or Foreign Subsidiary that is a CFC, (ii) security interests and (iii) security interests shall not be required with respect to any assets or properties to the extent that such security interests would result in a material adverse tax consequence to the Lead Borrower or its Restricted Subsidiaries, as reasonably determined by the Lead Borrower and notified in writing to the Administrative Agent. All such security interests shall be granted pursuant to documentation reasonably satisfactory in form and substance to the Administrative Agent and (subject to exceptions as are reasonably acceptable to the Administrative Agent) shall constitute, upon taking all necessary perfection action (which the Credit Parties agree to promptly take) valid and enforceable perfected security interests (except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors’ rights and by equitable principles (regardless of whether enforcement is sought in equity or at law), subject to the ABL Intercreditor Agreement and any First Lien/Second Lien Intercreditor Agreement, superior to and prior to the rights of all third Persons and subject to no other Liens except for Permitted Liens. The
Additional Security Documents or instruments related thereto shall be duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect (subject to exceptions as are reasonably acceptable to the Administrative Agent) the Liens in favor of the Collateral Agent required to be granted pursuant to the Additional Security Documents and all Taxes, fees and other charges payable in connection therewith shall be paid in full. Notwithstanding any other provision in this Agreement or any other Credit Document, no FSHCO, Foreign Subsidiary, or Subsidiary of a CFC or FSHCO shall be required to pledge any of its assets to secure any obligations of the Borrowers under the Credit Documents or guarantee the obligations of the Borrowers under the Credit Documents.

(b) Subject to the terms of the ABL Intercreditor Agreement and any First Lien/Second Lien Intercreditor Agreement, with respect to any person that is or becomes a Restricted Subsidiary after the Closing Date, promptly (i) deliver to the Collateral Agent the certificates, if any, representing all (or such lesser amount as is required) of the Equity Interests of such Subsidiary, together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Equity Interests, and all intercompany notes owing from such Subsidiary to any Credit Party together with instruments of transfer executed and delivered in blank by a duly authorized officer of such Credit Party (to the extent required pursuant to the Security Agreement), (ii) cause such new Subsidiary (other than an Excluded Subsidiary) (A) to execute a joinder agreement to the Subsidiaries Guaranty, a joinder agreement to each applicable Security Document, substantially in the form annexed thereto, and a certificate attested to by the Secretary or any Assistant Secretary of such Credit Party, in the form of Exhibit E with all appropriate insertions and (B) to take all actions necessary or advisable in the opinion of the Administrative Agent or the Collateral Agent to cause the Lien created by the applicable Security Document to be duly perfected to the extent required by such agreement in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent and (iii) at the request of the Administrative Agent, deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the other Lenders, of counsel to the Credit Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 9.12(b) as the Administrative Agent may reasonable request.

(c) The Lead Borrower will, and will cause each of the other Credit Parties that are Restricted Subsidiaries of the Lead Borrower to, at the expense of the Lead Borrower, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent, promptly, upon the reasonable request of the Administrative Agent or the Collateral Agent, any document or instrument supplemental to or confirmatory of the Security Documents, including opinions of counsel, or otherwise deemed by the Administrative Agent or the Collateral Agent reasonably necessary for the continued validity, perfection and priority (subject to the ABL Intercreditor Agreement) of the Liens on the Collateral covered thereby subject to no other Liens except for Permitted Liens or as otherwise permitted by the applicable Security Document.

(d) [reserved].

(e) the Lead Borrower agrees that each action required by clauses (a) through (d) of this Section 9.12 shall be completed as soon as reasonably practicable, but in no event later than 90 days after such action is required to be taken pursuant to such clauses or requested to be taken by the Administrative Agent or the Required Lenders (or such longer period as the Administrative Agent shall otherwise agree), as the case may be; provided that, in no event will the Lead Borrower or any of its Restricted Subsidiaries be required to take any action, other than using its commercially reasonable efforts, to obtain consents from third parties with respect to its compliance with this Section 9.12.

(f) [reserved].
The Lead Borrower agrees that it will, or will cause its relevant Subsidiaries to, complete each of the actions described on Schedule 9.13 as soon as commercially reasonable and by no later than the date set forth in Schedule 9.13 with respect to such action or such later date as the Administrative Agent may reasonably agree.

9.14 Permitted Acquisitions

(a) Subject to the provisions of this Section 9.14 and the requirements contained in the definition of Permitted Acquisition, the Lead Borrower and its Restricted Subsidiaries may from time to time after the Closing Date effect Permitted Acquisitions, so long as (in each case except to the extent the Required Lenders otherwise specifically agree in writing in the case of a specific Permitted Acquisition): (i) no Event of Default shall have occurred and be continuing at the time of the consummation of the proposed Permitted Acquisition or immediately after giving effect thereto and (ii) at the time of the consummation of any Permitted Acquisition, the Consolidated Total Net Leverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which Section 9.01 Financials were required to have been delivered, does not exceed 5.25 to 1.00; provided that the aggregate consideration paid by the Lead Borrower and its Restricted Subsidiaries in connection with Permitted Acquisitions consummated from and after the Closing Date where the Acquired Entity or Business does not become a Credit Party or owned by a Credit Party, shall not exceed the sum of (x) the greater of $50,000,000 and 3.0% of Consolidated Total Assets (measured at the time of such Permitted Acquisition is consummated), plus (y) the Available Amount.

(b) At the time of each Permitted Acquisition involving the creation or acquisition of a Restricted Subsidiary, or the acquisition of Equity Interests of any Person, the Equity Interests thereof created or acquired in connection with such Permitted Acquisition shall be pledged for the benefit of the Secured Creditors pursuant to (and to the extent required by) the Pledge Agreement; provided that the pledge of the outstanding capital stock of any FSHCO or Foreign Subsidiary that is a CFC directly owned by the Lead Borrower or a Domestic Subsidiary that is a Credit Party shall be limited to (x) no more than sixty-five percent (65%) of the total combined voting power for all classes of the voting Equity Interests of such FSHCO or Foreign Subsidiary that is a CFC and (y) one-hundred percent (100%) of the non-voting Equity Interest of such FSHCO or Foreign Subsidiary that is a CFC; provided that for the avoidance of doubt, no FSHCO, Foreign Subsidiary that is a CFC, or Subsidiary of a CFC shall be required to pledge any of its assets in connection with any such Permitted Acquisition.

(c) Each Borrower shall cause each Restricted Subsidiary (other than an Excluded Subsidiary) which is formed to effect, or is acquired pursuant to, a Permitted Acquisition to comply with, and to execute and deliver all of the documentation as and to the extent required by, Section 9.12, to the reasonable satisfaction of the Administrative Agent.

(d) The consummation of each Permitted Acquisition shall be deemed to be a representation and warranty by each Borrower that the certifications pursuant to this Section 9.14 are true and correct in all material respects and that all conditions thereto have been satisfied and that same is permitted in accordance with the terms of this Agreement, which representation and warranty shall be deemed to be a representation and warranty for all purposes hereunder, including, without limitation, Sections 8 and 11.

(e) Notwithstanding anything to the contrary contained herein, if the Lead Borrower has made a LCT Election pursuant to Section 1.03 in respect of a Permitted Acquisition, then any determination of compliance with the provisions of Section 9.14(a)(i) and 9.14(d) shall be made effective as of the date of entering the definitive agreement for such Permitted Acquisition.

9.15 Credit Ratings

The Lead Borrower shall use commercially reasonable efforts to maintain a corporate credit rating from S&P and a corporate family rating from Moody’s, in each case, with respect to the Lead Borrower, and a credit rating from S&P and Moody’s with respect to the Indebtedness incurred pursuant to this Agreement, in all cases, but not a specific rating.
Designation of Subsidiaries

(a) The Lead Borrower may at any time after the Closing Date designate any Restricted Subsidiary of the Lead Borrower as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary by written notice to the Administrative Agent; provided that (i) immediately before and after such designation, no Event of Default shall have occurred and be continuing, (ii) immediately after giving effect to such designation, the Consolidated Total Net Leverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which Section 9.01 Financials were required to have been delivered, does not exceed 3.75 to 1.00, (iii) in the case of the designation of any Subsidiary as an Unrestricted Subsidiary, such designation shall constitute an Investment in such Unrestricted Subsidiary (calculated as an amount equal to the sum of (x) the fair market value of the Subsidiary designated immediately prior to such designation (such fair market value to be calculated without regard to any Obligations of such Subsidiary under the Subsidiaries Guaranty) and (y) the aggregate principal amount of any Indebtedness owed by the Subsidiary to the Lead Borrower or any of its Subsidiaries immediately prior to such designation, all calculated, except as set forth in the parenthetical to clause (x) above, on a consolidated basis in accordance with U.S. GAAP), and such Investment shall be permitted under Section 10.05, (iv) no Subsidiary may be designated as an Unrestricted Subsidiary if it is a “Restricted Subsidiary” for the purpose of (I) the ABL Credit Agreement or (II) any Refinancing Notes Indenture, any Permitted Pari Passu Notes Document, any Permitted Junior Notes Document or other debt instrument, in each case of this clause (II), with a principal amount in excess of the Threshold Amount, (v) immediately after giving effect to the designation of an Unrestricted Subsidiary as a Restricted Subsidiary, the Lead Borrower shall comply with the provisions of Section 9.12 with respect to such designated Restricted Subsidiary, (vi) no Restricted Subsidiary may be a Subsidiary of an Unrestricted Subsidiary, (vii) in the case of the designation of any Subsidiary as an Unrestricted Subsidiary, no recourse whatsoever (whether by contract or by operation of law or otherwise) may be had to the Lead Borrower or any of its Restricted Subsidiaries or any of their respective properties or assets for any obligations of such Unrestricted Subsidiary, and (viii) the Lead Borrower shall have delivered to the Administrative Agent and each Lender a certificate executed by its chief financial officer or treasurer, certifying to the best of such officer’s knowledge, compliance with the requirements of the preceding clauses (i) through (vii), inclusive, and containing the calculations (in reasonable detail) required by the preceding clause (j). The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by the Lead Borrower in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value at the date of such designation of the Lead Borrower’s Investment in such Subsidiary.

Section 10. Negative Covenants

The Lead Borrower and each of its Restricted Subsidiaries hereby covenant and agree that on and after the Closing Date and until the Term Loans and Notes (in each case, together with interest thereon), Fees and all other Obligations (other than any indemnification obligations arising hereunder which are not then due and payable and obligations in respect of Interest Rate Protection Agreements, Other Hedging Agreements or Treasury Services Agreements) incurred hereunder and thereunder, are paid in full:

10.01 Liens

The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to, create, incur, assume or suffer to exist any Lien upon or with respect to any property or assets (real or personal, tangible or intangible) of the Lead Borrower or any of its Restricted Subsidiaries, whether now owned or hereafter acquired, or sell accounts receivable with recourse to the Lead Borrower or any of its Restricted Subsidiaries or authorize the filing of any financing statement under the UCC with respect to any Lien or any other similar notice of any Lien under any similar recording or notice statute; provided that the provisions of this Section 10.01 shall not prevent the creation, incurrence, assumption or existence of, or any filing in respect of, the following (Liens described below are herein referred to as “Permitted Liens”):

(i) Liens for Taxes, assessments or governmental charges or levies not overdue or Liens for Taxes being contested in good faith and by appropriate proceedings for which adequate reserves have been
established in accordance with U.S. GAAP (or, for Foreign Subsidiaries, in conformity with generally accepted accounting principles that are applicable in their respective jurisdiction of organization);

(ii) Liens in respect of property or assets of the Lead Borrower or any of its Restricted Subsidiaries imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers’, warehousemen’s, contractors’, materialmen’s and mechanics’ liens and other similar Liens arising in the ordinary course of business, and which are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property or assets, subject to any such Lien for which adequate reserves have been established in accordance with U.S. GAAP;

(iii) Liens in existence on the Closing Date which are listed, and the property subject thereto described, in Schedule 10.01(iii) (or to the extent not listed on such Schedule 10.01(iii), where the fair market value of all property to which such Liens under this clause (iii) attach is less than $10,000,000 in the aggregate), plus modifications, renewals, replacements, refinancings and extensions of such Liens, provided that (x) the aggregate principal amount of the Indebtedness, if any, secured by such Liens does not increase from that amount outstanding at the time of any such renewal, replacement or extension, plus accrued and unpaid interest and cash fees and expenses (including premium) incurred in connection with such renewal, replacement or extension and (y) any such renewal, replacement or extension does not encumber any additional assets or properties of the Lead Borrower or any of its Restricted Subsidiaries (other than after-acquired property that is affixed or incorporated into the property encumbered by such Lien on the Closing Date and the proceeds and products thereof) unless such Lien is permitted under the other provisions of this Section 10.01;

(iv) (x) Liens created pursuant to the Credit Documents, Liens securing Obligations (as defined in the ABL Credit Agreement) under the ABL Credit Agreement and the credit documents related thereto (including any obligations secured ratably thereunder), in each case as in effect on the date hereof, incurred pursuant to Section 10.04(i)(y); provided that in the case of Liens securing such Indebtedness under the ABL Credit Agreement, the ABL Collateral Agent (or other applicable representative thereof on behalf of the holders of such Indebtedness) shall have entered into with the Administrative Agent and/or the Collateral Agent the ABL Intercreditor Agreement and/or any First Lien/Second Lien Intercreditor Agreement, and (y) Liens under the credit documents securing any Refinancing Term Loans and Refinancing Notes or Interest Rate Protection Agreement, Other Hedging Agreements or Treasury Services Agreements (other than Excluded Swap Obligations) expressly secured ratably therewith in accordance with Section 2.18(a);

(v) Leases, subleases, licenses or sublicenses (including licenses or sublicenses of Intellectual Property) granted to other Persons not materially interfering with the conduct of the business of the Lead Borrower or any of its Restricted Subsidiaries;

(vi) Liens upon assets of the Lead Borrower or any of its Restricted Subsidiaries subject to Capitalized Lease Obligations to the extent such Capitalized Lease Obligations are permitted by Section 10.04(iii), provided that (x) such Liens serve only to secure the payment of Indebtedness and/or other monetary obligations arising under such Capitalized Lease Obligation and (y) the Lien encumbering the asset or assets giving rise to such Capitalized Lease Obligation does not encumber any asset of the Lead Borrower or any of its Restricted Subsidiaries other than the proceeds of the assets giving rise to such Capitalized Lease Obligations;

(vii) Liens placed upon equipment, machinery or other fixed assets acquired or constructed after the Closing Date and used in the ordinary course of business of the Lead Borrower or any of its Restricted Subsidiaries and placed at the time of the acquisition or construction thereof by the Lead Borrower or such Restricted Subsidiary within 270 days thereafter to secure Indebtedness incurred to pay all or a portion of the purchase or construction price thereof or to secure Indebtedness incurred solely for the purpose of financing the acquisition or construction of any such equipment, machinery or other
fixed assets or extensions, renewals or replacements of any of the foregoing for the same or a lesser amount, provided that (x) the Indebtedness secured by such Liens is permitted by Section 10.04(iii) and (y) in all events, the Lien encumbering the equipment, machinery or other fixed assets so acquired or constructed does not encumber any other asset of the Lead Borrower or such Restricted Subsidiary; provided that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender on customary terms;

(viii) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar charges or encumbrances and minor title deficiencies, which in the aggregate do not materially interfere with the conduct of the business of the Lead Borrower or any of its Restricted Subsidiaries;

(ix) Liens arising from precautionary UCC or other similar financing statement filings regarding operating leases or consignments entered into in the ordinary course of business;

(x) attachment and judgment Liens, to the extent and for so long as the underlying judgments and decrees do not constitute an Event of Default pursuant to Section 11.09;

(xi) statutory and common law landlords’ liens under leases to which the Lead Borrower or any of its Restricted Subsidiaries is a party;

(xii) Liens (other than Liens imposed under ERISA) incurred in the ordinary course of business in connection with workers’ compensation claims, unemployment insurance and social security benefits and Liens securing the performance of bids, tenders, leases and contracts in the ordinary course of business, statutory obligations, surety, stay, customs or appeal bonds, performance bonds and other obligations of a like nature (including (i) those to secure health, safety and environmental obligations and (ii) those required or requested by any Governmental Authority other than letters of credit) incurred in the ordinary course of business;

(xiii) [reserved];

(xiv) Liens on property or assets acquired pursuant to a Permitted Acquisition, or on property or assets of a Restricted Subsidiary of the Lead Borrower in existence at the time such Restricted Subsidiary is acquired pursuant to a Permitted Acquisition, provided that (x) any Indebtedness that is secured by such Liens is permitted to exist under Section 10.04, and (y) such Liens are not incurred in connection with, or in contemplation or anticipation of, such Permitted Acquisition and do not attach to any other asset of the Lead Borrower or any of its Restricted Subsidiaries; and any extensions, renewals and replacements thereof so long as the aggregate principal amount of the Indebtedness secured by such Liens does not increase from that amount outstanding at the time of any such extension, renewal or replacement, plus accrued and unpaid interest and cash fees and expenses (including premium) incurred in connection with such renewal, replacement or extension, and such extension, renewal or replacement does not encumber any asset or properties of the Lead Borrower or any of its Restricted Subsidiaries other than the proceeds of the assets subject to such Lien;

(xv) deposits or pledges to secure bids, tenders, contracts (other than contracts for the repayment of borrowed money), leases, statutory obligations, surety, stay, customs and appeal bonds and other obligations of like nature (including (i) those to secure health, safety and environmental obligations and (ii) those required or requested by any Governmental Authority other than letters of credit), and as security for the payment of rent, in each case arising in the ordinary course of business;

(xvi) Liens on assets of Foreign Subsidiaries securing Indebtedness of Foreign Subsidiaries permitted pursuant to Section 10.04;
(xvii) any interest or title of a lessor, sublessor, licensee, sublicensee, licensor or sublicensor under any lease, sublease, license or sublicense agreement (including software and other technology licenses) in the ordinary course of business;

(xviii) Liens on property subject to Sale-Leaseback Transactions to the extent such Sale-Leaseback Transactions are permitted by Section 10.02(xii);

(xix) any encumbrances or restrictions (including, without limitation, put and call agreements) with respect to the Equity Interests of any Permitted Joint Venture expressly permitted by the terms of this Agreement arising pursuant to the agreement evidencing such Permitted Joint Venture;

(xx) Liens on Collateral in favor of any Credit Party securing intercompany Indebtedness permitted by Section 10.05, provided that any Liens securing Indebtedness that is required to be subordinated pursuant to Section 10.05 shall be subordinated to the Liens created pursuant to the Security Documents;

(xxi) Liens on specific items of inventory or other goods (and proceeds thereof) of any Person securing such Person’s obligations in respect of bankers’ acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods, and pledges or deposits in the ordinary course of business;

(xxii) Liens on insurance policies and the proceeds thereof (whether accrued or not) and rights or claims against an insurer, in each case securing insurance premium financings permitted under Section 10.04(x);

(xxiii) Liens that may arise on inventory or equipment of the Lead Borrower or any of its Restricted Subsidiaries in the ordinary course of business as a result of such inventory or equipment being located on premises owned by Persons other than the Lead Borrower and its Restricted Subsidiaries;

(xxiv) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(xxv) Liens (i) of a collection bank arising under Section 4-210 of the UCC on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking or other financial institution arising as a matter of law or under customary general terms and conditions encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(xxvi) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 10.05(ii); provided that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

(xxvii) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the incurrence or issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Lead Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Lead Borrower or any Restricted Subsidiary or (iii) relating to purchase orders and other agreements entered into with customers of the Lead Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(xxviii) Liens attaching solely to cash earnest money deposits in connection with any letter of intent or purchase agreement in connection with a Permitted Acquisition or other Investment permitted hereunder;
Liens not otherwise permitted by the foregoing clauses (i) through (xxviii), or by following clauses (xxx) through (xlii), to the extent attaching to properties and assets with an aggregate fair market value not in excess of, and securing liabilities not in excess of the greater of $50,000,000 and 3.0% of Consolidated Total Assets in the aggregate at any time outstanding:

(i) Liens on Collateral (as defined in the Security Documents) securing obligations of Credit Parties under Permitted Pari Passu Notes, Permitted Junior Loans, Permitted Junior Notes, Refinancing Notes and Refinancing Term Loans that are secured as provided in the definitions thereof, or (ii) Liens on assets of non-Credit Parties securing obligations of non-Credit Parties under Permitted Junior Loans and Permitted Junior Notes to the extent permitted by Section 10.04(xxix);

cash deposits with respect to any Refinancing Notes, Permitted Pari Passu Notes or any Permitted Junior Debt or any other Indebtedness, in each case to the extent permitted by Section 10.07;

Liens on accounts receivable sold in connection with the sale or discount of accounts receivable permitted by Section 10.02(iv);

Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Lead Borrower or any Restricted Subsidiary in the ordinary course of business;

Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business of the Lead Borrower and the Restricted Subsidiaries complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Lead Borrower or any Restricted Subsidiary;

deposits made in the ordinary course of business to secure liability to insurance carriers;

receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof;

so long as no Default has occurred and is continuing at the time of granting such Liens, Liens on cash deposits in an aggregate amount not to exceed $7,500,000 securing any Interest Rate Protection Agreement or Other Hedging Agreement permitted hereunder;

[reserved];

customary Liens granted in favor of a trustee to secure fees and other amounts owing to such trustee under an indenture or other agreement pursuant to which Indebtedness not prohibited by the indenture is issued (including the indenture under which the notes are to be issued);

leases and subleases of real property that do not materially interfere with the ordinary conduct of the business of the Lead Borrower or any of its Restricted Subsidiaries; and

Liens on cash or Cash Equivalents (and the related escrow accounts) in connection with the issuance into (and pending the release from) escrow of any Refinancing Notes, any Permitted Junior Debt or any Permitted Pari Passu Notes.
In connection with the granting of Liens of the type described in this Section 10.01 by the Lead Borrower or any of its Restricted Subsidiaries, the Administrative Agent and the Collateral Agent shall, and shall be authorized to, take any actions deemed appropriate by it in connection therewith (including, without limitation, by executing appropriate lien releases or lien subordination agreements in favor of the holder or holders of such Liens, in either case solely with respect to the item or items of equipment or other assets subject to such Liens).

10.02 Consolidation, Merger, or Sale of Assets, etc

The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to, wind up, liquidate or dissolve its affairs or enter into any partnership, joint venture, or transaction of merger or consolidation, or convey, sell, lease or otherwise dispose of all or any part of its property or assets (including, in each case, pursuant to a Delaware LLC Division), or enter into any sale-leaseback transactions of any Person, except that:

(i) any Investment permitted by Section 10.05 may be structured as a merger, consolidation or amalgamation;

(ii) the Lead Borrower and its Restricted Subsidiaries may sell assets, so long as (x) each such sale is on terms and conditions not less favorable to the Lead Borrower or such Restricted Subsidiary as would reasonably be obtained by the Lead Borrower or such Restricted Subsidiary at that time in a comparable arm’s-length transaction with a Person other than an Affiliate and the Lead Borrower or the respective Restricted Subsidiary shall be in the form of cash, Cash Equivalents or, subject to the proviso below, Designated Non-cash Consideration (taking into account the amount of cash and Cash Equivalents, the principal amount of any promissory notes and the fair market value, as determined by the Lead Borrower or such Restricted Subsidiary, as the case may be, in good faith, of any other consideration (including Designated Non-cash Consideration)) and is paid at the time of the closing of such sale; provided, however, that for purposes of this clause (y), the following shall be deemed to be cash: (A) any liabilities (as shown on such Borrower’s or such Restricted Subsidiary’s most recent balance sheet provided hereunder or in the footnotes thereto) of such Borrower or such Restricted Subsidiary that are assumed by the transferee with respect to the applicable disposition and for which the Lead Borrower and the Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received by such Borrower or such Restricted Subsidiary from such transferee that are converted by such Borrower or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received in the conversion) within 180 days following the closing of the applicable asset sale, and (C) any Designated Non-cash Consideration received by the Lead Borrower or any of its Restricted Subsidiaries in such asset sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (y) that is at that time outstanding, not to exceed the greater of (A) $50,000,000 and (B) 3.0% of Consolidated Total Assets at the time of the receipt of such Designated Non-cash Consideration (with the fair market value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value) and (z) the Net Sale Proceeds therefrom are applied as (and to the extent) required by Section 5.02(d);

(iii) each of the Lead Borrower and its Restricted Subsidiaries may lease (as lessee) or license (as licensee) real or personal property (so long as any such lease or license does not create a Capitalized Lease Obligation except to the extent permitted by Section 10.04(iii));

(iv) each of the Lead Borrower and its Restricted Subsidiaries may sell or discount, in each case in the ordinary course of business, accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof and not as part of any financing transaction;
(v) each of the Lead Borrower and its Restricted Subsidiaries may grant licenses, sublicenses, leases or subleases to other Persons not materially interfering with the conduct of the business of the Lead Borrower or any of its Restricted Subsidiaries, including of Intellectual Property;

(vi) (w) any Domestic Subsidiary of the Lead Borrower may be merged, consolidated, dissolved, amalgamated or liquidated with or into the Lead Borrower (so long as the surviving Person of such merger, consolidation, dissolution, amalgamation or liquidation is a corporation, limited liability company or limited partnership organized or existing under the laws of the United States of America, any state thereof or the District of Columbia and, if such surviving Person is not the Lead Borrower, such Person expressly assumes, in writing, all the obligations of the Lead Borrower under the Credit Documents pursuant to an assumption agreement in form and substance reasonably satisfactory to the Administrative Agent) or any other Credit Party (so long as the surviving Person of such merger, consolidation, dissolution, amalgamation or liquidation is a Wholly-Owned Domestic Subsidiary of the Lead Borrower, is a corporation, limited liability company or limited partnership and is or becomes a Subsidiary Borrower or Subsidiary Guarantor concurrently with such merger, consolidation, dissolution or liquidation), (x) any Foreign Subsidiary or Excluded Subsidiary of the Lead Borrower may be merged, consolidated, dissolved, amalgamated or liquidated with or into any Wholly-Owned Foreign Subsidiary of the Lead Borrower or any Wholly-Owned Domestic Subsidiary of the Lead Borrower that is an Excluded Subsidiary, so long as such Wholly-Owned Foreign Subsidiary or such Excluded Subsidiary, as applicable, is the surviving corporation of such merger, consolidation, dissolution, amalgamation or liquidation shall only be permitted pursuant to this clause (y), so long as (I) no Default and no Event of Default then exists or would exist immediately after giving effect thereto and (II) any security interests granted to the Collateral Agent for the benefit of the Secured Creditors in the assets (and Equity Interests) of any such Person subject to any such transaction shall remain in full force and effect and perfected and enforceable (to at least the same extent as in effect immediately prior to such merger, consolidation, amalgamation or liquidation);

(vii) each Credit Party may convey, sell, lease or otherwise dispose of all or any part of its property or assets to another Credit Party;

(viii) each of the Lead Borrower and its Restricted Subsidiaries may make sales or leases of (A) inventory, (B) goods held for sale and (C) immaterial assets with a fair market value, in the case of this clause (C), of less than $10,000,000 in the ordinary course of business;

(ix) each of the Lead Borrower and its Restricted Subsidiaries may sell or otherwise dispose of (i) outdated, obsolete, surplus or worn out property, in each case, in the ordinary course of business and (ii) property no longer used or useful in the conduct of the business of the Lead Borrower and its Restricted Subsidiaries;

(x) each of the Lead Borrower and its Restricted Subsidiaries may sell or otherwise dispose of assets acquired pursuant to a Permitted Acquisition so long as (w) such assets are not used or useful to the core or principal business of the Lead Borrower and its Restricted Subsidiaries, (x) such assets have a fair market value not in excess of $10,000,000, (y) the aggregate proceeds (determined in a manner consistent with clause (x) above) received by the Lead Borrower or such Restricted Subsidiary from all such sales, transfers or dispositions relating to a given Permitted Acquisition shall not exceed 30% of the aggregate consideration paid for such Permitted Acquisition, and (z) such assets are sold, transferred or disposed of on or prior to the first anniversary of the relevant Permitted Acquisition;

(xi) in order to effect a sale, transfer or disposition otherwise permitted by this Section 10.02, a Restricted Subsidiary of the Lead Borrower may be merged, amalgamated or consolidated with or into another Person, or may be dissolved or liquidated;
each of the Lead Borrower and its Restricted Subsidiaries may effect Sale-Leaseback Transactions involving real property acquired after the Closing Date and not more than 180 days prior to such Sale-Leaseback Transaction for cash in an amount at least equal to the cost of such property; provided that any the excess of Net Sale Proceeds received by the Lead Borrower or any of its Restricted Subsidiaries from any such Sale-Leaseback Transaction from and after such time as when the Lead Borrower and its Restricted Subsidiaries shall have received Net Sale Proceeds of at least $20,000,000 from all Sale-Leaseback Transactions occurring after the Closing Date shall be applied as (and to the extent) required by Section 5.02(d);

(xiii) [reserved];

(xiv) each of the Lead Borrower and its Restricted Subsidiaries may issue or sell Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;

(xv) each of the Lead Borrower and its Restricted Subsidiaries may make transfers of property subject to casualty or condemnation proceedings upon the occurrence of the related Recovery Event;

(xvi) each of the Lead Borrower and its Restricted Subsidiaries may abandon Intellectual Property rights in the ordinary course of business, in the exercise of its reasonable good faith judgment;

(xvii) each of the Lead Borrower and its Restricted Subsidiaries may make voluntary terminations of or unwind Interest Rate Protection Agreements, Other Hedging Agreements and Treasury Services Agreements;

(xviii) each of the Lead Borrower and its Restricted Subsidiaries may make dispositions resulting from foreclosures by third parties on properties of the Lead Borrower or any of its Restricted Subsidiaries and acquisitions by the Lead Borrower or any of its Restricted Subsidiaries resulting from foreclosures by such Persons or properties of third parties;

(xix) each of the Lead Borrower and its Restricted Subsidiaries may terminate leases and subleases;

(xx) each of the Lead Borrower and its Restricted Subsidiaries may use cash and Cash Equivalents to make payments that are otherwise permitted under Sections 10.03 and 10.07;

(xxii) each of the Lead Borrower and its Restricted Subsidiaries may sell or otherwise dispose of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such sale or disposition are promptly applied to the purchase price of such replacement property;

(xxiii) sales, dispositions or contributions of property (A) between Credit Parties (other than the Lead Borrower), (B) between Restricted Subsidiaries (other than Credit Parties), (C) by Restricted Subsidiaries that are not Credit Parties to the Credit Parties (other than the Lead Borrower) or (D) by Credit Parties to any Restricted Subsidiary that is not a Credit Party, provided with respect to clause (D) that (1) the portion (if any) of any such sale, disposition or contribution of property made for less than fair market value and (2) any noncash consideration received in exchange for any such sale, disposition or contribution of property, shall in each case constitute an Investment in such Restricted Subsidiary subject to Section 10.05.

(xxiv) dispositions of Investments (including Equity Interests) in, and issuances of Equity Interests by, any Permitted Joint Venture or any Subsidiary that is not a Wholly-Owned Subsidiary to the extent required by, or made pursuant to customary buy/sell arrangements between the parties to such Permitted Joint Venture or equityholders of such Subsidiary set forth in, the joint venture agreement,
operating agreement, shareholders agreement or similar agreement governing such Permitted Joint Venture or such Subsidiary;

(xxiv) transfers of condemned property as a result of the exercise of “eminent domain” or other similar powers to the respective Governmental Authority or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and transfers of property that have been subject to a casualty to the respective insurer of such real property as part of an insurance settlement; provided that the proceeds of such dispositions are applied in accordance with Section 5.02(f);

(xxv) any disposition of any asset between or among the Restricted Subsidiaries as a substantially concurrent interim disposition in connection with a disposition otherwise permitted pursuant to this Section 10.02; and

(xxvi) dispositions permitted by Section 10.03.

To the extent the Required Lenders waive the provisions of this Section 10.02 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 10.02 (other than to the Lead Borrower or aRestricted Subsidiary thereof), such Collateral shall be sold free and clear of the Liens created by the Security Documents, and the Administrative Agent and the Collateral Agent shall, and shall be authorized to, take any actions deemed appropriate in order to effect the foregoing.

10.03 Dividends

The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to, authorize, declare or pay any Dividends with respect to the Lead Borrower or any of its Restricted Subsidiaries, except that:

(i) any Restricted Subsidiary of the Lead Borrower and any Credit Party (other than the Lead Borrower) may pay Dividends or return capital or make distributions and other similar payments with regard to its Equity Interests to the Lead Borrower, to other Restricted Subsidiaries of the Lead Borrower or to another Credit Party which directly or indirectly own equity therein;

(ii) any non-Wholly-Owned Subsidiary of the Lead Borrower may declare and pay cash Dividends to its shareholders generally so long as the Lead Borrower or its Restricted Subsidiary which owns the Equity Interests in the Subsidiary paying such Dividends receives at least its proportionate share thereof (based upon its relative holding of the Equity Interests in the Subsidiary paying such Dividends and taking into account the relative preferences, if any, of the various classes of Equity Interests of such Subsidiary);

(iii) [reserved];

(iv) [reserved];

(v) [reserved];

(vi) [reserved];

(vii) reasonable and customary indemnities to directors, officers and employees of Lead Borrower in the ordinary course of business, to the extent reasonably attributable to the ownership or operation of the Lead Borrower and its Restricted Subsidiaries;

(viii) [reserved];

(ix) any Dividend used to fund the Transaction, including Transaction Costs;
(x) [reserved];

(xi) repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants or the settlement or vesting of other equity incentive awards;

(xii) [reserved];

(xiii) on a Pro Forma Basis, if the Consolidated Total Net Leverage Ratio does not exceed 3.25 to 1.00, any Dividends to the extent the same are made solely with the Available Amount, so long as at the time of, and after giving effect to such Dividend, no Event of Default shall have occurred and be continuing;

(xiv) purchases of minority interests in non-Wholly-Owned Subsidiaries by the Lead Borrower and the Guarantors; provided that the aggregate amount of such purchases, when added to the aggregate amount of Investments pursuant to Section 10.05(xvii), shall not exceed $20,000,000;

(xv) the declaration and payment of dividends or the payment of other distributions by the Lead Borrower in an aggregate amount since the Closing Date not to exceed $75,000,000;

(xvi) the Lead Borrower and each Restricted Subsidiary may declare and make dividend payments or other distributions payable solely in the Equity Interests of such Person so long as in the case of dividend or other distribution by a Restricted Subsidiary, the Lead Borrower or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution;

(xvii) [reserved];

(xviii) the Lead Borrower and any Restricted Subsidiary may pay dividends and distributions within 60 days after the date of declaration thereof, if at the date of declaration of such payment, such payment would have complied with another provision of this Section 10.03; and

(xix) any Dividends, so long as (x) at the time of, and after giving effect to such Dividend, no Event of Default shall have occurred and be continuing and (y) on a Pro Forma Basis, the Consolidated Total Net Leverage Ratio does not exceed 2.75 to 1.00.

In determining compliance with this Section 10.03 (and in determining amounts paid as Dividends pursuant hereto for purposes of the definition of Consolidated EBITDA and Consolidated Net Income), amounts loaned or advanced to the Lead Borrower pursuant to Section 10.05(vi) shall be deemed to be cash Dividends paid to the Lead Borrower to the extent provided in said Section 10.05(vi).

10.04 Indebtedness

The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to, contract, create, incur, assume or suffer to exist any Indebtedness, except:

(i) (x) Indebtedness incurred pursuant to this Agreement and the other Credit Documents; and (y) Indebtedness incurred pursuant to the ABL Credit Agreement, including any increases in Commitments (as that term is defined in the ABL Credit Agreement) in a principal amount not to exceed $225,000,000;

(ii) Indebtedness under Interest Rate Protection Agreements entered into with respect to other Indebtedness permitted under this Section 10.04 so long as the entering into of such Interest Rate Protection Agreements are bona fide hedging activities and are not for speculative purposes;
(iii) Indebtedness of the Lead Borrower and its Restricted Subsidiaries evidenced by Capitalized Lease Obligations and purchase money Indebtedness (including obligations in respect of mortgages, industrial revenue bonds, industrial development bonds and similar financings); provided that in no event shall the aggregate principal amount of Capitalized Lease Obligations and the principal amount of all such Indebtedness incurred or assumed in each case after the Closing Date permitted by this clause (iii) exceed the greater of $50,000,000 and 3.0% of Consolidated Total Assets at any one time outstanding;

(iv) (A) Indebtedness in the form of any indemnification, adjustment of purchase price, earn-out, non-compete, consulting, deferred compensation and similar obligations of the Lead Borrower or its Restricted Subsidiaries and (B) Indebtedness incurred by the Lead Borrower or any of its Restricted Subsidiaries in any disposition permitted hereby under agreements providing for earn-outs or the adjustment of the purchase price or similar adjustments, in each case, in an aggregate amount not exceeding $75,000,000 at any time outstanding;

(v) Indebtedness of a Restricted Subsidiary of the Lead Borrower acquired pursuant to a Permitted Acquisition (or Indebtedness assumed at the time of a Permitted Acquisition of an asset securing such Indebtedness), provided that (x) such Indebtedness was not incurred in connection with, or in anticipation or contemplation of, such Permitted Acquisition and (y) the Consolidated Total Net Leverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which Section 9.01 Financials were required to have been delivered, shall not exceed 5.25 to 1.00;

(vi) intercompany Indebtedness among the Lead Borrower and its Restricted Subsidiaries to the extent permitted by Section 10.05(vi);

(vii) Indebtedness outstanding on the Closing Date and listed on Schedule 10.04 (“Existing Indebtedness”) and any subsequent extension, renewal or refinancing thereof; provided that the aggregate principal amount of the Indebtedness to be extended, renewed or refinanced does not increase from that amount outstanding at the time of any such extension, renewal or refinancing, plus accrued and unpaid interest and cash fees and expenses (including premium) incurred in connection with such renewal, replacement or extension; provided, however, that such refinancing Indebtedness: (x) has a Weighted Average Life to Maturity at the time such refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness being extended, renewed or refinanced; (y) to the extent such refinancing Indebtedness extends, renews or refinances Indebtedness subordinated or pari passu to the Term Loans, such refinancing Indebtedness is subordinated or pari passu to the Term Loans at least to the same extent as the Indebtedness being extended, renewed or refinanced; and (z) shall not include Indebtedness of a Subsidiary of the Lead Borrower that is not a Subsidiary Guarantor that refunds, refinances, replaces, renews, extends or defeases Indebtedness of the Lead Borrower or a Subsidiary Guarantor;

(viii) [reserved];

(ix) Indebtedness in respect of letters of credit or bonds backing obligations under insurance policies or related to self-insurance obligations or consisting of the financing of insurance premiums, in an aggregate amount not exceeding $20,000,000 at any time outstanding;

(x) Indebtedness incurred in the ordinary course of business to finance insurance premiums or take-or-pay obligations contained in supply arrangements;

(xi) Indebtedness incurred in the ordinary course of business in respect of netting services, overdraft protections, employee credit card programs, automatic clearinghouse arrangements and other similar services in connection with cash management and deposit accounts and Indebtedness in connection with the honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, including in each case, obligations under any Treasury Services Agreements;
(xii) Indebtedness in respect of Other Hedging Agreements so long as the entering into of such Other Hedging Agreements are bona fide hedging activities and are not for speculative purposes;

(xiii) [reserved];

(xiv) refinancings, renewals or extensions of any Indebtedness incurred pursuant to clause (v) above, provided that the aggregate principal amount of the Indebtedness to be refinanced, renewed or extended does not increase from that amount outstanding at the time of any such refinancing, renewal or extension, plus accrued and unpaid interest and cash fees and expenses (including premium) incurred in connection with such renewal, replacement or extension, and is on terms not less favorable in any material respect to the Lenders;

(xv) additional Indebtedness of the Lead Borrower and its Restricted Subsidiaries not to exceed the greater of $50,000,000 and 3.0% of Consolidated Total Assets in aggregate principal amount outstanding at any time;

(xvi) Contingent Obligations for customs, stay, performance, appeal, judgment, replevin and similar bonds and suretyship arrangements, and completion guarantees and other obligations of a like nature, all in the ordinary course of business;

(xvii) Contingent Obligations to insurers required in connection with worker’s compensation and other insurance coverage incurred in the ordinary course of business;

(xviii) guarantees made by the Lead Borrower or any of its Restricted Subsidiaries of Indebtedness of the Lead Borrower or any of its Restricted Subsidiaries permitted to be outstanding under this Section 10.04; provided that such guarantees are permitted by Section 10.05;

(xix) guarantees made by any Foreign Subsidiary of Indebtedness of any other Foreign Subsidiary permitted to be outstanding under this Section 10.04;

(xx) guarantees made by Restricted Subsidiaries acquired pursuant to a Permitted Acquisition of Indebtedness acquired or assumed pursuant thereto in accordance with Section 10.04, or any refinancing thereof pursuant to Section 10.04; provided that such guarantees may only be made by Restricted Subsidiaries who were guarantors of the Indebtedness originally acquired or assumed pursuant to Section 10.04 at the time of the consummation of the Permitted Acquisition to which such Indebtedness relates;

(xxi) customary Contingent Obligations in connection with sales, other dispositions and leases permitted under Section 10.02 (but not in respect of Indebtedness for borrowed money or Capitalized Lease Obligations) including indemnification obligations with respect to leases, and guarantees of collectability in respect of accounts receivable or notes receivable for up to face value;

(xxii) guarantees of Indebtedness of directors, officers, consultants and employees of the Lead Borrower or any of its Restricted Subsidiaries in respect of expenses of such Persons in connection with relocations and other ordinary course of business purposes;

(xxiii) guarantees of Indebtedness of a Person in connection with a Permitted Joint Venture, provided that the aggregate principal amount of any Indebtedness so guaranteed, when added to the aggregate amount of unreimbursed payments theretofore made in respect of such guarantees and the amount of Investments then outstanding (and deemed outstanding) under clause (six) of Section 10.05, shall not exceed the greater of $50,000,000 and 3.0% of Consolidated Total Assets;

(xxiv) [reserved];
(xxv) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, provided that such Indebtedness is extinguished within two Business Days of its incurrence;

(xxvi) (x) severance, pension and health and welfare retirement benefits or the equivalent thereof to current and former officers, employees, consultants and directors of the Lead Borrower or its Restricted Subsidiaries incurred in the ordinary course of business, (y) Indebtedness representing deferred compensation or equity-based compensation to current and former officers, employees, consultants and directors of the Lead Borrower and the Restricted Subsidiaries and (z) Indebtedness consisting of promissory notes issued by any Credit Party to current or former officers, directors, consultants and employees, their respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of any Credit Party permitted by Section 10.03;

(xxvii) (A) Permitted Pari Passu Notes or Permitted Junior Debt in an amount not to exceed the then remaining aggregate principal amount of Incremental Term Loans that could be incurred at such time pursuant to Section 2.15 so long as (i) all such Indebtedness is incurred in accordance with the requirements of the definition of “Permitted Pari Passu Notes,” “Permitted Junior Notes” or “Permitted Junior Loans”, as the case may be and (ii) no Event of Default then exists or would result therefrom (provided, that with respect to any such Indebtedness incurred to finance a Limited Condition Transaction, such requirement shall be limited to the absence of an Event of Default pursuant to Section 11.01 or Section 11.05); and (B) Permitted Refinancing Indebtedness in respect of Indebtedness incurred pursuant to subclause (A);

(xxviii) (x) guarantees made by the Lead Borrower or any of its Restricted Subsidiaries of obligations (not constituting debt for borrowed money) of the Lead Borrower or any of its Restricted Subsidiaries owing to vendors, suppliers and other third parties incurred in the ordinary course of business and (y) Indebtedness of any Credit Party (other than the Lead Borrower) as an account party in respect of trade letters of credit issued in the ordinary course of business;

(xxix) Permitted Junior Debt of the Lead Borrower and its Restricted Subsidiaries incurred under Permitted Junior Debt Documents so long as (i) all such Indebtedness is incurred in accordance with the requirements of the definition of Permitted Junior Notes or Permitted Junior Loans, as the case may be, (ii) no Default or Event of Default then exists or would result therefrom, (iii) 100% of the Net Debt Proceeds therefrom shall be used for working capital or other general corporate purchases (including without limitation, to finance one or more Permitted Acquisitions and to pay fees in connection therewith, (iv) the aggregate principal amount of secured Permitted Junior Debt issued or incurred after the Closing Date shall not cause the Consolidated Senior Secured Net Leverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which Section 9.01 Financials were required to have been delivered, to exceed 3.75 to 1.00, (v) the aggregate principal amount of unsecured Permitted Junior Debt issued or incurred after the Closing Date shall not cause the Consolidated Total Net Leverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which Section 9.01 Financials were required to have been delivered, to exceed 5.25 to 1.00 and (vi) the Lead Borrower shall have furnished to the Administrative Agent a certificate from a Responsible Officer certifying as to compliance with the requirements of preceding clauses (i), (ii), (iii), (iv) and (v) and containing the calculations required by preceding clauses (iv) and (v); provided that the amount of Permitted Junior Debt which may be incurred pursuant to this clause (xxix) by non-Credit Parties shall not exceed $20,000,000;

(XXX) Indebtedness arising out of Sale-Leaseback Transactions permitted by Section 10.01(xviii);

(XXXI) Indebtedness under Refinancing Notes and Refinancing Term Loans, 100% of the Net Debt Proceeds of which are applied to repay outstanding Term Loans in accordance with Section 5.02(c);
obligations in respect of deposits and progress or similar payments arising in the ordinary course of business with respect to capital equipment and construction projects;

Indebtedness in connection with Permitted Securitization Financings; and

all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (xxxiii) above.

10.05 Advances, Investments and Loans

The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, lend money or credit or make advances to any Person, or purchase or acquire any stock, obligations or securities of, or any other interest in, or make any capital contribution to, any other Person, or purchase or own a futures contract or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, or hold any cash or Cash Equivalents or designate a Subsidiary as an Unrestricted Subsidiary (each of the foregoing, an “Investment” and, collectively, “Investments” and with the value of each Investment being measured at the time made and without giving effect to subsequent changes in value or any write-ups, write-downs or write-offs thereof but giving effect to any cash return or cash distributions received by the Lead Borrower and its Restricted Subsidiaries with respect thereto), except that the following shall be permitted:

(i) the Lead Borrower and its Restricted Subsidiaries may acquire and hold accounts receivable owing to any of them, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms of the Lead Borrower or such Restricted Subsidiary;

(ii) the Lead Borrower and its Restricted Subsidiaries may acquire and hold cash and Cash Equivalents;

(iii) the Lead Borrower and its Restricted Subsidiaries may hold the Investments held by them on the Closing Date and described on Schedule 10.05(iii), and any modification, replacement, renewal or extension thereof that does not increase the principal amount thereof unless any additional Investments made with respect thereto are permitted under the other provisions of this Section 10.05;

(iv) the Lead Borrower and its Restricted Subsidiaries may acquire and hold Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers, and Investments received in good faith settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(v) the Lead Borrower and its Restricted Subsidiaries may enter into Interest Rate Protection Agreements to the extent permitted by Section 10.04(ii), and Other Hedging Agreements to the extent permitted by Section 10.04(xii);

(vi) (a) the Lead Borrower and any Restricted Subsidiary may make intercompany loans to and other investments in Credit Parties, so long as, after giving effect thereto, the security interest of the Collateral Agent for the benefit of the Secured Creditors in the Collateral, taken as a whole, is not materially impaired, (b) any Foreign Subsidiary may make intercompany loans to and other investments in any the Lead Borrower or any of its Restricted Subsidiaries so long as in the case of such intercompany loans to Credit Parties, all payment obligations of the respective Credit Parties are subordinated to their obligations under the Credit Documents on terms reasonably satisfactory to the Administrative Agent, (c) the Credit Parties may make intercompany loans to, guarantees on behalf of, and other investments in, Permitted Joint Ventures and Subsidiaries that are not Credit Parties so long as the aggregate amount of outstanding loans, guarantees and other investments made pursuant to this subclause (c) does not exceed the greater of $50,000,000 and 3.0% of Consolidated Total Assets, (d) any Restricted Subsidiary that is not a Credit Party may make intercompany loans to, and other investments in, any other Restricted Subsidiary.
that is also not a Credit Party and (e) Credit Parties may make intercompany loans and other investments in any Restricted Subsidiary that is not a Credit Party so long as such Investment is part of a series of simultaneous Investments by Restricted Subsidiaries in other Restricted Subsidiaries that results in the proceeds of the initial Investment being invested in one or more Credit Parties (other than Lead Borrower, unless otherwise permitted by Section 10.03):

(vii) Permitted Acquisitions shall be permitted in accordance with Section 9.14;

(viii) loans and advances by the Lead Borrower and its Restricted Subsidiaries to officers, directors, consultants and employees of the Lead Borrower and its Restricted Subsidiaries in an aggregate amount not exceeding $10,000,000 at any time outstanding in connection with (i) business-related travel, relocations and other ordinary course of business purposes (including travel and entertainment expenses) shall be permitted and (ii) any such Person’s purchase of Equity Interests of Lead Borrower; provided that no cash is actually advanced pursuant to this clause (ii) unless immediately repaid;

(ix) advances of compensation to employees of the Lead Borrower and its Restricted Subsidiaries in the ordinary course of business;

(x) non-cash consideration may be received in connection with any Asset Sale permitted pursuant to Section 10.02(ii) or (x);

(xi) additional Restricted Subsidiaries of the Lead Borrower may be established or created if the Lead Borrower and such Subsidiary comply with the requirements of Section 9.12, if applicable; provided that to the extent any such new Subsidiary is created solely for the purpose of consummating a transaction pursuant to an acquisition permitted by this Section 10.05, and such new Subsidiary at no time holds any assets or liabilities other than any merger consideration contributed to it contemporaneously with the closing of such transaction, such new Subsidiary shall not be required to take the actions set forth in Section 9.12, as applicable, until the respective acquisition is consummated (at which time the surviving or transferee entity of the respective transaction and its Subsidiaries shall be required to so comply in accordance with the provisions thereof);

(xii) extensions of trade credit may be made in the ordinary course of business (including advances made to distributors consistent with past practice), Investments received in satisfaction or partial satisfaction of previously extended trade credit from financially troubled account debtors, Investments consisting of prepayments to suppliers made in the ordinary course of business and loans or advances made to distributors in the ordinary course of business;

(xiii) earnest money deposits may be made to the extent required in connection with Permitted Acquisitions and other Investments to the extent permitted under Section 10.01(xviii);

(xiv) Investments in deposit accounts or securities accounts opened in the ordinary course of business;

(xv) Investments in the nature of pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business;

(xvi) Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit;

(xvii) purchases of minority interests in non-Wholly-Owned Subsidiaries by the Lead Borrower and the Guarantors; provided that the aggregate amount of such purchases, when added to the aggregate amount of Dividends pursuant to Section 10.03(xiv), shall not exceed $20,000,000;
so long as no Event of Default shall have occurred and be continuing at the time of the proposed Investment or immediately after giving effect thereto, Investments to the extent same are made solely with the Available Amount;

in addition to Investments permitted by clauses (i) through (xviii) and (xx) through (xxxiv) of this Section 10.05, the Lead Borrower and its Restricted Subsidiaries may make additional loans, advances and other Investments to or in a Person (including a Permitted Joint Venture) in an aggregate amount for all loans, advances and other Investments made pursuant to this clause (xix), not to exceed, when added to the aggregate amount then guaranteed under clause (xiii) of Section 10.04 and all unreimbursed payments theretofore made in respect of guarantees pursuant to clause (xxiii) of Section 10.04, the greater of $50,000,000 and 3.0% of Consolidated Total Assets;

the licensing, sublicensing or contribution of Intellectual Property rights pursuant to arrangements with Persons other than the Lead Borrower and the Restricted Subsidiaries in the ordinary course of business for fair market value, as determined by the Lead Borrower or such Restricted Subsidiary, as the case may be, in good faith;

Investments to the extent that payment for such Investments is made solely by the issuance of Equity Interests constituting common stock or Qualified Preferred Stock of the Lead Borrower to the seller of such Investments;

Investments of a Person that is acquired and becomes a Restricted Subsidiary or of a company merged or amalgamated or consolidated into any Restricted Subsidiary, in each case after the Closing Date and in accordance with this Section 10.05 and/or Section 10.02, as applicable, to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation, do not constitute a material portion of the aggregate assets acquired in such transaction and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

Investments in a Restricted Subsidiary that is not a Credit Party or in a Joint Venture, in each case, to the extent such Investment is substantially contemporaneously repaid in full with a dividend or other distribution from such Restricted Subsidiary or Joint Venture;

to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses or leases of Intellectual Property, in each case, in the ordinary course of business;

Investments by Borrower and its Restricted Subsidiaries consisting of deposits, prepayment and other credits to suppliers or landlords made in the ordinary course of business;

guaranties made in the ordinary course of business of obligations owed to landlords, suppliers, customers, franchisees and licensees of the Lead Borrower or its Subsidiaries;

Investments consisting of the licensing, sublicensing or contribution of Intellectual Property pursuant to joint marketing arrangements with other Persons;

Investments in Unrestricted Subsidiaries having an aggregate fair market value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this Section 10.05(xxix) that are at that time outstanding not to exceed $25,000,000, at any one time outstanding;

Investments by the Lead Borrower or any Restricted Subsidiary in Permitted Joint Ventures in an aggregate amount outstanding at any time (valued at cost and net of any return representing
return of (but not return on) any such investment) not to exceed the greater of $50,000,000 and 3.0% of Consolidated Total Assets;

(xxxi) Investments by the Lead Borrower in a Permitted Joint Venture in each case to fund or reimburse payments by such Permitted Joint Venture in respect of its pension obligations solely to the extent the Lead Borrower or any other Credit Party either received an amount equal to such Investment from a third party for the purposes of funding such pension obligations or is entitled to reimbursement for such amount from a third party;

(xxxii) deposits and progress or similar payments made in the ordinary course of business with respect to capital equipment and construction projects;

(xxxiii) [reserved]; and

(xxiv) any Investments, so long as, on the date of such Investment, (i) no Event of Default has occurred and is continuing and (ii) on a Pro Forma Basis, the Consolidated Total Net Leverage Ratio does not exceed 3.25 to 1.00.

10.06 Transactions with Affiliates

The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to, enter into any transaction or series of related transactions with any Affiliate of the Lead Borrower or any of its Subsidiaries, other than on terms and conditions deemed in good faith by the board of directors of the Lead Borrower (or any committee thereof) to be not less favorable to the Lead Borrower or such Restricted Subsidiary as would reasonably be obtained by the Lead Borrower or such Restricted Subsidiary at that time in a comparable arm’s-length transaction with a Person other than an Affiliate, except:

(i) Dividends may be paid to the extent provided in Section 10.03;

(ii) loans and other transactions among the Lead Borrower and its Restricted Subsidiaries may be made to the extent otherwise expressly permitted under Section 10;

(iii) customary fees and indemnification (including the reimbursement of out-of-pocket expenses) may be paid to directors of the Lead Borrower and its Restricted Subsidiaries;

(iv) The Lead Borrower and its Restricted Subsidiaries may enter into, and may make payments under, employment or other service-related agreements, employee benefits plans, incentive plans, indemnification provisions, stay bonuses, severance and other similar compensatory arrangements with current and former officers, employees, consultants and directors of the Lead Borrower and its Restricted Subsidiaries in the ordinary course of business;

(v) [reserved];

(vi) the Transaction (including Transaction Costs) shall be permitted;

(vii) [reserved];

(viii) transactions described on Schedule 10.06(x) or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect;

(ix) Investments in the Lead Borrower’s Subsidiaries and Permitted Joint Ventures (to the extent any such Subsidiary that is not a Restricted Subsidiary or any such Permitted Joint Venture is only an Affiliate as a result of Investments by the Lead Borrower and the Restricted Subsidiaries in such Subsidiary or Permitted Joint Venture) to the extent otherwise permitted under Section 10.05:
10.07 Limitations on Payments, Certificate of Incorporation, By-Laws and Certain Other Agreements, etc.

The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to:

(a) make (or give any notice (other than any such notice that is expressly contingent upon the repayment in full in cash of all Obligations other than any indemnification obligations arising hereunder which are not due and payable) in respect of) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, Change of Control or similar event of (including, in each case without limitation, by way of depositing with the trustee with respect thereto or any other Person money or securities before due for the purpose of paying when due), any Refinancing Notes (other than Refinancing Notes secured by Liens ranking pari passu with the Liens securing the Indebtedness under this Agreement), except that (A) the Lead Borrower may consummate the Transaction, and (B) so long as no Default under Section 11.01 or 11.05 and no Event of Default then exists or would exist immediately after giving effect to the respective repayment, redemption or repurchase, such Refinancing Notes may be repaid, redeemed, repurchased or defeased (so long as then retired or the required deposit under the applicable indenture is then made) or the applicable indenture is discharged (so long as any such Refinancing Notes will be paid in full within the time period set forth in the applicable indenture) with, (i) if (x) no Event of Default shall have occurred and be continuing at the time of the consummation of the proposed repayment or prepayment or immediately after giving effect thereto and (y) the Consolidated Total Net Leverage Ratio shall not exceed 3.25 to 1.00, each determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which Section 9.01 Financials were required to have been delivered, the Available Amount, (ii) amounts not to exceed $35,000,000, less any amounts used under Section 10.07(b)(ii), and (iii) any amount, so long as on a Pro Forma Basis, the Consolidated Total Net Leverage Ratio does not exceed 2.75 to 1.00; provided that nothing in this clause (a) shall be deemed to limit the ability to consummate the Transaction;

(b) make (or give any notice (other than any such notice that is expressly contingent upon the repayment in full in cash of all Obligations other than any indemnification obligations arising hereunder which are not due and payable) in respect of) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, Change of Control or similar event of (including, in each case without limitation, by way of depositing with the trustee with respect thereto or any other Person money or securities before due for the purpose of paying when due), any Permitted Junior Debt, except that so long as no Default under Section 11.01 or 11.05 and no Event of Default then exists or would exist immediately after giving effect to the respective repayment, redemption or repurchase, Permitted Junior Debt may be repaid, redeemed, repurchased or defeased (so long as then retired or the required deposit under the applicable indenture is then made) or the applicable indenture is discharged (so long as the Permitted Junior Debt will be paid in full within the time period set forth in the applicable indenture) with, (i) if (x) no Event of Default shall have occurred and be continuing at the time of the consummation of the proposed repayment or prepayment or immediately after giving effect thereto and (y) the Consolidated Total Net Leverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which Section 9.01 Financials were required to have been delivered, shall not exceed 3.25 to 1.00, the Available Amount, (ii) amounts not to exceed $35,000,000, less any amounts used under Section 10.07(b)(ii), and (iii) any amount, so long as on a Pro Forma Basis, the Consolidated Total Net Leverage Ratio does not exceed 2.75 to 1.00;

(c) amend or modify, or permit the amendment or modification of any provision of, any Refinancing Note Document (after the entering into thereof) other than any amendment or modification that is not adverse to the interests of the Lenders in any material respect;
(d) amend or modify, or permit the amendment or modification of any provision of, any Permitted Junior Debt Document (after the entering into thereof) with a principal amount in excess of the Threshold Amount, other than any amendment or modification that is not adverse to the interests of the Lenders in any material respect; or

(e) amend, modify or change its certificate or articles of incorporation (including, without limitation, by the filing or modification of any certificate or articles of designation) or certificate of formation; limited liability company agreement or by-laws (or the equivalent organizational documents); accounting policies, reporting policies or fiscal year (except as required by U.S. GAAP), as applicable, or any agreement entered into by it with respect to its Equity Interests, or enter into any new agreement with respect to its Equity Interests, unless such amendment, modification, change or other action contemplated by this clause (e) could not reasonably be expected to be adverse in any material respect to the interests of the Lenders.

10.08 Limitation on Certain Restrictions on Subsidiaries

The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any such Restricted Subsidiary to (a) pay dividends or make any other distributions on its capital stock or any other interest or participation in its profits owned by the Lead Borrower or any of its Restricted Subsidiaries, or pay any Indebtedness owed to the Lead Borrower or any of its Restricted Subsidiaries, (b) make loans or advances to the Lead Borrower or any of its Restricted Subsidiaries or (c) transfer any of its properties or assets to the Lead Borrower or any of its Restricted Subsidiaries, except for such encumbrances or restrictions existing under or by reason of:

(i) applicable law;

(ii) this Agreement and the other Credit Documents, the ABL Credit Agreement and the other definitive documentation entered into in connection therewith;

(iii) any Refinancing Term Loans and Refinancing Note Documents;

(iv) customary provisions restricting subletting or assignment of any lease governing any leasehold interest of the Lead Borrower or any of its Restricted Subsidiaries;

(v) customary provisions restricting assignment of any licensing agreement (in which the Lead Borrower or any of its Restricted Subsidiaries is the licensee) or other contract entered into by the Lead Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(vi) restrictions on the transfer of any asset pending the close of the sale of such asset;

(vii) any agreement or instrument governing Indebtedness assumed in connection with a Permitted Acquisition, to the extent the relevant encumbrance or restriction was not agreed to or adopted in connection with, or in anticipation of, the respective Permitted Acquisition and does not apply to the Lead Borrower or any Restricted Subsidiary of the Lead Borrower, or the properties of any such Person, other than the Persons or the properties acquired in such Permitted Acquisition;

(viii) encumbrances or restrictions on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business;

(ix) any agreement or instrument relating to Indebtedness of a Foreign Subsidiary incurred pursuant to Section 10.04 to the extent such encumbrance or restriction only applies to such Foreign Subsidiary;
(x) an agreement effecting a refinancing, replacement or substitution of Indebtedness issued, assumed or incurred pursuant to an agreement or instrument referred to in clause (vii) above; provided that the provisions relating to such encumbrance or restriction contained in any such refinancing, replacement or substitution agreement are no less favorable to the Lead Borrower or the Lenders in any material respect than the provisions relating to such encumbrance or restriction contained in the agreements or instruments referred to in such clause (vii);

(xi) restrictions on the transfer of any asset subject to a Lien permitted by Section 10.01;

(xii) restrictions and conditions imposed by the terms of the documentation governing any Indebtedness of a Restricted Subsidiary of the Lead Borrower that is not a Credit Party, which Indebtedness is permitted by Section 10.04;

(xiii) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 10.05 and applicable solely to such joint venture;

(xiv) on or after the execution and delivery thereof, the Permitted Junior Debt Documents, the Permitted Pari Passu Notes Documents and the Refinancing Note Documents;

(xv) customary restrictions in respect of intellectual property contained in licenses or sublicenses of, or other grants of rights to use or exploit, such intellectual property; and

(xvi) negative pledges and restrictions on Liens in favor of any holder of Indebtedness for borrowed money permitted under Section 10.04 but only if such negative pledge or restriction expressly permits Liens for the benefit of the Administrative Agent and/or the Collateral Agent and the Secured Creditors with respect to the credit facilities established hereunder and the Obligations under the Credit Documents on a senior basis and without a requirement that such holders of such Indebtedness be secured by such Liens securing the Obligations under the Credit Documents equally and ratably or on a junior basis.

10.09 Business

The Lead Borrower will not permit at any time the business activities taken as a whole conducted by the Lead Borrower and its Restricted Subsidiaries to be materially different from the business activities taken as a whole conducted by the Lead Borrower and its Restricted Subsidiaries on the Closing Date (after giving effect to the Transaction) and Similar Business.

10.10 Negative Pledges

The Lead Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, agree or covenant with any Person to restrict in any way its ability to grant any Lien on its assets in favor of the Lenders, other than pursuant to the ABL Intercreditor Agreement, any First Lien/Second Lien Intercreditor Agreement, any Additional Intercreditor Agreement, any Pari Passu Intercreditor Agreement or any other intercreditor agreement contemplated by this agreement, and except that this Section 10.10 shall not apply to:

(i) any covenants contained in this Agreement or any other Credit Documents or that exist on the Closing Date;

(ii) covenants existing under the ABL Credit Agreement as in effect on the Closing Date and the other credit documents pursuant thereto;

(iii) the covenants contained in any Refinancing Term Loans, any Refinancing Note Documents, any Permitted Junior Debt or any Permitted Pari Passu Notes Documents (in each case so long as same do not restrict the granting of Liens to secure Indebtedness pursuant to this Agreement);
(iv) covenants and agreements made in connection with any agreement relating to secured Indebtedness permitted by this Agreement but only if such covenant or agreement applies solely to the specific asset or assets to which such Lien relates;

(v) customary provisions in leases, subleases, licenses or sublicenses and other contracts restricting the right of assignment thereof;

(vi) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures that are applicable solely to such joint venture;

(vii) restrictions imposed by law;

(viii) customary restrictions and conditions contained in agreements relating to any sale of assets or Equity Interests pending such sale, provided such restrictions and conditions apply only to the Person or property that is to be sold;

(ix) contractual obligations binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such contractual obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary;

(x) negative pledges and restrictions on Liens in favor of any holder of Indebtedness for borrowed money entered into after the Closing Date and otherwise permitted under Section 10.04 but only if such negative pledge or restriction expressly permits Liens for the benefit of the Administrative Agent and/or the Collateral Agent and the Secured Creditors with respect to the credit facilities established thereunder and the Obligations under the Credit Documents on a senior basis and without a requirement that such holders of such Indebtedness be secured by such Liens securing the Obligations under the Credit Documents equally and ratably or on a junior basis;

(xi) restrictions on any Foreign Subsidiary pursuant to the terms of any Indebtedness of such Foreign Subsidiary permitted to be incurred hereunder;

(xii) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business; and

(xiii) any restrictions on Liens imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i), (ii), (iii), (x) and (xi) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Lead Borrower, no more restrictive with respect to such encumbrance and other restrictions than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 11. Events of Default. Upon the occurrence of any of the following specified events (each, an “Event of Default”):

11.01 Payments

Any Borrower shall (i) default in the payment when due of any principal of any Term Loan or any Note or (ii) default, and such default shall continue unremedied for five or more Business Days, in the payment when due of any interest on any Term Loan or Note, or any Fees or any other amounts owing hereunder or under any other Credit Document; or

11.02 Representations, etc.
Any representation, warranty or statement made or deemed made by any Credit Party herein or in any other Credit Document or in any certificate delivered to the Administrative Agent, the Collateral Agent or any Lender pursuant hereto or thereto shall prove to be untrue in any material respect on the date as of which made or deemed made; or

11.03  Covenants

The Lead Borrower or any of its Restricted Subsidiaries shall (i) default in the due performance or observance by it of any term, covenant or agreement contained in Section 9.01(f)(i) (solely with respect to any notice of Default or Event of Default under this Agreement), 9.04 (as to the Lead Borrower), 9.08, 9.11, 9.14(a) or Section 10 or (ii) default in the due performance or observance by it of any other term, covenant or agreement contained in this Agreement or in any other Credit Document (other than those set forth in Sections 11.01 and 11.02), and such default shall continue unremedied for a period of 30 days after written notice thereof to the defaulting party by the Administrative Agent or the Required Lenders; or

11.04  Default Under Other Agreements

(i)The Lead Borrower or any of its Restricted Subsidiaries shall (x) default in any payment of any Indebtedness (other than the Obligations) beyond the period of grace, if any, provided in an instrument or agreement under which such Indebtedness was created or (y) default in the observance or performance of any agreement or condition relating to any Indebtedness (other than the Obligations) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such Indebtedness to become due prior to its stated maturity or (ii) any Indebtedness (other than the Obligations) of the Lead Borrower or any of its Restricted Subsidiaries shall be declared to be (or shall become) due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof, provided that (A) it shall not be a Default or an Event of Default under this Section 11.04 unless the aggregate principal amount of all Indebtedness as described in preceding clauses (i) and (ii) is at least equal to the Threshold Amount, (B) the preceding clause (ii) shall not apply to Indebtedness that becomes due as a result of a voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is otherwise permitted hereunder and (C) an Event of Default under clause (i)(y) of this Section 11.04 with respect to the ABL Credit Agreement shall not be an Event of Default until the earliest of (I) in the case of a payment default, the first date on which such default shall continue unremedied for a period of 30 days after the date of such default (during which period such default is not waived or cured), (II) the date on which the Indebtedness under the ABL Credit Agreement has been accelerated as a result of such default and (III) the date on which or until the administrative agent and/or the lenders under the ABL Credit Agreement have exercised their secured creditor remedies as a result of such default; or

11.05  Bankruptcy, etc

The Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated) shall commence a voluntary case concerning itself under Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto (the "Bankruptcy Code"); or an involuntary case is commenced against the Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated), and the petition is not dismissed within 60 days, after commencement of the case; or a custodian (as defined in the Bankruptcy Code), receiver, receiver-manager, trustee, monitor is appointed for, or takes charge of, all or substantially all of the property of the Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated), or the Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated) commences any other proceeding under any reorganization, bankruptcy, insolvency, arrangement, winding-up, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated), or there is commenced against Lead Borrower or any of its Restricted
Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated) any such proceeding which remains undismissed for a period of 60 days, or Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated) is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; the Lead Borrower any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated) suffers any appointment of any custodian, receiver, receiver-manager, trustee, monitor or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of 60 days; or Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated) makes a general assignment for the benefit of creditors; or any corporate, limited liability company or similar action is taken by the Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated) for the purpose of effecting any of the foregoing; or

11.06 ERISA

(a) An ERISA Event has occurred with respect to a Plan or Multiemployer Plan which has resulted or would reasonably be expected to result in a Material Adverse Effect; (b) there is or arises Unfunded Pension Liability which has resulted or would reasonably be expected to result in a Material Adverse Effect, (c) there is or arises any withdrawal liability incurred by the Lead Borrower or any Restricted Subsidiary of the Lead Borrower under Section 4201 of ERISA, resulting from Lead Borrower, any Restricted Subsidiary of Lead Borrower or the ERISA Affiliates complete withdrawal from any or all Multiemployer Plans which has resulted or would reasonably be expected to result in a Material Adverse Effect, (d) a Foreign Pension Plan has failed to comply with, or be funded in accordance with, applicable law which has resulted or would reasonably be expected to result in a Material Adverse Effect, or (e) Lead Borrower or any of its Restricted Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Foreign Pension Plan that, in each case, has resulted or would reasonably be expected to result in a Material Adverse Effect; or

11.07 Security Documents

Any of the Security Documents shall cease to be in full force and effect, or shall cease to give the Collateral Agent for the benefit of the Secured Creditors the Liens, rights, powers and privileges purported to be created thereby (including, without limitation (to the extent provided therein), a perfected security interest, to the extent required by the Credit Documents, in, and Lien on, all of the Collateral (other than (x) any immaterial portion of the Collateral or (y) the failure of the Collateral Agent or the collateral agent under the ABL Credit Agreement to maintain possession of possessory collateral delivered to it), in favor of the Collateral Agent, superior to and prior to the rights of all third Persons (except as permitted by Section 10.01), and subject to no other Liens (except as permitted by Section 10.01)); or

11.08 Subsidiaries Guaranty

If the Subsidiaries Guaranty or any provision thereof shall cease to be in full force or effect as to any Guarantor (other than any Guarantor otherwise qualifying as an Excluded Subsidiary, whether or not so designated), or any Guarantor or any Person acting for or on behalf of such Guarantor shall deny or disaffirm in writing such Guarantor’s obligations under the Subsidiaries Guaranty or any Guarantor (other than any Guarantor otherwise qualifying as an Excluded Subsidiary, whether or not so designated) shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to the Subsidiaries Guaranty; or

11.09 Judgments

One or more judgments or decrees shall be entered against the Lead Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) of Leaf Borrower involving in the aggregate for the Lead Borrower and its Restricted Subsidiaries (other than any Immaterial Subsidiary) a liability or liabilities (not paid or fully covered by a reputable and solvent insurance company with respect to judgments for the payment of money) and such judgments and decrees either shall be final and non-appealable or shall not be vacated, discharged or stayed or bonded pending
appeal for any period of 60 consecutive days, and the aggregate amount of all such judgments and decrees (to the extent not paid or fully covered by such insurance company) equals or exceeds the Threshold Amount; or

11.10 Change of Control. A Change of Control shall occur;

then and in any such event, and at any time thereafter, if any Event of Default shall then be continuing, the Administrative Agent, upon the written request of the Required Lenders, shall by written notice to the Lead Borrower, take any or all of the following actions, without prejudice to the rights of the Administrative Agent, any Lender or the holder of any Note to enforce its claims against any Credit Party (provided that, if an Event of Default specified in Section 11.05 shall occur with respect to any Credit Party, the result which would occur upon the giving of written notice by the Administrative Agent as specified in clauses (i) and (ii) below shall occur automatically without the giving of any such notice): (i) declare the Total Commitment terminated, whereupon all Commitments of each Lender shall forthwith terminate immediately; (ii) declare the principal of and any accrued interest in respect of all Term Loans and the Notes and all Obligations owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Credit Party; (iii) enforce, as Collateral Agent, all of the Liens and security interests created pursuant to the Security Documents; and (iv) enforce the Subsidiaries Guaranty.

Section 12. The Administrative Agent

12.01 Appointment and Authorization

(a) Each of the Lenders hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Credit Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Section 12 (other than Sections 12.08, 12.10 and 12.11) are solely for the benefit of the Administrative Agent and the Lenders, and neither any Borrower nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Credit Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the “collateral agent” and “security trustee” under the Credit Documents, and each of the Lenders (including in its capacity as a potential Guaranteed Creditor under a Designated Interest Rate Protection Agreement or Designated Treasury Services Agreement) 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 Credit Party 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” or “security trustee” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 12.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security 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 Section 12 and Section 13 (including Section 13.01), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” or “security trustee” under the Credit Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Guaranteed Creditors with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

(c) The Administrative Agent shall also act as the “collateral agent” and “security trustee” under the Credit Documents, and each of the Lenders (including in its capacity as a potential Guaranteed Creditor under a Designated Interest Rate Protection Agreement) hereby authorizes the Administrative Agent to enter into the ABL.
Intercreditor Agreements, any First Lien/Second Lien Intercreditor Agreement, any Additional Intercreditor Agreement, any Pari Passu Intercreditor Agreement and any other intercreditor agreement or arrangement permitted under this Agreement and any such intercreditor agreement shall be being binding upon the Lenders.

12.02 Delegation of Duties

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section 12 shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

12.03 Exculpatory Provisions

The Administrative Agent or the Lead Arrangers, as applicable, shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents. Without limiting the generality of the foregoing, the Administrative Agent or the Lead Arrangers, as applicable:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Credit Document or applicable law;

(c) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose to any Lender, any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Credit Parties or any of their Affiliates, that is communicated to, obtained or in the possession of, the Administrative Agent or the Lead Arrangers or any of their respective Related Parties in any capacity, except for notices, reports and other documents expressly required herein to be furnished to the Lenders by the Administrative Agent or the Lead Arrangers, as applicable;

(d) shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11 and 13.12) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Lead Borrower or a Lender; and

(e) shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Section 6 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.
12.04 Reliance by Administrative Agent

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Term Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Term Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Lead Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

12.05 No Other Duties, Etc.

 Anything herein to the contrary notwithstanding, none of the Lead Arrangers shall have any powers, duties or responsibilities under this Agreement or any of the other Credit Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender hereunder.

12.06 Non-reliance on the Administrative Agent, the Lead Arrangers and Other Lenders

Each Lender expressly acknowledges that none of the Administrative Agent or the Lead Arrangers, and that no act by the Administrative Agent or the Lead Arrangers hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Credit Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent or the Lead Arrangers to any Lender as to any matter, including whether the Administrative Agent or the Lead Arrangers have disclosed material information in their (or their Related Parties’) possession. Each Lender represents to the Administrative Agent and the Lead Arrangers that it has, independently and without reliance upon the Administrative Agent or the Lead Arrangers or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Credit Parties and their Subsidiaries, and all applicable bank or other regulatory laws, statutes, regulations or orders relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Lead Borrower hereunder. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or the Lead Arrangers or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Credit Parties. Each Lender represents and warrants that (i) the Credit Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender agrees not to assert a claim in contravention of the foregoing. Each Lender represents and warrants that 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, 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.

12.07 Indemnification by the Lenders
To the extent that the Lead Borrower for any reason fails to pay any amount required under Section 13.01(a) to be paid by it to the Administrative Agent or Collateral Agent (or any sub-agent of either of them), or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent or Collateral Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender’s pro rata share (based on the amount of then outstanding Term Loans held by each Lender or, if the Term Loans have been repaid in full, based on the amount of outstanding Term Loans held by each Lender immediately prior to such repayment in full) of (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided 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 Collateral Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent or Collateral Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this Section 12.07 are subject to the provisions of Section 5.04.

12.08 Rights as a Lender

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Lead Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

12.09 Administrative Agent May File Proofs of Claim; Credit Bidding

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Term 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 Lead Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Term 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 and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 4.01 and 13.01) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, 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 Sections 4.01 and 13.01.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender or in any such proceeding.
The Secured Creditors 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 Credit 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 law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Creditors shall be entitled to, 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) 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 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)(i) through (a)(v) of Section 13.04 of this Agreement, and (iii) 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 Creditor or any acquisition vehicle to take any further action.

12.10 Resignation of the Agents

The Administrative Agent may at any time give notice of its resignation (including as Collateral Agent) to the Lenders and the Lead Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the Lead Borrower’s consent (other than during the existence of an Event of Default under Section 11.01 or 11.05), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders (and consented to by the Lead Borrower, to the extent so required) and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, with the Lead Borrower’s consent (other than during the existence of an Event of Default under Section 11.01 or 11.05), on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Lead Borrower and the Lenders that no qualifying Person has accepted such appointment within such period, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Credit Documents, the retiring Administrative Agent shall continue to hold such collateral security solely for purposes of maintaining the Secured Creditors’ security interest thereon until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders (with the consent of the Lead Borrower, to the extent so required) appoint a successor Administrative Agent as provided for above in this Section 12.10. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this Section 12.10). After the retiring Administrative Agent’s resignation hereunder
and under the other Credit Documents, the provisions of this Section 12 and Section 13.01 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.

12.11 Collateral Matters and Guaranty Matters

Each of the Lenders (including in its capacity as a potential Guaranteed Creditor under a Designated Interest Rate Protection Agreement or Designated Treasury Services Agreement) 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 Credit Document (i) upon termination of the Commitments and payment in full of all Obligations (other than (x) contingent indemnification obligations and (y) obligations and liabilities under Designated Interest Rate Protection Agreements and Designated Treasury Services Agreements), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Credit Document to a Person that is not a Credit Party, (iii) that constitutes Excluded Collateral, (iv) if the property subject to such Lien is owned by a Subsidiary Guarantor, subject to Section 13.12 upon release of such Subsidiary Guarantor from its obligations under the Subsidiaries Guaranty pursuant to clause (b) below, (v) if approved, authorized or ratified in writing in accordance with Section 13.12 or (vi) with respect to any Securitization Asset that is sold or pledged pursuant to a Permitted Securitization Financing;

(b) to release any Subsidiary Guarantor from its obligations under the Subsidiaries Guaranty if such Person ceases to be a Restricted Subsidiary or becomes an Excluded Subsidiary as a result of a transaction permitted hereunder; and

(c) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Credit Document to the holder of any Lien on such property that is permitted by Section 10.01(iv), 10.01(vi), 10.01(vii), 10.01(xiv), and 10.01(xxx) (in the case of clause (ii)) or any other Lien that is permitted by Section 10.01 to be senior to the Lien securing the Obligations or to release any Lien securing the Obligations upon the incurrence of any Lien permitted by Section 10.01 with respect to specified assets if the Lien securing the Obligations is not allowed by the documentation creating such Lien or related documentation.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent’s authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Subsidiaries Guaranty pursuant to this Section 12.11. In each case as specified in this Section 12.11, the Administrative Agent will (and each Lender irrevocably authorizes the Administrative Agent to), at the Borrowers’ expense, execute and deliver to the applicable Credit Party such documents as such Credit Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Subsidiaries Guaranty, in each case in accordance with the terms of the Credit Documents and this Section 12.11.

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 Credit 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.

12.12 Designated Interest Rate Protection Agreements and Designated Treasury Services Agreements

No Guaranteed Creditor that obtains the benefits of Section 11, the Subsidiaries Guaranty or any Collateral by virtue of the provisions hereof or of the Subsidiaries Guaranty or any Security Document shall have any right to
notice of any action or to consent to, direct or object to any action hereunder or under any other Credit Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Credit Documents. Notwithstanding any other provision of this Section 12.12 to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Designated Interest Rate Protection Agreements and Designated Treasury Services Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Guaranteed Creditor.

12.13 Withholding Taxes

To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other authority of the United States or 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 for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall, within 10 days after written demand therefor, indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrowers pursuant to Section 5.04 and without limiting or expanding the obligation of the Borrowers to so do) for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such Tax was 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 Credit Document against any amount due the Administrative Agent under this Section 12.13. The agreements in this Section 12.13 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations.

12.14 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 not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Credit 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 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 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 not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Credit Party, that the Administrative Agent is not 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 Credit Document or any documents related hereto or thereto).

Section 13. Miscellaneous

13.01 Payment of Expenses, etc

(a) The Credit Parties hereby jointly and severally agree to: (i) if the Closing Date occurs, pay all reasonable invoiced out-of-pocket costs and expenses of the Agents (including, without limitation, the reasonable fees and disbursements of one primary counsel to all Agents and Lenders and, if reasonably necessary, one local counsel in any relevant jurisdiction and, in the case of an actual or perceived conflict of interest where the Indemnified Person (as defined below) affected by such conflict informs the Lead Borrower of such conflict and thereafter retains its own counsel, of another firm of counsel for such affected Indemnified Person but excluding, other than as indicated under Section 13.01(a)(ii), Taxes other than Taxes that represent liabilities, obligations, losses, damages, penalties, actions, costs, expenses and disbursements arising from a non-Tax claim) in connection with the preparation, execution and delivery of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein, the administration hereof and thereof and any amendment, waiver or consent relating hereto or thereto of the Agents in connection with their syndication efforts with respect to this Agreement and of the Agents and each Lender in connection with the enforcement of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a “work-out” or pursuant to any insolvency or bankruptcy proceedings (which shall be limited to one primary counsel to all Agents and Lenders to be retained by the Agent and, if reasonably necessary, one local counsel in any relevant jurisdiction and, in the case of an actual or perceived conflict of interest where the Indemnified Person affected by such conflict informs the Lead Borrower of such conflict and thereafter retains its own counsel, of another firm of counsel for such affected Indemnified Person); (ii) pay and hold each Agent and each Lender harmless from and against any and all Other Taxes with respect to the foregoing matters and save each Agent and each Lender harmless from and against any and all liabilities with respect to or resulting from any delay or omission (other than to the extent attributable to such Agent, such Lender or the Lead Arranger) to pay such Other Taxes; and (iii) indemnify each Agent and each Lender and their respective Affiliates, and the officers, directors, employees, agents, trustees, representatives and investment advisors of each of the foregoing (each, an “Indemnified Person”) from and hold each of them harmless against any and all liabilities, obligations (including removal or remedial actions), losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements (including reasonable attorneys’ and consultants’ fees and disbursements) (but excluding Taxes other than Taxes that represent liabilities, obligations, losses, damages, penalties, actions, costs, expenses and
disbursements arising from a non-Tax claim) incurred by, imposed on or assessed against any of them as a result of, or arising out of, or in any way related to, or by reason of, (a) any investigation, litigation or other proceeding (whether or not any Agent or any Lender is a party thereto and whether or not such investigation, litigation or other proceeding is brought by or on behalf of any Credit Party) related to the entering into and/or performance of this Agreement or any other Credit Document or the proceeds of any Term Loans hereunder or the consummation of the Transaction or any other transactions contemplated herein or in any other Credit Document or the exercise of any of their rights or remedies provided herein or in the other Credit Documents, or (b) the actual or alleged presence of Hazardous Materials in the Environment relating in any way to any Real Property owned, leased or operated, at any time, by the Lead Borrower or any of its Subsidiaries; the generation, storage, transportation, handling, Release or threat of Release of Hazardous Materials by the Lead Borrower or any of its Subsidiaries at any location, whether or not owned, leased or operated by the Lead Borrower or any of its Subsidiaries; the non-compliance by the Lead Borrower or any of its Subsidiaries with any Environmental Law (including applicable permits thereunder) applicable to any Real Property; or any Environmental Claim asserted against the Lead Borrower, any of its Subsidiaries or relating in any way to any Real Property at any time owned, leased or operated by the Lead Borrower or any of its Subsidiaries, including, in each case, without limitation, the reasonable fees and disbursements of counsel and other consultants incurred in connection with any such investigation, litigation or other proceeding, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnified Person (but excluding in each case any losses, liabilities, claims, damages or expenses (i) to the extent incurred by reason of the gross negligence, bad faith or willful misconduct of the applicable Indemnified Person, any Affiliate of such Indemnified Person or any of their respective directors, officers, employees, representatives, agents, Affiliates, trustees or investment advisors, (ii) to the extent incurred by reason of any material breach of the obligations of such Indemnified Person under this Agreement or the other Credit Documents (in the case of each of preceding clauses (i) and (ii), as determined by a court of competent jurisdiction in a final and non-appealable decision) or (iii) that do not involve or arise from an act or omission by any Borrower or the Guarantors or any of their respective affiliates and is brought by an Indemnified Person (other than claims against any Agent in its capacity as such or in its fulfilling such role). To the extent that the undertaking to indemnify, pay or hold harmless any Agent or any Lender or other Indemnified Person set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, the Credit Parties shall make the maximum contribution to the payment and satisfaction of each of the indemnified liabilities which is permissible under applicable law.

(b) No Agent or any Indemnified Person shall be responsible or liable to any Credit Party or any other Person for (x) any determination made by it pursuant to this Agreement or any other Credit Document in the absence of gross negligence, bad faith or willful misconduct on the part of such Indemnified Person (in each case, as determined by a court of competent jurisdiction in a final and non-appealable judgment), (y) any damages arising from the use by others of information or other materials obtained through electronic, telecommunications or other information transmission systems or (z) any indirect, special, exemplary, incidental, punitive or consequential damages (including, without limitation, any loss of profits, business or anticipated savings) which may be alleged as a result of this Agreement or any other Credit Document or the financing contemplated hereby.

13.02 Right of Setoff

In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent and each Lender is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to any Credit Party or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special) (other than accounts used exclusively for payroll, payroll taxes, fiduciary and trust purposes, and employee benefits) and any other Indebtedness at any time held or owing by the Administrative Agent or such Lender (including, without limitation, by branches and agencies of the Administrative Agent or such Lender wherever located) to or for the credit or the account of the Lead Borrower or any of its Subsidiaries against and on account of the Obligations and liabilities of the Credit Parties to the Administrative Agent or such Lender under this Agreement or under any of the other Credit Documents, including, without limitation, all interests in Obligations purchased by such Lender pursuant to Section 13.06(b), and all other claims of any nature or description arising out of or connected with this...
Agreement or any other Credit Document, irrespective of whether or not the Administrative Agent or such Lender shall have made any demand hereunder and although said Obligations, liabilities or claims, or any of them, shall be contingent or unmatured.

13.03 Notices

(a) Except as otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including telegraphic, telex, teletypewriter, cable communication or electronic transmission) and mailed, telegraphed, telexed, teletyped, cabled, delivered or transmitted: if to any Credit Party, c/o PAE Holding Corporation, c/o Platinum Equity, LLC, 360 North Crescent Drive, Beverly Hills, CA 90210, Attention: Legal Department, Teletype No.: (310) 712-1863; if to any Lender, at its address specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Lead Borrower); and if to the Administrative Agent, at the Notice Office; or, as to any Credit Party or the Administrative Agent, at such other address as shall be designated by such party in a written notice to the other parties hereto and, as to each Lender, at such other address as shall be designated by such Lender in a written notice to the Lead Borrower and the Administrative Agent. All such notices and communications shall, when mailed, telegraphed, telexed, teletyped, or cabled or sent by overnight courier, be effective when deposited in the mails, telegraphed, telexed, or delivered or transmitted, except that notices and communications to the Administrative Agent and the Lead Borrower shall not be effective until received by the Administrative Agent or the Lead Borrower, as the case may be.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent, the Lead Borrower may, 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.

(c) THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES (COLLECTIVELY, THE “AGENT PARTIES”) HAVE ANY LIABILITY TO THE BORROWERS, THE SUBSIDIARY GUARANTORS, ANY LENDER OR ANY OTHER PERSON FOR LOSSES, CLAIMS, DAMAGES, LIABILITIES OR EXPENSES OF ANY KIND (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF A BORROWER’S, ANY CREDIT PARTY’S OR THE ADMINISTRATIVE AGENT’S TRANSMISSION OF BORROWER MATERIALS OR NOTICES THROUGH THE PLATFORM, ANY OTHER ELECTRONIC MESSAGING SERVICE, OR THROUGH THE INTERNET.

13.04 Benefit of Agreement; Assignments; Participations, etc.

(a) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; provided, however, that no Borrower may assign or transfer any of its rights, obligations or interest hereunder without the prior written consent of the Lenders and, provided, further, that, although any Lender may transfer, assign or grant participation in its rights or obligations hereunder, such Lender shall remain a “Lender” for all purposes hereunder (and may not transfer or assign all or any portion of its Commitments hereunder except as provided in Sections 2.13 and 13.04(b) and the transferee, assignee or participant, as the case may be, shall not constitute a “Lender” hereunder and, provided, further, that no Lender shall transfer or grant any participation under which the participant shall have rights to approve any amendment to or waiver of this Agreement or any other Credit Document except to the extent such amendment or waiver would:
(i) extend the final scheduled maturity of any Term Loan or Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or Fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof or increases in the size of the Commitments, or increase the amount of the participant’s participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory repayment of any Term Loan shall not constitute a change in the terms of such participation, and that an increase in any Commitment (or the available portion thereof) or Term Loan shall be permitted without the consent of any participant if the participant’s participation is not increased as a result thereof),

(ii) consent to the assignment or transfer by any Borrower of any of its rights and obligations under this Agreement,

(iii) modify any of the voting percentages set forth in Section 13.12 or the underlying definitions,

(iv) except as otherwise expressly provided in the Security Documents, release all or substantially all of the Collateral under all the Security Documents supporting the Term Loans in which such participant is participating; or

(v) except as otherwise provided in the Credit Documents, release all or substantially all of the value of the Subsidiaries Guaranty supporting the Loans in which such participant is participating. In the case of any such participation, the participant shall not have any rights under this Agreement or any of the other Credit Documents (the participant’s rights against such Lender in respect of such participation to be those set forth in the agreement executed by such Lender in favor of the participant relating thereto).

Each Borrower agrees that each participant shall be entitled to the benefits of Sections 2.10 and 5.04 (subject to the limitations and requirements of such Sections) to the same extent as if it were a Lender and had acquired its interest by assignment; provided, however, that a participant shall not be entitled to receive any greater payment under Section 2.10 or Section 5.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such participant except to the extent such entitlement to a greater payment results from a change in law after the sale of the participation takes place. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrowers, maintain a register on which it enters the name and address of each participant and the principal amounts (and interest amounts) of each participant's interest in the Term Loans or other obligations under the Credit 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, Term Loan, or its other obligations under any Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such Commitment, Term Loan or other obligation is in registered form under Section 5f.103-1(c) of the U.S. 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.

(b) Notwithstanding the foregoing, any Lender (or any Lender together with one or more other Lenders) may (x) assign all or a portion of its Commitments and related rights or outstanding Obligations (or, if the Commitments with respect to the relevant Tranche have terminated, outstanding Obligations) hereunder to

(i) (A) its parent company and/or any affiliate of such Lender which is at least 50% owned by such Lender or its parent company or (B) to one or more other Lenders or any affiliate of any such other Lender which is at least 50% owned by such other Lender or its parent company (provided that any fund that invests in loans and is managed or advised by the same investment advisor of another fund which is a Lender (or by an Affiliate of such investment advisor) shall be treated as an affiliate of such other Lender for the purposes of this subclause (x)(i)(B)); provided that no such assignment may be made to any such Person that is, or would at such time constitute, a Defaulting Lender, or
(ii) in the case of any Lender that is a fund that invests in loans, any other fund that invests in loans and is managed or advised by the same investment advisor of any Lender or by an Affiliate of such investment advisor;

or (y) assign all, or if less than all, a portion equal to at least $1,000,000 (or such lesser amount as may be agreed to by the Administrative Agent and, so long as no Event of Default then exists under Section 11.01 or 11.05, the Lead Borrower, which consent shall not be unreasonably withheld or delayed) in the aggregate for the assigning Lender or assigning Lenders, of such Commitments and related outstanding Obligations (or, if the Commitments with respect to the relevant Tranche have terminated, outstanding Obligations) hereunder to one or more Eligible Transferees (treating any fund that invests in loans and any other fund that invests in loans and is managed or advised by the same investment advisor of such fund or by an Affiliate of such investment advisor as a single Eligible Transferee), each of which assignees shall become a party to this Agreement as a Lender by execution of an Assignment and Assumption Agreement (which Assignment and Assumption Agreement shall contain an acknowledgement and agreement by the respective assignee that, as a Lender, it shall be subject to, and bound by the terms of the ABL Intercreditor Agreement and any First Lien/Second Lien Intercreditor Agreement), provided that

(i) at such time, Schedule 2.01 shall be deemed modified to reflect the Commitments and/or outstanding Term Loans or Delayed Draw Term Loans, as the case may be, of such new Lender and of the existing Lenders,

(ii) upon the surrender of the relevant Notes by the assigning Lender (or, upon such assigning Lender’s indemnifying the Borrowers for any lost Note pursuant to a customary indemnification agreement) new Notes will be issued, at the Borrowers’ expense, to such new Lender and to the assigning Lender upon the request of such new Lender or assigning Lender, such new Notes to be in conformity with the requirements of Section 2.05 (with appropriate modifications) to the extent needed to reflect the revised Commitments and/or outstanding Term Loans, as the case may be,

(iii) the consent of the (A) Administrative Agent and (B) so long as no Event of Default then exists under Section 11.01 or 11.05, the consent of the Lead Borrower shall (in either case) be required in connection with any such assignment pursuant to clause (y) above (which consent, in the case of each of clauses (A) and (B), shall not be unreasonably withheld or delayed); provided that the Lead Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five Business Days after having received notice thereof,

(iv) the Administrative Agent shall receive at the time of each such assignment, from the assigning or assignee Lender, the payment of a non-refundable assignment fee of $3,500; and

(v) no such transfer or assignment shall be effective until recorded by the Administrative Agent on the Register pursuant to Section 13.15.

To the extent of any assignment pursuant to this Section 13.04(b), the assigning Lender shall be relieved of its obligations hereunder with respect to its assigned Commitments and outstanding Term Loans. At the time of each assignment pursuant to this Section 13.04(b) to a Person that is not already a Lender hereunder, such assignee shall provide to the Administrative Agent and the Borrowers such Tax forms as are required to be provided under clauses (b) and (c) of Section 5.04 and shall deliver to the Administrative Agent an Administrative Questionnaire. To the extent that an assignment of all or any portion of a Lender’s Commitments and related outstanding Obligations pursuant to Section 2.12 or this Section 13.04(b) would, at the time of such assignment, result in increased costs under Section 2.10 or 5.04 from those being charged by the assigning Lender prior to such assignment, then the Lead Borrower shall not be obligated to pay such increased costs (although the Borrowers, in accordance with and pursuant to the other provisions of this Agreement, shall be obligated to pay any other increased costs of the type described above resulting from changes after the date of the respective assignment).

(c) The Borrowers shall also be entitled to purchase (from Lenders) outstanding principal of Term Loans in accordance with the provisions of Sections 2.19 and 2.20, which purchases shall be evidenced by
assignments (in form reasonably satisfactory to the Administrative Agent) from the applicable Lender to the Lead Borrower. No such transfer or assignment shall be effective until recorded by the Administrative Agent (in a manner consistent with the following sentence) on the Register pursuant to Section 13.15. All Term Loans purchased pursuant to Section 2.19 and 2.20 shall be immediately and automatically cancelled and retired, and the Lead Borrower shall in no event become a Lender hereunder. To the extent of any assignment to a Borrower as described in this clause (c), the assigning Lender shall be relieved of its obligations hereunder with respect to the assigned Term Loans.

(d) Nothing in this Agreement shall prevent or prohibit any Lender from pledging its Term Loans and Notes hereunder to a Federal Reserve Bank in support of borrowings made by such Lender from such Federal Reserve Bank and, with prior notification to the Administrative Agent (but without the consent of the Administrative Agent or the Borrowers), any Lender which is a fund may pledge all or any portion of its Term Loans and Notes to its trustee or to a collateral agent providing credit or credit support to such Lender in support of its obligations to such trustee, such collateral agent or a holder of such obligations, as the case may be. No pledge pursuant to this clause (c) shall release the transferor Lender from any of its obligations hereunder.

(e) Each Lender acknowledges and agrees to comply with the provisions of Section 13.04 applicable to it as a Lender hereunder.

(f) If any Borrower wishes to replace the Term Loans or Commitments with Term Loans or Commitments having different terms, it shall have the option, with the consent of the Administrative Agent and subject to at least three Business Days’ advance notice to the Lenders of such Term Loans or Commitments to be replaced, to (i) require such Lenders to assign such Term Loans or Commitments to the Administrative Agent or its designees and (ii) amend the terms thereof in accordance with Section 13.12 (with such replacement, if applicable, being deemed to have been made pursuant to Section 13.12). Pursuant to any such assignment, all Term Loans and Commitments to be replaced shall be purchased at par (allocated among the applicable Lenders in the same manner as would be required if such Term Loans were being optionally prepaid or such Commitments were being optionally reduced or terminated by the Borrowers), accompanied by payment of any accrued interest and fees thereon and any amounts owing pursuant to Section 2.08. By receiving such purchase price, the applicable Lenders shall automatically be deemed to have assigned such Term Loans or Commitments pursuant to the terms of an Assignment and Assumption Agreement, and accordingly no other action by such Lenders shall be required in connection therewith. The provisions of this paragraph are intended to facilitate the maintenance of the perfection and priority of existing security interests in the Collateral during any such replacement.

The Administrative Agent shall have the right, and the Lead Borrower hereby expressly authorizes the Administrative Agent, to provide to any requesting Lender, the list of Disqualified Lenders provided to the Administrative Agent by the Lead Borrower and any updates thereto. The Borrower hereby agrees that any such requesting Lender may share the Disqualified Lenders with any potential assignee, transferee or participant. Notwithstanding the foregoing, each Credit Party and the Lenders acknowledges and agrees that 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 of this Agreement relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender or participant or prospective Lender or participant is a Disqualified Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender.

13.05 No Waiver; Remedies Cumulative

No failure or delay on the part of the Administrative Agent, the Collateral Agent or any Lender in exercising any right, power or privilege hereunder or under any other Credit Document or in the course of dealing between the Borrowers or any other Credit Party and the Administrative Agent, the Collateral Agent or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right.
power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Credit Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Administrative Agent, the Collateral Agent or any Lender would otherwise have. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Administrative Agent, the Collateral Agent or any Lender to any other or further action in any circumstances without notice or demand.

13.06 Payments Pro Rata

(a) The Administrative Agent agrees that promptly after its receipt of each payment from or on behalf of any Credit Party in respect of any Obligations of such Credit Party, it shall, except as otherwise provided in this Agreement, distribute such payment to the Lenders (other than any Lender that has consented in writing to waive its pro rata share of such payment) pro rata based upon their respective shares, if any, of the Obligations with respect to which such payment was received.

(b) Each of the Lenders agrees that, if it should receive any amount hereunder (whether by voluntary payment, by realization upon security, by the exercise of the right of setoff or banker’s lien, by counterclaim or cross action, by the enforcement of any right under the Credit Documents, or otherwise) which is applicable to the payment of the principal of, or interest on, the Term Loans or Fees, of a sum which with respect to the related sum or sums received by other Lenders is in a greater proportion than the total of such Obligation then owed and due to such Lender bears to the total of such Obligation then owed and due to all of the Lenders immediately prior to such receipt, then such Lender receiving such excess payment shall purchase for cash without recourse or warranty from the other Lenders an interest in the Obligations of the respective Credit Party to such Lenders in such amount as shall result in a proportional participation by all of the Lenders in such amount; provided that if all or any portion of such excess amount is thereafter recovered from such Lender, such purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest.

(c) Notwithstanding anything to the contrary contained herein, the provisions of the preceding Sections 13.06(a) and (b) shall be subject to (x) the express provisions of this Agreement which require, or permit, differing payments to be made to Non-Defaulting Lenders as opposed to Defaulting Lenders, (y) the express provisions of this Agreement which permit disproportionate payments with respect to various of the Tranches as, and to the extent, provided herein, and (z) any other provisions which permit disproportionate payments with respect to the Term Loans as, and to the extent, provided therein.

13.07 Calculations; Computations

(a) The financial statements to be furnished to the Lenders pursuant hereto shall be made and prepared in accordance with U.S. GAAP consistently applied throughout the periods involved (except as set forth in the notes thereto); provided that (i) except as otherwise specifically provided herein, all computations of Excess Cash Flow and the Applicable Margin, and all computations and all definitions (including accounting terms) used in determining compliance with Section 9.14, shall utilize U.S. GAAP and policies in conformity with those used to prepare the audited financial statements of the Lead Borrower referred to in Section 8.05(a)(i) for the fiscal year of the Lead Borrower ended December 31, 2019 and, (ii) to the extent expressly provided herein, certain calculations shall be made on a Pro Forma Basis; provided further, that if the Lead Borrower notifies the Administrative Agent that the Lead Borrower wishes to amend any leverage calculation or any financial definition used therein to implement the effect of any change in U.S. GAAP or the application thereof occurring after the Closing Date on the operation thereof (or if the Administrative Agent notifies the Lead Borrower that the Required Lenders wish to amend any leverage test or any financial definition used therein for such purpose), then the Lead Borrower and the Administrative Agent shall negotiate in good faith to amend such leverage test or the definitions used therein (subject to the approval of the Required Lenders) to preserve the original intent thereof in light of such changes in U.S. GAAP; provided, further that all determinations made pursuant to any applicable leverage test or any financial definition used therein shall be determined on the basis of U.S. GAAP as applied and in effect immediately before the relevant change in U.S. GAAP or the application thereof became effective, until such leverage test or such financial definition is amended. 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, without giving effect to
Statement of Financial Accounting Standards 141R or ASC 805 (or any other financial accounting standard having a similar result or effect).

(b) All computations of interest (other than interest based on the Prime Rate) and other Fees hereunder shall be made on the basis of a year of
360 days for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or Fees are
payable. All computations of interest based determined by reference to the Prime Rate shall be based on a 365-day or 366-day year, as the case may be.

(c) The calculation of any financial ratios under 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-down if there is no nearest number).

13.08 GOVERNING LAW; SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL

(a) THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES
HEREUNDER AND THEREUNDER SHALL, EXCEPT AS OTHERWISE PROVIDED IN THE RELEVANT SECURITY DOCUMENT, BE
CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK. ANY LEGAL ACTION OR
PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT (EXCEPT THAT, (X) IN THE CASE OF ANY
SECURITY DOCUMENT, PROCEEDINGS MAY ALSO BE BROUGHT BY THE ADMINISTRATIVE AGENT OR COLLATERAL AGENT IN THE
STATE IN WHICH THE RELEVANT COLLATERAL IS LOCATED OR ANY OTHER RELEVANT JURISDICTION AND (Y) IN THE CASE OF ANY
BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS WITH RESPECT TO ANY CREDIT PARTY, ACTIONS OR PROCEEDINGS
RELATED TO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS MAY BE BROUGHT IN SUCH COURT HOLDING SUCH
BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS) MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF
THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE WHICH ARE LOCATED IN THE COUNTY OF NEW
YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, EACH OF THE PARTIES
HERETO OR THEREO HEREBY IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND
UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HERETO HEREBY FURTHER
IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH COURTS LACK PERSONAL JURISDICTION OVER IT, AND AGREES NOT TO
PLEAD OR CLAIM, IN ANY LEGAL ACTION PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENTS
BROUGHT IN ANY OF THE AFOREMENTIONED COURTS, THAT SUCH COURTS LACK PERSONAL JURISDICTION OVER IT. EACH PARTY
HERETO IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH
ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, SUCH
PARTY, AS THE CASE MAY BE, AT ITS ADDRESS SET FORTH OPPOSITE ITS SIGNATURE BELOW, SUCH SERVICE TO BECOME
EFFECTIVE 30 DAYS AFTER SUCH MAILING. EACH PARTY HERETO IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO
THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS
AGREEMENT OR ANY OTHER CREDIT DOCUMENT BROUGHT IN THE COURTS REFERRED TO IN CLAUSE (a) ABOVE AND HEREBY

(b) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO
THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS
AGREEMENT OR ANY OTHER CREDIT DOCUMENT BROUGHT IN THE COURTS REFERRED TO IN CLAUSE (a) ABOVE AND HEREBY
FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

13.09 Electronic Signatures; Counterparts

This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a “Communication”), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Credit Party agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on such Credit Party to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of such Credit Party enforceable against such in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered.

Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. A set of counterparts executed by all the parties hereto shall be lodged with the Lead Borrower and the Administrative Agent. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Administrative Agent and each of the Lenders of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Lenders may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“Electronic Copy”), which shall be deemed created in the ordinary course of the such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Administrative Agent has agreed to accept such Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of Credit Party without further verification and (b) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, “Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

13.10 [Reserved]

13.11 Headings Descriptive

The headings of the several Sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

13.12 Amendment or Waiver; etc.

(a) Neither this Agreement nor any other Credit Document nor any terms hereof or thereof may be changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing signed by the Credit Parties party hereto or thereto and the Required Lenders (in respect of any waiver, amendment or modification of any condition to borrowing of Delayed Draw Term Loans set forth in Section 7 after the Closing
Date, the Required Delayed Draw Term Lenders voting as a single Tranche, rather than the Required Lenders), (although additional parties may be added to (and annexes may be modified to reflect such additions) the Subsidiaries Guaranty and the Security Documents in accordance with the provisions hereof and thereof without the consent of the other Credit Parties party thereto or the Required Lenders), provided that no such change, waiver, discharge or termination shall:

(i) without the prior written consent of each Lender directly and adversely affected thereby, (A) extend the final scheduled maturity of any Term Loan or Note, or reduce the rate or extend the time of payment of interest or Fees thereon; except (x) in connection with applicability of any post-default increase in interest rates and (y) extensions expressly permitted by Section 2.14, reduce or forgive the principal amount thereof, or (B) reduce the amount of or extend the date of, any Scheduled Repayment (except that, if additional Term Loans are made pursuant to a given Tranche, the Scheduled Repayments of such Tranche may be increased on a proportionate basis without the consent otherwise required by this clause (B)),

(ii) except as otherwise expressly provided in the Security Documents, release all or substantially all of the Collateral under all the Security Documents without the prior written consent of each Lender,

(iii) except as otherwise provided in the Credit Documents, releases all or substantially all of the value of the Subsidiaries Guaranty without the prior written consent of each Lender,

(iv) amend, modify or waive any provision of this Section 13.12(a) or Section 13.06 (except for technical amendments with respect to additional extensions of credit pursuant to this Agreement which afford the protections to such additional extensions of credit of the type provided to the Initial Term Loans on the Closing Date), in each case, without the prior written consent of each Lender directly and adversely affected thereby,

(v) reduce the percentage specified in the definition of Required Lenders without the prior written consent of each Lender (it being understood that, with the prior written consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders, as applicable, on substantially the same basis as the extensions of Initial Term Loans are included on the Closing Date),

(vi) reduce the percentage specified in the definition of Required Delayed Draw Term Lenders without the prior written consent of each Required Delayed Draw Term Lenders,

(vii) consent to the assignment or transfer by the any Borrower of any of its rights and obligations under this Agreement without the consent of each Lender or (vii) amend Section 2.14 the effect of which is to extend the maturity of any Term Loan without the prior written consent of each Lender directly and adversely affected thereby, and

(viii) subordinate (in right of security) the Liens securing the Obligations to other secured Indebtedness of the Credit Parties (except Liens permitted by Section 10.01(iv)(x) or Section 10.01(vi)) or subordinate (in right of payment) the Obligations to other senior Indebtedness of the Credit Parties, in each case without the prior written consent of each Lender;

provided, further, that no such change, waiver, discharge or termination shall (1) increase the Commitments of any Lender over the amount thereof then in effect without the consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or a mandatory reduction in the Total Commitment shall not constitute an increase of the Commitment of any Lender, and that an increase in the available portion of any Commitment of any Lender shall not constitute an increase of the Commitment of such Lender), (2) without the consent of each Agent adversely affected thereby, amend, modify or waive any provision of Section 12 or any other provision as same relates to the rights or obligations of such Agent, (3) without the consent
of Collateral Agent, amend, modify or waive any provision relating to the rights or obligations of the Collateral Agent, (4) except in cases where additional extensions of term loans are being afforded substantially the same treatment afforded to the Term Loans pursuant to this Agreement as in effect on the Closing Date, without the consent of the Majority Lenders of each Tranche which is being allocated a lesser prepayment, repayment or commitment reduction, alter the required application of any prepayments or repayments (or commitment reduction), as between the various Tranches, pursuant to Section 5.01 or 5.02 (although (x) the Required Lenders may waive, in whole or in part, any such prepayment, repayment or commitment reduction, so long as the application, as amongst the various Tranches, of any such prepayment, repayment or commitment reduction which is still required to be made is not altered and (y) any conversion of any Tranche of Term Loans into another Tranche of Term Loans hereunder in like principal amount and any other conversion of any Tranche of Term Loans into Extended Term Loans pursuant to an Extension Amendment shall not be considered a “prepayment” or “repayment” for purposes of this clause (4)), or (5) without the consent of the Majority Lenders of the respective Tranche affected thereby, amend the definition of Majority Lenders (it being understood that, with the consent of the Required Lenders, additional extensions of credit pursuant to this Agreement may be included in the determination of the Majority Lenders on substantially the same basis as the extensions of Term Loans and Commitments are included on the Closing Date); and provided further that only the consent the Administrative Agent shall be necessary for amendments described in clause (y) of the second proviso contained in clause (vi) of the definition of “Permitted Junior Loans.”

(b) If, in connection with any proposed change, waiver, discharge or termination of any of the provisions of this Agreement as contemplated by clauses (i) through (v), inclusive, of the first proviso to Section 13.12(a), the consent of the Required Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then the Lead Borrower shall have the right, so long as all non-consenting Lenders whose individual consent is required are treated as described in either clauses (A) or (B) below, to either (A) replace each such non-consenting Lender or Lenders with one or more Replacement Lenders pursuant to Section 2.13 so long as at the time of such replacement, each such Replacement Lender consents to the proposed change, waiver, discharge or termination or (B) terminate such non-consenting Lender’s Commitments and/or repay the outstanding Term Loans of each Tranche of such Lender in accordance with Section 5.01(b), provided that, unless the Commitments that are terminated, and Term Loans repaid, pursuant to the preceding clause (B) are immediately replaced in full at such time through the addition of new Lenders or the increase of outstanding Term Loans of existing Lenders (who in each case must specifically consent thereto), then in the case of any action pursuant to preceding clause (B) the Required Lenders (determined after giving effect to the proposed action) shall specifically consent thereto, provided further, that in any event the Lead Borrower shall not have the right to replace a Lender, terminate its Commitments or repay its Term Loans solely as a result of the exercise of such Lender’s rights (and the withholding of any required consent by such Lender) pursuant to the second proviso to Section 13.12(a).

(c) Notwithstanding anything to the contrary contained in clause (a) of this Section 13.12, the Borrowers, the Administrative Agent and each Incremental Term Loan Lender may, in accordance with the provisions of Section 2.15 enter into an Incremental Term Loan Commitment Agreement, provided that after the execution and delivery by the Borrowers, the Administrative Agent and each such Incremental Term Loan Lender of such Incremental Term Loan Commitment Agreement, such Incremental Term Loan Commitment Agreement, may thereafter only be modified in accordance with the requirements of clause (a) above of this Section 13.12.

(d) Notwithstanding anything to the contrary in clause (a) above of this Section 13.12, this Agreement may be amended (or amended and restated) (i) with the written consent of the Required Lenders, the Administrative Agent and the Borrowers, (x) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Credit Documents with the Term Loan and the accrued interest and fees in respect thereof and (y) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders and (ii) with the written consent of the Administrative Agent, the Borrowers and the Refinancing Term Loan Lenders, this Agreement and the other Credit Documents shall be amended (or amended and restated) in connection with any refinancing facilities permitted pursuant to Section 2.18.

(e) Notwithstanding anything to the contrary herein, any fee letter may be amended, or rights and privileges thereunder waived, in a writing executed only by the parties thereto.
(f) Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, to the fullest extent permitted by applicable law, such Lender will not be entitled to vote in respect of amendments, waivers and consents hereunder and the Commitment and the outstanding Term Loans or other extensions of credit of such Lender hereunder will not be taken into account in determining whether the Majority Lenders, the Required Lenders, the Required Delayed Draw Term Lenders or all of the Lenders, as required, have approved any such amendment, waiver or consent (and the definitions of “Majority Lenders”, “Required Lenders” and “Required Delayed Draw Term Lenders” will automatically be deemed modified accordingly for the duration of such period); provided that any such amendment or waiver that would increase or extend the term of the Commitment of such Defaulting Lender, extend the date fixed for the payment of principal or interest owing to such Defaulting Lender hereunder, reduce the principal amount of any obligation owing to such Defaulting Lender, reduce the amount of or the rate or amount of interest on any amount owing to such Defaulting Lender or of any fee payable to such Defaulting Lender hereunder, or alter the terms of this proviso, will require the consent of such Defaulting Lender.

(g) Further, notwithstanding anything to the contrary contained in this Section 13.12, if following the Closing Date, the Administrative Agent and any Credit Party shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Credit Documents, then the Administrative Agent and the Credit 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 Credit Documents if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof.

13.13  Survival

All indemnities set forth herein including, without limitation, in Sections 2.10, 2.11, 5.04, 12.07 and 13.01 shall survive the execution, delivery and termination of this Agreement and the Notes and the making and repayment of the Obligations.

13.14  Domicile of Term Loans

Each Lender may transfer and carry its Term Loans at, to or for the account of any office, Subsidiary or Affiliate of such Lender. Notwithstanding anything to the contrary contained herein, to the extent that a transfer of Term Loans pursuant to this Section 13.14 would, at the time of such transfer, result in increased costs under Section 2.10, 2.11 or 5.04 from those being charged by the respective Lender prior to such transfer, then the Borrowers shall not be obligated to pay such increased costs (although the Borrowers shall be obligated to pay any other increased costs of the type described above resulting from changes after the date of the respective transfer).

13.15  Register

The Borrowers hereby designate the Administrative Agent to serve as their agent, solely for purposes of this Section 13.15, to maintain a register (the “Register”) on which it will record the Commitments from time to time of each of the Lenders, the Term Loans made by each of the Lenders and the stated interest on, and each repayment in respect of the principal amount of, the Term Loans of each Lender. Each Lender, 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 (and the entries in the Register shall be conclusive absent manifest error for such purposes), notwithstanding notice to the contrary. With respect to any Lender, the transfer of the Commitments of, and the principal (and interest) amounts of the Term Loans owing to, such Lender and the rights to the principal of, and interest on, any Term Loan made pursuant to such Commitments shall not be effective until such transfer is recorded on the Register maintained by the Administrative Agent with respect to ownership of such Commitments and Term Loans and prior to such recordation all amounts owing to the transferor with respect to such Commitments and Term Loans shall remain owing to the transferor. The registration of assignment or transfer of all or part of any Commitments and Term Loans shall be recorded by the Administrative Agent on the Register only upon the acceptance by the Administrative Agent of a properly executed and delivered Assignment and Assumption Agreement pursuant to Section 13.04(h). Coincident with the delivery of such an Assignment and Assumption

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Agreement to the Administrative Agent for acceptance and registration of assignment or transfer of all or part of a Term Loan, or as soon thereafter as practicable, the assigning or transferor Lender shall surrender the Note (if any) evidencing such Term Loan, and thereupon one or more new Notes in the same aggregate principal amount shall be issued to the assigning or transferor Lender and/or the new Lender at the request of any such Lender. The registration of any provision of Incremental Term Loan Commitments pursuant to Section 2.15, shall be recorded by the Administrative Agent on the Register only upon the acceptance of the Administrative Agent of a properly executed and delivered Incremental Term Loan Commitment Agreement. Coincident with the delivery of such Incremental Term Loan Commitment Agreement for acceptance and registration of the provision of an Incremental Term Loan Commitment, as the case may be, or as soon thereafter as practicable, to the extent requested by such Incremental Term Loan Lenders, Term Notes shall be issued, at the Lead Borrower’ expense, to such Incremental Term Loan Lenders, to be in conformity with Section 2.05 (with appropriate modification) to the extent needed to reflect the Incremental Term Loan Commitments, and outstanding Incremental Term Loans made by such Incremental Term Loan Lender.

13.16 Confidentiality

(a) Subject to the provisions of clause (b) of this Section 13.16, each Agent, Lead Arranger and Lender agrees that it will use its commercially reasonable efforts not to disclose without the prior consent of the Lead Borrower (other than to its affiliates and its and their respective directors, officers, employees, auditors, advisors or counsel or to another Lender if such Lender or such Lender’s holding or parent company in its sole discretion determines that any such party should have access to such information, provided such Persons shall be subject to the provisions of this Section 13.16 to the same extent as such Lender or (language substantially similar to this Section 13.16(a)) any information with respect to any Borrower or any of its Subsidiaries which is now or in the future furnished pursuant to this Agreement or any other Credit Document, provided that any Lender may disclose any such information (i) as has become generally available to the public other than by virtue of a breach of this Section 13.16(a) by such Lender, (ii) as may be required or appropriate in any report, statement or testimony submitted to any municipal, state or Federal regulatory body having or claiming to have jurisdiction over such Lender or to the Federal Reserve Board or the Federal Deposit Insurance Corporation or similar organizations (whether in the United States or elsewhere) or their successors, (iii) as may be required or appropriate in respect to any summons or subpoena or in connection with any litigation, (iv) in order to comply with any law, order, regulation or ruling applicable to such Lender, (v) to the Administrative Agent or the Collateral Agent, (vi) to any prospective or actual direct or indirect contractual counterparty in any swap, hedge or similar agreement (or to any such contractual counterparty’s professional advisor), so long as such contractual counterparty (or such professional advisor) agrees to be bound by the provisions of this Section 13.16 (or language substantially similar to this Section 13.16(a)), (vii) to any prospective or actual transferee, pledgee or participant in connection with any contemplated transfer, pledge or participation of any of the Notes or Commitments or any interest therein by such Lender and (viii) has become available to any Agent, the Lead Arranger, any Lender, or any of their respective Affiliates on a non-confidential basis from a source other than any Borrower or any Subsidiary thereof, and which source is not known by such Person to be subject to a confidentiality restriction in respect thereof in favor of each Borrower or any Affiliate of such Borrower, provided that such prospective transferee, pledgee or participant agrees to be bound by the confidentiality provisions contained in this Section 13.16 (or language substantially similar to this Section 13.16(a)); provided, further, that, to the extent permitted pursuant to any applicable law, order, regulation or ruling, and other than in connection with credit and other bank examinations conducted in the ordinary course with respect to such Lender, in the case of any disclosure pursuant to the foregoing clauses (ii), (iii) or (v), such Lender will use its commercially reasonable efforts to notify the Lead Borrower in advance of such disclosure so as to afford each Borrower the opportunity to protect the confidentiality of the information proposed to be so disclosed.

(b) The Borrowers hereby acknowledge and agree that each Lender may share with any of its affiliates, and such affiliates may share with such Lender, any information related to the Lead Borrower or any of its Subsidiaries (including, without limitation, any non-public customer information regarding the creditworthiness of the Lead Borrower and its Subsidiaries), provided such Persons shall be subject to the provisions of this Section 13.16 to the same extent as such Lender.

13.17 USA Patriot Act Notice

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Each Lender hereby notifies the Lead Borrower that pursuant to the requirements of the USA PATRIOT Act Title III of Pub. 107-56 (signed into law October 26, 2001 and amended on March 9, 2009) (the “Patriot Act”), it is required to obtain, verify, and record information that identifies each Borrower and each Subsidiary Guarantor, which information includes the name of each Credit Party and other information that will allow such Lender to identify the Credit Party in accordance with the Patriot Act, and each Credit Party agrees to provide such information from time to time to any Lender.

13.18 Joint and Several Liability

Each Borrower is jointly and severally liable for the Obligations as a primary obligor in respect thereof. The Obligations of each Borrower are independent of the Obligations of each other Borrower, and a separate action or actions may be brought and prosecuted against any Borrower to enforce this Agreement, irrespective of whether any action has been brought against any other Borrower or whether any other Borrower is joined in any such action.

13.19 Waiver of Sovereign Immunity

Each of the Credit Parties, in respect of itself, its Subsidiaries, its process agents, and its properties and revenues, hereby irrevocably agrees that, to the extent that the Borrowers, their respective Subsidiaries or any of their properties has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, whether in the United States or elsewhere, to enforce or collect upon the Term Loans or any Credit Document or any other liability or obligation of the Borrowers or any of their respective Subsidiaries related to or arising from the transactions contemplated by any of the Credit Documents, including, without limitation, immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment, and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, the Borrowers, for themselves and on behalf of their respective Subsidiaries, hereby expressly waive, to the fullest extent permissible under applicable law, any such immunity, and agree not to assert any such right or claim in any such proceeding, whether in the United States or elsewhere. Without limiting the generality of the foregoing, the Borrowers further agree that the waivers set forth in this Section 13.19 shall have the fullest extent permitted under the Foreign Sovereign Immunities Act of 1976 of the United States and are intended to be irrevocable for purposes of such Act.

13.20 Lead Borrower

Each Borrower hereby designates Existing Lead Borrower and the Closing Date Lead Borrower, as applicable, in its capacity as the Lead Borrower, to act as its agent hereunder. The Lead Borrower may act as agent on behalf of each Borrower for purposes of delivering Notices of Borrowing, and notices of conversion/continuation or similar notices, giving instructions with respect to the disbursement of the proceeds of Loans, selecting interest rate options, giving and receiving all other notices and consents hereunder or under any of the other Credit Documents and taking all other actions (including in respect of compliance with covenants) on behalf of any Borrower or the Borrowers under the Credit Documents. The Lead Borrower hereby accepts such appointment. Each Borrower agrees that each notice, election, representation and warranty, covenant, agreement and undertaking made on its behalf by the Lead Borrower shall be deemed for all purposes to have been made by such Borrower and shall be binding upon and enforceable against such Borrower to the same extent as if the same had been made directly by such Borrower.

13.21 INTERCREDITOR AGREEMENT

(a) EACH LENDER PARTY HERETO UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT IT (AND EACH OF ITS SUCCESSORS AND ASSIGNS) AND EACH OTHER LENDER (AND EACH OF THEIR SUCCESSORS AND ASSIGNS) SHALL BE BOUND BY THE ABL INTERCREDITOR AGREEMENT, WHICH IN CERTAIN CIRCUMSTANCES MAY REQUIRE (AS MORE FULLY PROVIDED THEREIN) THE TAKING OF CERTAIN ACTIONS BY THE LENDERS, INCLUDING THE PURCHASE AND SALE OF PARTICIPATIONS BY VARIOUS LENDERS TO EACH OTHER IN ACCORDANCE WITH THE TERMS THEREOF.
13.21 Absence of Fiduciary Relationship

Notwithstanding any other provision of this Agreement or any provision of any other Credit Document, (i) none of the Lead Arrangers or any Lender shall, solely by reason of this Agreement or any other Credit Document, have any fiduciary, advisory or agency relationship or duty in respect of any Lender or any other Person and (ii) the Lead Borrower hereby waive, to the fullest extent permitted by law, any claims they may have against the Lead Arrangers or any Lender for breach of fiduciary duty or alleged breach of fiduciary duty. Each Agent, Lender and their Affiliates may have economic interests that conflict with those of the Credit Parties, their stockholders and/or their affiliates.

13.22 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 and the transactions contemplated hereby (including without limitation Assignment and Assumption Agreements, amendments or other Notices of Borrowing, 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 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 the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

13.23 Entire Agreement

This Agreement and the other Credit Documents represent the final agreement among the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements among the parties.

13.24 Acknowledgement and Consent to Bail-In of Affected Financial Institutions

Solely to the extent an Affected Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be
subject to the write-down and conversion powers of an the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(1) a reduction in full or in part or cancellation of any such liability;

(2) 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 Credit Document; or

(3) 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.

13.26 Acknowledgement Regarding any Supported QFCs

To the extent that the Credit 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 Credit Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Credit 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 Credit Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 13.26, the following terms have the following meanings:

“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.
“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).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“Swap Contract” shall mean (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.

[Signature pages follow.]
IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Agreement as of the date first above written.

PAE HOLDING CORPORATION,
as the Existing Lead Borrower

By: /s/ Charles Peiffer
Name: Charles Peiffer
Title: Executive Vice President and Chief Financial Officer

PAE INCORPORATED,
as the Lead Borrower

By: /s/ Charles Peiffer
Name: Charles Peiffer
Title: Executive Vice President and Chief Financial Officer

[Signature page to PAE A&R Credit Agreement(2020)]
Pacific Architects and Engineers, LLC, 
as a Subsidiary Borrower

By: /s/ Charles Peiffer
Name: Charles Peiffer
Title: Executive Vice President and Chief Financial Officer

PAE Justice Support, 
as a Subsidiary Borrower

By: /s/ Charles Peiffer
Name: Charles Peiffer
Title: Executive Vice President and Chief Financial Officer

PAE Pinnacle Holdings, LLC, 
as a Guarantor

By: /s/ Charles Peiffer
Name: Charles Peiffer
Title: Executive Vice President and Chief Financial Officer

Shay Intermediate Holding Corporation, 
as a Guarantor

By: /s/ Charles Peiffer
Name: Charles Peiffer
Title: Executive Vice President and Chief Financial Officer

Shay Intermediate Holding II Corporation, 
as a Guarantor

By: /s/ Charles Peiffer
Name: Charles Peiffer
Title: Executive Vice President and Chief Financial Officer

DynCorp, LLC, 
as a Guarantor

[Signature page to PAE A&R Credit Agreement (2020)]
By: /s/ Clinton Bickett

Name: Clinton Bickett
Title: Vice President and Chief Financial Officer

Macfadden & Associates, Inc.,
as a Subsidiary Borrower

By: /s/ Clinton Bickett

Name: Clinton Bickett
Title: Vice President and Chief Financial Officer

Pacific Operations Maintenance Company,
as a Subsidiary Borrower

By: /s/ Clinton Bickett

Name: Clinton Bickett
Title: Vice President and Chief Financial Officer

PAE Applied Technologies International LLC,
as a Guarantor

By: /s/ Clinton Bickett

Name: Clinton Bickett
Title: Vice President and Chief Financial Officer

PAE Applied Technologies LLC,
as a Subsidiary Borrower

By: /s/ Clinton Bickett

Name: Clinton Bickett
Title: Vice President and Chief Financial Officer

PAE Aviation and Technical Services LLC,
as a Subsidiary Borrower

By: /s/ Clinton Bickett

Name: Clinton Bickett
Title: Vice President and Chief Financial Officer

[Signature page to PAE A&R Credit Agreement (2020)]
PAE Canada, Inc.,  
as a Guarantor  

By: /s/ Clinton Bickett  

Name: Clinton Bickett  
Title: Vice President and Chief Financial Officer  

PAE Design and Facility Management,  
as a Subsidiary Borrower  

By: /s/ Clinton Bickett  

Name: Clinton Bickett  
Title: Vice President and Chief Financial Officer  

PAE Government Services, Inc.,  
as a Subsidiary Borrower  

By: /s/ Clinton Bickett  

Name: Clinton Bickett  
Title: Vice President and Chief Financial Officer  

PAE International,  
as a Guarantor  

By: /s/ Clinton Bickett  

Name: Clinton Bickett  
Title: Vice President and Chief Financial Officer  

PAE Training Services, LLC,  
as a Guarantor  

By: /s/ Clinton Bickett  

Name: Clinton Bickett  
Title: Vice President and Chief Financial Officer  

PAE Worldwide Incorporated,  
as a Guarantor  

By: /s/ Clinton Bickett  

Name: Clinton Bickett  
Title: Vice President and Chief Financial Officer  

[Signature page to PAE A&R Credit Agreement (2020)]
PAE Labat-Anderson LLC,  
as a Subsidiary Borrower  

By: /s/ Michael Fluehr  

Name: Michael Fluehr  
Title: Vice President and Chief Financial Officer  

PAE National Security Solutions LLC,  
as a Subsidiary Borrower  

By: /s/ Michael Fluehr  

Name: Michael Fluehr  
Title: Vice President and Chief Financial Officer  

PAE Professional Services LLC,  
as a Borrower  

By: /s/ Michael Fluehr  

Name: Michael Fluehr  
Title: Vice President and Chief Financial Officer  

FCI Federal, LLC,  
as a Subsidiary Borrower  

By: /s/ Michael Fluehr  

Name: Michael Fluehr  
Title: Vice President and Chief Financial Officer  

PAE Shield Acquisition Company LLC,  
as a Guarantor  

By: /s/ Michael Fluehr  

Name: Michael Fluehr  
Title: Vice President and Chief Financial Officer
PAE Shared Services LLC,
as a Guarantor

By:  /s/ Mark Monroe
Name: Mark Monroe
Title: Treasurer

Africa Expeditionary Services LLC,
as a Guarantor

By:  /s/ Mark Monroe
Name: Mark Monroe
Title: Treasurer

BANK OF AMERICA, N.A.,
as Administrative Agent and a Lender

[Signature page to PAE A&R Credit Agreement (2020)]
By: /s/ David H. Strickert

Name: David H. Strickert
Title: Managing Director

[Signature page to PAE A&R Credit Agreement (2020)]
Amendment No. 3 to revolving CREDIT Agreement

This AMENDMENT NO. 3 (this “Amendment”) dated as of October 19, 2020 to the Revolving Credit Agreement dated as of October 20, 2016 (as amended by Amendment No. 1, dated as of June 12, 2017, Amendment No. 2, dated as of January 31, 2020, and as further amended, supplemented or otherwise modified prior to the Amendment No. 3 Effective Date (as defined below), the “Credit Agreement”), among PAE INCORPORATED, a Delaware corporation (“PAE”), PAE HOLDING CORPORATION (the “Existing Lead Borrower”), the Subsidiary Borrowers party thereto (the “Subsidiary Borrowers” and together with the Lead Borrower, the “Borrowers”), the Lenders party thereto from time to time and Bank of America, N.A., as the Administrative Agent (the “Administrative Agent”), is entered into and among Holdings, the Borrowers, the Subsidiary Guarantors, the Administrative Agent and the Lenders party hereto.

WHEREAS, the Borrower has requested (i) an increase of the aggregate amount of the Revolving Commitments from $150,000,000 to $175,000,000 and (ii) the other amendments to the Credit Agreement as set forth herein;

WHEREAS, pursuant to Section 13.12 of the Credit Agreement, the Credit Agreement or any other Credit Document may be amended in a writing signed by the Credit Parties party thereto, the Administrative Agent and certain Lenders;

WHEREAS, pursuant to Section 13.12 of the Credit Agreement, Holdings and the Borrowers have requested to amend the Credit Agreement in order to, among other things, (i) with the consent of all Lenders party to the Credit Agreement immediately after giving effect to the Amendment No. 3 Effective Date (the “Existing Lenders”), extend the Maturity Date to the date that is five years after the Amendment No. 3 Effective Date and (ii) with the consent of the Supermajority Lenders, modify the definition of “Borrowing Base”;

WHEREAS, each Person identified on Schedule 1 hereto (each, an “Increase Loan Lender”, and collectively, the “Increase Loan Lenders”, and together with the Existing Lenders, the “Lenders”) has agreed (on a several and not a joint basis), subject to the terms and conditions set forth herein and in the Credit Agreement, to provide a Revolving Commitment Increase (and the total amount of Revolving Commitment Increases made pursuant to this Amendment shall be $25,000,000) and the Revolving Commitment of each Lender, after giving effect to such Revolving Commitment Increases, shall be in the amount set forth opposite such Lender’s name on Schedule 1 hereto (and such Schedule 1 shall supersede Schedule 2.01 to the Credit Agreement); provided that, any Existing Lender without a Revolving Commitment set forth on Schedule 1 hereto as of the Amendment No. 3 Effective Date shall no longer be deemed a Lender party to the Credit Agreement;

WHEREAS, PAE desires to become a party to, and bound by the terms of, the Credit Agreement and the other Credit Documents as the “Lead Borrower” thereunder (in such capacity, the “Lead Borrower”);

WHEREAS, Bank of America, N.A. (or any of its affiliates as so designated by them to act in such capacity) has been appointed and will act as the sole arranger for this Amendment (in such capacity, the “Amendment No. 3 Arranger”); and

WHEREAS, this Amendment will become effective on the Amendment No. 3 Effective Date on the terms and subject to the conditions set forth herein.
Accordingly, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. Capitalized terms used and not otherwise defined herein have the meanings assigned to them in the Credit Agreement as amended by this Amendment (the “Amended Credit Agreement”).

ARTICLE II

AMENDMENTS TO THE CREDIT AGREEMENT

Section 2.01 Amendments to Credit Agreement. Each of the parties hereto agrees that, effective on the Amendment No. 3 Effective Date, the Credit Agreement shall be amended to delete the stricken text (indicated textually in the same manner as the following example: stricken text) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Amended Credit Agreement attached as Exhibit A hereto.

Section 2.02 Joinder and Assumption of Obligations. Effective as of the Amendment No. 3 Effective Date (and subject to the proviso to Section 4.01(j) below), the Lead Borrower hereby acknowledges that it has received and reviewed a copy of the Credit Agreement, and hereby:

(a) joins in the execution of, and becomes a party to, the Credit Agreement as the Lead Borrower thereunder, as indicated by its signature below;

(b) covenants and agrees to be bound by all covenants, agreements, liabilities and acknowledgments of the Lead Borrower under the Credit Agreement and the other Credit Documents to which the Lead Borrower is a party, in each case, with the same force and effect as if the Lead Borrower was a signatory to the Credit Agreement and such other Credit Documents; and

(c) assumes and agrees to perform all applicable duties and Obligations of the Lead Borrower under the Credit Agreement and such other Credit Documents.

Section 2.03 Required Lender Consent. The Administrative Agent and each Lender party hereto hereby consents to this Amendment.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.01 Representations and Warranties. By execution of this Amendment, each Credit Party party hereto hereby represents and warrants, as of the date hereof, that:

(a) each of the representations and warranties made by any Credit Party set forth in Section 8 of the Credit Agreement or in any other Credit Document shall be true and correct in all material respects (in each case, any representation or warranty that is qualified as to “materiality or similar language” shall be true and correct in all respects on and as of the date hereof) on and as of the date hereof, with the same effect as though made on and as of the Closing Date, except to the extent such
representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such date (in each case, any representation or warranty that is qualified as to “materiality or similar language” shall be true and correct in all respects on and as of the date hereof); and

(b) at the time of and immediately after giving effect to this Amendment, no Default or Event of Default shall have occurred and be continuing.

ARTICLE IV
CONDITIONS TO EFFECTIVENESS

Section 4.01 Amendment No. 3 Effective Date. This Amendment shall become effective as of the first date (the “Amendment No. 3 Effective Date”) on which each of the following conditions shall have been satisfied:

(a) Execution and Delivery of this Amendment. Each Credit Party, each Joinder Party (as defined below), the Administrative Agent and each Lender shall have signed a counterpart of this Amendment (whether the same or different counterparts) and shall have delivered (by electronic transmission or otherwise) the same to the Administrative Agent.

(b) Representations and Warranties. The representations and warranties contained in Article III hereof shall be true and correct on and as of the Amendment No. 3 Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct on and as of such earlier date, in each case subject to the qualifications set forth therein.

(c) Closing Fee. The Administrative Agent shall have received for the account of each Lender that executes and delivers a copy of this Amendment to the Administrative Agent (or its counsel) at or prior to 9:30 a.m. New York City time on October 19, 2020, a non-refundable closing fee in an amount equal to 0.50% of the amount of such consenting Lender’s Revolving Commitment (whether funded or unfunded) immediately after giving effect to the Revolving Commitment Increases contemplated hereby (it being understood that Borrowers shall have no liability for any such fee if the Amendment No. 3 Effective Date does not occur).

(d) Fees and Expenses. On the Amendment No. 3 Effective Date, the Borrowers shall have paid to the Administrative Agent and the Amendment No. 3 Arranger all costs, fees and expenses (including, without limitation, legal fees and expenses) to the extent invoiced at least three (3) Business Days prior to the Amendment No. 3 Effective Date and any other compensation payable to the Administrative Agent and the Amendment No. 3 Arranger or otherwise payable to the extent then due.

(e) Opinions of Counsel. The Administrative Agent shall have received the executed opinion of Morgan, Lewis & Bockius LLP, counsel to the Credit Parties, addressed to the Administrative Agent and each of the Lenders party hereto and dated the Amendment No. 3 Effective Date which, in each case, shall be in form and substance reasonably satisfactory to the Administrative Agent.

(f) Secretary’s Certificate. On the Amendment No. 3 Effective Date, the Administrative Agent shall have received a certificate from each Credit Party, dated the Amendment No. 3 Effective Date, signed by a Responsible Officer of such Credit Party, and attested to by the Secretary or any Assistant Secretary of such Credit Party, in the form of Exhibit E to the Credit Agreement with appropriate insertions, together with copies of the certificate or articles of incorporation and by-laws (or
equivalent organizational documents), as applicable, of such Credit Party and the resolutions of such Credit Party referred to in such certificate, and each of the foregoing shall be in form and substance reasonably satisfactory to the Administrative Agent.

(g) **Good Standing Certificates.** On the Amendment No. 3 Effective Date, the Administrative Agent shall have received good standing certificates and bring-down telegrams or facsimiles, if any, for the Credit Parties which the Administrative Agent reasonably may have requested, certified by proper Governmental Authorities.

(h) **Solvency Certificate.** The Administrative Agent shall have received a solvency certificate from the chief financial officer or treasurer of the Lead Borrower substantially in the form of Exhibit I to the Credit Agreement and reasonably satisfactory to the Administrative Agent.

(i) **No Default.** No Default or Event of Default shall exist at the time of, or result from, giving effect to this Amendment.

(j) **KYC and Beneficial Ownership Information.** The Administrative Agent and the Lenders shall have received from the Credit Parties, at least three Business Days prior to the Amendment No. 3 Effective Date, (i) all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, in each case to the extent requested in writing, and (ii) if the Lead Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, the Administrative Agent or any Lender that requests a Beneficial Ownership Certification shall have received a Beneficial Ownership Certification in relation to such Borrower at least three Business Days before the Amendment No. 3 Effective Date, in each case to the extent reasonably requested in writing at least 10 Business Days prior to the Amendment No. 3 Effective Date (provided that, upon the execution and delivery by such Lender of its signature page to this Amendment, the condition set forth in this clause (ii) shall be deemed to be satisfied).

(k) **Joinders.** On or prior to the Amendment No. 3 Effective Date, the Administrative Agent shall have received appropriate joinder documentation to each of the following documents, in each case duly executed and delivered by each entity identified on Schedule 2 hereto (each, a “Joinder Party”):

i. the Intercreditor Agreement;

ii. the Subsidiaries Guaranty;

iii. the Security Agreement; and

iv. the Pledge Agreement.

Section 4.02 **Effects of this Amendment.**

(a) Except as expressly set forth herein, this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of or otherwise affect the rights and remedies of the Lenders or the Administrative Agent under the existing Credit Agreement or any other Credit Document, and shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the existing Credit Agreement or any other provision of the existing Credit Agreement or of any other Credit Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect. This Amendment shall not constitute a novation of the Credit
Agreement as in effect immediately prior to giving effect hereto or any of the Credit Documents. Except as expressly set forth herein, nothing herein shall be deemed to be a waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other Credit Document in similar or different circumstances.

(b) From and after the Amendment No. 3 Effective Date, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof”, “herein”, or words of like import, and each reference to the “Credit Agreement” in any other Credit Document shall in each case be deemed a reference to the Amended Credit Agreement as amended hereby. This Amendment shall constitute a “Credit Document” for all purposes of the Credit Agreement and the other Credit Documents.

Section 4.03 Post-Closing Actions. The Lead Borrower agrees that it will, or will cause its relevant Subsidiaries to, complete each of the actions described on Schedule 3 as soon as commercially reasonable and by no later than the date set forth in Schedule 3 with respect to such action or such later date as the Administrative Agent may reasonably agree.

ARTICLE V

REAFFIRMATION

Section 5.01 Reaffirmation. By signing this Amendment, each Credit Party hereby confirms that notwithstanding the effectiveness of this Amendment and the transactions contemplated hereby, the obligations of such Credit Parties under the Amended Credit Agreement and the other Credit Documents (i) are entitled to the benefits of the guarantees and the security interests set forth or created in the Amended Credit Agreement, the Security Agreement, the other Security Documents and the other Credit Documents, (ii) constitute “Guaranteed Obligations” and “Obligations” for purposes of the Amended Credit Agreement, the Security Agreement, the other Security Documents and all other Credit Documents, (iii) each Guarantor hereby confirms and ratifies its continuing unconditional obligations as Guarantor under the Credit Agreement as amended hereby with respect to all of the Guaranteed Obligations and (iv) each Credit Document to which such Credit Party is a party is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects and shall remain in full force and effect according to its terms (in the case of the Credit Agreement, as amended hereby). Each Credit Party ratifies and confirms that all Liens granted, conveyed, or assigned to any Agent by such Person pursuant to any Credit Document to which it is a party remain in full force and effect, are not released or reduced, and continue to secure full payment and performance of the Obligations as increased hereby.

ARTICLE VI

REALLOCATION

Section 6.01 Reallocation. The reallocation of the Lenders’ Revolving Loans with respect to any increase in the Revolving Commitments shall occur with respect to the Revolving Commitment Increases contemplated hereby on the Amendment No. 3 Effective Date, and the Increase Loan Lenders shall make such Revolving Loans on the Amendment No. 3 Effective Date as may be required to effectuate such reallocation. Furthermore, on the Amendment No. 3 Effective Date, all participations in Letters of Credit and Swingline Loans shall be reallocated pro rata among the Lenders after giving effect to the Revolving Commitment Increases contemplated hereby.
ARTICLE VII

MISCELLANEOUS

Section 7.01 Entire Agreement. This Amendment, the Credit Agreement and the other Credit Documents constitute the entire agreement among the parties hereto with respect to the subject matter hereof and thereof and supersede all other prior agreements and understandings, both written and verbal, among the parties hereto with respect to the subject matter hereof. Except as expressly set forth herein, this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of any party under, the Credit Agreement, nor alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement, all of which are ratified and affirmed in all respects and shall continue in full force and effect. It is understood and agreed that each reference in each Credit Document to the Credit Agreement, whether direct or indirect, shall hereafter be deemed to be a reference to the Credit Agreement as amended hereby and that this Amendment is a Credit Document.

Section 7.02 Miscellaneous Provisions. The provisions of Sections 13.08 and 13.23 of the Amended Credit Agreement are hereby incorporated by reference and apply mutatis mutandis hereto.

Section 7.03 Severability. If any provision of this Amendment is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Amendment shall not be affected or impaired thereby. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 7.04 Counterparts. This Amendment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall constitute an original, but all of which, when taken together, shall constitute one and the same instrument. The words “execution,” “execute”, “signed,” “signature,” and words of like import in or related to any document to be signed in connection with this Amendment and the transactions contemplated hereby (including without limitation Assignment and Acceptances, amendments, Borrowing Requests, 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 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 the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it. Without limiting the generality of the foregoing, the Borrower and each other Credit Party hereby (i) agrees that, for all purposes, electronic images of this Amendment or any other Credit Documents (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (ii) waives any argument, defense or right to contest the validity or enforceability of the Credit Documents based solely on the lack of paper original copies of any Credit Documents, including with respect to any signature pages thereto. A set of counterparts executed by all the parties hereto shall be lodged with the Lead Borrower and the Administrative Agent.
Section 7.05 **Headings**. The headings of this Amendment are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

[Signature Pages Follow]
IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**PAE INCORPORATED**

By: /s/ Charles Peiffer

Name: Charles Peiffer  
Title: Executive Vice President & Chief Financial Officer

**PAE HOLDING CORPORATION**

By: /s/ Charles Peiffer

Name: Charles Peiffer  
Title: Executive Vice President & Chief Financial Officer

[Signature page to Revolving Credit Agreement Amendment No. 3]  
DBJ/116477506.3
By: /s/ Stephanie Finn
Name: Stephanie Finn
Title: Assistant Secretary

FCI Federal, LLC
PAE Shared Services LLC

By: /s/ Stephanie Finn
Name: Stephanie Finn
Title: Secretary

BANK OF AMERICA, N.A.,
as Administrative Agent

[Signature page to Revolving Credit Agreement Amendment No. 3]
By:  /s/ John Yankauskas

Name: John Yankauskas
Title: Sr. Vice President

BANK OF AMERICA, N.A.,
as a Lender

[Signature page to Revolving Credit Agreement Amendment No. 3]
By:  /s/ John Yankauskas

Name: John Yankauskas
Title: Sr. Vice President

[Signature page to Revolving Credit Agreement Amendment No. 3]
The undersigned Lender hereby consents to the Amendment.

CITIZENS BANK, NATIONAL ASSOCIATION,
as a Lender

By:  /s/ Dan Laurenzi

Name: Dan Laurenzi
Title: Director

[Signature page to Revolving Credit Agreement Amendment No. 3]
The undersigned Lender hereby consents to the Amendment.

TRUST BANK,
as a Lender

By:  /s/ Stephen Metts

Name: Stephen Metts
Title: Director

[Signature page to Revolving Credit Agreement Amendment No. 3]
The undersigned Lender hereby consents to the Amendment.

Stifel Bank & Trust,
as a Lender

By: /s/ John H. Phillips

Name: John H. Phillips
Title: E.U.P. – C.L.O.

[Signature page to Revolving Credit Agreement Amendment No. 3]
The undersigned Lender hereby consents to the Amendment.

MORGAN STANLEY SENIOR FUNDING, INC.,
as a Lender

By: /s/ Michael King

Name: Michael King
Title: Authorized Signatory

[Signature page to Revolving Credit Agreement Amendment No. 3]
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<th>Name of Lender</th>
<th>Revolving Commitments</th>
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<td>Stifel Bank &amp; Trust</td>
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<td>Total</td>
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<td>Name of Joinder Party</td>
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<tr>
<td>Africa Expeditionary Services LLC</td>
<td>Delaware</td>
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<td>PAE Canada, Inc.</td>
<td>California</td>
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<td>PAE Incorporated</td>
<td>Delaware</td>
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<td>PAE Pinnacle Holdings, LLC</td>
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<td>PAE Worldwide Incorporated</td>
<td>Delaware</td>
</tr>
<tr>
<td>Shay Intermediate Holding Corporation</td>
<td>Delaware</td>
</tr>
</tbody>
</table>
1. Within 30 days of the Amendment No. 3 Effective Date (or such longer period as the Administrative Agent may agree in its reasonable discretion), deliver to the Administrative Agent certified charter documents of PAE Design and Facility Management, a California corporation, dated as of a recent date.

2. Within 30 days of the Amendment No. 3 Effective Date (or such longer period as the Administrative Agent may agree in its reasonable discretion), to the extent not delivered on the Amendment No. 3 Effective Date, deliver to the Collateral Agent the certificates or instruments representing certificated pledged Equity Interests (as defined in the Pledge Agreement).
REVOLVING CREDIT AGREEMENT

among

PAE HOLDING CORPORATION, as the EXISTING LEAD BORROWER,

SHAY INTERMEDIATE HOLDING II CORPORATION, as INTERMEDIATE HOLDINGS,
PAE HOLDING CORPORATION

and its Domestic Subsidiaries listed as Borrowers on the signature pages hereto,

as Borrowers,

VARIABLE LENDERS

and

BANK OF AMERICA, N.A.,
as ADMINISTRATIVE AGENT

Dated as of October 20, 2016

as amended on June 12, 2017

and as amended on January 31, 2020

and as amended on October 19, 2020

BANK OF AMERICA, N.A.,
CITIZENS BANK, N.A.,
SUNTRUST ROBINSON HUMPHREY, INC.
and
MORGAN STANLEY SENIOR FUNDING, INC.,
as JOINT LEAD ARRANGERS AND BOOKRUNNERS

BANK OF AMERICA, N.A.,
CITIZENS BANK, N.A.,
TRUIST BANK
and
MORGAN STANLEY SENIOR FUNDING, INC.
as CO-DOCUMENTATION AGENTS AND CO-SYNDICATION AGENTS
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THIS REVOLVING CREDIT AGREEMENT, dated as of October 20, 2016, amended by Amendment No. 1 on June 12, 2017, amended by Amendment No. 2 on January 31, 2020 and as amended on the Amendment No. 3 Effective Date, among PAE INCORPORATED, a Delaware corporation (the “Amendment No. 3 Effective Date Lead Borrower” or “Holdings”), SHAY INTERMEDIATE HOLDING II CORPORATION, a Delaware corporation (“Intermediate Holdings”), PAE HOLDING CORPORATION, a Delaware corporation (the “Existing Lead Borrower”), each of the other Borrowers (as hereinafter defined), the Lenders party hereto from time to time and BANK OF AMERICA, N.A., as the Administrative Agent, the Collateral Agent, the Issuing Bank and the Swingline Lender. All capitalized terms used herein and defined in Section 1 are used herein as therein defined.

W I T N E S S E T H:

WHEREAS, (a) the Borrowers have requested that the Lenders extend credit in the form of Revolving Loans in an aggregate principal amount at any time outstanding not to exceed $100,000,000 (or such higher amount as permitted hereunder), (b) the Borrowers have requested that the Issuing Bank issue Letters of Credit in an aggregate stated amount at any time outstanding not to exceed $100,000,000 and (c) the Borrowers have requested that the Swingline Lender extend credit in the form of Swingline Loans in an aggregate principal amount at any time outstanding not to exceed $25,000,000.

WHEREAS, on the Closing Date, the Lead Borrower entered into (x) the First Lien Credit Agreement and (y) the Second Lien Credit Agreement, and on the Closing Date, the Lead Borrower used the proceeds of borrowings thereunder, together with borrowings of Revolving Loans under this Agreement, (a) to finance the repayment of all amounts outstanding under the Existing Credit Agreement, (b) to pay the Special Dividend, (c) for other general corporate purposes and corporate transactions and (e) to pay the Transaction Costs.

WHEREAS, the Lead Borrower requested that, on the Amendment No. 2 Effective Date, this Agreement be amended as set forth in Amendment No. 2.

WHEREAS, each of the Required Lenders has indicated its willingness to amend this Agreement on the Amendment No. 3 Effective Date on the terms and subject to the conditions set forth herein and in Amendment No. 3.

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

ARTICLE 1 Definitions and Accounting Terms

Section 1.01 Defined Terms

As used in this Agreement, the following terms shall have the following meanings:

“Account Debtor” shall mean any Person who may become obligated to another Person under, with respect to, or on account of, an Account.

“Accounts” shall mean all “accounts,” as such term is defined in the UCC as in effect on the date hereof in the State of New York, in which any Person now or hereafter has rights.

“Acquired Entity or Business” shall mean either (x) the assets constituting a business, division, product line, manufacturing facility or distribution facility of any Person not already a Subsidiary of the Lead Borrower, which assets shall, as a result of the respective acquisition, become assets of the Lead Borrower or a Restricted Subsidiary of the Lead Borrower (or assets of a Person who shall be merged with and into the Lead Borrower or a Restricted Subsidiary of the Lead Borrower) or (y) a majority of the Equity Interests of any such Person, which Person shall, as a result of the respective acquisition, become a Restricted Subsidiary of the Lead Borrower (or shall be merged with and into the Lead Borrower or a Restricted Subsidiary of the Lead Borrower).
“Acquisition” shall mean the transactions contemplated by the Acquisition Agreement.

“Acquisition Agreement” shall mean the Agreement and Plan of Merger, dated as of January 14, 2016, among Holdings, Shay Merger Corporation, the Lead Borrower and LG PAE, L.P., as the stockholder representative.

“Additional Intercreditor Agreement” shall mean an intercreditor agreement among the Collateral Agent and one or more Junior Representatives for holders of Permitted Junior Debt providing that, inter alia, the Liens on the Collateral in favor of the Collateral Agent (for the benefit of the Secured Creditors) shall be senior to such Liens in favor of the Junior Representatives (for the benefit of the holders of Permitted Junior Debt), as such intercreditor agreement may be amended, amended and restated, modified, supplemented, extended or renewed from time to time in accordance with the terms hereof and thereof. The Additional Intercreditor Agreement shall be in a form customary at such time for transactions of the type contemplated thereby and reasonably satisfactory to the Administrative Agent and the Lead Borrower (it being understood that the terms of the Intercreditor Agreement are reasonably satisfactory).

“Additional Security Documents” shall have the meaning provided in Section 9.12(a).

“Adjustment Date” shall mean the first day of January, April, July and October of each fiscal year.

“Administrative Agent” shall mean Bank of America, in its capacity as Administrative Agent for the Lenders hereunder, and shall include any successor to the Administrative Agent appointed pursuant to Section 12.10.

“Administrative Agent Fees” shall have the meaning provided in Section 2.05(b).

“Administrative Questionnaire” shall mean an Administrative Questionnaire substantially in the form of Exhibit M or any other form approved by the Administrative Agent.

“Advisory Agreement/Affected Financial Institution” shall mean that certain Management Agreement, dated as of March 14, 2016 by and between the Sponsor and the Lead Borrower, as amended, restated, modified or replaced from time to time (a) any EEA Financial Institution or (b) any UK Financial Institution.

“Affiliate” shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; provided, however, that neither the Administrative Agent nor any Lender (nor any Affiliate thereof) shall be considered an Affiliate of the Lead Borrower or any Subsidiary thereof as a result of this Agreement, the extensions of credit hereunder or its actions in connection therewith.

“Agents” shall mean the Administrative Agent, the Collateral Agent, the Documentation Agents, the Syndication Agents and any other agent with respect to the Credit Documents, including, without limitation, the Lead Arrangers, the Amendment No. 1 Lead Arranger and the Amendment No. 2 Lead Arranger and the Amendment No. 3 Lead Arranger.

“Aggregate Commitments” shall mean, at any time, the aggregate amount of the Revolving Commitments of all Lenders.

“Aggregate Exposures” shall mean, at any time, the sum of (a) the aggregate Outstanding Amount of all Loans plus (b) the LC Exposure, each determined at such time.

“Agreement” shall mean this Revolving Credit Agreement, as amended by Amendment No. 1 on the Amendment No. 1 Effective Date, as amended by Amendment No. 2 on the Amendment No. 2 Effective Date, as
amended by Amendment No. 3 on the Amendment No. 3 Effective Date and as further modified, supplemented, amended, restated (including any amendment and restatement hereof), extended or renewed from time to time.

"Alternative Currency" shall mean Euros, Pound Sterling, Swiss Francs, Japanese Yen and such other currencies as may be agreed by the Issuing Bank in its sole discretion.

"Amendment No. 1" shall mean that certain Amendment No. 1 to the Revolving Credit Agreement, dated as of June 12, 2017, among Holdings, the Borrowers, the other Guarantors party thereto, the Lenders party thereto, the Administrative Agent and the other parties thereto.

"Amendment No. 1 Effective Date" shall mean June 12, 2017.

"Amendment No. 1 Lead Arranger" shall have the meaning given to the term "Arranger" in Amendment No. 1.

"Amendment No. 2" shall mean that certain Amendment No. 2 to the Revolving Credit Agreement, dated as of January 31, 2020, among Holdings, the Borrowers, the other Guarantors party thereto, the Lenders party thereto, the Administrative Agent and the other parties thereto.

"Amendment No. 2 Effective Date" shall mean the date on which all the conditions precedent to the effectiveness of Amendment No. 2, listed in Section 4.01 thereof, shall have been satisfied, which date is January 31, 2020.

"Amendment No. 2 Lead Arranger" shall have the meaning provided in Amendment No. 2.

"Amendment No. 3" shall mean that certain Amendment No. 3 to the Revolving Credit Agreement, dated as of October 19, 2020, among Holdings, the Borrowers, the other Guarantors party thereto, the Lenders party thereto, the Administrative Agent and the other parties thereto.

"Amendment No. 3 Effective Date" shall mean the date on which all the conditions precedent to the effectiveness of Amendment No. 3, listed in Section 4.01 thereof, shall have been satisfied, which date is October 19, 2020.

"Amendment No. 3 Effective Date Lead Borrower" shall have the meaning provided in the first paragraph of this Agreement.

"Amendment No. 3 Lead Arranger" shall have the meaning provided in Amendment No. 3.

"Anti-Corruption Laws" shall mean all laws, rules, and regulations of any jurisdiction applicable to Holdings, the Lead Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption, including the Patriot Act.

"Applicable Margin" shall mean with respect to any Type of Revolving Loan, the per annum margin set forth below, as determined by the Average Availability as of the most recent Adjustment Date:

<table>
<thead>
<tr>
<th>Level</th>
<th>Average Availability (percentage of Line Cap)</th>
<th>Base Rate Loans</th>
<th>LIBO Rate Loans</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>≥ 66%</td>
<td>0.75%</td>
<td>1.75%</td>
</tr>
<tr>
<td>II</td>
<td>≥ 33% but &lt; 66%</td>
<td>1.00%</td>
<td>2.00%</td>
</tr>
<tr>
<td>III</td>
<td>&lt; 33%</td>
<td>1.25%</td>
<td>2.25%</td>
</tr>
</tbody>
</table>
Until completion of the first full fiscal quarter after the Closing Date, the Applicable Margin shall be determined as if Level II were applicable. Thereafter, the Applicable Margin shall be subject to increase or decrease on the first Business Day of each fiscal quarter based on Average Availability, and each such increase or decrease in the Applicable Margin shall be effective on the Adjustment Date occurring immediately after the last day of the fiscal quarter most recently ended. If the Borrowers fail to deliver any Borrowing Base Certificate on or before the date required for delivery thereof, then, at the option of the Required Lenders, the Applicable Margin shall be determined as if Level III were applicable, from the first day of the calendar month following the date such Borrowing Base Certificate was required to be delivered until the date of delivery of such Borrowing Base Certificate.

“Applicable Time” shall mean, with respect to any payment in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Issuing Bank to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“Assignment and Assumption Agreement” shall mean an Assignment and Assumption Agreement substantially in the form of Exhibit K (appropriately completed) or such other form as shall be acceptable to the Administrative Agent.

“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) an existing Lender, (b) an Affiliate of an existing Lender, or (c) an entity or an Affiliate of an entity that administers or manages an existing Lender.

“Availability” shall mean, as of any applicable date, the amount by which the Line Cap at such time exceeds the Aggregate Exposures on such date.

“Average Availability” shall mean, at any Adjustment Date, the average daily Availability for the fiscal quarter immediately preceding such Adjustment Date.

“Average Usage” shall mean the average utilization of Revolving Commitments during the immediately preceding fiscal quarter.

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

“Bail-In Legislation” shall mean, (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-in Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“Bank of America” shall mean Bank of America, N.A., together with its successors.

“Bank Product” shall mean any of the following products, services or facilities extended to any Borrower or any of its Subsidiaries: (a) Cash Management Services; (b) products under Swap Contracts; (c) commercial credit card, purchase card and merchant card services; and (d) other banking products or services as may be requested by any Borrower, other than Letters of Credit.

“Bank Product Debt” shall mean Indebtedness and other obligations of a Borrower or any of its Subsidiaries relating to Bank Products.
“Bank Product Reserve” shall mean the aggregate amount of reserves established by the Administrative Agent from time to time in its discretion in respect of Secured Bank Product Obligations (which shall at all times include a reserve for the maximum amount of all Noticed Hedges outstanding at that time).

“Bankruptcy Code” shall have the meaning provided in Section 11.05.

“Base Rate” shall mean, for any day, a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1% (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” and (c) the LIBO Rate for a LIBO Rate Loan with a one month Interest Period commencing on such day plus 1.00%. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“Base Rate Loan” shall mean each Revolving Loan which is designated or deemed designated as a Revolving Loan bearing interest at the Base Rate by the Lead Borrower at the time of the incurrence thereof or conversion thereto.

“Beneficial Ownership Certification” shall mean a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” shall mean 31 C.F.R. § 1010.230.

“Benefit Plan” means any of (a) an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, (b) a “plan” as defined in and subject to Section 4975 of the Code or (c) any Person whose assets include (for purposes of ERISA Section 3(42) 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”.

“Borrower Materials” shall have the meaning provided in Section 9.01.

“Borrowers” shall mean (i) the Lead Borrower and (ii) any Subsidiary Borrower.

“Borrowing” shall mean the borrowing of the same Type of Revolving Loan by the Borrowers from all the Lenders having Commitments on a given date (or resulting from a conversion or conversions on such date), having in the case of LIBO Rate Loans, the same Interest Period; provided that Base Rate Loans incurred pursuant to Section 3.01 shall be considered part of the related Borrowing of LIBO Rate Loans.

“Borrowing Base” shall mean at any time of calculation, an amount equal to the lesser of (x) the total average monthly amount of cash collections from Accounts by the Borrowers over the trailing 30-day two-month period, and (y) the sum of, without duplication:

(a) the book value of Eligible Accounts of the Borrowers multiplied by the advance rate of 85%, plus

(b) the lesser of (i) the book value of Eligible Unbilled Accounts of the Borrowers multiplied by the Advance Rate of 60% and (ii) an amount equal to 55% of
the total Borrowing Base (after giving effect to amounts under this clause (b)), plus

(c) the lesser of (i) $25,000,000 and (ii) the book value of Eligible Billed Hybrid Accounts of the Borrowers multiplied by the Advance Rate of 65
plus

(d) 100% of Eligible Cash of the Borrowers, minus

(e) any Reserves established from time to time by the Administrative Agent in accordance herewith.

It is understood that until the earlier of (a) such time as the Lead Borrower has delivered to the Administrative Agent the field examination and related Borrowing Base Certificate required by Section 9.13 hereof, and (b) the 90th day following the Closing Date, the Borrowing Base shall be deemed to be $75,000,000. If the field examination and related Borrowing Base Certificate required by Section 9.13 are not delivered by such 90th day, the Borrowing Base shall immediately become zero until such delivery.

The Administrative Agent shall (i) promptly notify the Lead Borrower in writing (including via e-mail) whenever it determines that the Borrowing Base set forth on a Borrowing Base Certificate differs from the Borrowing Base, (ii) discuss the basis for any such deviation and any changes proposed by the Lead Borrower, including the reasons for any impositions of or changes in Reserves or any change in advance rates with respect to Eligible Accounts (in the Administrative Agent’s Permitted Discretion and subject to the definition thereof) or eligibility criteria, with the Lead Borrower, (iii) consider, in the exercise of its Permitted Discretion, any additional factual information provided by the Lead Borrower relating to the determination of the Borrowing Base and (iv) promptly notify the Lead Borrower of its decision with respect to any changes proposed by the Lead Borrower. Pending a decision by the Administrative Agent to make any requested change, the initial determination of the Borrowing Base by the Administrative Agent shall continue to constitute the Borrowing Base.

“Borrowing Base Certificate” shall mean a certificate of a Responsible Officer of the Lead Borrower in form and substance satisfactory to the Administrative Agent.

“Business Day” shall mean (i) for all purposes other than as covered by clause (ii) below, any day except Saturday, Sunday and any day which shall be in New York City a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close and (ii) with respect to all notices and determinations in connection with, and payments of principal and interest on, LIBO Rate Loans, any day which is a Business Day described in clause (i) above and which is also a day for trading by and between banks in the New York or London interbank eurodollar market.

“Capital Expenditures” shall mean, with respect to any Person, all expenditures by such Person which should be capitalized in accordance with U.S. GAAP and, without duplication, the amount of Capitalized Lease Obligations incurred by such Person; provided that Capital Expenditures shall not include (i) the purchase price paid in connection with a Permitted Acquisition, (ii) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment to the extent that the gross amount of such purchase price is reduced by the credit granted by the seller of such equipment for such existing equipment being traded in at such time, (iii) expenditures made in leasehold improvements, to the extent reimbursed by the landlord, (iv) expenditures to the extent that they are actually paid for by a third party (excluding any Credit Party or any of its Restricted Subsidiaries) and for which no Credit Party or any of its Restricted Subsidiaries has provided or is required to provide or incur, directly or indirectly, any consideration or monetary obligation to such third party or any other


Person (whether before, during or after such period) and (v) property, plant and equipment taken in settlement of accounts.

“Capitalized Lease Obligations” shall mean, with respect to any Person, all rental obligations of such Person which, under U.S. GAAP, are or will be required to be capitalized on the books of such Person, in each case taken at the amount thereof accounted for as indebtedness in accordance with U.S. GAAP.

“Cash Collateralize” shall mean to pledge and deposit with or deliver to the Administrative Agent for deposit into the LC Collateral Account, for the benefit of the Administrative Agent, the Issuing Bank or the Swingline Lender (as applicable) and the Lenders, cash as collateral for the LC Exposure, Obligations in respect of Swingline Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash in accordance with Section 2.13(j). “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“Cash Equivalents” shall mean:

(i) U.S. Dollars, Canadian dollars, pounds sterling, euros, the national currency of any participating member state of the European Union or, in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business;

(ii) readily marketable direct obligations of any member of the European Economic Area, Switzerland, or Japan, or any agency or instrumentality thereof or obligations unconditionally guaranteed by the full faith and credit of such country, and, at the time of acquisition thereof, having a credit rating of at least AA- (or the equivalent grade) by Moody’s or Aa3 by S&P;

(iii) marketable general obligations issued by any state of the United States or any political subdivision thereof or any instrumentality thereof that are guaranteed by the full faith and credit of such state, and, at the time of acquisition thereof, having a credit rating of at least AA- (or the equivalent grade) by Moody’s or Aa3 by S&P;

(iv) securities or any other evidence of Indebtedness or readily marketable direct obligations issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (provided that the full faith and credit of the United States is pledged in support of those securities), in such case having maturities of not more than twelve months from the date of acquisition;

(v) certificates of deposit and eurodollar time deposits with maturities of twenty-four months or less from the date of acquisition, bankers’ acceptances with maturities not exceeding twenty-four months and overnight bank deposits, in each case, with any Lender party to this Agreement or any commercial bank or trust company having, or which is the principal banking subsidiary of a bank holding company having, a long-term unsecured debt rating of at least “A” or the equivalent thereof from S&P or “A2” or the equivalent thereof from Moody’s;

(vi) repurchase obligations with a term of not more than thirty days for underlying securities of the types described in clauses (iv) and (v) above entered into with any financial institution meeting the qualifications specified in clause (v) above;

(vii) commercial paper having one of the two highest ratings obtainable from Moody’s or S&P and, in each case, maturing within twenty-four months after the date of acquisition; and

(viii) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (i) through (vii) of this definition.
“Cash Management Services” shall mean any services provided from time to time to any Borrower or any of its Subsidiaries in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as the same has been amended and may hereafter be amended from time to time, 42 U.S.C. § 9601 et seq.

“CFC” shall mean a Subsidiary of the Lead Borrower that is a “controlled foreign corporation” within the meaning of Section 957 of the Code.

“Change of Control” shall be deemed to occur if:

(a) at any time prior to an Initial Public Offering, any combination of Permitted Holders shall fail to own beneficially (within the meaning of Rules 13d-3 and 13d-5 of the Exchange Act as in effect on the Closing Date), directly or indirectly, in the aggregate Equity Interests representing at least a majority of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of Holdings;

(b) at any time on and after an Initial Public Offering after the Amendment No. 3 Effective Date, any person or “group” (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act as in effect on the Closing Date), but excluding (x) any employee benefit plan of such person and its Subsidiaries and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan, (y) any combination of Permitted Holders, and (z) any one or more direct or indirect parent companies of Holdings in which the Sponsor, directly or indirectly, owns the largest percentage of such parent company’s voting Equity Interests and in which no other person or group directly or indirectly owns or controls (by ownership, control or otherwise) more voting Equity Interests of such parent company than the Sponsor, shall have, directly or indirectly, acquired beneficial ownership of Equity Interests representing 35% or more of the aggregate voting power represented by the issued and outstanding Equity Interests of the Relevant Public Company and the Permitted Holders shall own, directly or indirectly, less than such person or “group” of the aggregate voting power represented by the issued and outstanding Equity Interests of the Relevant Public Company:

(c) the Lead Borrower shall cease to own, directly or indirectly, 100% of the Equity Interests of each of the Subsidiary Borrowers (other than in connection with or after an Initial Public Offering or in connection with any transaction permitted by 10.02 hereof).

“Chattel Paper” shall have the meaning provided in Article 9 of the UCC.

“Closing Date” shall mean October 20, 2016.

“Code” shall mean the Internal Revenue Code of 1986, as amended from time to time.
“Collateral” shall mean all property (whether real, personal or otherwise) with respect to which any security interests have been granted (or purported to be granted) pursuant to any Security Document (including any Additional Security Documents), including, without limitation, all Pledge Agreement Collateral and all “Collateral” as described in the Security Agreement.

“Collateral Agent” shall mean the Administrative Agent acting as collateral agent for the Secured Creditors pursuant to the Security Documents.

“Commitment” shall mean, with respect to any Lender, such Lender’s Revolving Commitment, LC Commitment or Swingline Commitment, or any Extended Revolving Loan Commitment.

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

“Compliance Certificate” shall mean a certificate of the Responsible Officer of the Lead Borrower substantially in the form of Exhibit J hereto, and in any case, in form and substance reasonably satisfactory to the Administrative Agent.

“Consolidated Depreciation and Amortization Expense” shall mean, with respect to any Person, for any period, the total amount of depreciation and amortization expense, including (i) amortization of deferred financing fees and debt issuance costs, commissions, fees and expenses, (ii) amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits and (iii) amortization of intangibles (including goodwill and organizational costs) (excluding any such adjustment to the extent that it represents an accrual of or reserve for cash expenditures in any future period except to the extent such adjustment is subsequently reversed), in each case of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with U.S. GAAP.

“Consolidated EBITDA” shall mean, with respect to any Person for any period, Consolidated Net Income of such Person for such period; plus (without duplication)

(i) provision for taxes based on income, profits or capital (including state franchise taxes and similar taxes in the nature of income tax) of such Person and its Restricted Subsidiaries for such period, franchise taxes and foreign withholding taxes and including an amount equal to the tax distributions actually made to the holders of the Equity Interests of such Person or any direct or indirect parent of such Person in respect of such period in accordance with Section 10.03(vi) as though such amounts had been paid as income taxes directly by such Person, in each case, to the extent that such provision for taxes was deducted in computing such Consolidated Net Income; plus

(ii) the Consolidated Depreciation and Amortization Expense of such Person and its Restricted Subsidiaries for such period, to the extent such expenses were deducted in computing such Consolidated Net Income; plus

(iii) the Consolidated Interest Charges, of such Person and its Restricted Subsidiaries for such period, to the extent that such Consolidated Interest Charges were deducted in computing such Consolidated Net Income; plus

(iv) any other consolidated non-cash charges of such Person and its Restricted Subsidiaries for such period, to the extent that such consolidated non-cash charges were included in computing such Consolidated Net Income; provided that if any such non-cash charge represents an accrual or reserve for anticipated cash charges in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period; plus
any losses from foreign currency transactions (including losses related to currency remeasurements of Indebtedness) of such Person and its Restricted Subsidiaries for such period, to the extent that such losses were taken into account in computing such Consolidated Net Income; plus

(vi) (A) the Specified Permitted Adjustments and (B) any other cost savings, operating expense reductions, operating improvements and synergies permitted to be added back to this definition pursuant to the definition of “Pro Forma Cost Savings” (including, without limitation, costs and expenses incurred after the Closing Date related to employment of terminated employees incurred by such Person during such period to the extent such costs and expenses were deducted in computing Consolidated Net Income) and, in the case of this subclause (B), subject to the “Cost Savings Cap” (as defined in the definition of “Pro Forma Cost Savings”); plus

(vii) losses in respect of post-retirement benefits of such Person, as a result of the application of ASC 715, Compensation-Retirement Benefits, to the extent that such losses were deducted in computing such Consolidated Net Income; plus

(viii) capitalized consulting fees and organization costs; plus

(ix) any impact related to the application of purchase accounting in connection with any Permitted Acquisition or Permitted Joint Venture; plus

(x) any contingent or deferred payments (including Earnout Payments, noncompete payments and consulting payments) made to sellers in the Acquisition-Permitted Acquisitions or any acquisitions or Investments consummated prior to the Closing Date; plus

(xi) the amount of fees and expenses incurred by such Person pursuant to (a) the Advisory Agreement as in effect on the Closing Date during such period or pursuant to any amendment, modification or supplement thereto or replacement thereof, so long as the Advisory Agreement, as so amended, modified, supplemented or replaced, taken as a whole, is otherwise permitted hereunder and (b) Section 10.06(xii) hereunder [reserved]; plus

(xii) any proceeds from business interruption insurance received by such Person during such period, to the extent the associated losses arising out of the event that resulted in the payment of such business interruption insurance proceeds were included in computing Consolidated Net Income; minus

(xiii) the amount of any gain in respect of post-retirement benefits as a result of the application of ASC 715, to the extent such gains were taken into account in computing such Consolidated Net Income; minus

(xiv) any gains from foreign currency transactions (including gains related to currency remeasurements of Indebtedness) of such Person and its Restricted Subsidiaries for such period, to the extent that such gains were taken into account in computing such Consolidated Net Income; minus

(xv) non-cash gains increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business and other than reversals of an accrual or reserve for a potential cash item that reduced Consolidated EBITDA in any prior period,

in each case, on a consolidated basis and determined in accordance with U.S. GAAP.

“Consolidated Fixed Charge Coverage Ratio” shall mean, for any period of four consecutive fiscal quarters for which Section 9.01 Financial Statements were required to have been delivered, the ratio of (a) Consolidated EBITDA of the Lead Borrower and its Restricted Subsidiaries for such period, minus (x) Capital Expenditures of the Lead Borrower and its Restricted Subsidiaries paid in cash (excluding the proceeds of any Indebtedness (other than Indebtedness hereunder)) for such period, (y) the amount of cash payments made during such period by the Lead
Borrower and its Restricted Subsidiaries in respect of federal, state, local and foreign income taxes during such period (net of cash refunds received for such period) and (z) Dividends permitted by Section 10.03(xiii) or (xv) paid in cash for such period to (b) Consolidated Fixed Charges for such period.

“Consolidated Fixed Charges” shall mean, for any period of four consecutive fiscal quarters for which Section 9.01 Financial Statements were required to have been delivered, for the Lead Borrower and its Restricted Subsidiaries on a consolidated basis, the sum, without duplication, of (a) Consolidated Interest Charges for such period to the extent paid in cash (or accrued and payable on a current basis in cash) and (b) the aggregate amount of scheduled amortization payments of principal made during such period in respect of long-term Consolidated Indebtedness (as such amortization payments may be reduced on account of any prepayments of such Consolidated Indebtedness). Notwithstanding the foregoing, for purposes of calculating Consolidated Fixed Charges for any period that includes a fiscal quarter (or portion thereof) prior to the Closing Date, Consolidated Fixed Charges shall be calculated from the period from the Closing Date to the date of determination divided by the number of days in such period and multiplied by 365.

“Consolidated Indebtedness” shall mean, at any time, the sum of (without duplication) (i) all Capitalized Lease Obligations of the Lead Borrower and its Restricted Subsidiaries, (ii) all Indebtedness of the Lead Borrower and its Restricted Subsidiaries of the type described in clause (i)(A) of the definition of Indebtedness and (iii) all Contingent Obligations of the Lead Borrower and its Restricted Subsidiaries in respect of Indebtedness of any third Person of the type referred to in the preceding clauses (i) and (ii), in each case, determined on a consolidated basis in accordance with U.S. GAAP and calculated on a Pro Forma Basis; provided that Consolidated Indebtedness shall not include Indebtedness in respect of any Refinancing Notes, Permitted First Lien Notes or Permitted Junior Notes that have been defeased or satisfied and discharged in accordance with the applicable indenture or with respect to which the required deposit has been made in connection with a call for repurchase or redemption to occur within the time period set forth in the applicable indenture, in each case to the extent such transactions are permitted by Section 10.07(a).

“Consolidated Interest Charges” shall mean, for any period of four consecutive fiscal quarters for which Section 9.01 Financial Statements were required to have been delivered, for the Lead Borrower and its Restricted Subsidiaries on a consolidated basis, all cash interest, premium payments, debt discount, charges and related fees and expenses, net of interest income, of the Lead Borrower and its Restricted Subsidiaries in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, excluding (a) up-front or financing fees, transaction costs, commissions, expenses, premiums or charges, (b) costs associated with obtaining, or breakage costs in respect of swap or hedging agreements and (c) amortization of deferred financing costs. Notwithstanding the foregoing, for purposes of calculating Consolidated Interest Charges for any period that includes a fiscal quarter (or portion thereof) prior to the Closing Date (other than as a component of Consolidated EBITDA), Consolidated Interest Charges shall be calculated from the period from the Closing Date to the date of determination divided by the number of days in such period and multiplied by 365.

“Consolidated Net Income” shall mean, with respect to any specified Person for any period, the aggregate of the net income (loss) of such Person and its Restricted Subsidiaries for such period, on a consolidated basis, determined in accordance with U.S. GAAP; provided that:

(i) any after-tax effect of all extraordinary, nonrecurring or unusual gains or losses or income or expenses (including related to the Transaction) or any restructuring charges or reserves, including, without limitation, any expenses related to any reconstruction, recommissioning or reconfiguration of fixed assets for alternate uses, retention, severance, system establishment cost, contract termination costs, costs to consolidate facilities and relocate employees, advisor fees and other out of pocket costs and non-cash charges to assess and execute operational improvement plans and restructuring programs, will be excluded;

(ii) any expenses, costs or charges incurred, or any amortization thereof for such period, in connection with any equity issuance, Investment, acquisition, (including Permitted Acquisition).
disposition, recapitalization or incurrence or repayment of Indebtedness permitted under this Agreement, including a refinancing thereof (in each case whether or not successful) (including any such costs and charges incurred in connection with the Transaction), and all gains and losses realized in connection with any business disposition or any disposition of assets outside the ordinary course of business or the disposition of securities or the early extinguishment of Indebtedness, together with any related provision for taxes on any such gain, loss, income or expense will be excluded;

(iii) the net income (or loss) of any Person that is not a Restricted Subsidiary or that is accounted for by the equity method of accounting will be excluded, provided that the income of such Person will be included to the extent of the amount of dividends or similar distributions paid in cash (or converted to cash) to the specified Person or a Restricted Subsidiary of the Person;

(iv) the net income (or loss) of any Person and its Restricted Subsidiaries will be calculated without deducting the income attributed to, or adding the losses attributed to, the minority equity interests of third parties in any non-Wholly-Owned Restricted Subsidiary except to the extent of the dividends paid in cash (or convertible into cash) during such period on the shares of Equity Interests of such Restricted Subsidiary held by such third parties;

(v) [reserved];

(vi) the cumulative effect of any change in accounting principles will be excluded;

(vii) (a) any non-cash expenses resulting from the grant or periodic remeasurement of stock options, restricted stock grants or other equity incentive programs (including any stock appreciation and similar rights) and (b) any costs or expenses incurred pursuant to any management equity plan or stock option plan or other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent, in the case of clause (b), that such costs or expenses are funded with cash proceeds contributed to the common equity capital of the Lead Borrower or a Restricted Subsidiary of the Lead Borrower, will be excluded;

(viii) the effect of any non-cash impairment charges or write-ups, write-downs or write-offs of assets or liabilities resulting from the application of U.S. GAAP and the amortization of intangibles arising from the application of U.S. GAAP, including pursuant to ASC 805, Business Combinations, ASC 350, Intangibles-Goodwill and Other, or ASC 360, Property, Plant and Equipment, as applicable, will be excluded;

(ix) any net after-tax income or loss from disposed, abandoned or discontinued operations and any net after-tax gains or losses on disposed, abandoned or discontinued, transferred or closed operations will be excluded;

(x) any increase in amortization or depreciation, or effect of any adjustments to inventory, property, plant or equipment, software, goodwill and other intangibles, debt line items, deferred revenue or rent expense, any one-time cash charges (such as purchased in process research and development or capitalized manufacturing profit in inventory) or any other effects, in each case, resulting from purchase accounting in connection with the Acquisition or any other acquisition prior to or following the Closing Date will be excluded;

(xi) an amount equal to the tax distributions actually made to the holders of the Equity Interests of such Person or any direct or indirect parent of such Person in respect of such period in accordance with Section 10.03(vi) will be included as though such amounts had been paid as income taxes directly by such Person for such period;

(xii) unrealized gains and losses relating to foreign currency transactions, including those relating to mark-to-market of Indebtedness resulting from the application of U.S. GAAP, including
pursuant to ASC 830, *Foreign Currency Matters*, (including any net loss or gain resulting from hedge arrangements for currency exchange risk) will be excluded;

(xiii) any net gain or loss from Obligations or in connection with the early extinguishment of obligations under Swap Contracts (including of ASC 815, *Derivatives and Hedging*) will be excluded; and

(xiv) subject to the Cost Savings Cap, the amount of any restructuring, business optimization, acquisition and integration costs and charges (including, without limitation, retention, severance, systems establishment costs, excess pension charges, information technology costs, rebranding costs, contract termination costs, including future lease commitments, costs related to the start-up, closure or relocation or consolidation of facilities and costs to relocate employees) will be excluded; and

(xv) accruals and reserves that are established or adjusted within 12 months after the Closing Date that are so required to be established as a result of the Transaction in accordance with U.S. GAAP will be excluded.

“Consolidated Senior Secured Debt” shall mean, at any time, (i) the sum of all Consolidated Indebtedness at such time that is secured by a Lien on any assets of the Lead Borrower or any of its Restricted Subsidiaries less (ii) the aggregate principal amount of any Indebtedness of the Lead Borrower and its Restricted Subsidiaries at such time that is subordinated in right of payment to the Obligations and (y) the aggregate amount of unrestricted cash and Cash Equivalents (in each case, free and clear of all Liens, other than nonconsensual Liens permitted by Section 10.01 and Liens created under the First Lien Credit Agreement and the credit documents related thereto, the Second Lien Credit Agreement and the credit documents related thereto, any Credit Document and any Permitted Junior Debt Documents (to the extent that such cash and Cash Equivalents also secure the Indebtedness hereunder on a senior priority basis)) included on the consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries at such time, in each case, calculated on a Pro Forma Basis.

“Consolidated Senior Secured Net Leverage Ratio” shall mean, at any time, the ratio of (i) Consolidated Senior Secured Debt at such time to (ii) Consolidated EBITDA of the Lead Borrower and its Restricted Subsidiaries for the Test Period then most recently ended for which Section 9.01 Financials were required to have been delivered. If the Consolidated Senior Secured Net Leverage Ratio is being determined for a given Test Period, Consolidated Senior Secured Debt shall be measured on the last day of such Test Period, with Consolidated EBITDA being determined for such Test Period.

“Consolidated Total Assets” shall mean, as of any date of determination, the amount that would, in conformity with U.S. GAAP, be set forth opposite the caption “total assets” (or any like caption) on a consolidated balance sheet of the Lead Borrower and the Restricted Subsidiaries at such date.

“Consolidated Total Debt” shall mean, at any time, (i) the sum of all Consolidated Indebtedness at such time, less (ii) the aggregate amount of unrestricted cash and Cash Equivalents (in each case, free and clear of all Liens, other than nonconsensual Liens permitted by Section 10.01 and Liens created under any First Lien Credit Documents, any Second Lien Credit Documents, any Credit Document and any Permitted Junior Debt Documents (to the extent that such cash and Cash Equivalents also secure the Indebtedness hereunder on a senior priority basis)) included on the consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries at such time, in each case, calculated on a Pro Forma Basis.

“Consolidated Total Net Leverage Ratio” shall mean, at any time, the ratio of (x) Consolidated Indebtedness at such time, less the aggregate amount of (a) the aggregate amount of unrestricted cash and Cash Equivalents (in each case, free and clear of all Liens, other than nonconsensual Liens permitted by Section 10.01 and Liens created under the First Lien Credit Agreement and the credit documents related thereto, any Second Lien Credit Documents, any Credit Document and any Permitted Junior Debt Documents (to the extent that such cash and Cash Equivalents also secure the Indebtedness hereunder on a senior priority basis)) included on the consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries at such time to (y) Consolidated EBITDA of the Lead Borrower and its Restricted Subsidiaries for the Test Period then most recently ended for which Section 9.01
Financials were required to have been delivered, in each case, calculated on a Pro Forma Basis. If the Consolidated Total Net Leverage Ratio is being determined for a given Test Period, Consolidated Indebtedness shall be measured on the last day of such Test Period, with Consolidated EBITDA being determined for such Test Period.

“Contingent Obligation” shall mean, as to any Person, any obligation of such Person as a result of such Person being a general partner of any other Person, unless the underlying obligation is expressly made non-recourse as to such general partner, and any obligation of such Person guaranteeing or intended to guarantee any Indebtedness (“primary obligations”) of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, including, without limitation, any such obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (x) for the purchase or payment of any such primary obligation or (y) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof; provided, however, that the term Contingent Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

“Cost Savings Cap” shall have the meaning provided to such term in the definition of “Pro Forma Cost Savings.”

“Covered Entity” shall have the meaning assigned to such term in Section 13.26(b).

“Credit Agreement Party” shall mean each of Holdings and the Borrowers and Intermediate Holdings.

“Credit Agreement Party Guaranty” shall mean the guaranty of each Credit Agreement Party pursuant to Section 14.

“Credit Documents” shall mean this Agreement, Amendment No. 1, Amendment No. 2, Amendment No. 3, each Note, each Subsidiaries Guaranty, each Security Document, the Intercreditor Agreement, each joinder document required to be executed and delivered pursuant to Section 4.01(l) of Amendment No. 3, any Additional Intercreditor Agreement, each Incremental Revolving Commitment Agreement and each Extension Amendment.

“Credit Event” shall mean the making of any Loan.

“Credit Extension” shall mean, as the context may require, (i) a Credit Event or (ii) the issuance, amendment, extension or renewal of any Letter of Credit by the Issuing Bank or the amendment, extension or renewal of any Existing Letter of Credit; provided that “Credit Extensions” shall not include conversions and continuations of outstanding Loans.

“Credit Party” shall mean Holdings, the Borrowers and each Subsidiary Guarantor.

“Debarment/Suspension Event” shall mean that any Credit Party has been debarred or suspended from contracting with the Federal government pursuant to Federal Acquisition Regulation subpart 9.4, for a period exceeding 30 consecutive days, with respect to matters representing over 25% of the consolidated revenues of the Lead Borrower and its Restricted Subsidiaries at the time of such debarment or suspension.

“Debtor Relief Laws” shall mean 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” shall mean any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

“Defaulting Lender” shall mean, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Lead Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Bank, any Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified the Lead 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 Business Days after written request by the Administrative Agent or the Lead Borrower, to confirm in writing to the Administrative Agent and the Lead 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 Lead Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of (A) a proceeding under any Debtor Relief Law or (B) a Bail-In Action, or (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; 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 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 Lead Borrower and each other Lender promptly following such determination.

“Delaware Divided LLC” shall mean any Delaware LLC which has been formed upon consummation of a Delaware LLC Division.

“Delaware LLC” shall mean any limited liability company organized or formed under the laws of the State of Delaware.

“Delaware LLC Division” shall mean the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

“Deposit Account” shall have the meaning assigned thereto in Article 9 of the UCC.

“Deposit Account Control Agreement” shall mean a Deposit Account control agreement to be executed by each institution maintaining a Deposit Account (other than an Excluded Deposit Account) for any Borrower or any other Credit Party, in each case as required by and in accordance with the terms of Section 9.17.

“Designated Non-cash Consideration” shall mean the fair market value of non-cash consideration received by the Lead Borrower or one of its Restricted Subsidiaries in connection with an asset sale that is so designated as Designated Non-cash Consideration pursuant to an officers’ certificate, setting forth the basis of such valuation, less
the amount of cash and Cash Equivalents received in connection with a subsequent sale of such Designated Non-cash Consideration.

“Dilution” shall mean for any period with respect to any Borrower, the fraction, expressed as a percentage, the numerator of which is the aggregate amount of reductions in the Accounts of such Borrower for such period other than by reason of dollar for dollar cash payment and the denominator of which is the aggregate dollar amount of the sales of such Borrower for such period.

“Dilution Reserve” shall mean, as of any date of determination, an amount (initially $0) sufficient to reduce the advance rate against Eligible Accounts by 1 percentage point (or fraction thereof, rounding to the nearest one-tenth of 1 percentage point) for each percentage point (or fraction thereof, rounding to the nearest one-tenth of 1 percentage point) by which Dilution is in excess of 5%.

“Disqualified Lender” shall mean certain competitors of the Lead Borrower and its Subsidiaries identified in writing by the Lead Borrower to the Administrative Agent and the Lenders from time to time (other than bona fide fixed income investors or debt funds); provided that the foregoing shall not apply (x) retroactively to disqualify any parties that have previously acquired an assignment or participation interest in any Loans to the extent that any such party was not a Disqualified Lender at the time of the applicable assignment or participation, as the case may be or (y) to any bona fide fixed income investors or debt funds.

“Disqualified Stock” shall mean, with respect to any Person, any capital stock of such Person other than common Equity Interests or Qualified Preferred Stock of such Person.

“Distribution Conditions” shall mean as to any relevant action contemplated in this Agreement, (i) no Event of Default has then occurred and is continuing or would result from any action, (ii) the Total Net Leverage Ratio on a Pro Forma Basis immediately after giving effect to such action is no greater than 6.0 to 1.0, (iii) (a) Availability on a Pro Forma Basis immediately after giving effect to such action would be at least the greater of (x) 17.5% of the Line Cap and (y) $15,000,000/27,500,000 and (b) over the 30 consecutive days prior to consummation of such action, Availability averaged no less than the greater of (x) 17.5% of the Line Cap and (y) $15,000,000/27,500,000, on a Pro Forma Basis for such action and (iv) (a) if Availability on a Pro Forma Basis immediately after giving effect to such action is less than the greater of (x) 25% of the Line Cap and (y) $20,000,000/35,000,000, or (b) over the 30 consecutive days prior to consummation of such action, Availability averaged less than the greater of (x) 25% of the Line Cap and (y) $20,000,000/35,000,000, on a Pro Forma Basis for such action, the Consolidated Fixed Charge Coverage Ratio would be at least 1.0 to 1.0 on a Pro Forma Basis for such action.

“Dividend” shall mean, with respect to any Person, that such Person has declared or paid a dividend, distribution or returned any equity capital to its stockholders, partners or members or authorized or made any other distribution, payment or delivery of property (other than common equity of such Person) or cash to its stockholders, partners or members as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for a consideration any shares of any class of its capital stock or any partnership or membership interests outstanding on or after the Closing Date (or any options or warrants issued by such Person with respect to its Equity Interests), or set aside any funds for any of the foregoing purposes.

“Documentation Agents” shall mean Bank of America, N.A. Citizens Bank, National Association, Truist Bank and Morgan Stanley Senior Funding, Inc. in their capacities as co-documentation agents under this Agreement.

“Dodd-Frank and Basel III” shall have the meaning set forth in Section 3.01(d).

“Dollar Equivalent” shall mean, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the Issuing Bank, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.
“Domestic Subsidiary” shall mean, as to any Person, any Subsidiary of such Person incorporated or organized under the laws of the United States, any state thereof or the District of Columbia.

“Dominion Account” shall mean an account at Bank of America over which the Administrative Agent has exclusive control for withdrawal purposes pursuant to the terms and provisions of this Agreement and the other Credit Documents.

“Earnout Payments” shall mean payments made by the Lead Borrower and/or any of its Restricted Subsidiaries under a contractual arrangement entered into with a seller in connection with the Acquisition or a Permitted Acquisition as part of the consideration given to such seller for such Acquisition or Permitted Acquisition where the amounts of such payments are based upon, and are dependent upon, the business acquired pursuant to such Acquisition or Permitted Acquisition achieving meaningful revenue, earnings or other performance target levels agreed upon in good faith by the Lead Borrower and such seller.

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

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

“EEA Resolution Authority” shall mean any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegate) having responsibility for the resolution of any EEA Financial Institution.

“Effective Yield” shall mean, as to any Revolving Loans, the effective yield on such Revolving Loans as determined by the Administrative Agent, taking into account the applicable interest rate margins, any interest rate floors or similar devices and all fees, including upfront or similar fees or original issue discount (amortized over the shorter of (x) the Weighted Average Life to Maturity of such Loans and (y) the four years following the date of incurrence thereof) payable generally to Lenders making such Loans, but excluding any arrangement, structuring, commitment, underwriting or other fees payable in connection therewith that are not generally shared with the relevant Lenders and customary consent fees paid generally to consenting Lenders. Each determination of the “Effective Yield” by the Administrative Agent shall be conclusive and binding on all Lenders absent manifest error.

“Eligible Accounts” shall mean, on any date of determination of the Borrowing Base, all of the Accounts owned by all Borrowers and reflected in the most recent Borrowing Base Certificate delivered by the Lead Borrower to the Administrative Agent shall be “Eligible Accounts” for the purposes of this Agreement, except any Account to which any of the exclusionary criteria set forth below applies. In addition, the Administrative Agent reserves the right, at any time and from time to time after the Closing Date, to adjust any of the criteria set forth below, to establish new criteria with respect to Eligible Accounts and to adjust the advance rates, in each case, in its Permitted Discretion, subject to the approval of the Supermajority Lenders in the case of adjustments, new criteria or increases in advance rates which have the effect of making more credit available than would have been available if the standards in effect on the Closing Date had continued to be in effect. Eligible Accounts shall not include any of the following Accounts:

(i) any Account in which the Collateral Agent, on behalf of the Secured Creditors, does not have a first priority perfected Lien (except such Liens as permitted by Section 10.01(i) hereof);

(ii) any Account that is not owned by a Borrower;

(iii) any Account owing to a joint venture (excluding a joint venture comprised of Wholly-Owned Subsidiaries of the Borrowers);
(iv) any Account that does not arise from a “cost plus”, “cost reimbursement”, or “time and materials” contract (each as categorized by the Lead Borrower in the ordinary course pursuant to methodology described to the Administrative Agent prior to the Closing Date); provided that all Accounts arising under any “multiple contract type” contract shall be deemed eligible so long as no more than 40% (or such greater percentage as the Administrative Agent may agree) of the Accounts arising under such contract (or multiple-contract program, if applicable) over the preceding 12-month period (or, prior to December 31, 2016, the preceding 9-month period) have arisen from “fixed price” and/or “milestone” components of such contract (or program);

(v) any Account, program or contract that is classified or undisclosed; until the completion of an initial field examination and such other due diligence with respect to such Accounts, program or contract as the Administrative Agent may require in its Permitted Discretion, in each case, the results of which are reasonably satisfactory to the Administrative Agent in consultation with the Lenders; provided, that, such Accounts, programs or contracts shall in no event in the aggregate exceed 25% of the Borrowing Base;

(vi) any Account arising from a program or contract with respect to which the applicable Borrower is subject to a Debarment/Suspension Event;

(vii) any Account due from an Account Debtor that is not domiciled in the United States, Puerto Rico or Canada and (if not a natural person) organized under the laws of the United States, Puerto Rico or Canada or any political subdivision thereof in the aggregate unless, in each case, such Account is backed by a letter of credit acceptable to the Administrative Agent which is in the possession of, is directly drawable by the Administrative Agent and, with respect to which the Administrative Agent has “control” as defined in Section 9-107 of the UCC;

(viii) any Account that is payable in any currency other than U.S. Dollars, Euros, Pound Sterling, Swiss Francs or Japanese Yen;

(ix) any Account that does not arise from the sale of goods or the performance of services by such Borrower in the ordinary course of its business;

(x) any Account that does not comply in all material respects with all applicable legal requirements, including, without limitation, all laws, rules, regulations and orders of any Governmental Authority;

(xi) any Account (A) as to which a Borrower’s right to receive payment is contingent upon the fulfillment of any condition whatsoever unless such condition is satisfied, (B) as to which a Borrower is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial or administrative process or (C) that represents a progress billing, fixed price or milestone 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 Borrower’s completion of further performance under such contract (except where eligibility is provided for in (iv) above or in the definition of “Eligible Billed Hybrid Account”) or is subject to the equitable lien of a surety bond issuer;

(xii) to the extent that any defense, counterclaim or dispute arises, or any accrued rebate exists or is owed, or the Account is, or is reasonably likely to become, subject to any right of set-off (including billings in excess of cost) by the Account Debtor, to the extent of the amount of such set-off, it being understood that the remaining balance of the Account shall be eligible;

(xiii) any Account that is not a true and correct statement of bona fide indebtedness incurred in the amount of the Account for merchandise sold to or services rendered and accepted by the applicable Account Debtor;
(xiv) any Account with respect to which an invoice or other electronic transmission constituting a request for payment, reasonably acceptable to the Administrative Agent in form and substance, that has not been sent on a timely basis to the applicable Account Debtor according to the normal invoicing and timing procedures of the Borrower;

(xv) any Account that arises from a sale to any director, officer, other employee or Affiliate of a Borrower (other than any portfolio company of the Sponsor to the extent such Account is on terms and conditions not less favorable to the applicable Borrower as would reasonably be obtained by such Borrower at that time in a comparable arm’s-length transaction with a Person other than a portfolio company of the Sponsor);

(xvi) any Account that is in default; provided that, without limiting the generality of the foregoing, an Account shall be deemed in default at any time upon the occurrence of any of the following; provided further that, in calculating delinquent portions of Accounts under clause (xvi)(A)(i) below, credit balances will be excluded:

(A) such Account (i) is not paid and is more than 60 days past due according to its original terms of sale or if no payment date is specified, more than 90 days after the date of the original invoice therefor, or (ii) with dated terms of no more than 120 days from the invoice date, or (iii) which has been written off the books of the Borrowers or otherwise designated as uncollectible; or

(B) the Account Debtor obligated upon such Account suspends business, makes a general assignment for the benefit of creditors, fails to pay its debts generally as they come due, or is classified by the Lead Borrower and its Subsidiaries as “cash only, bad check,” as determined by the Lead Borrower and its Subsidiaries in the ordinary course of business consistent with past-practice; or

(C) a petition is filed by or against any Account Debtor obligated upon such Account under any bankruptcy law or any other federal, state or foreign (including any provincial) receivership, insolvency relief or other law or laws for the relief of debtors; provided that so long as an order exists permitting payment of trade creditors specifically with respect to such Account Debtor and such Account Debtor has obtained adequate post-petition financing to pay such Accounts, the Accounts of such Account Debtor shall not be deemed ineligible under the provisions of this clause (C) to the extent the order permitting such financing allows the payment of the applicable Account;

(xvii) any Account that is the obligation of an Account Debtor (other than an individual) if 50% or more of the U.S. Dollar amount of all Accounts owing by such Account Debtor are ineligible under the criteria set forth in clause (xvi) above;

(xviii) any Account as to which any of the representations or warranties in the Credit Documents are untrue in any material respect (to the extent such materiality relates to the amount owing on such Account);

(xix) any Account which is evidenced by a judgment, Instrument (as defined in the Security Agreement) or Chattel Paper (as defined in the Security Agreement) and such Instrument or Chattel Paper is not pledged and delivered to the Administrative Agent under the Security Documents;

(xx) any Account arising on account of a supplier rebate, unless the Borrowers have received a waiver of offset from the supplier in form and substance reasonably satisfactory to the Administrative Agent;
any Account which is a component of a program to the extent such program exceeds 25% of the aggregate Eligible Accounts of all Borrowers;

any Account 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 Borrower (except where eligibility is provided for in clause (iv) above or in the definition of “Eligible Billed Hybrid Accounts”);

any Account which is owing in respect of interest and late charges;

Accounts owned by a target acquired in connection with a Permitted Acquisition, until the completion of a field examination and such other due diligence with respect to such target’s Accounts as the Administrative Agent may require in its Permitted Discretion, in each case, the results of which to be reasonably satisfactory to Administrative Agent, except, that, prior to the completion of such field examination, Accounts acquired in a Permitted Acquisition may be deemed Eligible Accounts, provided, that, (i) the Accounts are of the same type and character as the existing Eligible Accounts and otherwise meet the criteria set forth herein and (ii) the aggregate amount of such Accounts, plus all Eligible Billed Hybrid Accounts and Eligible Unbilled Accounts for which Administrative Agent has not received a field examination and other due diligence, which may be deemed Eligible Accounts, Eligible Billed Hybrid Accounts and Eligible Unbilled Accounts, respectively, shall not exceed 10% of the Borrowing Base at such time (calculated including such acquired assets) at any time; or

any Account as to which the contract or agreement underlying such Account is governed by (or, if no governing law is expressed therein, is deemed to be governed by) the laws of any jurisdiction other than the United States, any state thereof, the District of Columbia, Canada or any province thereof.

“Eligible Billed Hybrid Accounts” shall mean Accounts owned by the Borrowers that satisfy the criteria set forth in the definition of “Eligible Accounts” (excluding clause (xi)(C) or (xxii) thereof), and which would satisfy all such criteria but for the fact that the contracts from which such Accounts arise constitute “fixed price” or “milestone” contracts, or are “multiple contract type” contracts of which the “fixed price” and/or “milestone” components have given rise to greater than 40% of the Accounts thereunder over the preceding 12-month period (or, prior to December 31, 2016, the preceding 9-month period).

“Eligible Cash” shall mean, with respect to any Person, cash of such Person that is on deposit in a controlled investment account with the Collateral Agent over which such Person or any third party does not have withdrawal rights.

“Eligible Transferee” shall mean and include any existing Lender, any Approved Fund or any commercial bank, an insurance company, a finance company, a financial institution, any fund that invests in loans or any other “accredited investor” (as defined in Regulation D of the Securities Act) but in any event excluding (i) any natural person, (ii) any Disqualified Lender and (iii) the Sponsor, Holdings, each Borrower and their respective Subsidiaries and Affiliates.

“Eligible Unbilled Accounts” shall mean Accounts owned by the Borrowers that satisfy each of the criteria contained in the definition of “Eligible Accounts” (excluding clause (xiv) and (xxii) thereof) and that are included in the Lead Borrower’s “unbilled A/R reconciliation by category” matrix in any of the following categories: (x) “opening billing detail less than 30 days” (i.e., current month costs incurred in the month that are subsequently billable in the period with burdens), (y) “opening billing detail greater than 30 days” (i.e., costs incurred in the previous months that are subsequently billable in the period with burdens) or (z) “accruals” (i.e., costs accrued that have not been processed via accounts payable and cannot yet be invoiced), calculated net of any deductions under the applicable contract set forth in such reconciliation detail.

“Environment” shall mean ambient air, indoor air, surface water, groundwater, drinking water, land surface and sub-surface strata and natural resources such as wetlands, flora and fauna.
“Environmental Claims” shall mean any and all administrative, regulatory or judicial actions, suits, demands, demand letters, directives, claims, liens, notices of noncompliance or violation, investigations and/or proceedings relating in any way to any Environmental Law or any permit issued, or any approval given, under any such Environmental Law (hereafter, “Claims”), including, without limitation, (a) any and all Claims by governmental or regulatory authorities for enforcement, investigation, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief arising out of or relating to an alleged injury or threat of injury to human health, safety or the Environment due to the presence of Hazardous Materials, including any Release or threat of Release of any Hazardous Materials.


“Equity Interests” of any Person shall mean any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) equity of such Person, including any preferred stock, any limited or general partnership interest and any limited liability company membership interest.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and, unless the context indicates otherwise, the regulations promulgated and rulings issued thereunder. Section references to ERISA are to ERISA, as in effect at the date of this Agreement and any successor Section thereof.

“ERISA Affiliate” shall mean each person (as defined in Section 3(9) of ERISA) which together with the Lead Borrower or a Restricted Subsidiary of the Lead Borrower would be deemed to be a “single employer” within the meaning of Section 414(b) or (c) of the Code and solely with respect to Section 412 of the Code, Sections 414(b), (c), (m) or (o) of the Code.

“ERISA Event” shall mean (a) any “reportable event,” as defined in Section 4043 of ERISA or the regulations issued thereunder, but excluding any event for which the 30-day notice period is waived with respect to a Plan, (b) any failure to make a required contribution to any Plan that would result in the imposition of a Lien or other encumbrance or the failure to satisfy the minimum funding standards set forth in Sections 412 or 430 of the Code or Sections 302 or 303 of ERISA, or the arising of such a Lien or encumbrance, with respect to a Plan, (c) the incurrence by the Lead Borrower, a Restricted Subsidiary of the Lead Borrower, or an ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or the withdrawal or partial withdrawal (including under Section 4062(e) of ERISA) of any of the Lead Borrower, a Restricted Subsidiary of the Lead Borrower, or an ERISA Affiliate from any Plan or Multiemployer Plan, (d) the filing of a notice of intent to terminate a Plan, the treatment of a Plan amendment as a termination under Section 4041 of ERISA, or the receipt by the Lead Borrower, a Restricted Subsidiary of the Lead Borrower, or an ERISA Affiliate from the PBGC or a plan administrator of any notice of intent to terminate any Plan or Multiemployer Plan or to appoint a trustee to administer any Plan, (e) the adoption of any amendment to a Plan that would require the provision of security pursuant to the Code, ERISA or other applicable law, (f) the receipt by the Lead Borrower, a Restricted Subsidiary of the Lead Borrower, or an ERISA Affiliate of any written notice concerning statutory liability arising from the withdrawal or partial withdrawal of the Lead Borrower, a Restricted Subsidiary of the Lead Borrower, or an ERISA Affiliate from a Multiemployer Plan or a written determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA, (g) the occurrence of any non-exempt
“prohibited transaction” (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to which the Lead Borrower or any Restricted Subsidiary is a “disqualified person” (within the meaning of Section 4975 of the Code) or with respect to which the Lead Borrower or any Restricted Subsidiary would reasonably be expected to have liability, (h) the occurrence of any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of any Plan or the appointment of a trustee to administer any Plan, (i) the filing of any request for or receipt of a minimum funding waiver under Section 412(c) of the Code with respect to any Plan or Multiemployer Plan, (j) a determination that any Plan is in “at-risk” status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code), (k) the receipt by the Lead Borrower, a Restricted Subsidiary of the Lead Borrower or any ERISA Affiliate of any notice, that a Multiemployer Plan is, or is expected to be, in endangered or critical status under Section 305 of ERISA, or (l) any other extraordinary event or condition with respect to a Plan or Multiemployer Plan which would reasonably be expected to result in a Lien or any acceleration of any statutory requirement to fund all or a substantial portion of the unfunded accrued benefit liabilities of such plan.

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

“Event of Default” shall have the meaning provided in Section 11.

“Excluded Collateral” shall have the meaning assigned to such term in the Security Agreement.

“Excluded Deposit Account” shall mean a Deposit Account (i) which is used for the sole purpose of making payroll and withholding tax payments related thereto and other employee wage and benefit payments and accrued and unpaid employee compensation (including salaries, wages, benefits and expense reimbursements), (ii) which is used solely for paying taxes, including sales taxes, (iii) which is used solely as an escrow account or as a fiduciary or trust account maintained solely for the benefit of third parties, (iv) which is a zero balance Deposit Account or (v) which, individually or together with any other Deposit Accounts that are Excluded Deposit Accounts pursuant to this clause (v), has an average daily balance for any fiscal month of less than $5,000,000.

“Excluded Subsidiary” shall mean any Subsidiary of the Lead Borrower (other than a Borrower) that is (a) a Foreign Subsidiary, (b) an Unrestricted Subsidiary, (c) a FSHCO, (d) not a Wholly-Owned Subsidiary of the Lead Borrower or one or more of its Wholly-Owned Restricted Subsidiaries, (e) an Immaterial Subsidiary that is designated as such by the Lead Borrower in a certificate of a Responsible Officer of the Lead Borrower delivered to the Administrative Agent, (f) established or created pursuant to Section 10.05(xi) and meeting the requirements of the proviso thereto; provided that such Subsidiary shall only be an Excluded Subsidiary for the period immediately prior to such acquisition, (g) prohibited by applicable law, rule, regulation from guaranteeing the credit facilities established hereunder, or which would require governmental (including regulatory) consent, approval, license or authorization to provide a guarantee in each case, unless, such consent, approval, license or authorization has been received (but without obligation to seek the same), in each case so long as the Administrative Agent shall have received a certification from the Lead Borrower’s general counsel or a Responsible Officer of the Lead Borrower as to the existence of such prohibition or consent, approval, license or authorization requirement, (h) prohibited from guaranteeing the Obligations by any contractual obligation in existence (x) on the Closing Date or (y) at the time of the acquisition of Subsidiary after the Closing Date (to the extent such prohibition was not entered into in contemplation of such acquisition), (g) prohibited by applicable law, rule, regulation from guaranteeing the credit facilities established hereunder, or which would require governmental (including regulatory) consent, approval, license or authorization to provide a guarantee in each case, unless, such consent, approval, license or authorization has been received (but without obligation to seek the same), in each case so long as the Administrative Agent shall have received a certification from the Lead Borrower’s general counsel or a Responsible Officer of the Lead Borrower as to the existence of such prohibition or consent, approval, license or authorization requirement, (h) prohibited from guaranteeing the Obligations by any contractual obligation in existence (x) on the Closing Date or (y) at the time of the acquisition of Subsidiary after the Closing Date (to the extent such prohibition was not entered into in contemplation of such acquisition), (i) a Subsidiary with respect to which a guarantee by it of the Obligations would result in a material adverse tax consequence to Holdings, the Lead Borrower or the Restricted Subsidiaries, as reasonably determined by the Lead Borrower in consultation with the Administrative Agent, (j) a not-for-profit Subsidiary, (k) any other Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent (confirmed in writing by notice to the Lead Borrower), the cost or other consequences (including any adverse tax consequences) of guaranteeing the Obligations shall be excessive in view of the benefits to be obtained by the Lenders therefrom, (l) any Subsidiary regulated as an insurance company and (m) any Domestic Subsidiary that is a direct or indirect Subsidiary of a Foreign Subsidiary that is a CFC or a FSHCO; provided that, notwithstanding the above, (x) if a Subsidiary executes the Subsidiaries Guaranty as a “Subsidiary Guarantor” then it shall not constitute an “Excluded Subsidiary” (unless released from its obligations under the Subsidiaries Guaranty as a “Subsidiary Guarantor” in accordance with the terms hereof and thereof) and (y) if a Subsidiary serves as a guarantor under (I) the Second Lien Credit Agreement or any refinancing of the Second Lien Credit Agreement, any Refinancing Notes,
Permitted Junior Debt or any other Indebtedness incurred by any Borrower or any Guarantor, in each case of this clause (I), with a principal amount in excess of the Threshold Amount or (II) the First Lien Credit Agreement, then it shall not constitute an “Excluded Subsidiary” (unless released from its obligations under the Subsidiaries Guaranty as a “Subsidiary Guarantor” in accordance with the terms hereof and thereof): provided, further, that in the event any Subsidiary that is to become a Guarantor pursuant to clause (x) or (y) of this definition is organized in a jurisdiction other than the U.S., such jurisdiction shall be reasonably acceptable to the Administrative Agent and such Subsidiary shall grant a perfected lien on substantially all of its assets pursuant to arrangements reasonably agreed between the Administrative Agent and the Borrower subject to customary limitations in such jurisdiction to be reasonably agreed between the Administrative Agent and the Borrower.

“Excluded Swap Obligation” shall mean, with respect to any Guarantor, (x) as it relates to all or a portion of the Subsidiaries Guaranty of such Guarantor, any Swap Obligation if, and to the extent that, such Swap Obligation (or any Subsidiaries Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the Subsidiaries Guaranty of such Guarantor becomes effective with respect to such Swap Obligation or (y) as it relates to all or a portion of the grant by such Subsidiaries Guaranty of a security interest, any Swap Obligation if, and to the extent that, such Swap Obligation (or such security interest in respect thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the security interest of such Guarantor becomes 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 Subsidiaries Guaranty or security interest is or becomes illegal.

“Excluded Taxes” shall mean, with respect to the Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of any Credit Party under any Credit Document, (a) income Taxes imposed on (or measured by) its net income and franchise (and similar) Taxes imposed on it in lieu of income Taxes, either pursuant to the laws of the jurisdiction in which such recipient is organized or in which the principal office or applicable lending office of such recipient is located (or any political subdivision thereof) or as a result of any other present or former connection between it and the jurisdiction imposing such Tax (other than a connection arising from such Administrative Agent, Lender or other 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 Credit Document, or sold or assigned an interest in any Loan or Credit Document), (b) any branch profits Taxes under Section 884(a) of the Code or any similar Tax imposed by any jurisdiction described in clause (a) above, (c) in the case of a Lender (other than an assignee pursuant to a request by a Borrower under Section 3.04), any U.S. federal withholding Tax that is imposed on amounts payable to such Lender at the time such Lender becomes a party to this Agreement (or designates a new lending office), except to the extent that such recipient (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Credit Parties with respect to such withholding tax pursuant to Section 5.01(a), (d) any Taxes attributable to such recipient’s failure to comply with Section 5.01(b) or Section 5.01(c), (e) any Taxes imposed under FATCA and (f) U.S. federal backup withholding Taxes pursuant to Code Section 3406.

“Existing Credit Agreement” shall mean that certain Credit Agreement, dated as of March 14, 2016, among Holdings, the Lead Borrower, the subsidiary borrowers from time to time party thereto, the lenders from time to time party thereto, and Bank of America, as administrative agent (as modified, supplemented, amended, restated, extended or renewed from time to time).

“Existing Credit Agreement Refinancing” shall mean the repayment of all of the outstanding indebtedness (and termination of all commitments) under the Existing Credit Agreement, all as provided in Section 6.05.

“Existing Indebtedness” shall have the meaning provided in Section 10.04(vii).
“Existing Joint Ventures” shall mean joint ventures in respect of which the Lead Borrower or any of its Subsidiaries holds an equity interest on the Closing Date as set forth on Schedule 1.01C.

“Existing Lead Borrower” shall have the meaning provided in the first paragraph of this Agreement.

“Existing Letters of Credit” shall mean those Letters of Credit described on Schedule 1.02 hereto.

“Existing Revolving Loans” shall have the meaning assigned to such term in Section 2.19.

“Extended Revolving Loans” shall have the meaning assigned to such term in Section 2.19.

“Extended Revolving Loan Commitments” shall mean one or more commitments hereunder to convert Existing Revolving Loans to Extended Revolving Loans of a given Extension Series pursuant to an Extension Amendment.

“Extending Lender” shall have the meaning provided in Section 2.19(c).

“Extension Amendment” shall have the meaning provided in Section 2.19(d).

“Extension Election” shall have the meaning provided in Section 2.19(c).

“Extension Request” shall have the meaning provided in Section 2.19(a).

“Extension Series” shall have the meaning provided in Section 2.19(a).

“Fair Value” shall mean the amount at which the assets (both tangible and intangible), in their entirety, of Holdings, the Lead Borrower and its Subsidiaries taken as a whole would change hands between an independent willing buyer and a willing seller, within a commercially reasonable period of time, each having reasonable knowledge of the relevant facts, with neither being under any compulsion to act.

“FATCA” shall mean 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 thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code as of the date of this Agreement (or any such amended or successor version), any intergovernmental agreements between a non-U.S. jurisdiction and the United States with respect to any of the foregoing and any Requirement of Law adopted and any agreements entered into pursuant to any such intergovernmental agreement.

“FCCR Test Amount” shall have the meaning provided in Section 10.11(a).


“Federal Assignment of Claims Act” shall mean the Federal Assignment of Claims Act of 1940, as amended.

“Federal Funds Rate” shall mean, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.
“Fee Letter” shall mean the ABL Administrative Agent Fee Letter, dated October 20, 2016, by and between Bank of America and Holdings.

“Fees” shall mean all amounts payable pursuant to or referred to in Section 2.05.

“First Lien Collateral Agent” shall mean Bank of America, N.A., as collateral agent under the First Lien Credit Agreement or any successor thereto acting in such capacity.

“First Lien Credit Documents” shall have the meaning ascribed to the term “Credit Documents” in the First Lien Credit Agreement.

“First Lien Credit Agreement” shall mean (i) that certain First Lien Term Loan Credit Agreement, dated as of the Closing Date, among Holdings, the Lead Borrower, certain Subsidiaries of the Borrower from time to time party thereto, the lenders from time to time party thereto, and Bank of America, as administrative agent, and (ii) any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any Indebtedness or other financial accommodation that has been incurred to extend (subject to the limitations set forth herein and in the Intercreditor Agreement) or refinance in whole or in part the Indebtedness and other obligations outstanding under (x) the credit agreement referred to in clause (i) or (y) any subsequent First Lien Credit Agreement, unless such agreement or instrument expressly provides that it is not intended to be and is not a First Lien Credit Agreement hereunder. Any reference to the First Lien Credit Agreement hereunder shall be deemed a reference to any First Lien Credit Agreement then in existence.

“Foreign Pension Plan” shall mean any plan, fund (including, without limitation, any superannuation fund) or other similar program established or maintained outside the United States by the Lead Borrower or any one or more of its Restricted Subsidiaries primarily for the benefit of employees of the Lead Borrower or such Restricted Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

“Foreign Subsidiaries” shall mean each Subsidiary of the Lead Borrower that is not a Domestic Subsidiary.

“Fronting Exposure” shall mean a Defaulting Lender’s Pro Rata Share of LC Exposure or Swingline Loans, as applicable, except to the extent allocated to other Lenders under Section 2.11.

“Fronting Fee” shall have the meaning provided in Section 2.05(c).

“FSHCO” shall mean any Domestic Subsidiary that has no material assets other than Equity Interests, or Equity Interests and Indebtedness in one or more Foreign Subsidiaries that are CFCs.

“Government Contracts” means any contract of any Credit Party with any United States Governmental Authority.

“Governmental Authority” shall mean the government of the United States of America, any other nation or any political subdivision thereof, whether state, provincial 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.

“Guaranteed Creditors” shall mean and include (x) each of the Administrative Agent, the Collateral Agent and the Lenders and (y) any Secured Bank Product Provider or any Person that was a Secured Bank Product Provider on the Closing Date or at the time it entered into a Bank Product with a Borrower or its Subsidiary.

“Guaranteed Obligations” shall mean in the case of Holdings, (x) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of the unpaid principal and interest on each Note issued by, and all Loans made to, the Borrowers under this Agreement, together with all the other obligations
(including obligations which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due), indebtedness and liabilities (including, without limitation, indemnities, fees and interest (including any interest, fees and other amounts accruing after the commencement of any bankruptcy, insolvency, receivership or similar proceeding at the rate provided for herein, whether or not such interest, fees and other amounts is an allowed or allowable claim in any such proceeding) thereon) of the Borrowers to the Lenders, the Administrative Agent and the Collateral Agent now existing or hereafter incurred under, arising out of or in connection with this Agreement and each other Credit Document (other than the Intercreditor Agreement) to which any of the Borrowers is a party and the due performance and compliance by the Borrowers with all the terms, conditions and agreements contained in this Agreement and in each such other Credit Document (other than the Intercreditor Agreement) and (y) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of all obligations (including obligations which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due), liabilities and indebtedness (including any interest, fees and other amounts accruing after the commencement of any bankruptcy, insolvency, receivership or similar proceeding at the rate provided for herein, whether or not such interest, fees and other amounts is an allowed or allowable claim in any such proceeding) thereon) of the Lead Borrower or any of its Restricted Subsidiaries owing under any Secured Bank Product Obligation and the due performance and compliance with all terms, conditions and agreements contained therein, (ii) in the case of a Borrower, (x) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of the unpaid principal and interest on each Note issued by, and all Loans made to, each other Borrower under this Agreement, together with all the other obligations (including obligations which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due), indebtedness and liabilities (including, without limitation, indemnities, fees and interest (including any interest, fees and other amounts accruing after the commencement of any bankruptcy, insolvency, receivership or similar proceeding at the rate provided for herein, whether or not such interest, fees and other amounts is an allowed or allowable claim in any such proceeding) thereon) of each other Borrower to the Lenders, the Administrative Agent and the Collateral Agent now existing or hereafter incurred under, arising out of or in connection with this Agreement and each other Credit Document (other than the Intercreditor Agreement) to which each other Borrower is a party and the due performance and compliance by the Borrowers with all the terms, conditions and agreements contained in this Agreement and in each such other Credit Document (other than the Intercreditor Agreement) and (y) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of all obligations (including obligations which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due), liabilities and indebtedness (including any interest accruing after the commencement of any bankruptcy, insolvency, receivership or similar proceeding at the rate provided for herein, whether or not such interest is an allowed or allowable claim in any such proceeding) of such Borrower or any of its Restricted Subsidiaries owing under any Secured Bank Product Obligation and the due performance and compliance with all terms, conditions and agreements contained therein and (iii) the Obligations of the Subsidiary Guarantors under the Subsidiary Guaranty.

“Guarantor” shall mean (a) Holdings, each Borrower and each Subsidiary Guarantor and (b) with respect to the payment and performance by each Specified Credit Party of its obligations under Article 14 with respect to all Swap Obligations, the Borrowers.

“Guaranty” shall mean and include each of the Credit Agreement Party Guaranty and the Subsidiaries Guaranty.

“Hazardous Materials” shall mean (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, dielectric fluid containing levels of polychlorinated biphenyls, and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous waste,” “hazardous materials,” “extremely hazardous substances,” “restricted hazardous waste,” “toxic substances,” “toxic pollutants,” “contaminants,” or “pollutants,” or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance regulated under any Environmental Law.

“Holdings” shall have the meaning provided in the preamble hereto.
“Immaterial Subsidiary” shall mean any Restricted Subsidiary of the Lead Borrower that, as of the date of the most recent financial statements required to be delivered pursuant to Section 9.01(a) or (b), does not have, when taken together with all other Immaterial Subsidiaries, (a) assets in excess of 5.0% of Consolidated Total Assets; or (b) revenues for the period of four consecutive fiscal quarters ending on such date in excess of 5.0% of the combined revenues of the Lead Borrower and the Restricted Subsidiaries for such period; provided that in no event shall a Subsidiary Borrower be considered an Immaterial Subsidiary.

“Increase Date” shall have the meaning provided in Section 2.15(b).

“Increase Loan Lender” shall have the meaning provided in Section 2.15(b).

“Incremental Revolving Commitment Agreement” shall have the meaning provided in Section 2.15(d).

“Indebtedness” shall mean, as to any Person, without duplication, (i) all indebtedness (including principal, interest, fees and charges) of such Person (A) for borrowed money or (B) for the deferred purchase price of property or services, (ii) the maximum amount available to be drawn under all letters of credit, bankers’ acceptances and similar obligations issued for the account of such Person and all unpaid drawings in respect of such letters of credit, bankers’ acceptances and similar obligations, (iii) all Indebtedness of the types described in clause (i), (ii), (iv), (v), (vi) or (vii) of this definition secured by any Lien on any property owned by such Person, whether or not such Indebtedness has been assumed by such Person (provided that, if the Person has not assumed or otherwise become liable in respect of such Indebtedness, such Indebtedness shall be deemed to be in an amount equal to the lesser of (x) the aggregate unpaid amount of Indebtedness secured by such Lien and (y) the fair market value of the property to which such Lien relates as determined in good faith by such Person), (iv) the aggregate amount of all Capitalized Lease Obligations of such Person, (v) all Contingent Obligations of such Person, (vi) all obligations under any Swap Contracts and any Bank Product Debt or under any similar type of agreement and (vii) all Off-Balance Sheet Liabilities of such Person. Notwithstanding the foregoing, Indebtedness shall not include (a) trade payables and accrued expenses incurred by any Person in accordance with customary practices and in the ordinary course of business of such Person, (b) trade related letters of credit and trade related guarantees incurred in the ordinary course of business or (c) Earnout Payments except to the extent that the liability on account of any such Earnout Payments becomes fixed and is required by U.S. GAAP to be reflected as a liability on the consolidated balance sheet of the Lead Borrower and its Restricted Subsidiaries.

“Indemnified Person” shall have the meaning provided in Section 13.01.

“Indemnified Taxes” shall mean Taxes other than (i) Excluded Taxes and (ii) Other Taxes.

“Initial Public Offering” shall mean (a) the issuance by any Parent Company of its common Equity Interests in an underwritten primary public offering (other than a public offering pursuant to a registration statement on Form S-8 or S-4) pursuant to an effective registration statement filed with the SEC in accordance with the Securities Act, as amended, or (b) solely to the extent occurring in connection with the Pinnacle Transactions, the acquisition, purchase, merger or combination of the Lead Borrower or any Parent Company, by or with, a publicly traded special acquisition company or targeted acquisition company or any entity similar to the foregoing or any subsidiary thereof that results in the Equity Interests of the Lead Borrower or any Parent Company (or its successor by merger or combination) being traded on, or such Parent Company being wholly-owned by another entity whose equity is traded on, a United States national securities exchange, provided that, in the case of this clause (b), on a Pro Forma Basis after giving effect to the Pinnacle Transactions, on the Pinnacle Transactions Closing Date, the aggregate amount of Consolidated Total Debt shall not exceed $500,000,000.

“Intellectual Property” shall have the meaning provided in Section 8.20.

“Intercreditor Agreement” shall mean that certain Intercreditor Agreement in the form of Exhibit L, dated as of the Closing Date, by and among the Collateral Agent, and the First Lien Collateral Agent and the Second Lien Collateral Agent (as same may be amended or modified from time to time in accordance with the terms hereof and thereof).
“Interest Determination Date” shall mean, with respect to any LIBO Rate Loan, the second Business Day prior to the commencement of any Interest Period relating to such LIBO Rate Loan.

“Interest Period” shall mean, as to any Borrowing of a LIBO Rate Loan, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is one, two, three, six, or, if agreed to by all Lenders, twelve months or less than one month thereafter, as the Lead Borrower may elect, or the date any Borrowing of a LIBO Rate Loan is converted to a Borrowing of a Base Rate Loan in accordance with Section 2.08 or repaid or prepaid in accordance with Section 2.07 or Section 2.09; provided that 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. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

“Interim Period” shall have the meaning assigned to such term in Section 10.11(b).

“Inventory” shall mean all “inventory,” as such term is defined in the UCC as in effect on the date hereof in the State of New York, wherever located, in which any Person now or hereafter has rights.

“Investment Grade Rating” shall mean, with respect to any Person, that such Person has a corporate credit rating of BBB- or better by S&P and a corporate family rating of Baa3 or better by Moody’s.

“Investments” shall have the meaning provided in Section 10.05.

“Issuing Bank” shall mean, as the context may require, (a) Bank of America, with respect to Letters of Credit issued by it; (b) any other Lender that may become an Issuing Bank pursuant to Sections 2.13(i) and 2.13(k), with respect to Letters of Credit issued by such Lender; (c) with respect to the Existing Letters of Credit, the Lender which issued each such Letter of Credit, or (d) collectively, all of the foregoing.

“ISDA Definitions” shall mean 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.

“Joint Venture” shall mean any Person other than an individual or a Subsidiary of the Lead Borrower (i) in which the Lead Borrower or any of its Restricted Subsidiaries holds or acquires an ownership interest (by way of ownership of Equity Interests or other evidence of ownership) and (ii) which is engaged in a business permitted by Section 10.09.

“Junior Representative” shall mean, with respect to any series of Permitted Junior Debt, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Permitted Junior Debt is issued, incurred or otherwise obtained and each of their successors in such capacities.

“LC Collateral Account” shall mean a collateral account in the form of a deposit account established and maintained by the Administrative Agent for the benefit of the Secured Creditors, in accordance with the provisions of Section 2.13.

“LC Commitment” shall mean the commitment of the Issuing Bank to issue Letters of Credit pursuant to Section 2.13.

“LC Disbursement” shall mean a payment or disbursement made by the Issuing Bank pursuant to a Letter of Credit.
“LC Documents” shall mean all documents, instruments and agreements delivered by the Lead Borrower or any other Person to the Issuing Bank or the Administrative Agent in connection with any Letter of Credit.

“LC Exposure” shall mean at any time the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate principal amount of all LC Disbursements that have not yet been reimbursed at such time. The LC Exposure of any Revolving Lender at any time shall mean its Pro Rata Percentage of the aggregate LC Exposure at such time.

“LC Obligations” shall mean the sum (without duplication) of (a) all amounts owing by the Borrowers for any drawings under Letters of Credit (including any bankers’ acceptances or other payment obligations arising therefrom); and (b) the stated amount of all outstanding Letters of Credit.

“LC Participation Fee” shall have the meaning assigned to such term in Section 2.05(c)(i).

“LC Request” shall mean a request by the Lead Borrower in accordance with the terms of Section 2.13(b) in form and substance satisfactory to the Issuing Bank.

“LCT Election” shall have the meaning provided in Section 1.03.

“LCT Test Date” shall have the meaning provided in Section 1.03.

“Lead Arrangers” shall mean Bank of America, N.A., an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated, Citizens Bank, National Association, SunTrust Robinson Humphrey, Inc. and Morgan Stanley Senior Funding, Inc., in their respective capacities as joint lead arrangers and bookrunners for this Agreement.

“Lead Borrower” shall have the meaning provided in the preamble hereto, mean, subject to Section 4.01(j) of Amendment No. 3, (i) prior to the Amendment No. 3 Effective Date, the Existing Lead Borrower and (ii) on and after the Amendment No. 3 Effective Date, the Amendment No. 3 Effective Date Lead Borrower.

“Lender” shall mean each financial institution listed on Schedule 2.01, as well as any Person that becomes a “Lender” hereunder pursuant to Section 2.15, 3.04 or 13.04(b), and, as the context requires, includes the Swingline Lender.

“Letter of Credit” shall mean any letters of credit issued or to be issued by an Issuing Bank for the account of the Lead Borrower or any of its Subsidiaries pursuant to Section 2.13, including each Existing Letter of Credit.

“Letter of Credit Expiration Date” shall mean the date which is five (5) Business Days prior to the Maturity Date.

“LIBO Rate” shall mean:

(a) for any Interest Period with respect to a LIBO Rate Revolving Loan, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”) or a comparable or successor rate, which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time, the “LIBOR Screen Rate”) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period (rounded upward, if necessary, to a whole multiple of 1/8 of 1%); and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at or about 11:00 a.m., London time determined two Business Days prior to such date for U.S. Dollar deposits with a term of one month commencing that day (rounded upward, if necessary, to a whole multiple of 1/8 of 1%).
provided that to the extent a comparable or successor rate is approved by the Administrative Agent in connection herewith, the approved rate shall be applied in a manner consistent with market practice; provided, further, that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent. Notwithstanding any of the foregoing, the LIBO Rate shall not at any time be less than 0.50%.

“LIBO Rate Loan” shall mean each Revolving Loan designated as such by the Lead Borrower at the time of the incurrence thereof or conversion thereto.

“LIBOR Replacement Date” shall have the meaning specified in Section 3.01(e).

“LIBOR Successor Rate” shall have the meaning specified in Section 3.01(e).

“LIBOR Successor Rate Conforming Changes” shall mean, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of Business Day, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of the Administrative Agent, to reflect the adoption and implementation of such LIBOR Successor Rate and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as the Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Credit Document).

“Lien” shall mean any mortgage, pledge, hypothecation, collateral assignment, security deposit arrangement, encumbrance, deemed or statutory trust, security conveyance, lien (statutory or other), preference, priority or other security agreement of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, and any lease having substantially the same effect as any of the foregoing).

“Limited Condition Transaction” shall mean any acquisition (including by way of merger) or similar Investment (including the assumption or incurrence of Indebtedness), the making of any Dividend (other than the Special Dividend) and/or the making of any voluntary or optional payment or prepayment on or redemption or acquisition for value of any Indebtedness subject to Section 10.07(a).

“Line Cap” shall mean equal to an amount that is the lesser of (a) the Aggregate Commitments and (b) the then applicable Borrowing Base.

“Liquidity Event” shall mean the occurrence of a date when (a) Availability shall have been less than the greater of (i) 12.5% of the Line Cap and (ii) $10,000,000, in either case for five consecutive Business Days, until such date as (b) (x) Availability shall have been at least equal to the greater of (i) 12.5% of the Line Cap and (ii) $10,000,000 for 30 consecutive calendar days.

“Liquidity Notice” shall mean a written notice delivered by the Administrative Agent at any time during a Liquidity Period to any bank or other depository at which any Deposit Account (other than any Excluded Deposit Account) is maintained directing such bank or other depository (a) to remit all funds in such Deposit Account to the Dominion Account, or in the case of the Dominion Account, to the Administrative Agent on a daily basis, and (b) to cease following directions or instructions given to such bank or other depository by any Credit Party regarding the disbursement of funds from such Deposit Account (other than any Excluded Deposit Account), and (c) to follow all directions and instructions given to such bank or other depository by the Administrative Agent in each case, pursuant to the terms of any Deposit Account Control Agreement in place.

“Liquidity Period” shall mean any period throughout which (a) a Liquidity Event has occurred and is continuing or (b) a Specified Event of Default has occurred and is continuing.
“Loans” shall mean advances made to or at the instructions of the Lead Borrower pursuant to Section 2 hereof and may constitute Revolving Loans, Swingline Loans or Overadvance Loans.

“Location” of any Person shall mean such Person’s “location” as determined pursuant to Section 9-307 of the UCC of the State of New York.

“Margin Stock” shall have the meaning provided in Regulation U.

“Material Adverse Effect” shall mean (i) a material adverse effect on the business, assets, financial condition or results of operations of Holdings, the Lead Borrower and their Restricted Subsidiaries taken as a whole, (ii) a material and adverse effect on the rights and remedies of the Administrative Agent and Lenders, taken as a whole, under the Credit Documents and (iii) a material and adverse effect on the ability of the Credit Parties, taken as a whole, to perform their payment obligations under the Credit Documents.

“Maturity Date” shall mean the date that is five years after the Closing Amendment No. 3 Effective Date.

“Moody’s” shall mean Moody’s Investors Service, Inc.

“Multiemployer Plan” shall mean a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA under which the Lead Borrower or a Restricted Subsidiary of the Lead Borrower has any obligation or liability, including on account of an ERISA Affiliate.

“NAIC” shall mean the National Association of Insurance Commissioners.

“New Financing” shall mean the Indebtedness incurred or to be incurred by the Lead Borrower and its Subsidiaries under the Credit Documents (assuming the full utilization of the Revolving Commitment) and all other financings contemplated by the Credit Documents, in each case after giving effect to the Transaction and the incurrence of all financings in connection therewith.

“Non-Defaulting Lender” shall mean and include each Lender other than a Defaulting Lender.

“Note” shall mean each Revolving Note or Swingline Note, as applicable.

“Notice of Borrowing” shall mean a notice substantially in the form of Exhibit A-1 hereto.

“Notice of Conversion/Continuation” shall mean a notice substantially in the form of Exhibit A-2 hereto.

“Notice Office” shall mean (i) for credit notices, the office of the Administrative Agent located at 1600 JFK Boulevard. 11th Floor, Philadelphia, PA 19103, Attention: Kevin Corcoran, and (ii) for operational notices, the office of the Administrative Agent located at 1600 JFK Boulevard. 11th Floor, Philadelphia, PA 19103, Attention: Kevin Corcoran; or such other office or person as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

“Noticed Hedge” shall mean any Secured Bank Product Obligations arising under a Swap Contract with respect to which the Lead Borrower and the Secured Bank Product Provider thereof have notified the Administrative Agent of the intent to include such Secured Bank Product Obligations as a Noticed Hedge hereunder and with respect to which a Bank Products Reserve has subsequently been established in the maximum amount thereof.

“Obligations” shall mean (x) all now existing or hereafter arising debts, obligations, covenants, and duties of payment or performance by any Credit Party of every kind, matured or unmatured, direct or contingent, owing, arising, due, or payable to any Lender, Agent or Indemnified Person by any Credit Party arising out of this Agreement or any other Credit Document, including, without limitation, all obligations to repay principal or interest (including interest, fees and other amounts accruing during any proceeding under any Debtor Relief Laws, regardless of whether allowed or allowable in such proceeding) on the Loans and Letters of Credit, and to pay
interest, fees, costs, charges, expenses, professional fees, and all sums chargeable to any Credit Party or for which any Credit Party is liable as indemnitee under the Credit Documents, whether or not evidenced by any note or other instrument and (y) all Secured Bank Product Obligations, and in each case of clauses (x) and (y), the due performance and compliance with all terms, conditions and agreements contained therein; provided, however, that for purposes of each Guaranty and each other guarantee agreement or other instrument or document executed and delivered pursuant to this Agreement or any Guaranty, the term “Obligations” shall not, as to any Guarantor, include any Excluded Swap Obligations. Notwithstanding anything to the contrary contained above, (x) obligations of any Credit Party under any Secured Bank Product Obligations shall be secured and guaranteed pursuant to the Credit Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (y) any release of Collateral or Guarantors effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Secured Bank Product Obligations.

“Off-Balance Sheet Liabilities” of any Person shall mean (i) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (ii) any liability of such Person under any Sale-Leaseback Transactions that do not create a liability on the balance sheet of such Person, (iii) any obligation under a Synthetic Lease or (iv) any obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheet of such Person.

“Other Taxes” shall mean any and all present or future stamp, court or documentary, intangible, recording, filing or property Taxes or similar Taxes arising from any payment made under, from the execution, delivery, registration, performance or enforcement of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Credit Document except any such Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.04) that are imposed as a result of any present or former connection between the relevant Lender and the jurisdiction imposing such Tax (other than a connection arising from such Lender 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 Credit Document, or sold or assigned an interest in any Loan or Credit Document).

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

“Overadvance” shall have the meaning of such term assigned to such term in Section 2.17.

“Overadvance Loan” shall mean a Base Rate Loan made when an Overadvance exists or is caused by the funding thereof.

“Overadvance” shall have the meaning provided in Section 13.04(a).

“Overadvance Loan” shall have the meaning provided in Section 13.17.

“Payment Conditions” shall mean as to any relevant action contemplated in this Agreement, (i) no Event of Default has then occurred and is continuing or would result from any action, (ii) (a) Availability on a Pro Forma Basis immediately after giving effect to such action would be at least the greater of (x) 12.5% of the Line Cap and (y) $12,500,000 and (b) over the 30 consecutive days prior to consummation of such action, Availability averaged no less than the greater of (x) 12.5% of the Line Cap and (y) $12,500,000, on a Pro Forma Basis for such action and (iii) if (a) Availability on a Pro Forma Basis immediately after giving effect to such action is less than the greater of (x) 25% of the Line Cap and (y) $20,000,000, or (b) over the 30 consecutive days prior to consummation of such action, Availability averaged less than 25% of the greater of (x) 25% of the Line
Cap and (y) $20,000,000 to $35,000,000 on a Pro Forma Basis for such action, the Consolidated Fixed Charge Coverage Ratio would be at least 1.0 to 1.0 on a Pro Forma Basis for such action.

“Payment Office” shall mean the office of the Administrative Agent located at 901 Main Street, TX-1-492-14-11, Dallas, Texas 75202-3714 Attention: Angie Hidalgo, or such other office as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

“PBGC” shall mean the Pension Benefit Guaranty Corporation established pursuant to Section 4002 of ERISA, or any successor thereto.

“Perfection Certificate” shall have the meaning provided in the Security Agreement.

“Permitted Acquisition” shall mean the acquisition by the Lead Borrower or any of its Restricted Subsidiaries of an Acquired Entity or Business; provided that (in each case) (A) the Acquired Entity or Business acquired is in a business permitted by Section 10.09 and (B) all applicable requirements of Section 9.14 are satisfied.

“Permitted Discretion” shall mean reasonable credit judgment in accordance with customary business practices for comparable asset-based lending transactions, and as it relates to the establishment of reserves or the imposition of exclusionary criteria shall require that (x) such establishment, adjustment or imposition after the Closing Date be based on the analysis of facts or events first occurring or first discovered by the Administrative Agent after the Closing Date or are materially different from the facts or events occurring or known to the Administrative Agent on the Closing Date, unless the Lead Borrower and the Administrative Agent otherwise agree in writing, (y) the contributing factors to the imposition of any reserves shall not duplicate the exclusionary criteria set forth in the definitions of Eligible Accounts (and vice versa) and (z) the amount of any such reserve so established or the effect of any adjustment or imposition of exclusionary criteria be a reasonable quantification (as reasonably determined by the Administrative Agent) of the incremental dilution of the Borrowing Base attributable to such contributing factors.

“Permitted Encumbrance” shall mean, with respect to any applicable Real Property, such exceptions to title as are set forth in any mortgage title insurance policy delivered with respect thereto.

“Permitted First Lien Notes” shall mean “Permitted Pari Passu Notes” as defined in the First Lien Credit Agreement (as in effect on the date hereof).

“Permitted First Lien Notes Documents” shall mean “Permitted Pari Passu Notes Documents” as defined in the First Lien Credit Agreement (as in effect on the date hereof).

“Permitted Holders” shall mean (i) the Sponsor or (ii) any Related Party of any of the foregoing and (iii) any “group” (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act or any successor provision) of which any of the foregoing are members; provided that in the case of such “group” and without giving effect to the existence of such “group” or any other “group,” (x) such Persons specified in clauses (i) or (ii) above, collectively, have beneficial ownership, directly or indirectly, of more than 50% of the total voting power of the voting stock of the Lead Borrower or any of its direct or indirect parent entities held by such “group,” and (y) the Sponsor and its Related Parties, collectively, do not have beneficial ownership, directly or indirectly, of a lesser percentage of the voting stock of the Lead Borrower or any of its direct or indirect parent entities than any other Person that is a member of such “group” (without giving effect to any voting stock that may be deemed owned by each other Person pursuant to Rule 13d-3 or 13d-5 under the Exchange Act as a result of such “group”).

“Permitted Investment” shall mean any Investment permitted by Section 10.05.

“Permitted Joint Venture” shall mean (a) any joint venture (i) in which Holdings or the Lead Borrower or any of its Subsidiaries hold equity interests that represent less than 80% of the ordinary voting power and aggregate equity value represented by the issued and outstanding equity interests in such joint venture and (ii) that is engaged
in a business permitted under Section 10.09 and (b) each Existing Joint Venture unless and until it becomes a Wholly-Owned Subsidiary.

“Permitted Junior Debt” shall mean and include (i) any Permitted Junior Notes and (ii) any Permitted Junior Loans.

“Permitted Junior Debt Documents” shall mean and include the Permitted Junior Notes Documents and the Permitted Junior Loan Documents.

“Permitted Junior Loan Documents” shall mean, after the execution and delivery thereof, each agreement, document or instrument relating to the incurrence of Permitted Junior Loans, in each case as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

“Permitted Junior Loans” shall mean any Indebtedness of the Lead Borrower or any Restricted Subsidiary in the form of unsecured or secured loans; provided that in any event, unless the Required Lenders otherwise expressly consent in writing prior to the issuance thereof, (i) except as provided in clause (v) below, no such Indebtedness, to the extent incurred by any Credit Party, shall be secured by any asset of the Lead Borrower or any of its Subsidiaries, (ii) no such Indebtedness, to the extent incurred by any Credit Party, shall be guaranteed by any Person other than Holdings, the Borrowers or a Subsidiary Guarantor, (iii) no such Indebtedness shall be subject to scheduled amortization or have a final maturity, in either case prior to the date occurring ninety-one (91) days following the then Latest Maturity Date (as defined in the First Lien Credit Agreement), (iv) any “asset sale” mandatory prepayment provision or offer to prepay covenant included in the agreement governing such Indebtedness, to the extent incurred by any Credit Party, shall provide that the Lead Borrower or the respective Subsidiary shall be permitted to repay obligations, and terminate commitments, under this Agreement before prepaying or offering to prepay such Indebtedness, (v) in the case of any such Indebtedness incurred by a Credit Party that is secured (a) such Indebtedness is secured by only assets comprising Collateral on a junior-lien basis relative to the Liens on such Collateral securing the Obligations of the Credit Parties, and not secured by any property or assets of the Lead Borrower or any of its Subsidiaries other than the Collateral, (b) the security agreements relating to such Indebtedness are substantially the same as the Security Documents (with such differences as are reasonably satisfactory to the Administrative Agent) and (c) a Junior Representative acting on behalf of the holders of such Indebtedness shall have become party to the Additional Intercreditor Agreement; provided that if such Indebtedness is the initial incurrence of Permitted Junior Debt by the Lead Borrower that is secured by assets of the Lead Borrower or any other Credit Party, then Holdings, the Lead Borrower, the Subsidiary Borrowers, the Subsidiary Guarantors, the Administrative Agent, the Collateral Agent and the Junior Representative for such Indebtedness shall have executed and delivered the Additional Intercreditor Agreement and (vi) in respect of any such Indebtedness of a Credit Party, the representations and warranties, covenants, and events of default, taken as a whole, shall be no more onerous in any material respect than the related provisions contained in this Agreement; provided that any such terms may be more onerous to the extent they take effect after the Latest Maturity Date (as defined in the First Lien Credit Agreement) (provided that a certificate of a Responsible Officer of the Lead Borrower delivered to the Administrative Agent in good faith at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Lead Borrower has determined in good faith that such terms and conditions satisfy the requirement set out in the foregoing clause (vi), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent provides notice to the Lead Borrower of an objection during such five Business Day period (including a reasonable description of the basis upon which it objects)). The incurrence of Permitted Junior Loans shall be deemed to be a representation and warranty by the Lead Borrower that all conditions thereto have been satisfied in all material respects and that same is permitted in accordance with the terms of this Agreement, which representation and warranty shall be deemed to be a representation and warranty for all purposes hereunder, including, without limitation, Sections 7 and 11.

“Permitted Junior Notes” shall mean any Indebtedness of the Lead Borrower or any Restricted Subsidiary evidenced by a note security and incurred pursuant to one or more issuances of such notes; provided that in any event, unless the Required Lenders otherwise expressly consent in writing prior to the issuance thereof, (i) except as
provided in clause (vii) below, no such Indebtedness, to the extent incurred by any Credit Party, shall be secured by any asset of the Lead Borrower or any of its Subsidiaries, (ii) no such Indebtedness, to the extent incurred by any Credit Party, shall be guaranteed by any Person other than Holdings, the Borrowers or any Subsidiary Guarantor, (iii) no such Indebtedness shall be subject to scheduled amortization or have a final maturity, in either case prior to the date occurring ninety-one (91) days following the then Latest Maturity Date (as defined in the First Lien Credit Agreement) (iv) any “asset sale” offer to purchase covenant included in the indenture governing such Indebtedness, to the extent incurred by any Credit Party, shall provide that the Lead Borrower or the respective Subsidiary shall be permitted to repay obligations, and terminate commitments, under this Agreement before offering to purchase such Indebtedness, (v) the indenture governing such Indebtedness shall not include any financial maintenance covenants, (vi) the “default to other indebtedness” event of default contained in the indenture governing such Indebtedness shall provide for a “cross-acceleration” rather than a “cross-default,” (vii) in the case of any such Indebtedness incurred by a Credit Party that is secured (a) such Indebtedness is secured by only assets comprising Collateral on a junior-lien basis relative to the Liens on such Collateral securing the Obligations of the Credit Parties, and not secured by any property or assets of the Lead Borrower or any of its Subsidiaries other than the Collateral, (b) such Indebtedness (and the Liens securing the same) are permitted by the terms of the Additional Intercreditor Agreement (to the extent the Additional Intercreditor Agreement is then in effect), (c) the security agreements relating to such Indebtedness are substantially the same as the Security Documents (with such differences as are reasonably satisfactory to the Administrative Agent) and (d) a Junior Representative acting on behalf of the holders of such Indebtedness shall have become party to the Additional Intercreditor Agreement; provided that if such Indebtedness is the initial issue of Permitted Junior Notes by the Lead Borrower that is secured by assets of the Lead Borrower or any other Credit Party, then Holdings, the Lead Borrower, the Subsidiary Guarantors, the Administrative Agent, the Collateral Agent and the Junior Representative for such Indebtedness shall have executed and delivered the Additional Intercreditor Agreement, and (viii) to the extent incurred by any Credit Party, then Holdings, the Lead Borrower, the Subsidiary Guarantors, the Administrative Agent, the Collateral Agent and the Junior Representative for such Indebtedness shall have executed and delivered the Additional Intercreditor Agreement, and (viii) to the extent incurred by any Credit Party, the covenants and defaults, taken as a whole, contained in the indenture governing such Indebtedness shall not be more onerous in any material respect than those contained in the corresponding provisions in the Second Lien Credit Agreement, except, in the case of any such Indebtedness that is secured as provided in preceding clause (vii), with respect to covenants and defaults relating to the Collateral (provided that a certificate of a Responsible Officer of the Lead Borrower delivered to the Administrative Agent in good faith at least five Business Days prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that the Lead Borrower has determined in good faith that such terms and conditions satisfy the requirement set out in the foregoing clause (vii), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent provides notice to the Lead Borrower of an objection during such five Business Day period (including a reasonable description of the basis upon which it objects)). The issuance of Permitted Junior Notes shall be deemed to be a representation and warranty by the Lead Borrower that all conditions thereto have been satisfied in all material respects and that same is permitted in accordance with the terms of this Agreement, which representation and warranty shall be deemed to be a representation and warranty for all purposes hereunder, including, without limitation, Sections 7 and 11.

“Permitted Junior Notes Documents” shall mean, after the execution and delivery thereof, each Permitted Junior Notes Indenture, and the Permitted Junior Notes, in each case as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

“Permitted Junior Notes Indenture” shall mean any indenture or similar agreement entered into in connection with the issuance of Permitted Junior Notes, as the same may be amended, modified or supplemented from time to time in accordance with the terms hereof and thereof.

“Permitted Liens” shall have the meaning provided in Section 10.01.

“Person” shall mean any individual, partnership, joint venture, firm, corporation, association, limited liability company, trust or other enterprise or any government or political subdivision or any agency, department or instrumentality thereof.

“Pinnacle Acquisition Agreement” shall have the meaning provided in Amendment No. 2.
“Pinnacle Transactions” shall have the meaning provided in Amendment No. 2.

“Pinnacle Transactions Closing Date” shall mean the date of the consummation of the Pinnacle Transactions pursuant to the Pinnacle Acquisition Agreement.

“Plan” shall mean any “pension plan” as defined in Section 3(2) of ERISA other than a Foreign Pension Plan or a Multiemployer Plan, which is subject to Title IV of ERISA or Section 412 of the Code and is (i) maintained or contributed to by (or to which there is an obligation to contribute of) the Lead Borrower or a Restricted Subsidiary of the Lead Borrower or (ii) with respect to which the Lead Borrower or a Restricted Subsidiary of the Lead Borrower has any liability, including, for greater certainty, liability arising from an ERISA Affiliate.

“Platform” shall mean IntraLinks, Syndtrak, ClearPar, or a substantially similar electronic transmission system.

“Pledge Agreement” shall have the meaning provided in Section 6.08.

“Pledge Agreement Collateral” shall mean all of the “Collateral” as defined in the Pledge Agreement and all other Equity Interests or other property similar to that pledged (or purported to have been pledged) pursuant to the Pledge Agreement and which is pledged (or purported to be pledged) pursuant to one or more Additional Security Documents.

“Pledgee” shall have the meaning provided in the Pledge Agreement.

“Pre-Adjustment Successor Rate” shall have the meaning specified in Section 3.01(e).

“Present Fair Saleable Value” shall mean the amount that could be obtained by an independent willing seller from an independent willing buyer if the assets of the Lead Borrower and its Subsidiaries taken as a whole are sold as a going concern with reasonable promptness in an arm’s-length transaction under present conditions for the sale of comparable business enterprises insofar as such conditions can be reasonably evaluated.

“Prime Rate” shall mean the rate which the Administrative Agent announces from time to time as its prime lending rate, the Prime Rate to change when and as such prime lending rate changes. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer by the Administrative Agent, which may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

“Pro Forma Basis” shall mean, with respect to the calculation of any test, financial ratio, basket or covenant under this Agreement, including the Consolidated Senior Secured Net Leverage Ratio, the Consolidated Total Net Leverage Ratio and the Consolidated Fixed Charge Coverage Ratio and the calculation of Consolidated Total Assets, of any Person and its Restricted Subsidiaries, as of any date, that pro forma effect will be given to the Transaction, any acquisition, merger, consolidation, Investment, any issuance, incurrence, assumption or repayment or redemption of Indebtedness (including Indebtedness issued, incurred or assumed or repaid or redeemed as a result of, or to finance, any relevant transaction and for which any such test, financial ratio, basket or covenant is being calculated) (but excluding the identifiable proceeds of any Indebtedness being incurred substantially simultaneously therewith or as part of the same transaction or series of related transactions for purposes of netting cash to calculate the applicable ratio), any issuance or redemption of preferred stock, all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division, segment or operating unit, any operational change (including the entry into any material contract or arrangement) or any designation of a Restricted Subsidiary to an Unrestricted Subsidiary or of an Unrestricted Subsidiary to a Restricted Subsidiary, in each case that have occurred during the four consecutive fiscal quarter period of such Person being used to calculate such test, financial ratio, basket or covenant (the “Reference Period”), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a Person who became a Restricted Subsidiary of the subject Person or was merged or
consolidated with or into the subject Person or any other Restricted Subsidiary of the subject Person after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period.

For purposes of making any computation referred to above:

(1) if any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date for which a determination under this definition is made had been the applicable rate for the entire period (taking into account any Swap Contract applicable to such Indebtedness if such Swap Contract has a remaining term in excess of 12 months);

(2) interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer, in his or her capacity as such and not in his or her personal capacity, of the Lead Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with U.S. GAAP;

(3) interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Lead Borrower may designate; and

(4) interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period.

Any pro forma calculation may include, without limitation, adjustments calculated in accordance with Regulation S-X under the Securities Act; provided that any such adjustments that consist of reductions in costs and other operating improvements or synergies (whether added pursuant to this definition, the definition "Pro Forma Cost Savings" or otherwise added to Consolidated Net Income or Consolidated EBITDA) shall be calculated in accordance with, and satisfy the requirements specified in, the definition of "Pro Forma Cost Savings."

"Pro Forma Cost Savings" shall mean, without duplication of any amounts referenced in the definition of “Pro Forma Basis,” an amount equal to the amount of cost savings, operating expense reductions, operating improvements (including the entry into any material contract or arrangement) and acquisition synergies, in each case, projected in good faith to be realized (calculated on a pro forma basis as though such items had been realized on the first day of such period) as a result of actions taken on or prior to, or to be taken by the Lead Borrower (or any successor thereto) or any Restricted Subsidiary within 24 months of, the date of such pro forma calculation, net of the amount of actual benefits realized or expected to be realized during such period that are otherwise included in the calculation of Consolidated EBITDA from such action; provided that (a) such cost savings, operating expense reductions, operating improvements and synergies are factually supportable and reasonably identifiable (as determined in good faith by a responsible financial or accounting officer, in his or her capacity as such and not in his or her personal capacity, of the Lead Borrower (or any successor thereto)) and are reasonably anticipated to be realized within 24 months after the date of such pro forma calculation and (b) no cost savings, operating expense reductions, operating improvements and synergies shall be added pursuant to this definition to the extent duplicative of any expenses or charges otherwise added to Consolidated Net Income or Consolidated EBITDA, whether through a pro forma adjustment or otherwise, for such period; provided, further, that (i) the aggregate amount added in respect of the foregoing proviso (or otherwise added to Consolidated Net Income or Consolidated EBITDA), together with any Specified Permitted Adjustments, shall not exceed with respect to any four quarter period 25% of Consolidated EBITDA for such period (calculated prior to giving effect to any such adjustments (including any Specified Permitted Adjustments)) (such limitation, the “Cost Savings Cap”) and (ii) the aggregate amount added in respect of the foregoing proviso (or otherwise added to Consolidated Net Income or Consolidated EBITDA) shall no longer be permitted to be added back to the extent the cost savings, operating expense reductions, operating improvements and synergies have not been achieved within 24 months of the action or event giving rise to such cost savings, operating expense reductions, operating improvements and synergies.
“Projections” shall mean the detailed projected consolidated financial statements of the Lead Borrower and its Subsidiaries (after giving effect to the Transaction) delivered to the Administrative Agent on or prior to the Closing Date.

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

“Properly Contested” with respect to any obligation of a Credit Party, (a) the obligation is subject to a bona fide dispute regarding amount or the Credit Party’s liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not have a Material Adverse Effect, nor result in forfeiture or sale of any assets of the Credit Party; (e) no Lien is imposed on assets of the Credit Party, unless bonded and stayed to the satisfaction of Administrative Agent; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

“Pro Rata Percentage” of any Revolving Lender at any time shall mean the percentage of the total Revolving Commitment represented by such Lender’s Revolving Commitment.

“Pro Rata Share” shall mean, with respect to each Lender at any time, a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Revolving Exposure of such Lender at such time and the denominator of which is the aggregate amount of all Aggregate Exposures at such time. The initial Pro Rata Shares of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

“Protective Advances” shall have the meaning provided in Section 2.18.

“PTE” shall mean 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 Lender” shall have the meaning provided in Section 9.01.

“Qualified ECP Guarantor” shall have the meaning provided in Section 14.11.

“Qualified Preferred Stock” shall mean any preferred capital stock of Holdings or the Lead Borrower so long as the terms of any such preferred capital stock (x) do not contain any mandatory put, redemption, repayment, sinking fund or other similar provision prior to the 91st day after the then Latest Maturity Date (as defined in the First Lien Credit Agreement) as of the date such Qualified Preferred Stock was issued other than (i) provisions requiring payment solely (or with provisions permitting Holdings or the Lead Borrower, as applicable, to opt to make payment solely) in the form of common Equity Interests or Qualified Preferred Stock of Holdings or the Lead Borrower, as applicable, or any Equity Interests of any direct or indirect Parent Company of Holdings or Holdings or the Lead Borrower, as applicable, (ii) provisions requiring payment solely as a result of a change of control or asset sale, so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale are subject to the payment in full of all Obligations in cash (other than unasserted contingent indemnification obligations) or such payment is otherwise permitted by this Agreement (including as a result of a waiver or amendment hereunder) and (iii) with respect to preferred capital stock issued to any plan for the benefit of employees of Holdings or the Lead Borrower, as applicable, or its Subsidiaries or by any such plan to such employees, provisions requiring the repurchase thereof in order to satisfy applicable statutory or regulatory obligations and (y) give Holdings or the Lead Borrower the option to elect to pay such dividends or distributions on a non-cash basis or otherwise do not require the cash payment of dividends or distributions at any time that such cash payment is not permitted under this Agreement or would result in a Default or Event of Default hereunder.

“Real Property” of any Person shall mean, collectively, the right, title and interest of such Person (including any leasehold, mineral or other estate) in and to any and all land, improvements and fixtures owned, leased or operated by such Person, together with, in each case, all easements, hereditaments and appurtenances relating
thereto, all improvements and appurtenant fixtures and equipment, all general intangibles (except for any Intellectual Property) and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

“Recovery Event” shall mean the receipt by the Lead Borrower or any of its Restricted Subsidiaries of any cash insurance proceeds or condemnation awards payable (i) by reason of theft, loss, physical destruction, damage, taking or any other similar event with respect to any property or assets of the Lead Borrower or any of its Restricted Subsidiaries (but not by reason of any loss of revenues or interruption of business or operations caused thereby) and (ii) under any policy of insurance required to be maintained under Section 9.03, in each case to the extent such proceeds or awards do not constitute reimbursement or compensation for amounts previously paid by the Lead Borrower or any of its Restricted Subsidiaries in respect of any such event.

“Reference Period” shall have the meaning provided in the definition of the term “Pro Forma Basis”.

“Refinancing First Lien Notes” shall mean “Refinancing Notes” as defined in the First Lien Credit Agreement.

“Refinancing First Lien Notes Indenture” shall mean a “Refinancing Notes Indenture” as defined in the First Lien Credit Agreement.

“Refinancing First Lien Term Loans” shall mean “Refinancing Term Loans” as defined in the First Lien Credit Agreement.

“Refinancing Notes” shall mean Refinancing First Lien Notes and Refinancing Second Lien Notes.

“Refinancing Notes Indenture” shall mean a Refinancing First Lien Notes Indenture or a Refinancing Second Lien Notes Indenture, as applicable.

“Refinancing Second Lien Notes” shall mean “Refinancing Notes” as defined in the Second Lien Credit Agreement.

“Refinancing Second Lien Notes Indenture” shall mean a “Refinancing Notes Indenture” as defined in the Second Lien Credit Agreement.

“Refinancing Second Lien Term Loans” shall mean “Refinancing Term Loans” as defined in the Second Lien Credit Agreement.

“Refinancing Term Loans” shall mean Refinancing First Lien Term Loans and Refinancing Second Lien Term Loans.

“Register” shall have the meaning provided in Section 13.15.

“Regulation D” shall mean Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof establishing reserve requirements.

“Regulation T” shall mean Regulation T of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

“Regulation U” shall mean Regulation U of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.

“Regulation X” shall mean Regulation X of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof.
“Related Adjustment” shall mean, in determining any LIBOR Successor Rate, the first relevant available alternative set forth in the order below that can be determined by the Administrative Agent applicable to such LIBOR Successor Rate:

(i) the spread adjustment, or method for calculating or determining such spread adjustment, that has been selected or recommended by the Relevant Governmental Body for the relevant Pre-Adjustment Successor Rate (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto) and which adjustment or method (x) is published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion or (y) solely with respect to Term SOFR, if not currently published, which was previously so recommended for Term SOFR and published on an information service acceptable to the Administrative Agent; or

(ii) the spread adjustment that would apply (or has previously been applied) to the fallback rate for a derivative transaction referencing the ISDA Definitions (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto).

“Related Party” shall mean (a) with respect to Platinum Equity Advisors, LLC, (i) any investment fund controlled by or under common control with Platinum Equity Advisors, LLC, any officer or director of the foregoing persons, or any entity controlled by any of the foregoing persons and (ii) any spouse or lineal descendant (including by adoption or stepchildren) of the officers and directors referred to in clause (a)(i), and (b) with respect to any officer of the Lead Borrower or its Subsidiaries, (i) any officer or director of the foregoing persons or any spouse or lineal descendant (including by adoption and stepchildren) of such officer and (ii) any trust, partnership or other entity, in each case to the extent not an operating company, of which an 80% or more controlling interest is held by the beneficiaries, stockholders, partners or owners who are the officer, any of the persons described in (b)(i) above or any combination of these identified relationships and (c) with respect to any Agent, such Agent’s Affiliates and the respective directors, officers, employees, agents and advisors of such Agent and such Agent’s Affiliates.

“Release” shall mean actively or passively disposing, discharging, injecting, spilling, pumping, leaking, leaching, dumping, emitting, escaping, emptying, pouring, seeping, migrating or the like, of any Hazardous Materials into, through or upon the Environment or within, from or into any building, structure, facility or fixture.

“Relevant Governmental Body” shall mean the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York.

“Relevant Guaranteed Obligations” shall mean (i) in the case of Holdings, (x) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of the unpaid principal and interest on each Note issued by, and all Loans made to, the Borrowers under this Agreement, together with all the other obligations (including obligations which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due), indebtedness and liabilities (including, without limitation, indemnities, fees and interest (including any interest, fees and other amounts accruing after the commencement of any bankruptcy, insolvency, receivership or similar proceeding at the rate provided for herein, whether or not such interest, fees and other amounts is an allowed or allowable claim in any such proceeding) thereon) of the Borrowers to the Lenders, the Administrative Agent and the Collateral Agent now existing or hereafter incurred under, arising out of or in connection with this Agreement and each other Credit Document (other than the Intercreditor Agreement and any other amounts accruing after the commencement of any bankruptcy, insolvency, receivership or similar proceeding at the rate provided for herein, whether or not such interest, fees and other amounts is an allowed or allowable claim in any such proceeding) of the Lead Borrower or any of its Restricted Subsidiaries owing under any Secured Bank Product Obligation and the due
performance and compliance with all terms, conditions and agreements contained therein, (ii) in the case of a Borrower, (x) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of the unpaid principal and interest on each Note issued by, and all Loans made to each other Borrower under this Agreement, together with all the other obligations (including obligations which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due), indebtedness and liabilities (including, without limitation, indemnities, fees and interest (including any interest, fees and other amounts accruing after the commencement of any bankruptcy, insolvency, receivership or similar proceeding at the rate provided for herein, whether or not such interest, fees and other amounts is an allowed or allowable claim in any such proceeding) thereon) of each other Borrower to the Lenders, the Administrative Agent and the Collateral Agent now existing or hereafter incurred under, arising out of or in connection with this Agreement and each other Credit Document (other than the Intercreditor Agreement) to which each other Borrower is a party and the due performance and compliance by the Borrowers with all the terms, conditions and agreements contained in this Agreement and in each such other Credit Document (other than the Intercreditor Agreement) and (y) the full and prompt payment when due (whether at the stated maturity, by acceleration or otherwise) of all obligations (including obligations which, but for the automatic stay under Section 362(a) of the Bankruptcy Code, would become due), liabilities and indebtedness (including any interest, fees and other amounts accruing after the commencement of any bankruptcy, insolvency, receivership or similar proceeding at the rate provided for herein, whether or not such interest, fees and other amounts is an allowed or allowable claim in any such proceeding) of any Restricted Subsidiaries of such Borrower and each other Borrower and its Restricted Subsidiaries owing under any Secured Bank Product Obligation and the due performance and compliance with all terms, conditions and agreements contained therein.

“Relevant Guaranteed Party” shall mean (i) with respect to the Lead Borrower, each Subsidiary Borrower and (ii) with respect to any Subsidiary Borrower, the Lead Borrower and any other Subsidiary Borrower.

“Relevant Public Company” shall mean, at any time on and after an Initial Public Offering, the Parent Company whose equity is traded on a United States national securities exchange.

“Replaced Lender” shall have the meaning provided in Section 3.04.

“Replacement Lender” shall have the meaning provided in Section 3.04.

“Required Lenders” shall mean Non-Defaulting Lenders, the sum of whose outstanding principal of Commitments as of any date of determination represent greater than 50% of the sum of all outstanding principal of Commitments of Non-Defaulting Lenders at such time; provided, that at any time there are at least two Non-Defaulting Lenders with Commitments, approval of the “Required Lenders” shall require the approval of at least two Non-Defaulting Lenders together holding Commitments that represent greater than 50% of the sum of all outstanding principal of Commitments of Non-Defaulting Lenders.

“Requirement of Law” or “Requirements of Law” shall mean, with respect to any Person, (i) the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person and (ii) any statute, law, treaty, rule, regulation, order, decree, writ, injunction or determination of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Reserves” shall mean, without duplication of any items that are otherwise addressed or excluded through eligibility criteria, such reserves as the Administrative Agent, from time to time determines in its Permitted Discretion, including but not limited to Dilution Reserves, plus any Tax Reserves and Bank Product Reserves.

Notwithstanding anything to the contrary in this Agreement, (i) such Reserves shall not be established or changed except upon not less than three (3) Business Days’ prior written notice to the Lead Borrower, which notice shall include a reasonably detailed description of such Reserve being established (during which period (a) the Administrative Agent shall, if requested, discuss any such Reserve or change with the Lead Borrower, (b) the Lead Borrower may take such action as may be required so that the event, condition or matter that is the basis for such Reserve or change thereto no longer exists or exists in a manner that would result in the establishment of a lower
Reserve or result in a lesser change thereto, in a manner and to the extent reasonably satisfactory to the Administrative Agent and (c) no Credit Extensions shall be made to the Borrowers if after giving effect to such Credit Extension the Outstanding Amount would exceed the Line Cap less such Reserves), and (ii) the amount of any Reserve established by the Administrative Agent, and any change in the amount of any Reserve, shall have a reasonable relationship to the event, condition or other matter that is the basis for such Reserve or such change. Notwithstanding clause (i) of the preceding sentence, changes to the Reserves solely for purposes of correcting mathematical or clerical errors shall not be subject to such notice period, it being understood that no Default or Event of Default shall be deemed to result therefrom, if applicable, for a period of six (6) Business Days.

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

“Responsible Officer” shall mean, with respect to any Person, its chief financial officer, chief executive officer, president, or any vice president, managing director, treasurer, controller or other officer of such Person having substantially the same authority and responsibility and, solely for purposes of notices given to Article 2, any other officer or employee of the applicable Credit 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 Credit Party designated in or pursuant to an agreement between the applicable Credit Party and the Administrative Agent; provided that, with respect to compliance with financial covenants, “Responsible Officer” shall mean the chief financial officer, treasurer or controller of the Lead Borrower, or any other officer of the Lead Borrower having substantially the same authority and responsibility.

“Restricted Subsidiary” shall mean each Subsidiary of the Lead Borrower other than any Unrestricted Subsidiary. The Subsidiary Borrowers shall at all times constitute Restricted Subsidiaries.

“Returns” shall have the meaning provided in Section 8.09.

“Revolving Priority Collateral” shall have the meaning assigned to the term “ABL Collateral” in the Intercreditor Agreement.

“Revolving Availability Period” shall mean the period from and including the Closing Date to but excluding the earlier of the Maturity Date and the date of termination of the Revolving Commitments.

“Revolving Borrowing” shall mean a Borrowing comprised of Revolving Loans.

“Revolving Commitment” shall mean, with respect to each Lender, the commitment, if any, of such Lender to make Revolving Loans hereunder up to the amount set forth on Schedule 2.01, or in the Assignment and Assumption Agreement pursuant to which such Lender assumed its Revolving Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 13.04. The aggregate amount of the Lenders’ Revolving Commitments on the Amendment No. 4 Effective Date is $150,000,000.

“Revolving Commitment Increase” shall have the meaning provided in Section 2.15(a).

“Revolving Commitment Increase Notice” shall have the meaning provided in Section 2.15(b).

“Revolving Exposure” shall mean, with respect to any Lender at any time, the aggregate principal amount at such time of all outstanding Revolving Loans of such Lender, plus the aggregate amount at such time of such Lender’s LC Exposure, plus the aggregate amount at such time of such Lender’s Swingline Exposure.

“Revolving Lender” shall mean a Lender with a Revolving Commitment.
“Revolving Loans” shall mean advances made to or at the instructions of the Lead Borrower pursuant to Section 2 hereof and may constitute Revolving Loans, Swingline Loans, Protective Advances, or Overadvance Loans.

“Revolving Note” shall mean each revolving note substantially in the form of Exhibit B-1 hereto.

“S&P” shall mean Standard & Poor’s Ratings Services, a division of the McGraw Hill Company, Inc., and any successor owner of such division.

“Sale-Leaseback Transaction” shall mean any arrangements with any Person providing for the leasing by the Lead Borrower or any of its Restricted Subsidiaries of real or personal property which has been or is to be sold or transferred by the Lead Borrower or such Restricted Subsidiary to such Person or to any other Person to whom funds have been or are to be advanced by such Person in connection therewith.

“Sanctioned Country” shall mean, at any time, a country, region or territory which is, or whose government is, the target of any Sanctions (currently, Iran, Sudan, Syria, North Korea, Cuba and the Crimea region of Ukraine).

“Sanctioned Person” shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State or by the United Nations Security Council, the European Union or any EU member state or Her Majesty’s Treasury of the United Kingdom, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person controlled by any such Person.

“Sanctions” shall mean any comprehensive economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom.

“SEC Scheduled Unavailability Date” shall have the meaning provided in Section 9.01(j).

“Second Lien Collateral Agent” shall mean Bank of America, N.A., as collateral agent under the Second Lien Credit Agreement or any successor thereto acting in such capacity.

“SEC” shall have the meaning provided in Section 9.01(g).

“Second Lien Credit Agreement” shall mean (i) that certain Second Lien Term Loan Credit Agreement, dated as of the Closing Date, among Holdings, the Lead Borrower, certain Subsidiaries of the Borrower from time to time party thereto, the lenders from time to time party thereto, and Bank of America, as administrative agent, and (ii) any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any Indebtedness or other financial accommodation that has been incurred to extend (subject to the limitations set forth herein and in the Intercreditor Agreement) or refinance in whole or in part the Indebtedness and other obligations outstanding under (x) the credit agreement referred to in clause (i) or (y) any subsequent Second Lien Credit Agreement, unless such agreement or instrument expressly provides that it is not intended to be and is not a Second Lien Credit Agreement hereunder. Any reference to the Second Lien Credit Agreement hereunder shall be deemed a reference to any Second Lien Credit Agreement then in existence.

“Second Lien Credit Documents” shall have the meaning ascribed to the term “Credit Documents” in the Second Lien Credit Agreement.

“Section 9.01 Financials” shall mean the annual and quarterly financial statements required to be delivered pursuant to Sections 9.01(a) and (b).
“Secured Bank Product Obligations” shall mean Bank Product Debt owing to a Secured Bank Product Provider or any Person that was a Secured Bank Product Provider on the Closing Date or at the time it entered into a Bank Product with a Borrower or its Subsidiary, up to the maximum amount (in the case of any Secured Bank Product Provider other than Bank of America and its Affiliates) specified by such provider in writing to the Administrative Agent, which amount may be established or increased (by further written notice by the Lead Borrower to the Administrative Agent from time to time) as long as no Default or Event of Default then exists and no Overadvance would result from establishment of a Bank Product Reserve for such amount and all other Secured Bank Product Obligations.

“Secured Bank Product Provider” shall mean, at the time of entry into a Bank Product with a Borrower or its Subsidiary (or, if such Bank Product exists on the Closing Date, as of the Closing Date) the Administrative Agent, any Lender or any of their respective Affiliates that is providing a Bank Product; provided such provider delivers written notice to the Administrative Agent, substantially in the form of Exhibit D hereto, by the later of ten (10) days following (x) the Closing Date and (y) creation of the Bank Product, (i) describing the Bank Product and setting forth the maximum amount to be secured by the Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by Section 12.12. It is hereby understood that a Person may not be a Secured Bank Product Provider to the extent it is similarly treated as such under the First Lien Credit Agreement in respect of such Bank Product.

“Secured Creditors” shall have the meaning assigned that term in the respective Security Documents.

“Securities Act” shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.


“Security Agreement” shall have the meaning provided in Section 6.09.

“Security Document” shall mean and include each of the Security Agreement, the Pledge Agreement and, after the execution and delivery thereof, each Additional Security Document.

“Settlement Date” shall have the meaning provided in Section 2.14(b).

“Similar Business” shall mean any business and any services, activities or businesses incidental, or reasonably related or similar to, or complementary to any line of business engaged in by the Lead Borrower and its Restricted Subsidiaries on the Closing Date (after giving effect to the Transaction) or any business activity that is a reasonable extension, development or expansion thereof or ancillary thereto.

“SOFR” with respect to any Business Day shall mean the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark (or a successor administrator) on the Federal Reserve Bank of New York’s website (or any successor source) at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day and, in each case, that has been selected or recommended by the Relevant Governmental Body.

“Solvent” and “Solvency” shall mean, with respect to any Person on any date of determination, that on such date (i) the Fair Value of the assets of such Person and its Subsidiaries on a consolidated basis, is greater than the total amount of liabilities, including contingent liabilities, of such Person and its Subsidiaries, on a consolidated basis (it being understood that the amount of contingent liabilities at any time shall be computed as the amount that, in 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); (ii) the Present Fair Saleable Value of the assets of such Person and its Subsidiaries on a consolidated basis, is greater than the total amount of liabilities, including contingent liabilities, of such Person and its Subsidiaries on a consolidated basis (it being understood that the amount of contingent liabilities at any time shall be computed as the amount that, in 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); (iii) such Person and its Subsidiaries on a consolidated basis are able to pay their debts and liabilities (including, without limitation, contingent and subordinated liabilities) as they become absolute and mature in the ordinary course of business on their respective stated maturities and are otherwise “solvent” within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances; and (iv) such Person and its Subsidiaries on a consolidated basis will have adequate capital with which to conduct the business they are presently conducting and reasonably anticipate conducting.

“Special Dividend” shall mean the payment by the Lead Borrower to one or more Parent Companies, on or after the Closing Date, of one or more Dividends in an amount not to exceed $350,000,000 in the aggregate.

“Specified Credit Party” shall have the meaning provided in Section 14.11.

“Specified Equity Contribution” shall have the meaning provided in Section 10.11(b).

“Specified Event of Default” shall mean any Event of Default arising under Section 11.01, 11.03(i) (solely relating to a failure to comply with Section 9.17(c)), 11.03(ii) or 11.05.

“Specified Permitted Adjustments” shall mean all adjustments to Consolidated EBITDA identified in the confidential information memorandum for the Initial Term Loans (as defined in the First Lien Credit Agreement) dated September 27, 2016 to the extent such adjustments, without duplication, continue to be applicable to the reference period (it being understood that such adjustments shall be calculated net of the amount of actual benefits realized or expected to be realized during such reference period that are otherwise included in the calculation of Consolidated EBITDA).

“Sponsor” shall mean Platinum Equity Advisors, LLC and its Affiliates (excluding any operating portfolio company thereof).

“Sponsor Affiliate” shall mean the collective reference to any entities (other than a portfolio company) controlled directly or indirectly by the Sponsor.

“Spot Rate” shall mean the exchange rate, as determined by the Administrative Agent, that is applicable to conversion of one currency into another currency, which is (a) the exchange rate reported by Bloomberg (or other commercially available source designated by the Administrative Agent) as of the end of the preceding business day in the financial market for the first currency; or (b) if such report is unavailable for any reason, the spot rate for the purchase of the first currency with the second currency as in effect during the preceding business day in the Administrative Agent’s principal foreign exchange trading office for the first currency.

“Stated Liabilities” shall mean the recorded liabilities (including contingent liabilities that would be recorded in accordance with U.S. GAAP) of the Lead Borrower and its Subsidiaries taken as a whole, as of the Closing Date after giving effect to the consummation of the Transaction, determined in accordance with U.S. GAAP consistently applied, together with the principal amount of all New Financing.

“Subsequent Transaction” shall have the meaning provided in Section 1.03.

“Subsidiaries Guaranty” shall have the meaning provided in Section 6.10.

“Subsidiary” shall mean, as to any Person, (i) any corporation more than 50% of whose stock of any class or classes having by the terms thereof ordinary voting power to elect a majority of the directors of such corporation (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned by such Person and/or one or more Subsidiaries of such Person and (ii) any partnership, limited liability company, association, joint venture or other entity in which such Person and/or one or more Subsidiaries of such Person has more than a 50% Equity Interest at the time.
“Subsidiary Borrower” shall mean any Domestic Subsidiaries of the Lead Borrower that own any assets included in the Borrowing Base and that execute a counterpart hereto and to any other applicable Credit Document as a Borrower.

“Subsidiary Guarantor” shall mean (x) Intermediate Holdings and (y) each other Domestic Subsidiary of the Lead Borrower (other than the Subsidiary Borrowers) in existence on the Closing Date (after giving effect to the Transaction) other than any Excluded Subsidiary, as well as each Domestic Subsidiary of the Lead Borrower established, created or acquired after the Closing Date which becomes a party to the Subsidiaries Guaranty in accordance with the requirements of this Agreement or the provisions of the Subsidiaries Guaranty.

“Supermajority Lenders” shall mean those Non-Defaulting Lenders which would constitute the Required Lenders under, and as defined in, this Agreement if the percentage “50%” contained therein were changed to “66-2/3%.”

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

“Swingline Commitment” shall mean the commitment of the Swingline Lender to make loans pursuant to Section 2.12, as the same may be reduced from time to time pursuant to Section 2.07 or Section 2.12.

“Swingline Exposure” shall mean at any time the aggregate principal amount at such time of all outstanding Swingline Loans. The Swingline Exposure of any Revolving Lender at any time shall equal its Pro Rata Percentage of the aggregate Swingline Exposure at such time.

“Swingline Lender” shall mean Bank of America.

“Swingline Loan” shall mean any Loan made by the Swingline Lender pursuant to Section 2.12.

“Swingline Note” shall mean each swingline note substantially in the form of Exhibit B-2 hereto.

“Syndication Agents” shall mean Bank of America, Citizens Bank, National Association, Truist Bank and Morgan Stanley Senior Funding, Inc., in their capacities as co-syndication agents under this Agreement.

“Synthetic Lease” shall mean a lease transaction under which the parties intend that (i) the lease will be treated as an “operating lease” by the lessee and (ii) the lessee will be entitled to various tax and other benefits ordinarily available to owners (as opposed to lessees) of like property.

“Revaluation Date” shall mean, with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit denominated in an Alternative Currency, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof, (iii) each date of any payment by the Issuing
Bank under any Letter of Credit denominated in an Alternative Currency and (iv) such additional dates as the Administrative Agent or the Issuing Bank shall determine or the Required Lenders shall require.

“Taxes” shall mean any and all present or future taxes, levies, impostes, duties, deductions, charges, fees, assessments, liabilities or withholdings imposed by any Governmental Authority in the nature of a tax, including interest, penalties and additions to tax with respect thereto.

“Tax Group” shall have the meaning provided in Section 10.03(vi)(B).

“Tax Reserve” shall mean, as of any date of determination, an amount equal to the sum of (i) any past due federal income taxes and (ii) any federal payroll taxes then due, in each case, owing by a Borrower.

“Term Priority Collateral” shall have the meaning assigned to the term “Fixed Asset Collateral” in the Intercreditor Agreement.

“Term SOFR” shall mean the forward-looking term rate for any period that is approximately (as determined by the Administrative Agent) as long as any of the Interest Period options set forth in the definition of “Interest Period” and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion.

“Test Period” shall mean each period of four consecutive fiscal quarters of the Lead Borrower (in each case taken as one accounting period).

“Threshold Amount” shall mean $25,000,000.

“Transaction” shall mean, collectively, (i) the consummation of the Existing Credit Agreement Refinancing, (ii) the entering into of the Credit Documents and the incurrence of the Loans on the Closing Date, (iii) the entering into of the Second Lien Credit Agreement and the incurrence of term loans thereunder, (iv) the entering into of the First Lien Credit Agreement and the initial borrowings thereunder, (v) payment of the Special Dividend and (vi) the payment of all Transaction Costs.

“Transaction Costs” shall mean the fees, premiums and expenses payable by Holdings, the Lead Borrower and its Subsidiaries in connection with the transactions described in clauses (i) through (v) of the definition of “Transaction.”

“Type” shall mean the type of Loan determined with regard to the interest option applicable thereto, i.e., whether a Base Rate Loan or a LIBO Rate Loan.

“UCC” shall mean the Uniform Commercial Code as from time to time in effect in the relevant jurisdiction.

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“Unfunded Pension Liability” of any Plan subject to Title IV of ERISA shall mean the amount, if any, by which the present value of the accumulated plan benefits under the Plan determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all plan assets of such Plan.
“United States” and “U.S.” shall each mean the United States of America.

“Unrestricted Subsidiary” shall mean (i) on the Closing Date, each Subsidiary of the Lead Borrower listed on Schedule 1.01(B) and (ii) any Subsidiary of the Lead Borrower designated by the board of directors of the Lead Borrower as an Unrestricted Subsidiary pursuant to Section 9.16 subsequent to the Closing Date, in each case, except to the extent redesignated as a Restricted Subsidiary in accordance with such Section 9.16; provided, however, that no Subsidiary Borrower or any Restricted Subsidiary that owns any Equity Interests of any Subsidiary Borrower shall be designated as an Unrestricted Subsidiary.

“Unused Line Fee” shall have the meaning provided in Section 2.05(g).

“Unused Line Fee Rate” shall mean (i) initially, 0.50% per annum on the average daily unused Availability, calculated based upon the actual number of days elapsed over a 360-day year payable quarterly in arrears and (ii) from and after the delivery by the Lead Borrower to the Administrative Agent of the Borrowing Base Certificate for the first full fiscal quarter completed after the Closing Date, determined by reference to the following grid on a per annum basis based on the Average Usage as a percentage of the Revolving Commitments during the immediately preceding fiscal quarter:

<table>
<thead>
<tr>
<th>Average Usage</th>
<th>Unused Line Fee Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt; 50%</td>
<td>0.50%</td>
</tr>
<tr>
<td>≥ 50%</td>
<td>0.375%</td>
</tr>
</tbody>
</table>

“U.S. Dollars” and the sign “$” shall each mean freely transferable lawful money (expressed in dollars) of the United States.

“U.S. GAAP” shall mean generally accepted accounting principles in the United States of America as in effect from time to time; provided that determinations made pursuant to this Agreement in accordance with U.S. GAAP are subject (to the extent provided therein) to Section 13.07(a).

“U.S. Tax Compliance Certificate” shall have the meaning provided in Section 5.01(c).

“Weighted Average Life to Maturity” shall mean, when applied to any Indebtedness at any date, the number of years obtained by dividing (i) the then outstanding principal amount of such Indebtedness into (ii) the product obtained by multiplying (x) the amount of each then remaining installment or other required scheduled payments of principal, including payment at final maturity, in respect thereof, by (y) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment.

“Wholly-Owned Domestic Subsidiary” shall mean, as to any Person, any Wholly-Owned Subsidiary of such Person which is a Domestic Subsidiary of such person.

“Wholly-Owned Foreign Subsidiary” shall mean, as to any Person, any Wholly-Owned Subsidiary of such Person which is a Foreign Subsidiary of such Person.

“Wholly-Owned Restricted Subsidiary” shall mean, as to any Person, any Wholly-Owned Subsidiary of such Person which is a Restricted Subsidiary of such Person.

“Wholly-Owned Subsidiary” shall mean, as to any Person, (i) any corporation 100% of whose capital stock is at the time owned by such Person and/or one or more Wholly-Owned Subsidiaries of such Person and (ii) any partnership, association, joint venture or other entity in which such Person and/or one or more Wholly-Owned Subsidiaries of such Person owns 100% of the Equity Interests at such time (other than, in the case of a Foreign Subsidiary with respect to preceding clauses (i) or (ii), director’s qualifying shares and/or other nominal amounts of shares required to be held by Persons other than the Lead Borrower and its Subsidiaries under applicable law).
“Write-Down and Conversion Powers” shall mean, (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 Terms Generally and Certain Interpretive Provisions

The definitions in Section 1.01 shall apply equally to both 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”; and the words “asset” and “property” shall be construed as having 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. 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 of this Agreement unless the context shall otherwise require. All references herein to Articles, Sections, paragraphs, clauses, subclauses, Exhibits and Schedules shall be deemed references to Articles, Sections, paragraphs, clauses and subclasses of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Unless otherwise expressly provided herein, (a) all references to documents, instruments and other agreements (including the Credit Documents and organizational documents) shall be deemed to include all subsequent amendments, restatements, amendments and restatements, supplements and other modifications thereto, but only to the extent that such amendments, restatements, amendments and restatements, supplements and other modifications are not prohibited by any Credit Document and (b) references to any law, statute, rule or regulation shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such law. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). Any reference herein to a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company, or an allocation of assets to a series of a limited liability company (or the unwinding of such a division or allocation), as if it were a merger, transfer, consolidation, amalgamation, consolidation, assignment, sale, disposition or transfer, or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company shall constitute a separate Person hereunder (and each division of any limited liability company that is a Subsidiary, joint venture or any other like term shall also constitute such a Person or entity).

Section 1.03 Limited Condition Transactions

Notwithstanding anything to the contrary in this Agreement, in connection with any action being taken in connection with a Limited Condition Transaction, for purposes of:

(i) determining compliance with any provision of this Agreement which requires the calculation of any financial ratio or test, including the Consolidated Senior Secured Net Leverage Ratio and Consolidated Total Net Leverage Ratio and Consolidated Fixed Charge Coverage Ratio;

(ii) testing availability under baskets set forth in this Agreement (including baskets determined by reference to Consolidated Total Assets); or
in each case, at the option of the Lead Borrower (the Lead Borrower’s election to exercise such option in connection with any Limited Condition Transaction, an “LCT Election”), the date of determination of whether any such action is permitted hereunder shall be made (1) in the case of any acquisition (including by way of merger) or similar Investment (including the assumption or incurrence of Indebtedness in connection therewith), at the time of (or on the basis of the Section 9.01 Financials for the most recently ended Test Period at the time of) either (x) the execution of the definitive agreement with respect to which such acquisition or Investment or (y) the consummation of such acquisition or Investment, (2) in the case of any Dividend, at the time of (or on the basis of the Section 9.01 Financials for the most recently ended Test Period at the time of) (x) the declaration of such Dividend or (y) the making of such Dividend and (3) in the case of any voluntary or optional payment or prepayment on or redemption or acquisition for value of any Indebtedness subject to Section 10.07(a), at the time of (or on the basis of the Section 9.01 Financials for the most recently ended Test Period at the time of) (x) the delivery of irrevocable (which may be conditional) notice with respect to such payment or prepayment or redemption or acquisition of such Indebtedness or (y) the making of such voluntary or optional payment or prepayment on or redemption or acquisition for value of any Indebtedness (the “LCT Test Date”), and if, for the Limited Condition Transaction (and the other transactions to be entered into in connection therewith), the Lead Borrower or any of its Restricted Subsidiaries would have been permitted to take such action on the relevant LCT Test Date in compliance with such ratio, test or basket, such ratio, test or basket shall be deemed to have been complied with, except that, for the avoidance of doubt, in no event will the determination of Availability (on a stand-alone basis or as a component of Payment Conditions or Distribution Conditions) be made on any date other than the date of any applicable acquisition, Dividend, or other transaction. For the avoidance of doubt, if the Lead Borrower has made an LCT Election and any of the ratios, tests or baskets for which compliance was determined or tested as of the LCT Test Date would have failed to have been complied with as a result of fluctuations in any such ratio, test or basket, including due to fluctuations in Consolidated EBITDA or Consolidated Total Assets of the Lead Borrower or the Person subject to such Limited Condition Transaction, at or prior to the consummation of the relevant transaction or action, such baskets, tests or ratios will not be deemed to have failed to have been complied with as a result of such fluctuations. If the Lead Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any calculation of any ratio, test or basket availability with respect to the incurrence of Indebtedness or Liens, the making of Dividends, the making of any Investment permitted under Section 10.05, mergers, the conveyance, lease or other transfer of all or substantially all of the assets of the Lead Borrower, the prepayment, redemption, purchase, defeasance or other satisfaction of Indebtedness, or the designation of an Unrestricted Subsidiary (each, a “Subsequent Transaction”) following the relevant LCT Test Date and prior to the earlier of the date on which such Limited Condition Transaction is consummated or the date that the definitive agreement or irrevocable notice for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction, for purposes of determining whether such Subsequent Transaction is permitted under this Agreement, any such ratio, test or basket shall be required to be satisfied on a Pro Forma Basis assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence of Indebtedness and the use of proceeds thereof) have been consummated.

Section 1.04 Exchange Rates; Currency Equivalent

All references in the Credit Documents to Loans, Letters of Credit, Obligations, Borrowing Base components and other amounts shall be denominated in Dollars, unless expressly provided otherwise. The Dollar Equivalent of any amounts denominated or reported under a Credit Document in a currency other than Dollars shall be determined by the Administrative Agent on a daily basis, based on the current Spot Rate. The Lead Borrower shall report value and other Borrowing Base components to the Administrative Agent in the currency invoiced by the Lead Borrower or shown in the Lead Borrower’s financial records, and unless expressly provided otherwise, shall deliver financial statements and calculate financial covenants in Dollars. Notwithstanding anything herein to the contrary, if any Obligation is funded and expressly denominated in a currency other than Dollars, the Borrowers shall repay such Obligation in such other currency.
ARTICLE 2  Amount and Terms of Credit

Section 2.01  The Commitments

Subject to the terms and conditions and relying upon the representations and warranties herein set forth, each Lender agrees, severally and not jointly, to make Revolving Loans to the Borrowers, at any time and from time to time on and after the Closing Date until the earlier of one Business Day prior to the Maturity Date and the termination of the Commitment of such Lender in accordance with the terms hereof, in an aggregate principal amount at any time outstanding that will not result in (i) such Lender’s Revolving Exposure exceeding the lesser of (A) such Lender’s Revolving Commitment, and (B) such Lender’s Pro Rata Percentage multiplied by the Borrowing Base then in effect or (ii) the total Revolving Loans made on the Closing Date exceeding the maximum amount permitted to be used on the Closing Date pursuant to Section 8.08. Within the limits set forth above and subject to the terms, conditions and limitations set forth herein, the Borrowers may borrow, pay or prepay and reborrow Revolving Loans. All Borrowers shall be jointly and severally liable as borrowers for all Loans regardless of which Borrower receives the proceeds thereof.

Section 2.02  Loans

(a) Each Loan (other than Swingline Loans) shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their applicable Commitments; provided that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). Except for Loans deemed made pursuant to Section 2.02(f), Loans (other than Swingline Loans) comprising any Borrowing shall be in an aggregate principal amount that is (i) (A) in the case of Base Rate Loans, not less than $500,000 and (B) in the case of LIBO Rate Loans, an integral multiple of $250,000 and not less than $1,000,000, or (ii) equal to the remaining available balance of the applicable Revolving Commitments.

(b) Subject to Section 3.01, each Borrowing shall be comprised entirely of Base Rate Loans or LIBO Rate Loans as the Lead Borrower may request pursuant to Section 2.03. Each Lender may at its option make any LIBO Rate Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement or cause the Borrowers to pay additional amounts pursuant to Section 3.01. Borrowings of more than one Type may be outstanding at the same time; provided further that the Borrowers shall not be entitled to request any Borrowing that, if made, would result in more than ten (10) Borrowings of LIBO Rate Loans outstanding hereunder at any one time. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Except with respect to Loans made pursuant to Section 2.02(f), each Lender shall make each Loan (other than Swingline Loans) to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account in New York City as the Administrative Agent may designate not later than 3:00 p.m., New York City time, and the Administrative Agent shall promptly credit the amounts so received to an account as directed by the Lead Borrower in the applicable Notice of Borrowing maintained with the Administrative Agent or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met or waived, return the amounts so received to the respective Lenders.

(d) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing that such Lender will not make available to the Administrative Agent such
Lender’s portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (c) above, and the Administrative Agent may, in reliance upon such assumption, make available to the applicable Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, such Lender and the Lead Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to such Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of the Lead Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, a rate determined by the Administrative Agent to represent its cost of overnight or short-term funds (which determination shall be conclusive absent manifest error). If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender’s Loan as part of such Borrowing for purposes of this Agreement.

(e) Notwithstanding any other provision of this Agreement, the Lead 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.

(f) If the Issuing Bank shall not have received from the Lead Borrower the payment required to be made by Section 2.13(e) within the time specified in such Section, the Issuing Bank will promptly notify the Administrative Agent of the LC Disbursement and the Administrative Agent will promptly notify each Revolving Lender of such LC Disbursement and its Pro Rata Percentage thereof. Each Revolving Lender shall pay by wire transfer of immediately available funds to the Administrative Agent on such date (or, if such Revolving Lender shall have received such notice later than 12:00 (noon), New York City time, on any day, not later than 11:00 a.m., New York City time, on the immediately following Business Day), an amount equal to such Lender’s Pro Rata Percentage of such LC Disbursement (it being understood that such amount shall be deemed to constitute a Base Rate Loan of such Lender, and such payment shall be deemed to have reduced the LC Exposure), and the Administrative Agent will promptly pay to the Issuing Bank amounts so received by it from the Revolving Lenders. The Administrative Agent will promptly pay to the Issuing Bank any amounts received by it from the Lead Borrower pursuant to Section 2.13(e) prior to the time that any Revolving Lender makes any payment pursuant to this paragraph (f); any such amounts received by the Administrative Agent thereafter will be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made such payments and to the Issuing Bank, as their interests may appear. If any Revolving Lender shall not have made its Pro Rata Percentage of such LC Disbursement available to the Administrative Agent as provided above, such Lender and the Lead Borrower severally agree to pay interest on such amount, for each day from and including the date such amount is required to be paid in accordance with this paragraph (f) to but excluding the date such amount is paid, to the Administrative Agent for the account of the Issuing Bank at (i) in the case of the Lead Borrower, a rate per annum equal to the interest rate applicable to Revolving Loans pursuant to Section 2.06(a), and (ii) in the case of such Lender, for the first such day, the Federal Funds Rate, and for each day thereafter, the Base Rate.

Section 2.03 Borrowing Procedure

To request a Revolving Borrowing, the Lead Borrower shall notify the Administrative Agent of such request by telexcopy or electronic transmission (if arrangements for doing so have been approved by the Administrative Agent, which approval shall not be unreasonably withheld, conditioned or delayed) or telephone (promptly confirmed by telexcopy or electronic transmission) (i) in the case of a Borrowing of LIBO Rate Loans, not later than 1:00 p.m., New York City time, three Business Days before the date of the proposed Borrowing or (ii) in
the case of a Borrowing of Base Rate Loans (other than Swingline Loans), not later than 1:00 p.m., New York City time, on the date of the proposed Borrowing. Each such telephonic Notice of Borrowing shall be irrevocable, subject to Sections 2.09 and 3.01, and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Notice of Borrowing in a form approved by the Administrative Agent and signed by the Lead Borrower. Each such telephonic and written Notice of Borrowing shall specify the following information in compliance with Section 2.02:

(a) the aggregate amount of such Borrowing;
(b) the date of such Borrowing, which shall be a Business Day;
(c) whether such Borrowing is to be a Borrowing of Base Rate Loans or a Borrowing of LIBO Rate Loans;
(d) in the case of a Borrowing of LIBO Rate Loans, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term “Interest Period”; provided that if the Borrowers wish to request LIBO Rate Loans having an Interest Period other than one, two, three or six months in duration as provided in the definition of “Interest Period,” the applicable notice must be received by the Administrative Agent not later than 11:00 a.m., New York City time, four Business Days prior to the requested date of such Borrowing, conversion or continuation, whereupon the Administrative Agent shall give prompt notice to each Lender of such request and determine whether the requested Interest Period is acceptable to all of them and the Administrative Agent shall notify the Lead Borrower (which notice may be by telephone) not later than 11:00 a.m., New York City time, three Business Days before the requested date of such Borrowing, conversion or continuation whether or not the requested Interest Period has been consented to by such Lenders; and
(e) the location and number of the account to which funds are to be disbursed, which shall comply with the requirements of Section 2.02.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Borrowing of Base Rate Loans. If no Interest Period is specified with respect to any requested Borrowing of LIBO Rate Loans, then the Lead Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a Notice of Borrowing in accordance with this Section 2.03, 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 Evidence of Debt; Repayment of Loans
(a) Each Borrower, jointly and severally, 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 of such Lender on the Maturity Date and (ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the Maturity Date.
(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. The Lead Borrower shall be entitled to review records of such accounts with prior reasonable notice during normal business hours.
(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the 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 Borrowers 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. Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrowers to such Lender. The Lead Borrower shall be entitled to review records of such accounts with prior reasonable notice during normal business hours.

(d) The entries made in the accounts maintained pursuant to paragraphs (b) and (c) above shall be prima facie evidence of the existence and amounts of the obligations therein recorded absent manifest error; 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 obligations of the Borrowers to repay the Loans in accordance with their terms.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the applicable Borrower shall promptly 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) substantially in the form of Exhibit B-1 or Exhibit B-2, as applicable.

Section 2.05 Fees

(a) Unused Line Fee. The Borrowers shall, jointly and severally, pay to the Administrative Agent, for the Pro Rata benefit of the Lenders (other than any Defaulting Lender), a fee equal to the Unused Line Fee Rate multiplied by the amount by which the Revolving Commitments (other than Revolving Commitments of a Defaulting Lender) exceed the average daily balance of outstanding Revolving Loans (other than Swingline Loans) and stated amount of outstanding Letters of Credit during any calendar quarter (such fee, the “Unused Line Fee”). Such fee shall accrue commencing on the Closing Date, and will be payable in arrears, on each Adjustment Date, commencing with January 1, 2017.

(b) Administrative Agent Fees. The Borrowers, jointly and severally, agree to pay to the Administrative Agent, for its own account, the fees set forth in the Fee Letter or such other fees payable in the amounts and at the times separately agreed upon between the Lead Borrower and the Administrative Agent (the “Administrative Agent Fees”).

(c) LC and Fronting Fees. The Borrowers, jointly and severally, agree to pay (i) to the Administrative Agent for the account of each Revolving Lender a participation fee (“LC Participation Fee”) with respect to its participations in Letters of Credit, which shall accrue at a rate equal to the Applicable Margin from time to time used to determine the interest rate on LIBO Rate Loans pursuant to Section 2.06, on the average daily amount of such Lender’s LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Closing 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 the Issuing Bank a fronting fee (“Fronting Fee”), which shall accrue at the rate of 0.125% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Closing 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, as well as the Issuing Bank’s standard and reasonable fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder as agreed among the Lead Borrower and the Issuing Bank from time to time. LC Participation Fees and Fronting Fees shall be payable on each Adjustment Date, commencing with January 1, 2017; 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 (including documentation reasonably supporting such request). Any other fees payable to the Issuing Bank pursuant to this paragraph shall be payable within 10 days after written demand (together with backup documentation supporting such reimbursement request). All LC 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).

(d) All fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the Lenders (other than Defaulting Lenders), except that the Fronting Fees shall be paid directly to the Issuing Bank. Once paid, none of the fees shall be refundable under any circumstances.

Section 2.06 Interest on Loans

(a) Subject to the provisions of Section 2.06(c), the Loans comprising each Borrowing of Base Rate Loans, including each Swingline Loan, shall bear interest at a rate per annum equal to the Base Rate plus the Applicable Margin in effect from time to time.

(b) Subject to the provisions of Section 2.06(c), the Loans comprising each Borrowing of LIBO Rate Loans shall bear interest at a rate per annum equal to the LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin in effect from time to time.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fees or other amount payable by the Borrowers hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of, or interest on, any Loan, 2% plus the rate otherwise applicable to such Loan or (ii) in the case of any other amount, 2% plus the rate applicable to Base Rate Loans.

(d) Accrued interest on each Loan shall be payable in arrears (i) in the case of Base Rate Loans, on each Adjustment Date, commencing with January 1, 2017, for such Base Rate Loans, (ii) in the case of LIBO Rate Loans, at the end of the current Interest Period therefor and, in the case of an Interest Period in excess of three months, on each date occurring at three-month intervals after the first day of such Interest Period and (iii) in the case of Revolving Loans, upon termination of the Revolving Commitments; provided that (x) interest accrued pursuant to paragraph (c) of this Section 2.06 shall be payable on demand and, absent demand, on each Adjustment Date, at the end of the current Interest Period and upon termination of the Revolving Commitments, as applicable, (y) in the event of any repayment or prepayment of any Loan (other than a prepayment of a Base Rate Loan prior to the end of the Revolving Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (z) in the event of any conversion of any LIBO Rate 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.

(e) All interest hereunder shall be computed on the basis of a year of 365/366 days, except that interest computed by reference to the LIBO Rate (other than Base Rate Loans determined by reference to the LIBO Rate) and all fees shall be computed on the basis of a year of 360 days, 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 Base Rate or LIBO Rate shall be determined by the Administrative Agent in
accordance with the provisions of this Agreement and such determination shall be conclusive absent manifest error.

Section 2.07 Termination and Reduction of Commitments

(a) The Revolving Commitments, the Swingline Commitment, and the LC Commitment shall automatically terminate on the Maturity Date.

(b) The Lead Borrower may at any time terminate, or from time to time reduce, the Revolving Commitments; provided that (i) any such reduction shall be in an amount that is an integral multiple of $1,000,000 and (ii) the Revolving Commitments shall not be terminated or reduced if after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.09, the Aggregate Exposures would exceed the Aggregate Commitments.

(c) The Lead Borrower shall notify the Administrative Agent of any election to terminate or reduce the Aggregate Commitments under paragraph (b) of this Section 2.07 at least two Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Each notice delivered by the Lead Borrower pursuant to this Section 2.07 shall be irrevocable except that, to the extent delivered in connection with a refinancing of the Obligations, such notice shall not be irrevocable until such refinancing is closed and funded. Any effectuated termination or reduction of the Aggregate Commitments shall be permanent. Each reduction of the Aggregate Commitments shall be made ratably among the Lenders in accordance with their respective Revolving Commitments.

Section 2.08 Interest Elections

(a) Each Revolving Borrowing initially shall be of the Type specified in the applicable Notice of Borrowing and, in the case of a Borrowing of LIBO Rate Loans, shall have an initial Interest Period as specified in such Notice of Borrowing. Thereafter, the Lead Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Borrowing of LIBO Rate Loans, may elect Interest Periods therefor, all as provided in this Section 2.08. The Lead 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. Notwithstanding anything to the contrary, the Lead Borrower shall not be entitled to request any conversion or continuation that, if made, would result in more than ten (10) Borrowings of LIBO Rate Loans outstanding hereunder at any one time. This Section 2.08 shall not apply to Swingline Loans, which may not be converted or continued.

(b) To make an election pursuant to this Section 2.08, the Lead Borrower shall notify the Administrative Agent of such election by telephone or electronic transmission (if arrangements for doing so have been approved by the Administrative Agent, which approval shall not be unreasonably withheld, delayed or conditioned) by the time that a Notice of Borrowing would be required under Section 2.03 if the Lead Borrower was requesting a Revolving Borrowing of the Type resulting from such election to be made on the effective date of such election, subject to Section 3.05. Each such telephonic Notice of Conversion/Continuation shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Notice of Conversion/Continuation substantially in the form of Exhibit A-2, unless otherwise agreed to by the Administrative Agent and the Lead Borrower.
(c) Each telephonic and written Notice of Conversion/Continuation shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Notice of Conversion/Continuation 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 Notice of Conversion/Continuation, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be a Borrowing of Base Rate Loans or a Borrowing of LIBO Rate Loans; and

(iv) if the resulting Borrowing is a Borrowing of LIBO Rate Loans, 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 Notice of Conversion/Continuation requests a Borrowing of LIBO Rate Loans but does not specify an Interest Period, then the Lead Borrower shall be deemed to have selected an Interest Period of one month’s duration.

(d) Promptly following receipt of an Notice of Conversion/Continuation, the Administrative Agent shall advise each Lender of the details thereof and of such Lender’s portion of each resulting Borrowing.

(e) If a Notice of Conversion/Continuation with respect to a Borrowing of LIBO Rate Loans is not timely delivered 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 a Borrowing of Base Rate Loans. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Lead Borrower, then, after the occurrence and during the continuance of such Event of Default (i) no outstanding Borrowing may be converted to or continued as a Borrowing of LIBO Rate Loans and (ii) unless repaid, each Borrowing of LIBO Rate Loans shall be converted to a Borrowing of Base Rate Loans at the end of the Interest Period applicable thereto.

Section 2.09 Optional and Mandatory Prepayments of Loans

(a) Optional Prepayments. The Lead Borrower shall have the right at any time and from time to time to prepay, without premium or penalty, any Borrowing, in whole or in part, subject to the requirements of this Section 2.09: provided that each partial prepayment shall be in an amount that is an integral multiple of $100,000.

(b) Revolving Loan Prepayments.

(i) In the event of the termination of all the Revolving Commitments, the Lead Borrower shall, on the date of such termination, repay or prepay all the outstanding Revolving Borrowings and all outstanding Swingline Loans and Cash Collateralize or backstop on terms reasonably satisfactory to the Administrative Agent the LC Exposure in accordance with Section 2.13(j).
(ii) In the event of any partial reduction of the Revolving Commitments, then (A) at or prior to the effective date of such reduction, the Administrative Agent shall notify the Lead Borrower and the Revolving Lenders of the Aggregate Exposures after giving effect thereto and (B) if the Aggregate Exposures would exceed the Line Cap then in effect, after giving effect to such reduction, then the Lead Borrower shall, on the date of such reduction (or, if such reduction is due to the imposition of new Reserves or a change in the methodology of calculating existing Reserves, within five Business Days following such notice), first, repay or prepay all Swingline Loans, second, repay or prepay Revolving Borrowings and third, replace or Cash Collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.13(j), in an amount sufficient to eliminate such excess.

(iii) In the event that the Aggregate Exposures at any time exceeds the Line Cap then in effect, the Lead Borrower shall, immediately after demand (or, if such overadvance is due to the imposition of new Reserves or a change in the methodology of calculating existing Reserves, or change in eligibility standards, within five Business Days following notice), apply an amount equal to such excess to prepay the Loans and any interest accrued thereon, in accordance with this Section 2.09(b)(iii). The Lead Borrower shall, first, repay or prepay all Swingline Loans, second, repay or prepay Revolving Borrowings, and third, replace or Cash Collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.13(j), in an amount sufficient to eliminate such excess.

(iv) In the event that the aggregate LC Exposure exceeds the LC Commitment then in effect, the Lead Borrower shall, without notice or demand, immediately replace or Cash Collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.09(b)(iii), in an amount sufficient to eliminate such excess.

(c) (d) Application of Prepayments.

(i) Prior to any optional or mandatory prepayment of Borrowings hereunder, the Lead Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to paragraph (i) of this Section 2.09(c). Unless during a Liquidity Period, except as provided in Section 2.09(b)(ii) hereof, all mandatory prepayments shall be applied as follows: first, to fees and reimbursable expenses of the Administrative Agent then due and payable pursuant to the Credit Documents; second, to interest then due and payable on the Borrowers' Swingline Loans; third, to the principal balance of the Swingline Loan outstanding until the same has been prepaid in full; fourth, to interest then due and payable on the Revolving Loans and other amounts due pursuant to Sections 3.02 and 5.01; fifth, to the principal balance of the Revolving Loans until the same have been prepaid in full; sixth, to Cash Collateralize all LC Exposure plus any accrued and unpaid interest thereon (to be held and applied in accordance with Section 2.13(j) hereof); seventh, to all other Obligations pro rata in accordance with the amounts that such Lender certifies is outstanding; and eighth, as required by the Intercreditor Agreement or, in the absence of any such requirement, returned to the Lead Borrower or to such party as otherwise required by law.

(ii) Amounts to be applied pursuant to this Section 2.09 to the prepayment of Revolving Loans shall be applied, as applicable, first to reduce outstanding Base Rate Loans. Any amounts remaining after each such application shall be applied to prepay LIBO Rate Loans. Notwithstanding the foregoing, if the amount of any prepayment of Loans required under this Section 2.09 shall be in excess of the amount of the Base Rate Loans at the time outstanding, only the portion of the amount of such prepayment that is equal to the amount of such outstanding Base Rate Loans shall be immediately prepaid and, at the election of the Lead Borrower, the balance of such required prepayment shall be either (A) deposited in the LC Collateral Account and applied to the prepayment of LIBO Rate Loans on the last day of the then next-expiring Interest Period for LIBO Rate Loans (with all interest accruing thereon for the account of the Lead Borrower) or (B) prepaid immediately, together with any amounts owing to the Lenders under Section 2.10. Notwithstanding any such deposit in the LC Collateral Account, interest shall continue to accrue on such Loans until prepayment.

(d) (e) Notice of Prepayment. The Lead Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the
Swingline Lender) by telephone (confirmed by teletypewriter) of any prepayment hereunder (i) in the case of prepayment of a Borrowing of LIBO Rate Loans, not later than 1:00 p.m., New York City time, three Business Days before the date of prepayment, (ii) in the case of prepayment of a Borrowing of Base Rate Loans, not later than 4:00 p.m., New York City time, on the date of prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 1:00 p.m., New York City time, on the date of prepayment. Each such notice shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Each notice of prepayment pursuant to this Section shall be irrevocable, except that the Lead Borrower may, by subsequent notice to the Administrative Agent, revoke any such notice of prepayment if such notice of revocation is received not later than 10:00 a.m. (New York City time) on the day on which such prepayment is scheduled to occur and, provided that (i) the Lead Borrower reimburses each Lender pursuant to Section 3.02 for any funding losses within five Business Days after receiving written demand therefor and (ii) the amount of Loans as to which such revocation applies shall be deemed converted to (or continued as, as applicable) Base Rate Loans in accordance with the provisions of Section 2.08 as of the date of notice of revocation (subject to subsequent conversion in accordance with the provisions of this Agreement). Promptly following receipt of any such notice (other than a notice relating solely to Swingline Loans), the Administrative Agent shall advise the Lenders of the contents thereof.

Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.06.

Section 2.10 Payments Generally; Pro Rata Treatment; Sharing of Set-offs

(a) Each Borrower shall make each payment required to be made by it hereunder or under any other Credit Document (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Sections 3.01, 3.02 and 5.01 or otherwise) at or before the time expressly required hereunder or under such other Credit Document for such payment (or, if no such time is expressly required, prior to 2:00 p.m., New York City time), on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the reasonable 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 the Payment Office, except payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments to be made directly to the Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 3.01, 3.02, 5.01 and 13.01 shall be made to the Administrative Agent for the benefit of the Persons entitled thereto and payments pursuant to other Credit Documents shall be made to the Administrative Agent for the benefit of the Persons specified therein. 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. If any payment under any Credit Document 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 under each Credit Document shall be made in U.S. Dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied in the manner as provided in Section 2.09(c) or 11.11 hereof, as applicable, ratably among the parties entitled thereto.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Revolving Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Revolving Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Revolving 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 the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving 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 Lead 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 to any assignee or participant, other than to the Lead Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each 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 Credit Parties rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of a Credit Party in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Lead Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Bank hereunder that the Lead Borrower will not make such payment, the Administrative Agent may assume that the Lead Borrower has 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 Lead 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 Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.02(c), 2.02(f), 2.10(d), 2.12(d) or 2.13(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender’s obligations under such Sections until all such unsatisfied obligations are fully paid.
Section 2.11  Defaulting Lenders

(a) **Reallocations of Pro Rata Shares; Amendments.** For purposes of determining the Lenders’ obligations to fund or acquire participations in Loans or Letters of Credit, the Administrative Agent may exclude the Commitments and Loans of any Defaulting Lender(s) from the calculation of Pro Rata Shares; **provided** that such reallocation shall not cause the Revolving Exposure of any Non-Defaulting Lender to exceed its Revolving Commitment. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Credit Document, except as provided in Section 13.12.

(b) **Payments; Fees.** The Administrative Agent may, in its discretion, receive and retain any amounts payable to a Defaulting Lender under the Credit Documents, and a Defaulting Lender shall be deemed to have assigned to the Administrative Agent such amounts until all Obligations owing to the Administrative Agent, Non-Defaulting Lenders and other Secured Creditors have been paid in full. The Administrative Agent may apply such amounts to the Defaulting Lender’s defaulted obligations, use the funds to Cash Collateralize such Lender’s Fronting Exposure, or readvance the amounts to the Borrowers hereunder. A Lender shall not be entitled to receive any fees accruing hereunder during the period in which it is a Defaulting Lender, and the unfunded portion of its Commitment shall be disregarded for purposes of calculating the Unused Line Fee under Section 2.05(a). To the extent any LC Obligations owing to a Defaulting Lender are reallocated to other Lenders, LC Participation Fees attributable to such LC Obligations under Section 2.05(c) shall be paid to such other Lenders. The Administrative Agent shall be paid all LC Participation Fees attributable to LC Obligations that are not so reallocated.

(c) **Cure.** The Lead Borrower, Administrative Agent and Issuing Bank may agree in writing that a Lender is no longer a Defaulting Lender. At such time, Pro Rata Shares shall be reallocated without exclusion of such Lender’s Commitments and Loans, and all outstanding Loans, LC Obligations and other exposures under the Commitments shall be reallocated among Lenders and settled by the Administrative Agent (with appropriate payments by the reinstated Lender) in accordance with the readjusted Pro Rata Shares. Unless expressly agreed by the Lead Borrower, Administrative Agent and Issuing Bank, no reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Loan, to make a payment in respect of LC Obligations or otherwise to perform its obligations hereunder shall not relieve any other Lender of its obligations, and no Lender shall be responsible for default by another Lender.

Section 2.12  Swingline Loans

(a) **Swingline Commitment.** Subject to the terms and conditions set forth herein, the Swingline Lender may, but shall not be obligated to, make Swingline Loans to the Borrowers from time to time during the Revolving Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding $25,000,000 or (ii) the Aggregate Exposures exceeding the lesser of (A) the Aggregate Commitments and (B) the Borrowing Base then in effect; **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 Lead Borrower may borrow, repay and reborrow Swingline Loans.

(b) **Swingline Loans.** To request a Swingline Loan, the Lead Borrower shall notify the Administrative Agent of such request by telephone (confirmed by telecopy), not later than 4:00 p.m., New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan.
The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Lead Borrower. The Swingline Lender shall make each Swingline Loan available to the Borrowers by means of a credit to the general deposit account of the Lead Borrower with the Swingline Lender (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.13(e), by remittance to the Issuing Bank) by 5:00 p.m., New York City time, on the requested date of such Swingline Loan. The Lead Borrower shall not request a Swingline Loan if at the time of and immediately after giving effect to such request a Default has occurred and is continuing. Swingline Loans shall be made in minimum amounts of $100,000.

(c) **Prepayment.** The Lead Borrower shall have the right at any time and from time to time to repay, without premium or penalty, any Swingline Loan, in whole or in part, upon giving written or telecopy notice (or telephone notice promptly confirmed by written, or telecopy notice) to the Swingline Lender and to the Administrative Agent before 4:00 p.m., New York City time on the date of repayment at the Swingline Lender’s address for notices specified in the Swingline Lender’s administrative questionnaire. All principal payments of Swingline Loans shall be accompanied by accrued interest on the principal amount being repaid to the date of payment.

(d) **Participations.** The Swingline Lender may by written notice given to the Administrative Agent not later than 4:00 p.m., New York City time, on any Business Day 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 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 Pro Rata Percentage of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender’s Pro Rata 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 Aggregate Commitments or whether an Overadvantage exists or is created thereby, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever (provided that such payment shall not cause such Lender’s Revolving Exposure to exceed such Lender’s Revolving Commitment). 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 2.02(f) with respect to Loans made by such Lender (and Section 2.02 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 Lead 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 Lead Borrower (or other party on behalf of the Lead 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. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve any Borrower of any default in the payment thereof.
If the Maturity Date shall have occurred at a time when Extended Revolving Loan Commitments are in effect, then on the Maturity Date all then outstanding Swingline Loans shall be repaid in full on such date (and there shall be no adjustment to the participations in such Swingline Loans as a result of the occurrence of such Maturity Date); provided that, if on the occurrence of the Maturity Date (after giving effect to any repayments of Revolving Loans and any reallocation of Letter of Credit participations as contemplated in Section 2.13(o)), there shall exist sufficient unutilized Extended Revolving Loan Commitments so that the respective outstanding Swingline Loans could be incurred pursuant to the Extended Revolving Loan Commitments which will remain in effect after the occurrence of the Maturity Date, then there shall be an automatic adjustment on such date of the participations in such Swingline Loans and same shall be deemed to have been incurred solely pursuant to the Extended Revolving Loan Commitments and such Swingline Loans shall not be so required to be repaid in full on the Maturity Date.

Section 2.13 Letters of Credit

(a) General. Subject to the terms and conditions set forth herein, the Lead Borrower may request the issuance of Letters of Credit in U.S. Dollars or in one or more Alternative Currencies for the Lead Borrower’s account or the account of a Subsidiary of the Lead Borrower in a form reasonably acceptable to the Administrative Agent and the Issuing Bank, at any time and from time to time during the Revolving Availability Period (provided that the Lead Borrower shall be a co-applicant with respect to each Letter of Credit issued for the account of or in favor of a Subsidiary). All Existing Letters of Credit shall be deemed, without further action by any party hereto, to have been issued on the Closing Date pursuant to this Agreement, and the Lenders shall thereupon acquire participations in the Existing Letters of Credit as if so issued without further action by any party hereto, to be acquired by the Lenders hereto. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Lead Borrower to, or entered into by the Lead Borrower with, the Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) Request for Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit or the amendment, renewal or extension of an outstanding Letter of Credit, the Lead Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Issuing Bank) a LC Request to the Issuing Bank and the Administrative Agent not later than 1:00 p.m. on the second Business Day preceding the requested date of issuance, amendment, renewal or extension (or such later date and time as is reasonably acceptable to the Issuing Bank). A request for an initial issuance of a Letter of Credit shall specify in form and detail reasonably satisfactory to the Issuing Bank: (i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (ii) the amount and currency thereof; (iii) the expiry date thereof; (iv) the name and address of the beneficiary thereof; (v) the documents to be presented by such beneficiary in case of any drawing thereunder; (vi) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder, and (vii) such other matters as the Issuing Bank may reasonably require. A request for an amendment, renewal or extension of any outstanding Letter of Credit shall specify in form and detail reasonably satisfactory to the Issuing Bank (w) the Letter of Credit to be amended, renewed or extended; (x) the proposed date of amendment, renewal or extension thereof (which shall be a Business Day), (y) the nature of the proposed amendment, renewal or extension, and (z) such other matters as the Issuing Bank may reasonably require. If requested by the Issuing Bank, the Lead Borrower also shall submit a letter of credit application substantially on the Issuing Bank’s standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or
extension of each Letter of Credit the Lead Borrower shall be deemed to represent and warrant (solely in the case of (w) and (x) that), after
giving effect to such issuance, amendment, renewal or extension (A) the LC Exposure shall not exceed $100,000,000, (B) the total Revolving
Exposures shall not exceed the lesser of (1) the total Revolving Commitments and (2) the Borrowing Base then in effect and (C) if a
Defaulting Lender exists, either such Lender or the Lead Borrower has entered into arrangements satisfactory to the Administrative Agent
and Issuing Bank to eliminate any Fronting Exposure associated with such Lender. Unless the Issuing Bank shall otherwise agree, no Letter
of Credit shall be denominated in a currency other than U.S. Dollars or an Alternative Currency.

(c) **Expiration Date.** Each Letter of Credit shall expire at or prior to the close of business on the earlier of the date which is one year
after the date of the issuance of such Letter of Credit (or such other longer period of time as the Administrative Agent and the applicable
Issuing Bank may agree and, in the case of any renewal or extension thereof, one (1) year after such renewal or extension) and, unless Cash
Collateralized or otherwise credit supported to the reasonable satisfaction of the Administrative Agent and the applicable Issuing Bank (in
which case the expiry may extend no longer than twelve months after the Letter of Credit Expiration Date) the Letter of Credit Expiration
Date. Each Letter of Credit may, upon the request of the Lead Borrower, include a provision whereby such Letter of Credit shall be renewed
automatically for additional consecutive periods of twelve (12) months or less (but, subject to the foregoing, not beyond the date that is after
the Letter of Credit Expiration Date) unless the applicable Issuing Bank notifies the beneficiary thereof at least thirty (30) days prior to the
then-applicable expiration date that such Letter of Credit will not be renewed.

(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 Issuing Bank or the Lenders, the Issuing Bank hereby grants to each Revolving Lender, and each
Revolving Lender hereby acquires from the Issuing Bank, a participation in such Letter of Credit equal to such Lender’s Pro Rata 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 Issuing Bank, such
Lender’s Pro Rata Percentage of each LC Disbursement made by the Issuing Bank and not reimbursed by the Lead Borrower on the date due
as provided in paragraph (e) of this Section 2.13, or of any reimbursement payment required to be refunded to the Borrowers for any reason.
Each 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, renewal or extension of any
Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Aggregate Commitments or whether or not
an Overadvance exists or is created thereby, and that each such payment shall be made without any offset, abatement, withholding or
reduction whatsoever.

(e) **Reimbursement.** If the Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the Lead Borrower shall
reimburse such LC Disbursement by paying to the Issuing Bank an amount equal to such LC Disbursement not later than (x) in the case of
reimbursement in U.S. Dollars, 2:00 p.m., New York City time, on the Business Day after receiving notice from the Issuing Bank of such LC
Disbursement or (y) in the case of reimbursement in an Alternative Currency, the Applicable Time on the Business Day after receiving notice
from such Issuing Bank of such LC Disbursement; provided that, whether or not the Lead Borrower submits a Notice of Borrowing, the Lead
Borrower shall be deemed to have requested (except to the extent the Lead Borrower makes payment to reimburse such LC Disbursement
when due) a Borrowing of Base Rate Loans in an amount necessary to reimburse such LC Disbursement. If the Lead Borrower fails to make
such payment when due, the Issuing Bank shall notify
the Administrative Agent and the Administrative Agent shall notify each Revolving Lender of the applicable LC Disbursement, the payment then due from the Lead Borrower in respect thereof and such Lender’s Pro Rata Percentage thereof. Promptly following receipt of such notice, each Revolving Lender shall pay to the Administrative Agent its Pro Rata Percentage of the unreimbursed LC Disbursement in U.S. Dollars (except to the extent the Revolving Lenders agree to reimburse such amounts in an Alternative Currency) in the same manner as provided in Section 2.02(f) with respect to Loans made by such Lender, and the Administrative Agent shall promptly pay to the Issuing Bank the amounts so received by it from the Revolving Lenders. In the case of a Letter of Credit denominated in an Alternative Currency, the Lead Borrower shall reimburse the Issuing Bank in such Alternative Currency, unless (A) the Issuing Bank (at its option) shall have specified in such notice that it will require reimbursement in U.S. Dollars, or (B) in the absence of any such requirement for reimbursement in U.S. Dollars, the Lead Borrower shall have notified the Issuing Bank promptly following receipt of the notice of drawing that the Lead Borrower will reimburse the Issuing Bank in U.S. Dollars. In the case of any such reimbursement in U.S. Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the Issuing Bank shall notify the Lead Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Promptly following receipt by the Administrative Agent of any payment from the Lead Borrower pursuant to this paragraph, the Administrative Agent shall, to the extent that Revolving Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, distribute such payment to such Lenders and the Issuing Bank as their interests may appear. Any payment made by a Revolving Lender pursuant to this paragraph to reimburse the Issuing Bank for any LC Disbursement (other than the funding of Base Rate Loans or a Swingline Loan as contemplated above) shall not constitute a Loan and shall not relieve the Lead Borrower of its obligation to reimburse such LC Disbursement. In the event that (A) a drawing denominated in an Alternative Currency is to be reimbursed in U.S. Dollars pursuant to the third sentence in this Section 2.13(e) and (B) the U.S. Dollar amount paid by the Lead Borrower shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the Alternative Currency equal to the drawing, the Lead Borrower agrees, as a separate and independent obligation, to indemnify the Issuing Bank for the loss resulting from its inability on that date to purchase the Alternative Currency in the full amount of the drawing.

(f) Obligations Absolute.

(i) Subject to the limitations set forth below, the obligation of the Lead Borrower to reimburse LC Disbursements as provided in paragraph (e) of this Section 2.13 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 or this Agreement, or any term or provision therein, (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) payment by the Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not strictly comply with the terms of such Letter of Credit, (iv) the existence of any claim, set-off, defense or other right which the Lead Borrower may have at any time against a beneficiary of any Letter of Credit, or (v) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.13, constitute a legal or equitable discharge of, or provide a right of set-off against, the obligations of the Lead Borrower hereunder; provided that the Lead Borrower shall have no obligation to reimburse the Issuing Bank to the extent that such payment was made in error due to the gross negligence, bad faith, or willful misconduct of the Issuing Bank (as determined by a court of competent jurisdiction or another independent tribunal having jurisdiction). Neither the
Administrative Agent, the Lenders nor the Issuing Bank, nor any of their Affiliates, 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 or any consequence arising from causes beyond the control of the Issuing Bank; provided that the foregoing shall not be construed to excuse the Issuing Bank from liability to the Lead Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Lead Borrower to the extent permitted by applicable law) suffered by the Lead Borrower that are caused by the 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, willful misconduct, or bad faith on the part of the Issuing Bank (as determined by a court of competent jurisdiction or another independent tribunal having jurisdiction), the 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 which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the 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.

(ii) The Issuing Bank does not assume any responsibility for any failure or delay in performance or any breach by the Lead Borrower or other Person of any obligations under any LC Document. The Issuing Bank does not make to the Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, such documents or any Credit Party. The Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Document; the validity, genuineness, enforceability, collectability, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Credit Party.

(iii) No Issuing Bank or any of its Affiliates or any of its or their respective officers, directors, employees, agents and investment advisors shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence or willful misconduct as determined by court of competent jurisdiction in a final nonappealable judgment. The Issuing Bank shall not have any liability to any Lender if the Issuing Bank refrains from any action under any Letter of Credit or such LC Documents until it receives written instructions from the Required Lenders.

(g) Disbursement Procedures. The Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Issuing Bank shall promptly notify the Administrative Agent and the Lead Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the 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 Lead Borrower of its obligation to reimburse the Issuing Bank and the Revolving
Lenders with respect to any such LC Disbursement (other than with respect to the timing of such reimbursement obligation set forth in Section 2.13(e)).

(h) **Interim Interest.** If the Issuing Bank shall make any LC Disbursement, then, unless the Lead 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 Lead Borrower reimburses such LC Disbursement, at the rate per annum then applicable to Base Rate Loans; provided that, if the Lead Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section 2.13, then Section 2.06(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section 2.13 to reimburse the Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) **Resignation or Removal of the Issuing Bank.** The Issuing Bank may resign as Issuing Bank hereunder at any time upon at least 30 days’ prior written notice to the Lenders, the Administrative Agent and the Lead Borrower. The Issuing Bank may be replaced at any time by agreement between the Lead Borrower and the Administrative Agent; provided that so long as no Default or Event of Default exists, such successor Issuing Bank shall be reasonably acceptable to the Lead Borrower. One or more Lenders may be appointed as additional Issuing Banks in accordance with subsection (k) below. The Administrative Agent shall notify the Lenders of any such replacement of the Issuing Bank or any such additional Issuing Bank. At the time any such resignation or replacement shall become effective, the Lead Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.05(c). From and after the effective date of any such resignation or replacement shall become effective, the successor or additional Issuing Bank shall have all the rights and obligations of the Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and references herein to the term “Issuing Bank” shall be deemed to refer to such successor or such addition or to any previous Issuing Bank, or to such successor or such additional Issuing Bank and all previous Issuing Banks, as the context shall require. After the resignation or 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 issued by it prior to such resignation or replacement, but shall not be required to issue additional Letters of Credit. If at any time there is more than one Issuing Bank hereunder, the Lead Borrower may, in its discretion, select which Issuing Bank is to issue any particular Letter of Credit.

(j) **Cash Collateralization.**

(i) If any Specified Event of Default shall occur and be continuing, on the Business Day that the Lead Borrower receives notice from the Administrative Agent (acting at the request of the Required Lenders) demanding the deposit of Cash Collateral pursuant to this paragraph, the Lead Borrower shall deposit in the LC Collateral Account, in the name of the Administrative Agent and for the benefit of the Secured Creditors, an amount in cash equal to 102.00% of the LC Exposure as of such date. Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Lead Borrower under this Agreement, but shall be immediately released and returned to the Lead Borrower (in no event later than two (2) Business Days) once all Specified Events of Default are cured or waived. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made only in Cash Equivalents and at the direction of the
Lead Borrower and at the Lead Borrower’s risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Lead 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 total LC Exposure), be applied to satisfy other Obligations of the Lead Borrower.

(ii) The Lead Borrower shall, on demand by the Issuing Bank or the Administrative Agent from time to time, Cash Collateralize the Fronting Exposure associated with any Defaulting Lender.

(k) Additional Issuing Banks. The Lead Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld, delayed or conditioned) and such Lender, designate one or more additional Lenders to act as an issuing bank under the terms of this Agreement. Any Lender designated as an issuing bank pursuant to this paragraph (k) shall be deemed (in addition to being a Lender) to be the Issuing Bank with respect to Letters of Credit issued or to be issued by such Lender, and all references herein and in the other Credit Documents to the term “Issuing Bank” shall, with respect to such Letters of Credit, be deemed to refer to such Lender in its capacity as Issuing Bank, as the context shall require.

(l) The Issuing Bank shall be under no 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 the Issuing Bank from issuing such Letter of Credit, or any law applicable to the Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Bank shall prohibit, or request that the Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the 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 the Issuing Bank.

(m) The Issuing Bank shall be under no obligation to amend any Letter of Credit if (i) the Issuing Bank would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (ii) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(n) LC Collateral Account.

(i) The Administrative Agent is hereby authorized to establish and maintain at the Notice Office, in the name of the Administrative Agent and pursuant to a dominion and control agreement, a restricted deposit account designated “The Lead Borrower LC Collateral Account.” Each Credit Party shall deposit into the LC Collateral Account from time to time the Cash Collateral required to be deposited under Section 2.13(j) hereof.
(ii) The balance from time to time in such LC Collateral Account shall constitute part of the Collateral and shall not constitute payment of the Obligations until applied as hereinafter provided. Notwithstanding any other provision hereof to the contrary, all amounts held in the LC Collateral Account shall constitute collateral security first for the liabilities in respect of Letters of Credit outstanding from time to time and second for the other Obligations hereunder until such time as all Letters of Credit shall have been terminated and all of the liabilities in respect of Letters of Credit have been paid in full. All funds in “The Lead Borrower LC Collateral Account” may be invested in accordance with the provisions of Section 2.13(i).

(o) Extended Commitments. If the Maturity Date shall have occurred at a time when Extended Revolving Loan Commitments are in effect, then (i) such Letters of Credit shall automatically be deemed to have been issued (including for purposes of the obligations of the Lenders to purchase participations therein and to make payments in respect thereof pursuant to Sections 2.13(d) and (g)) under (and ratably participated in by Lenders) the Extended Revolving Loan Commitments, up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Extended Revolving Loan Commitments thereunder at such time (it being understood that no partial face amount of any Letter of Credit may be so reallocated) and (ii) to the extent not reallocated pursuant to the immediately preceding clause (i), the Borrowers shall Cash Collateralize any such Letter of Credit in accordance with Section 2.13(j).

Section 2.14 Settlement Amongst Lenders

(a) The Swingline Lender may, at any time (but, in any event shall weekly), on behalf of the Lead Borrower (which hereby authorizes the Swingline Lender to act on its behalf in that regard) request the Administrative Agent to cause the Lenders to make a Revolving Loan (which shall be a Base Rate Loan) in an amount equal to such Lender’s Pro Rata Percentage of the Outstanding Amount of Swingline Loans, which request may be made regardless of whether the conditions set forth in Section 7 have been satisfied. Upon such request, each Lender shall make available to the Administrative Agent the proceeds of such Revolving Loan for the account of the Swingline Lender. If the Swingline Lender requires a Revolving Loan to be made by the Lenders and the request therefor is received prior to 12:00 Noon on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if the request therefor is received after 12:00 Noon, then no later than 3:00 p.m. on the next Business Day. The obligation of each such Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent or the Swingline Lender. If and to the extent any Lender shall not have so made its transfer to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand, such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate.

(b) The amount of each Lender’s Pro Rata Percentage of outstanding Revolving Loans (including outstanding Swingline Loans) shall be computed weekly (or more frequently in the Administrative Agent’s discretion) and shall be adjusted upward or downward based on all Revolving Loans (including Swingline Loans) and repayments of Revolving Loans (including Swingline Loans) received by the Administrative Agent as of 3:00 p.m. on the first Business Day (such date, the “Settlement Date”) following the end of the period specified by the Administrative Agent.
The Administrative Agent shall deliver to each of the Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Loans (including Swingline Loans) for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Administrative Agent shall transfer to each Lender its applicable Pro Rata Percentage of repayments, and (ii) each Lender shall transfer to the Administrative Agent (as provided below) or the Administrative Agent shall transfer to each Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Revolving Loans made by each Lender with respect to Revolving Loans to the Borrowers (including Swingline Loans) shall be equal to such Lender’s applicable Pro Rata Percentage of Revolving Loans (including Swingline Loans) outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative Agent by the Lenders and is received prior to 12:00 Noon on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 12:00 Noon, then no later than 3:00 p.m. on the next Business Day. The obligation of each Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent. If and to the extent any Lender shall not have so made its transfer to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate.

Section 2.15 Revolving Commitment Increase

(a) Subject to the terms and conditions set forth herein, after the Closing Amendment No. 3 Effective Date, the Lead Borrower shall have the right to request, by written notice to the Administrative Agent, an increase in the Revolving Commitments (a “Revolving Commitment Increase”) in an aggregate amount not to exceed $50,000,000; provided that (a) the Lead Borrower shall only be permitted to request four Revolving Commitment Increases during the term of this Agreement and (b) any Revolving Commitment Increase shall be in a minimum amount of $10,000,000.

(b) Each notice submitted pursuant to this Section 2.15 (a “Revolving Commitment Increase Notice”) requesting a Revolving Commitment Increase shall specify the amount of the increase in the Revolving Commitments being requested. Upon receipt of a Revolving Commitment Increase Notice, the Administrative Agent may (at the direction of the Lead Borrower) promptly notify the Lenders and each Lender may (subject to the Lead Borrower’s consent) have the right to elect to have its Revolving Commitment increased by its Pro Rata share (it being understood and agreed that a Lender may elect to have its Revolving Commitment increased in excess of its Pro Rata share in its discretion if any other Lender declines to participate in the Revolving Commitment Increase) of the requested increase in Revolving Commitments; provided that (i) each Lender may elect or decline, in its sole discretion, to have its Revolving Commitment increased in connection with any requested Revolving Commitment Increase, it being understood that no Lender shall be obligated to increase its Revolving Commitment unless it, in its sole discretion, agrees and, if a Lender fails to respond to any Revolving Commitment Increase Notice within five (5) Business Days after such Lender’s receipt of such request, such Lender shall be deemed to have declined to participate in such Revolving Commitment Increase, (ii) if any Lender declines to participate in any Revolving Commitment Increase and, as a result, commitments from additional financial institutions are required in connection with the Revolving Commitment Increase, any Person or Persons providing such commitment shall be subject to the written consent of the Administrative Agent, the Swingline Lender and the Issuing Bank (such consent not to be unreasonably withheld or delayed), if such consent would be required pursuant to the definition of Eligible Transferee and (iii) in no event shall a Defaulting Lender be entitled to participate in such Revolving Commitment Increase. In the event that any Lender or other Person agrees to participate in any Revolving Commitment Increase (each an “Increase Loan Lender”), such Revolving Commitment Increase shall
become effective on such date as shall be mutually agreed upon by the Increase Loan Lenders and the Lead Borrower, which date shall be as soon as practicable after the date of receipt of the Revolving Commitment Increase Notice (such date, the “Increase Date”); provided that the establishment of such Revolving Commitment Increase shall be subject to the satisfaction of each of the following conditions: (1) no Event of Default would exist after giving effect thereto; (2) the representations and warranties under Section 8 shall be true in all material respects, provided that, solely with respect to Revolving Loans made under the Revolving Commitment Increases that are used to effect or finance a Permitted Acquisition or Investments permitted under this Agreement, the Borrowers shall have the option of making any representations and warranties under Section 8 and determinations as to the availability of any “basket-carveouts” under Section 10 effective as of the date of entering the definitive agreement for such Permitted Acquisition or such Investment in accordance with the Limited Condition Transaction provisions set forth in Section 1.03; (3) the Revolving Commitment Increase shall be effected pursuant to one or more joinder agreements executed and delivered by the Lead Borrower, the Administrative Agent, and the Increase Loan Lenders, each of which shall be reasonably satisfactory to the Lead Borrower, the Administrative Agent, and the Increase Loan Lenders; (4) the Credit Parties shall execute and deliver or cause to be executed and delivered to the Administrative Agent such amendments to the Credit Documents, legal opinions and other documents as the Administrative Agent may reasonably request in connection with any such transaction, which amendments, legal opinions and other documents shall be reasonably satisfactory to the Administrative Agent; and (5) the Borrowers shall have paid to the Administrative Agent and the Lenders such additional fees as may be agreed to be paid by the Borrowers in connection therewith.

(c) On the Increase Date, upon fulfillment of the conditions set forth in this Section 2.15, (i) the Administrative Agent shall effect a settlement of all outstanding Revolving Loans among the Lenders that will reflect the adjustments to the Revolving Commitments of the Lenders as a result of the Revolving Commitment Increase, (ii) the Administrative Agent shall notify the Lenders and Credit Parties of the occurrence of the Revolving Commitment Increase to be effected on the Increase Date, (iii) Schedule 2.01 shall be deemed modified to reflect the revised Revolving Commitments of the affected Lenders and (iv) Notes will be issued, at the expense of the Borrowers, to any Lender participating in the Revolving Commitment Increase and requesting a Note.

(d) The terms and provisions of the Revolving Commitment Increase shall be identical to the Revolving Loans and the Revolving Commitments and, for purposes of this Agreement and the other Credit Documents, all Revolving Loans made under the Revolving Commitment Increase shall be deemed to be Revolving Loans. Without limiting the generality of the foregoing, (i) the rate of interest applicable to the Revolving Commitment Increase shall be the same as the rate of interest applicable to the existing Revolving Loans, (ii) unused line fees applicable to the Revolving Commitment Increase shall be calculated using the same Unused Line Fee Rates applicable to the existing Revolving Loans, (iii) the Revolving Commitment Increase shall share ratably in any mandatory prepayments of the Revolving Loans, (iv) after giving effect to such Revolving Commitment Increases, Revolving Commitments shall be reduced based on each Lender’s Pro Rata Percentage, and (v) the Revolving Commitment Increase shall rank pari passu in right of payment and security with the existing Revolving Loans. Each joinder agreement and any amendment to any Credit Document requested by the Administrative Agent in connection with the establishment of the Revolving Commitment Increase may, without the consent of any of the Lenders, effect such amendments to this Agreement (an “Incremental Revolving Commitment Agreement”) and the other Credit Documents as may be reasonably necessary or appropriate, in the opinion of the Administrative Agent and the Lead Borrower, to effect the provisions of this Section 2.15.

Section 2.16 Lead Borrower
Each Borrower hereby designates the Lead Borrower as its representative and agent for all purposes under the Credit Documents, including requests for Revolving Loans and Letters of Credit, designation of interest rates, delivery or receipt of communications, preparation and delivery of Borrowing Base and financial reports, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Credit Documents (including in respect of compliance with covenants), and all other dealings with the Administrative Agent, the Issuing Bank or any Lender. The Lead Borrower hereby accepts such appointment. The Administrative Agent and the Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any Notice of Borrowing) delivered by the Lead Borrower on behalf of any Borrower. The Administrative Agent and the Lenders may give any notice or communication with a Borrower hereunder to the Lead Borrower on behalf of such Borrower. Each of the Administrative Agent, the Issuing Bank and the Lenders shall have the right, in its discretion, to deal exclusively with the Lead Borrower for any or all purposes under the Credit Documents. Each Borrower agrees that any notice, election, communication, representation, agreement or undertaking made on its behalf by the Lead Borrower shall be binding upon and enforceable against it.

Section 2.17 Overadvances

If the aggregate Revolving Loans outstanding exceed the Line Cap (an “Overadvance”) at any time, the excess amount shall be payable by the Borrowers on demand by the Administrative Agent, but all such Revolving Loans shall nevertheless constitute Obligations secured by the Collateral and entitled to all benefits of the Credit Documents. The Administrative Agent may require the Lenders to honor requests for Overadvance Loans and to forbear from requiring the Borrowers to cure an Overadvance, (a) when no other Event of Default is known to the Administrative Agent, as long as (i) the Overadvance does not continue for more than 30 consecutive days (and no Overadvance may exist for at least five consecutive days thereafter before further Overadvance Loans are required) and (ii) the aggregate amount of all Overadvances and Protective Advances is not known by the Administrative Agent to exceed 10% of the Borrowing Base, (b) regardless of whether an Event of Default exists, if the Administrative Agent discovers an Overadvance not previously known by it to exist, as long as from the date of such discovery the Overadvance (i) is not increased by more than $500,000, and (ii) does not continue for more than 30 consecutive days. In no event shall Overadvance Loans be required that would cause the aggregate outstanding Revolving Loans and LC Obligations to exceed the aggregate Revolving Commitments. The making of any Overadvance shall not create nor constitute a Default or Event of Default; it being understood that the making or continuance of an Overadvance shall not constitute a waiver by the Administrative Agent or the Lenders of the then existing Event of Default.

Section 2.18 Protective Advances

The Administrative Agent shall be authorized, in its discretion, following notice to and consultation with the Lead Borrower, at any time, to make Base Rate Loans ("Protective Advances") (a) in an aggregate amount, together with the aggregate amount of all Overadvance Loans, not to exceed 10% of the Borrowing Base, if the Administrative Agent deems such Protective Advances necessary or desirable to preserve and protect the Collateral, or to enhance the collectability or repayment of the Obligations; or (b) to pay any other amounts chargeable to Credit Parties under any Credit Documents, including costs, fees and expenses; provided that, the aggregate amount of outstanding Protective Advances plus the outstanding amount of Revolving Loans and LC Obligations shall not exceed the aggregate Revolving Commitments. Each Lender shall participate in each Protective Advance in accordance with its Pro Rata Percentage. Required Lenders may at any time revoke the Administrative Agent’s authority to make further Protective Advances under clause (a) by written notice to the Administrative Agent. Absent such revocation, the Administrative Agent's determination that funding of a Protective Advance is appropriate shall be conclusive. The Administrative Agent may use the proceeds of such Protective Advances to (a) protect, insure, maintain or realize upon any Collateral; or (b) defend or maintain the validity or priority of the Administrative Agent’s Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien; provided that the Administrative Agent shall use reasonable efforts to notify the Lead Borrower after paying any such amount or taking any such action and shall not make payment of any item that is being Properly Contested.
Section 2.19  Extended Loans

(a) Notwithstanding anything to the contrary in this Agreement, subject to the terms of this Section 2.19, the Lead Borrower may at any time and from time to time request that all or a portion of the then-existing Revolving Loans (the “Existing Revolving Loans”), together with any related outstandings, be converted to extend the scheduled maturity date(s) of any payment of principal with respect to all or any portion of the principal amount (and related outstandings) of such Revolving Loans (any such Revolving Loans which have been so converted, “Extended Revolving Loans”) and to provide for other terms consistent with this Section 2.19. In order to establish any Extended Revolving Loans, the Lead Borrower shall provide a notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders) (each, an “Extension Request”) setting forth the proposed terms of the Extended Revolving Loans to be established, which shall (x) be identical as offered to each Lender (including as to the proposed interest rates and fees payable) and (y) be identical to the Existing Revolving Loans, except that: (i) repayments of principal of the Extended Revolving Loans may be delayed to later dates than the Maturity Date; (ii) the Effective Yield with respect to the Extended Revolving Loans (whether in the form of interest rate margin, upfront fees, original issue discount or otherwise) may be different than the Effective Yield for the Existing Revolving Loans to the extent provided in the applicable Extension Amendment; and (iii) the Extension Amendment may provide for other covenants and terms that apply solely to any period after the Maturity Date that is in effect on the effective date of the Extension Amendment (immediately prior to the establishment of such Extended Revolving Loans); provided, however, that (A) in no event shall the final maturity date of any Extended Revolving Loans at the time of establishment thereof be earlier than the then Maturity Date of any other Revolving Loans hereunder and (B) the Weighted Average Life to Maturity of any Extended Revolving Loans at the time of establishment thereof shall be no shorter than the remaining Weighted Average Life to Maturity of any other Revolving Loans then outstanding. Any Extended Revolving Loans converted pursuant to any Extension Request shall be designated a series (each, an “Extension Series”) of Extended Revolving Loans, as applicable, for all purposes of this Agreement; provided that any Extended Revolving Loans converted from Existing Revolving Loans may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Extension Series with respect to such Revolving Loans.

(b) With respect to any Extended Revolving Loans, subject to the provisions of Sections 2.12(e) and 2.13(o), to the extent dealing with Swingline Loans and Letters of Credit which mature or expire after the Maturity Date, all Swingline Loans and Letters of Credit shall be participated in on a pro rata basis by all Lenders with Revolving Commitments and/or Extended Revolving Loan Commitments in accordance with their Pro Rata Share of the Aggregate Commitments (and, except as provided in Sections 2.12(e) and 2.13(o), without giving effect to changes thereto on the Maturity Date with respect to Swingline Loans and Letters of Credit theretofore incurred or issued) and all borrowings under the Aggregate Commitments and repayments thereunder shall be made on a pro rata basis (except for (x) payments of interest and fees at different rates on Extended Revolving Loan Commitments (and related outstandings) and (y) repayments required upon any Maturity Date of any Revolving Commitments or Extended Revolving Loan Commitments).

(c) The Lead Borrower shall provide the applicable Extension Request at least ten (10) Business Days prior to the date on which Lenders under the Existing Revolving Loans, are requested to respond, and shall agree to such procedures, if any, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Section 2.19. No Lender shall have any obligation to agree to have any of its Existing Revolving Loans converted into Extended Revolving Loans pursuant to any Extension Request. Any Lender (each, an “Extending Lender”) wishing to have all or a portion of its Existing Revolving Loans subject to such Extension
Request converted into Extended Revolving Loans shall notify the Administrative Agent (each, an “Extension Election”) on or prior to the date specified in such Extension Request of the amount of its Existing Revolving Loans which it has elected to request be converted into Extended Revolving Loans (subject to any minimum denomination requirements imposed by the Administrative Agent). Any Lender that does not respond to the Extension Request on or prior to the date specified therein shall be deemed to have rejected such Extension Request. In the event that the aggregate principal amount of Existing Revolving Loans subject to Extension Elections relating to a particular Extension Request exceeds the amount of Extended Revolving Loans requested pursuant to such Extension Request, Revolving Loans subject to such Extension Elections shall be converted to Extended Revolving Loans, on a pro rata basis based on the aggregate principal amount of Revolving Loans included in each suchExtension Elections or to the extent such option is expressly set forth in the respective Extension Request, the Lead Borrower shall have the option to increase the amount of Extended Revolving Loans so that such excess does not exist.

(d) Extended Revolving Loans shall be established pursuant to an amendment (each, an “Extension Amendment”) to this Agreement among the Borrowers, the Administrative Agent and each Extending Lender providing Extended Revolving Loans thereunder which shall be consistent with the provisions set forth in Section 2.19(a) above (but which shall not require the consent of any other Lender). The Administrative Agent shall promptly notify each relevant Lender as to the effectiveness of each Extension Amendment.

(e) With respect to any Extension Amendment consummated by a Borrower pursuant to this Section 2.19, (i) such Extension Amendment shall not constitute voluntary or mandatory payments or prepayments for purposes of this Agreement, (ii) with respect to Extended Revolving Loan Commitments, if the aggregate amount extended is less than (A) the LC Commitment, the LC Commitment shall be reduced upon the date that is five (5) Business Days prior to the Maturity Date (to the extent needed so that the LC Commitment does not exceed the aggregate Revolving Commitment which would be in effect after the Maturity Date), and, if applicable, the Borrowers shall Cash Collateralize obligations under any issued Letters of Credit in an amount equal to 102% of the stated amount of such Letters of Credit, or (B) the Swingline Commitment, the Swingline Commitment shall be reduced upon the date that is five (5) Business Days prior to the Maturity Date (to the extent needed so that the Swingline Commitment does not exceed the aggregate Revolving Commitment which would be in effect after the Maturity Date), and, if applicable, the Borrowers shall prepay any outstanding Swingline Loans. The Administrative Agent and the Lenders hereby consent to each Extension Amendment and the other transactions contemplated by this Section 2.19 (including, for the avoidance of doubt, payment of any interest or fees in respect of any Extended Revolving Loan Commitments on such terms as may be set forth in the Extension Request) and hereby waive the requirements of any provision of this Credit Agreement or any other Credit Document that may otherwise prohibit any Extension Amendment or any other transaction contemplated by this Section 2.19; provided that such consent shall not be deemed to be an acceptance of the Extension Request.

(f) Each of the parties hereto hereby agrees that this Agreement and the other Credit Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent (but only to the extent) necessary to (i) reflect the existence and terms of any Extended Revolving Loans incurred pursuant thereto, (ii) establish new tranches or sub-tranches in respect of Revolving Commitments so extended and such technical amendments as may be necessary in connection with the establishment of such new tranches or sub-tranches, in each case on terms consistent with this Section 2.19, and (iii) effect such other amendments to this Agreement and the other Credit Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent.
and the Lead Borrower, to effect the provisions of this Section, and the Required Lenders hereby expressly authorize the Administrative Agent to enter into any such Extension Amendment. Notwithstanding the foregoing, the Administrative Agent shall have the right (but not the obligation) to seek the advice or concurrence of the Required Lenders with respect to any matter contemplated by this Section 2.19 and, if the Administrative Agent seeks such advice or concurrence, the Administrative Agent shall be permitted to enter into such amendments with the Borrowers in accordance with any instructions actually received by such Required Lenders and shall also be entitled to refrain from entering into such amendments with the Borrowers unless and until it shall have received such advice or concurrence; provided, however, that whether or not there has been a request by the Administrative Agent for any such advice or concurrence, all such amendments entered into with the Borrowers by the Administrative Agent hereunder shall be binding and conclusive on the Lenders.

ARTICLE 3 Yield Protection, Illegality and Replacement of Lenders

Section 3.01 Increased Costs, Illegality, Inability to Determine Rates, etc.

(a) In the event that any Lender shall have determined (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto but, with respect to clause (i) below, may be made only by the Administrative Agent):

(i) on any Interest Determination Date that, by reason of any changes arising after the date of this Agreement affecting the interbank eurodollar market, adequate and fair means do not exist for ascertaining the applicable interest rate on the basis provided for in the definition of LIBO Rate;

(ii) at any time, that such Lender shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to any LIBO Rate Loan because of any change since the Closing Date in any applicable law or governmental rule, regulation, order, guideline or request (whether or not having the force of law) or in the official interpretation or administration thereof and including the introduction of any new law or governmental rule, regulation, order, official guideline or request, such as, but not limited to: (A) any additional Tax imposed on any Lender (except Indemnified Taxes or Other Taxes indemnified under Section 5.01 or any Excluded Taxes) or (B) a change in official reserve requirements, but, in all events, excluding reserves required under Regulation D to the extent included in the computation of the LIBO Rate; or

(iii) at any time, if the making or continuance of any LIBO Rate Loan has been made (x) unlawful by any law or governmental rule, regulation or order, (y) impossible by compliance by any Lender in good faith with any governmental request (whether or not having force of law) or (z) impracticable as a result of a contingency occurring after the Closing Date which materially and adversely affects the interbank eurodollar market;

then, and in any such event, such Lender (or the Administrative Agent, in the case of clause (i) above) shall promptly give notice (by telephone promptly confirmed in writing) to the Lead Borrower and, except in the case of clause (i) above, to the Administrative Agent of such determination (which notice the Administrative Agent shall promptly transmit to each of the other Lenders). Thereafter (x) in the case of clause (i) above, LIBO Rate Loans shall no longer be available until such time as the circumstances giving rise to such notice by the Administrative Agent no longer exist, and any Notice of Borrowing or Notice of Conversion/Continuation given by the Lead
Borrower with respect to LIBO Rate Loans which have not yet been incurred (including by way of conversion) shall be deemed rescinded by the Borrowers, (y) in the case of clause (ii) above, each Borrower, jointly and severally, agrees to pay to such Lender, upon such Lender’s written request therefor, such additional amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion shall determine) as shall be required to compensate such Lender for such increased costs or reductions in amounts received or receivable hereunder (a written notice setting forth the additional amounts owed to such Lender, showing in reasonable detail the basis for the calculation thereof, shall be submitted to the Lead Borrower by such Lender and shall, absent manifest error, be final and conclusive and binding on all the parties hereto), (z) in the case of clause (iii) above, the Borrowers shall take one of the actions specified in Section 3.01(b) as promptly as possible and, in any event, within the time period required by law.

(b) At any time that any LIBO Rate Loan is affected by the circumstances described in Section 3.01(a)(ii), the Lead Borrower may, and in the case of a LIBO Rate Loan affected by the circumstances described in Section 3.01(a)(iii), the Lead Borrower shall, either (x) if the affected LIBO Rate Loan is then being made initially or pursuant to a conversion, cancel such Borrowing by giving the Administrative Agent telephonic notice (confirmed in writing) on the same date that the Lead Borrower was notified by the affected Lender or the Administrative Agent pursuant to Section 3.01(a)(ii) or (iii) or (y) if the affected LIBO Rate Loan is then outstanding, upon at least three Business Days’ written notice to the Administrative Agent, require the affected Lender to convert such LIBO Rate Loan into a Base Rate Loan; provided that if more than one Lender is affected at any time, then all affected Lenders must be treated the same pursuant to this Section 3.01(b).

(c) If any Lender determines that after the Closing Date the introduction of or any change in any applicable law or governmental rule, regulation, order, guideline, directive or request (whether or not having the force of law) concerning capital or liquidity requirements, or any change in interpretation or administration thereof by the NAIC or any Governmental Authority, central bank or comparable agency, will have the effect of increasing the amount of capital or liquidity required or expected to be maintained by such Lender or any corporation controlling such Lender based on the existence of such Lender’s Commitments hereunder or its obligations hereunder, then each Borrower, jointly and severally, agrees to pay to such Lender, upon its written demand therefor, such additional documented amounts as shall be required to compensate such Lender or such other corporation for the increased cost to such Lender or such other corporation or the reduction in the rate of return to such Lender or such other corporation as a result of such increase of capital. In determining such additional amounts, each Lender will act reasonably and in good faith and will use averaging and attribution methods which are reasonable; provided that such Lender’s determination of compensation owing under this Section 3.01(c) shall, absent manifest error, be final and conclusive and binding on all the parties hereto. Each Lender, upon determining that any additional amounts will be payable pursuant to this Section 3.01(c), will give prompt written notice thereof to the Lead Borrower, which notice shall show in reasonable detail the basis for calculation of such additional amounts.

(d) Notwithstanding anything in this Agreement 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 regulatory authorities, in each case pursuant to Basel III ((x) and (y) collectively referred to as “Dodd-Frank and Basel III”), shall be deemed to be a change after the Closing Date in a requirement of law or government rule, regulation or order, regardless of the date enacted, adopted, issued or implemented (including for purposes of this Section 3.01).
Notwithstanding the above, a Lender will not be entitled to demand compensation for any increased cost or reduction set forth in this Section 3.01 at any time if it is not the general practice and policy of such Lender to demand such compensation from similarly situated borrowers in similar circumstances at such time.

(e) Notwithstanding anything to the contrary in this Agreement or any other Credit Documents, if the Administrative Agent determines (which determination shall be conclusive absent manifest error), or the Lead Borrower or Required Lenders notify the Administrative Agent (with, in the case of the Required Lenders, a copy to the Lead Borrower) that the Lead Borrower or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining LIBOR for any Interest Period hereunder or any other tenors of LIBOR, including, without limitation, because the LIBOR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent or such administrator has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available, or used for determining the interest rate of loans, provided that, at the time of such statement, there is no successor administrator that is satisfactory to the Administrative Agent, that will continue to provide LIBOR after such specific date (such specific date, the “Scheduled Unavailability Date”); or

(iii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over such administrator has made a public statement announcing that all Interest Periods and other tenors of LIBOR are no longer representative; or

(iv) syndicated loans currently being executed, or that include language similar to that contained in this Section 3.01, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR:

then, in the case of clauses (i)-(iii) above, on a date and time determined by the Administrative Agent (any such date, the “LIBOR Replacement Date”), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and shall occur reasonably promptly upon the occurrence of any of the events or circumstances under clauses (i), (ii) or (iii) above and, solely with respect to clause (i) above, no later than the Scheduled Unavailability Date, LIBOR will be replaced hereunder and under any Credit Document with, subject to the proviso below, the first available alternative set forth in the order below for any payment period for interest calculated that can be determined by the Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Credit Document (the “LIBOR Successor Rate” and any such rate before giving effect to the Related Adjustment, the “Pre-Adjustment Successor Rate”):

(x) Term SOFR plus the Related Adjustment; and

(y) SOFR plus the Related Adjustment;

and in the case of clause (iv) above, the Lead Borrower and Administrative Agent may amend this Agreement solely for the purpose of replacing LIBOR under this Agreement and under any other Credit Document in accordance with the definition of “LIBOR Successor Rate” and such amendment will become effective at 5:00 p.m., on the fifth Business Day after the Administrative Agent shall have notified all Lenders and the Lead Borrower of the occurrence of the circumstances described in clause (iv) above unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to the implementation of a LIBOR Successor Rate pursuant to such clause;
provided; that, if the Administrative Agent determines that Term SOFR has become available, is administratively feasible for the Administrative Agent and would have been identified as the Pre-Adjustment Successor Rate in accordance with the foregoing if it had been so available at the time that the LIBOR Successor Rate then in effect was so identified, and the Administrative Agent notifies the Lead Borrower and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Pre-Adjustment Successor Rate shall be Term SOFR and the LIBOR Successor Rate shall be Term SOFR plus the relevant Related Adjustment.

The Administrative Agent will promptly (in one or more notices) notify the Lead Borrower and each Lender of (x) any occurrence of any of the events, periods or circumstances under clauses (i) through (iii) above, (y) a LIBOR Replacement Date and (z) the LIBOR Successor Rate.

Any LIBOR Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, such LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent.

Notwithstanding anything else herein, if at any time any LIBOR Successor Rate as so determined would otherwise be less than 0.50%, the LIBOR Successor Rate will be deemed to be 0.50% for the purposes of this Agreement and the other Credit Documents.

In connection with the implementation of a LIBOR Successor Rate, the Administrative Agent will have the right to make LIBOR Successor Rate Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Credit Document, any amendments implementing such LIBOR Successor Rate Conforming Changes will become effective without any further action or consent of any other party to this Agreement; provided that, with respect to any such amendment effected, the Administrative Agent shall post each such amendment implementing such LIBOR Successor Rate Conforming Changes to the Borrower and the Lenders reasonably promptly after such amendment becomes effective.

If the events or circumstances of the type described in 3.01(e)(i)-(iii) have occurred with respect to the LIBOR Successor Rate then in effect, then the successor rate thereto shall be determined in accordance with the definition of “LIBOR Successor Rate.”

(f) Notwithstanding anything to the contrary herein, (i) after any such determination by the Administrative Agent or receipt by the Administrative Agent of any such notice described under Section 3.01(e)(i)-(iii), as applicable, if the Administrative Agent determines that none of the LIBOR Successor Rates is available on or prior to the LIBOR Replacement Date, (ii) if the events or circumstances described in Section 3.01(e)(iv) have occurred but none of the LIBOR Successor Rates is available, or (iii) if the events or circumstances of the type described in Section 3.01(e)(i)-(iii) have occurred with respect to the LIBOR Successor Rate then in effect and the Administrative Agent determines that none of the LIBOR Successor Rates is available, then in each case, the Administrative Agent and the Lead Borrower may amend this Agreement solely for the purpose of replacing LIBOR or any then current LIBOR Successor Rate in accordance with this Section 3.01 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with another alternate benchmark rate giving due consideration to any evolving or then
existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any Related Adjustments and any other mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by the Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a LIBOR Successor Rate. Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders and the Borrower unless, prior to such time, Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders object to such amendment.

If, at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, no LIBOR Successor Rate has been determined in accordance with clauses (e) or (f) of this Section 3.01 and the circumstances under clauses (e)(i) or (e)(iii) above exist or the Scheduled Unavailability Date has occurred (as applicable), the Administrative Agent will promptly so notify the Lead Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain LIBO Rate Term Loan shall be suspended, (to the extent of the affected LIBO Rate Term Loan, Interest Periods, interest payment dates or payment periods), and (y) the LIBO Rate Term Loan component shall no longer be utilized in determining the Base Rate until the LIBOR Successor Rate has been determined in accordance with clauses (e) or (f). Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBO Rate Term Loan (to the extent of the affected LIBO Rate Term Loan, Interest Periods, interest payment dates or payment periods) or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Term Loans (subject to the foregoing clause (y)) in the amount specified therein.

Section 3.02 Compensation

Each Borrower, jointly and severally, agrees to compensate each Lender, upon its written request (which request shall set forth in reasonable detail the basis for requesting such compensation and the calculation of the amount of such compensation), for all losses, expenses and liabilities (including, without limitation, any loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund its LIBO Rate Loans but excluding loss of anticipated profits (and without giving effect to the minimum “LIBO Rate”) which such Lender may sustain: (i) if for any reason (other than a default by such Lender or the Administrative Agent) a Borrowing of, or conversion from or into, LIBO Rate Loans does not occur on a date specified therefor in a Notice of Borrowing or Notice of Conversion; (ii) if any prepayment or repayment (including any termination or reduction of Commitments made pursuant to Section 2.07 or as a result of an acceleration of the Loans pursuant to Section 11) or conversion of any of its LIBO Rate Loans occurs on a date which is not the last day of an Interest Period with respect thereto; (iii) if any prepayment of any LIBO Rate Loans is not made on any date specified in a notice of termination or reduction given by the Lead Borrower; or (iv) as a consequence of any other default by any Borrower to repay its LIBO Rate Loans when required by the terms of this Agreement or any Note held by such Lender.

Section 3.03 Change of Lending Office

Each Lender agrees that on the occurrence of any event giving rise to the operation of Section 3.01(a)(ii) or (iii), Section 3.01(c), Section 5.01 or Section 13.01(g)(ii) with respect to such Lender, it will, if
requested by the Lead Borrower, use reasonable efforts (subject to overall policy considerations of such Lender) to designate another lending office for any Loans affected by such event; provided that such designation is made on such terms that such Lender and its lending office suffer no economic, legal or regulatory disadvantage, with the object of avoiding the consequence of the event giving rise to the operation of such Section. Nothing in this Section shall affect or postpone any of the obligations of the Borrowers or the right of any Lender provided in Sections 3.01, 5.01 or 13.01(a)(ii).

Section 3.04 Replacement of Lenders

(x) If any Lender becomes a Defaulting Lender, (y) upon the occurrence of an event giving rise to the operation of Section 3.01(a)(ii) or (iii), Section 3.01(c), Section 5.01 or Section 13.01(a)(ii) with respect to such Lender or (z) in the case of a refusal by a Lender to consent to certain proposed changes, waivers, discharges or terminations with respect to this Agreement which have been approved by the Required Lenders as (and to the extent provided in Section 13.12(b), the Lead Borrower shall have the right, if no Event of Default then exists or, in the case of preceding clause (z), will exist immediately after giving effect to such replacement), to replace such Lender (the "Replacement Lender") with one or more other Eligible Transferees, none of whom shall constitute a Defaulting Lender at the time of such replacement (collectively, the "Replacement Lender") and each of whom shall be required to be reasonably acceptable to the Administrative Agent (to the extent the Administrative Agent’s consent would be required for an assignment to such Replacement Lender pursuant to Section 13.04); provided that (i) at the time of any replacement pursuant to this Section 3.04, the Replacement Lender shall enter into one or more Assignment and Assumption Agreements pursuant to Section 13.04(b) (and with all fees payable pursuant to said Section 13.04(b) to be paid by the Replacement Lender and/or the Replaced Lender (as may be agreed to at such time by and among the Lead Borrower, the Replacement Lender and the Replaced Lender)) pursuant to which the Replacement Lender shall acquire all of the Commitments and outstanding Loans of, the Replaced Lender and, in connection therewith, shall pay to (x) the Replacement Lender in respect thereof an amount equal to the sum of (I) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the respective Replaced Lender and (II) an amount equal to all accrued, but theretofore unpaid, Fees owing to the Replaced Lender pursuant to Section 2.05 and (ii) all obligations of each Borrower due and owing to the Replaced Lender at such time (other than those specifically described in clause (i) above in respect of which the assignment purchase price has been, or is concurrently being, paid) shall be paid in full to such Replaced Lender concurrently with such replacement. Upon receipt by the Replaced Lender of all amounts required to be paid to it pursuant to this Section 3.04, the Administrative Agent shall be entitled (but not obligated) and authorized to execute an Assignment and Assumption Agreement on behalf of such Replaced Lender, and any such Assignment and Assumption Agreement so executed by the Administrative Agent and the Replacement Lender shall be effective for purposes of this Section 3.04 and Section 13.04. Upon the execution of the respective Assignment and Assumption Agreement, the payment of amounts referred to in clauses (i) and (ii) above, recordation of the assignment on the Register pursuant to Section 13.15 and, if so requested by the Replacement Lender, delivery to the Replacement Lender of the appropriate Note or Notes executed by the applicable Borrower, (x) the Replacement Lender shall become a Lender hereunder and the Replacement Lender shall cease to constitute a Lender hereunder, except with respect to indemnification provisions under this Agreement (including, without limitation, Sections 3.01, 3.02, 5.01, 12.07 and 13.01), which shall survive as to such Replaced Lender with respect to facts and circumstances occurring prior to the effective date of such replacement. In connection with any replacement of Lenders pursuant to, and as contemplated by, this Section 3.04, each Borrower hereby irrevocably authorizes the Lead Borrower to take all necessary action, in the name of such Borrower, as described above in this Section 3.04 in order to effect the replacement of the respective Lender or Lenders in accordance with the preceding provisions of this Section 3.04.

Section 3.05 Inability to Determine Rates

If the Required Lenders determine in good faith that for any reason (a) U.S. Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such LIBO Rate Loan, (b) adequate and reasonable means do not exist for determining the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan, or (c) that the LIBO Rate for any requested Interest Period with respect to a proposed LIBO Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Lead Borrower and each Lender.
Thereafter, (x) the obligation of the Lenders to make or maintain LIBO Rate Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the LIBO Rate component of the Base Rate, the utilization of the LIBO 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 Lead Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBO Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of LIBO Rate Loans in the amount specified therein.

ARTICLE 4  [Reserved]

ARTICLE 5  Taxes

Section 5.01  Net Payments

(a) All payments made by or on account of any Credit Party under any Credit Document shall be made free and clear of, and without deduction or withholding for, any Taxes, except as required by applicable law. If any Taxes are required to be withheld or deducted from such payments, then the Credit Parties jointly and severally agree that (i) to the extent such deduction or withholding is on account of an Indemnified Tax or Other Tax, the sum payable shall be increased as necessary so that after making all required deductions or withholding (including deduction or withholdings applicable to additional sums payable under this Section 5.01), the Administrative Agent or Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the applicable withholding agent will make such deductions or withholdings, and (iii) the applicable withholding agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law. In addition, the Credit Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law. The Credit Parties will furnish to the Administrative Agent within 45 days after the date the payment by any of them of any Taxes is due pursuant to applicable law certified copies of tax receipts evidencing such payment by the applicable Credit Party. The Credit Parties jointly and severally agree to indemnify and hold harmless the Administrative Agent and each Lender, and reimburse the Administrative Agent and each Lender, within 10 days of written request therefor, for the amount of any Indemnified Taxes (including any Indemnified Taxes imposed on amounts payable under this Section 5.01) payable or paid by the Administrative Agent or such Lender or required to be withheld or deducted from a payment to the Administrative Agent or such Lender, and any Other Taxes, and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority.

(b) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to the Lead Borrower and the Administrative Agent, at the time or times reasonably requested by the Lead Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Lead Borrower or the Administrative Agent, certifying as to any entitlement of such Lender to an exemption from, or a reduced rate of, withholding Tax. In addition, each Lender shall deliver to the Lead Borrower and the Administrative Agent, at the time or times reasonably requested by the Lead Borrower or the Administrative Agent, such other documentation prescribed by applicable law or reasonably requested by the Lead Borrower or the Administrative Agent as will enable the Lead Borrower or the Administrative Agent to determine whether such Lender is subject to backup withholding or information reporting requirements. Each Lender shall, whenever a lapse in time or change in circumstances renders such documentation (including any specific documents required below in Section 5.01(c)) expired, obsolete or inaccurate in any respect, deliver promptly to the Lead Borrower and the Administrative
Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Lead Borrower or the Administrative Agent) or promptly notify the Lead Borrower and the Administrative Agent in writing of its inability to do so.

(c) Without limiting the generality of the foregoing: (x) each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Code) shall deliver to the Lead Borrower and the Administrative Agent on or prior to the Closing Date or, in the case of a Lender that is an assignee or transferee of an interest under this Agreement pursuant to Section 3.04 or 13.04(b) (unless the relevant Lender was already a Lender hereunder immediately prior to such assignment or transfer), on the date of such assignment or transfer to such Lender, (i) two accurate and complete signed copies of Internal Revenue Service Form W-8BEN (or successor form) or Form W-8BEN-E (or successor form) claiming eligibility for benefits of an income tax treaty to which the United States is a party or Form W-8ECI (or successor form), or (ii) in the case of a Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of “portfolio interest,” a certificate substantially in the form of Exhibit C (any such certificate, a “U.S. Tax Compliance Certificate”) and two accurate and complete signed copies of Internal Revenue Service Form W-8BEN (or successor form) or W-8BEN-E (or successor form) certifying to such Lender’s entitlement as of such date to a complete exemption from U.S. withholding tax with respect to payments of interest to be made under this Agreement and under any Note; or (iii) to the extent a Lender is not the beneficial owner (for example, where the Lender is a partnership or a participating Lender), two accurate and complete signed copies of Internal Revenue Service Form W-8IMY (or successor form) of the Lender, accompanied by Form W-8ECI, Form W-8BEN, Form W-8BEN-E, U.S. Tax Compliance Certificate, Form W-8IMY, and/or any other required information (or successor or other applicable form) from each beneficial owner that would be required under this Section 5.01(c) if such beneficial owner were a Lender (provided that, if the Lender is a partnership for U.S. federal income Tax purposes (and not a participating Lender), and one or more beneficial owners are claiming the portfolio interest exemption), the U.S. Tax Compliance Certificate may be provided by such Lender on behalf of such beneficial owners; (y) Each Lender that is a United States person, as defined in Section 7701(a)(30) of the Code, shall deliver to the Lead Borrower and the Administrative Agent, at the times specified in Section 5.01(b), two accurate and complete signed copies of Internal Revenue Service Form W-9, or any successor form that such Person is entitled to provide at such time, in order to qualify for an exemption from United States back-up withholding requirements; and (z) if any payment made to a Lender under any Credit 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 Lead Borrower and the Administrative Agent, at the time or times prescribed by applicable law and at such time or times reasonably requested by the Lead 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 Lead Borrower or the Administrative Agent as may be necessary for the Lead Borrower or the Administrative Agent to comply with its obligations under FATCA, to determine whether such Lender has complied with such Lender’s obligations under FATCA or to determine, if necessary, the amount to deduct and withhold from such payment. Solely for purposes of this Section 5.01(c)(z), “FATCA” shall include any amendment made to FATCA after the Closing Date.

Notwithstanding any other provision of this Section 5.01, a Lender shall not be required to deliver any form that such Lender is not legally eligible to deliver.

(d) If the Administrative Agent or any Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes or Other Taxes as to which it has been
indemnified by the Credit Parties or with respect to which a Credit Party has paid additional amounts pursuant to Section 5.01(a), it shall pay to the relevant Credit Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Credit Party under Section 5.01(a) with respect to the Indemnified Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including any Taxes) of the Administrative Agent or such Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the relevant Credit Party, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Credit Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 5.01(d), in no event will the Administrative Agent or any Lender be required to pay any amount to any Credit Party pursuant to this Section 5.01(d) to the extent that such payment would place the Administrative Agent or such Lender in a less favorable position (on a net after-Tax basis) than such party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. Nothing in this Section 5.01(d) shall be construed to obligate the Administrative Agent or any Lender to disclose its Tax returns or any other information regarding its Tax affairs or computations to any Person or otherwise to arrange its Tax affairs in any manner other than as it determines in its sole discretion.

(e) For the avoidance of doubt, for purposes of Section 5.01, the term “Lender” shall include any Issuing Bank.

ARTICLE 6 Conditions Precedent to the Closing Date

The Administrative Agent, Swingline Lenders, the Issuing Bank and the Lenders shall not be required to fund any Revolving Loans or Swingline Loans, or arrange for the issuance of any Letters of Credit on the Closing Date, until the following conditions are satisfied or waived.

Section 6.01 Closing Date; Credit Documents; Notes

On or prior to the Closing Date, Holdings, each Borrower, the Administrative Agent and the Lenders on the date hereof shall have signed a counterpart of this Agreement (whether the same or different counterparts) and shall have delivered (by electronic transmission or otherwise) the same to the Administrative Agent or, in the case of the Lenders, shall have given to the Administrative Agent telephonic (confirmed in writing), written or telex notice (actually received) at such office that the same has been signed and mailed to it.

Section 6.02 [Reserved]

Section 6.03 Opinions of Counsel

On the Closing Date, the Administrative Agent shall have received the executed opinions of (i) Latham & Watkins, counsel to the Credit Parties, (ii) Morgan, Lewis & Bockius LLP, special Virginia counsel to the Credit Parties and (iii) Downey Brand LLP, special Nevada counsel to the Credit Parties, which, in each case, shall be in form and substance reasonably satisfactory to the Administrative Agent.

Section 6.04 Corporate Documents; Proceedings, etc.

(a) On the Closing Date, the Administrative Agent shall have received a certificate from each Credit Party, dated the Closing Date, signed by a Responsible Officer of such Credit Party, and attested to by the Secretary or any Assistant Secretary of such Credit Party, in the form
of Exhibit E with appropriate insertions, together with copies of the certificate or articles of incorporation and by-laws (or equivalent organizational documents), as applicable, of such Credit Party and the resolutions of such Credit Party referred to in such certificate, and each of the foregoing shall be in form and substance reasonably satisfactory to the Administrative Agent.

(b) On the Closing Date, the Administrative Agent shall have received good standing certificates and bring-down telegrams or facsimiles, if any, for the Credit Parties which the Administrative Agent or the Lead Arranger reasonably may have requested, certified by proper Governmental Authorities.

Section 6.05 Termination of Existing Credit Agreement; Refinancing

The Lead Borrower and its Subsidiaries shall have repaid in full all Indebtedness outstanding under the Existing Credit Agreement, together with all accrued but unpaid interest, fees and other amounts owing thereunder (other than contingent indemnification obligations not yet due and payable) and (i) all commitments to lend or make other extensions of credit thereunder shall have been terminated and (ii) all security interests in respect of, and Liens securing, the Indebtedness and other obligations thereunder created pursuant to the security documentation relating thereto shall have been terminated and released (or arrangements therefor reasonably satisfactory to the Administrative Agent shall have been made), and the Administrative Agent shall have received all such releases as may have been reasonably requested by the Administrative Agent, which releases shall be in form and substance reasonably satisfactory to Administrative Agent, including, without limiting the foregoing, (a) proper termination statements (Form UCC-3 or the appropriate equivalent) for filing under the UCC or equivalent statute or regulation of each jurisdiction where a financing statement or application for registration (Form UCC-1 or the appropriate equivalent) was filed with respect to Holdings or any of its Subsidiaries in connection with the security interests created with respect to the Existing Credit Agreement and (b) terminations or reassignments of any security interest in, or Lien on, any patents, trademarks, copyrights, or similar interests of Holdings or any of its Subsidiaries. The Borrowers or the relevant parent company thereof shall have satisfied and discharged all Indebtedness contemplated under the definition of “Existing Credit Agreement Refinancing”.

Section 6.06 [Reserved]

Section 6.07 Intercreditor Agreement

On the Closing Date, each Credit Party shall have duly authorized the Intercreditor Agreement and the Intercreditor Agreement substantially in the form of Exhibit L hereto shall have been executed and delivered by each party thereto.

Section 6.08 Pledge Agreement

On the Closing Date, each Credit Party shall have duly authorized, executed and delivered the Pledge Agreement to the Collateral Agent substantially in the form of Exhibit F (as amended, modified, restated and/or supplemented from time to time, the “Pledge Agreement”) and shall have delivered to the Collateral Agent, as Pledgee thereunder, all of the Pledge Agreement Collateral (in the case of Equity Interests), if any, referred to therein and then owned by such Credit Party together with executed and undated endorsements for transfer in the case of Equity Interests constituting certificated Pledge Agreement Collateral, along with evidence that all other actions necessary, to perfect (to the extent required in the Pledge Agreement) the security interests in Equity Interests purported to be created by the Pledge Agreement have been taken.

Section 6.09 Security Agreements

On the Closing Date, each Credit Party shall have duly authorized, executed and delivered to the Collateral Agent the Security Agreement substantially in the form of Exhibit G (as amended, modified, restated and/or
supplemented from time to time, the “Security Agreement”) covering all of such Credit Party’s present and future Collateral referred to therein, and shall have delivered to the Collateral Agent:

(i) proper financing statements (Form UCC-1 or the equivalent) authorized for filing under the UCC or other appropriate filing offices of each jurisdiction as may be reasonably necessary or desirable to perfect the security interests purported to be created by the Security Agreement;

(ii) (x) certified copies of a recent date of requests for information or copies (Form UCC-1), or equivalent reports as of a recent date, listing all effective financing statements that name Holdings, the Lead Borrower or any other Credit Party as debtor and that are filed in the jurisdictions referred to in clause (i) above, together with copies of such other financing statements that name Holdings, the Lead Borrower or any other Credit Party as debtor (none of which shall cover any of the Collateral except to the extent evidencing Permitted Liens), (y) United States Patent and Trademark Office and United States Copyright Office searches reasonably requested by the Administrative Agent and (z) reports as of a recent date listing all effective tax and judgment liens with respect to Holdings, the Lead Borrower or any other Credit Party in each jurisdiction as the Agents may reasonably require; and

(iii) a duly authorized and executed Perfection Certificate.

Section 6.10 Subsidiaries Guaranty

On the Closing Date, each Subsidiary Guarantor shall have duly authorized, executed and delivered to the Administrative Agent the Subsidiaries Guaranty substantially in the form of Exhibit H (as amended, modified or supplemented from time to time, the “Subsidiaries Guaranty”), guaranteeing all of the obligations of the Lead Borrower as more fully provided therein.

Section 6.11 Financial Statements; Pro Forma Balance Sheets; Projections

On or prior to the Closing Date, the Agents and the Lenders shall have received (i) unaudited consolidated balance sheets and related statements of income and cash flows for the Lead Borrower and its consolidated Subsidiaries for each fiscal quarter of the Lead Borrower and its consolidated Subsidiaries ended after the close of its June 30, 2016 fiscal quarter and at least 45 days prior to the Closing Date and (ii) a pro forma consolidated balance sheet of the Lead Borrower and its consolidated Subsidiaries as of the last day of the most recently ended fiscal quarter ended at least 45 days prior to the Closing Date (after giving effect to the Transaction), and related pro forma consolidated income statement for Lead Borrower and its consolidated Subsidiaries for the most recently ended four fiscal quarter periods ended at least 45 days prior to the Closing Date prepared as if the Transaction had occurred at the beginning of such period, which pro forma financial statements need not meet the requirements of Regulation S-X of the Securities Act.

On the Closing Date, the Administrative Agent shall have received a solvency certificate from the chief financial officer or treasurer of the Lead Borrower substantially in the form of Exhibit I.

Section 6.12 Solvency Certificate

On the Closing Date, the Lead Borrower shall have paid to the Agents and each Lender all costs, fees and expenses (including, without limitation, legal fees and expenses) to the extent invoiced at least three Business Days prior to the Closing Date and other compensation payable to the Agents or such Lender or otherwise payable in respect of the Transaction to the extent then due.
Section 6.14  Representation and Warranties

The representations and warranties contained in Section 8 of this Agreement and in each other Credit Document shall be true and correct in all material respects on the Closing Date (in each case, any representation or warranty that is qualified as to “materiality” or similar language shall be true and correct in all respects on the Closing Date).

Section 6.15   Patriot Act

The Agents shall have received from the Credit Parties, at least five Business Days prior to the Closing Date, all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act, in each case to the extent requested in writing at least 10 Business Days prior to the Closing Date.

Section 6.16   Borrowing Notice

Prior to the making of a Revolving Loan on the Closing Date, the Administrative Agent shall have received a Notice of Borrowing meeting the requirements of Section 2.02(c).

Section 6.17   Officer’s Certificate

On the Closing Date, the Lead Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer of the Lead Borrower certifying as to the satisfaction of the conditions in Section 6.14 and Section 6.19.

Section 6.18   [Reserved]

Section 6.19   Material Adverse Effect

Since December 31, 2015, there has occurred no fact, event or circumstance which has had or would reasonably be expected to have a Material Adverse Effect.

Section 6.20   Borrowing Base Certificate

Subject to Section 9.13, the Lead Borrower shall have delivered to the Administrative Agent a Borrowing Base Certificate in form and substance reasonably satisfactory to the Administrative Agent.

ARTICLE 7   Conditions Precedent to All Credit Events

The obligation of each Lender and each Issuing Bank to make any Credit Extension (including the initial Credit Extension) shall be subject to the satisfaction (or waiver) of each of the conditions precedent set forth below:

Section 7.01   Notice of Borrowing

The Administrative Agent shall have received a Notice of Borrowing as required by Section 2.03 (or such notice shall have been deemed given in accordance with Section 2.03) if Loans are being requested or, in the case of the issuance, amendment, extension or renewal of a Letter of Credit, the Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance, amendment, extension or renewal of such Letter of Credit as required by Section 2.13(b) or, in the case of the Borrowing of a Swingline Loan, the Swingline Lender and the Administrative Agent shall have received a notice requesting such Swingline Loan as required by Section 2.12(b).

Section 7.02   Availability
Availability on the proposed date of such Borrowing shall be adequate to cover the amount of such Borrowing.

Section 7.03  No Default

No Default or Event of Default shall exist at the time of, or result from, such funding or issuance.

Section 7.04  Representations and Warranties

Each of the representations and warranties made by any Credit Party set forth in Section 8 hereof or in any other Credit Document shall be true and correct in all material respects (without duplication of any materiality standard set forth in any such representation or warranty) on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such date (without duplication of any materiality standard set forth in any such representation or warranty).

The acceptance of the benefits of each Credit Event after the Closing Date shall constitute a representation and warranty by each Borrower to the Administrative Agent and each of the Lenders that all the conditions specified in this Section 7 and applicable to such Credit Event are satisfied as of that time (other than such conditions which are subject to the discretion of the Administrative Agent or the Lenders). All of the Notes, certificates, legal opinions and other documents and papers referred to in Section 6 and in this Section 7, unless otherwise specified, shall be delivered to the Administrative Agent at the Notice Office for the account of each of the Lenders.

ARTICLE 8  Representations, Warranties and Agreements

In order to induce the Lenders to enter into this Agreement and to make the Loans, each of Intermediate Holdings and each Borrower, as applicable, makes the following representations, warranties and agreements, in each case after giving effect to the Transaction.

Section 8.01  Organizational Status

Each of Holdings, as the Lead Borrower and each of its Restricted Subsidiaries (i) is a duly organized and validly existing corporation, partnership, limited liability company or unlimited liability company, as the case may be, in good standing under the laws of the jurisdiction of its organization, (ii) has the corporate, partnership, limited liability company or unlimited holding company power and authority, as the case may be, to own its property and assets and to transact the business in which it is engaged and presently proposes to engage and (iii) is, to the extent such concepts are applicable under the laws of the relevant jurisdiction, duly qualified and is authorized to do business and is in good standing in each jurisdiction where the ownership, leasing or operation of its property or the conduct of its business requires such qualifications except, in the case of clauses (ii) and (iii) hereof, for failures to be so qualified which, individually and in the aggregate, have not had, and would not reasonably be expected to have, a Material Adverse Effect.

Section 8.02  Power and Authority

Each of the Credit Parties thereof has the corporate, partnership, limited liability company or unlimited liability company power and authority, as the case may be, to execute, deliver and perform the terms and provisions of each of the Credit Documents to which it is party and has taken all necessary corporate, partnership, limited liability company or unlimited liability company action, as the case may be, to authorize the execution, delivery and performance by it of each of such Credit Documents. Each Credit Party thereof has duly executed and delivered each of the Credit Documents to which it is party, and each of such Credit Documents constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally
affecting creditors’ rights and by equitable principles (regardless of whether enforcement is sought in equity or at law).

Section 8.03  No Violation

Neither the execution, delivery or performance by any Credit Party of the Credit Documents to which it is a party, nor compliance by it with the terms and provisions thereof, (i) will contravene any provision of any law, statute, rule or regulation or any order, writ, injunction or decree of any court or governmental instrumentality, (ii) will conflict with or result in any breach of any of the terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien (except for Permitted Liens) upon any of the property or assets of any Credit Party or any of its Restricted Subsidiaries pursuant to the terms of, any indenture, mortgage, deed of trust, credit agreement or loan agreement, or any other material agreement, contract or instrument, in each case to which any Credit Party or any of its respective Restricted Subsidiaries is a party or by which it or any of its property or assets is bound or to which it may be subject (except, in the case of preceding clauses (i) and (ii), other than in the case of any contravention, breach, default and/or conflict, that would not reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect) or (iii) will violate any provision of the certificate or articles of incorporation, certificate of formation, limited liability company agreement or by-laws (or equivalent organizational documents), as applicable, of any Credit Party or any of its respective Restricted Subsidiaries.

Section 8.04  Approvals

Except to the extent the failure to obtain or make the same would not reasonably be expected to have a Material Adverse Effect, no order, consent, approval, license, authorization or validation of, or filing, recording or registration with (except for (x) those that have otherwise been obtained or made on or prior to the Closing Date and which remain in full force and effect on the Closing Date and (y) filings which are necessary to perfect the security interests created under the Security Documents), or exemption by, any governmental or public body or authority, or any subdivision thereof, is required to be obtained or made by, or on behalf of, any Credit Party to authorize, or is required to be obtained or made by, or on behalf of, any Credit Party in connection with, the execution, delivery and performance of any Credit Document.

Section 8.05  Financial Statements; Financial Condition; Projections

(a)  (i) The consolidated balance sheets of the Lead Borrower and its consolidated Subsidiaries for the fiscal period ended December 31, 2015 and the related consolidated statements of income, cash flows and retained earnings of the Lead Borrower and its consolidated Subsidiaries for each such fiscal year present fairly in all material respects the consolidated financial position of the Lead Borrower and its consolidated Subsidiaries at the dates of such balance sheets and the consolidated results of the operations of the Lead Borrower and its consolidated Subsidiaries for the periods covered thereby. All of the foregoing historical financial statements have been audited by Ernst & Young LLP and prepared in accordance with U.S. GAAP consistently applied.

(ii)  All unaudited financial statements of the Lead Borrower and its Subsidiaries furnished to the Lenders on or prior to the Closing Date pursuant to clause (i) of Section 6.11 have been prepared in accordance with U.S. GAAP consistently applied by the Lead Borrower, except as otherwise noted therein, subject to normal year-end audit adjustments (all of which are of a recurring nature and none of which, individually or in the aggregate, would be material) and the absence of footnotes.

(iii)  The pro forma consolidated balance sheet of the Lead Borrower furnished to the Lenders pursuant to clause (ii) of Section 6.11 has been prepared as of June 30, 2016 as if the Transaction and the financing thereof had occurred on such date. Such pro forma consolidated
balance sheet presents a good faith estimate of the pro forma consolidated financial position of the Lead Borrower as of June 30, 2016. The pro forma consolidated income statement of the Lead Borrower furnished to the Lenders pursuant to clause (ii) of Section 6.11 has been prepared for the four fiscal quarters ended June 30, 2016, as if the Transaction and the financing therefor had occurred on the first day of such four-quarter period. Such pro forma consolidated income statement presents a good faith estimate of the pro forma consolidated income statement of the Lead Borrower as if the Transaction and the financing therefor had occurred on the first day of such four-quarter period.

(b) On the Closing Date, Holdings, the Lead Borrower and its Subsidiaries, on a consolidated basis, are Solvent after giving effect to the consummation of the Transaction and the related financing transactions.

(c) The Projections have been prepared in good faith and are based on assumptions that were believed by the Lead Borrower to be reasonable at the time made and at the time delivered to the Administrative Agent.

(d) Since December 31, 2015, there has been no Material Adverse Effect, and there has been no change, event or occurrence that could reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

Section 8.06 Litigation

There are no actions, suits or proceedings or, to the knowledge of any Credit Party, governmental investigations pending or, to the knowledge of any Credit Party, threatened (i) with respect to the Transaction or any Credit Document or (ii) that either individually or in the aggregate, have had, or would reasonably be expected to have, a Material Adverse Effect.

Section 8.07 True and Complete Disclosure

(a) All written information (taken as a whole) furnished by or on behalf of any Credit Party in writing to the Administrative Agent or any Lender (including, without limitation, all such written information contained in the Credit Documents) for purposes of or in connection with this Agreement, the other Credit Documents or any transaction contemplated herein or therein does not, and all other such written information (taken as a whole) hereafter furnished by or on behalf of any Credit Party in writing to the Administrative Agent or any Lender will not, on the date as of which such written information is dated or certified and on the Closing Date, contain any material misstatement of fact or omit to state any material fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such written information was provided.

(b) Notwithstanding anything to the contrary in the foregoing clause (a) of this Section 8.07, none of the Credit Parties makes any representation, warranty or covenant with respect to any information consisting of statements, estimates, forecasts and projections regarding the future performance of the Lead Borrower or any of its Subsidiaries, or regarding the future condition of the industries in which they operate other than that such information has been (and in the case of such information furnished after the Closing Date, will be) prepared in good faith based upon assumptions believed to be reasonable at the time of preparation thereof (it being understood and agreed that projections are not to be viewed as facts,
projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Credit Parties, no 
assurances can be given that any particular projection will be realized and that actual results during the period or periods covered by such 
projections may differ from projected results, and such differences may be material).

Section 8.08 Use of Proceeds; Margin Regulations

(a) All proceeds of the Loans incurred on the Closing Date (if any) will be used by the Borrowers to fund certain original issue 
discount or upfront fees.

(b) All proceeds of the Loans incurred after the Closing Date will be used for working capital needs and general corporate purposes, 
including the financing of capital expenditures, Permitted Acquisitions, and other permitted Investments, Dividends, performance of 
Government Contracts and any other purpose not prohibited hereunder.

(c) No part of any Credit Event (or the proceeds thereof) nor any drawing under any Letter of Credit will be used to purchase or 
carry any Margin Stock or to extend credit for the purpose of purchasing or carrying any Margin Stock. None of the making of any Loan nor 
the use of the proceeds thereof, nor any drawing under any Letter of Credit nor the occurrence of any other Credit Event will violate the 
provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System. The Borrower is not engaged in the business of 
extending credit for the purpose of purchasing or carrying any Margin Stock.

(d) The Lead Borrower will not request any Borrowing, and the Borrowers shall not use, and shall procure that their respective 
Subsidiaries and each of their respective directors, officers, employees and agents shall not use, the proceeds of any Borrowing (A) in 
furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person 
in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or 
with any Sanctioned Person, or in any Sanctioned Country, or (C) in any manner that would result in the violation of any Sanctions 
applicable to any party hereto.

Section 8.09 Tax Returns and Payments

Except, in each case, as would not reasonably be expected to result in a Material Adverse Effect, since April 4, 2011, (i) the Lead Borrower and 
each of its Restricted Subsidiaries has timely filed or caused to be timely filed with the appropriate taxing authority all Tax returns, statements, forms and 
reports for taxes (the “Returns”) required to be filed by, or with respect to the income, properties or operations of, the Lead Borrower and/or any of its 
Restricted Subsidiaries, and (ii) the Lead Borrower and each of its Restricted Subsidiaries have paid all Taxes payable by them, other than those that are 
being contested in good faith by appropriate proceedings and fully provided for as a reserve on the financial statements of the Lead Borrower and its 
Restricted Subsidiaries in accordance with U.S. GAAP.

Section 8.10 ERISA

(a) No ERISA Event has occurred or is reasonably expected to occur that would reasonably be expected to result in a Material 
Adverse Effect. Each Plan is in compliance in form and operation with its terms and with the applicable provisions of ERISA, the Code and 
other applicable law, except for such non-compliance that would not reasonably be expected to have a Material Adverse Effect. Except as 
would not reasonably be expected to result in a Material Adverse Effect, each Plan (and each related trust, if any) which is intended to be 
qualified under Section 401(a) of the Code has received a favorable
determination letter from the Internal Revenue Service or is in the form of a prototype document that is the subject of a favorable opinion letter.

(b) There exists no Unfunded Pension Liability with respect to any Plan, except as would not reasonably be expected to have a Material Adverse Effect.

(c) If each of the Lead Borrower, each Restricted Subsidiary of the Lead Borrower and each ERISA Affiliate were to withdraw from all Multiemployer Plans in a complete withdrawal as of the date this assurance is given, the aggregate withdrawal liability that would be incurred by the Lead Borrower and its Restricted Subsidiaries would not reasonably be expected to have a Material Adverse Effect.

(d) There are no actions, suits or claims pending against or involving a Plan (other than routine claims for benefits) or, to the knowledge of the Lead Borrower or any Restricted Subsidiary of the Lead Borrower, threatened, which would reasonably be expected to be asserted successfully against any Plan and, if so asserted successfully, would reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(e) The Lead Borrower, any Restricted Subsidiary of the Lead Borrower and any ERISA Affiliate have made all material contributions to or under each Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, the terms of such Plan or Multiemployer Plan, respectively, or any contract or agreement requiring contributions to a Plan or Multiemployer Plan except where any failure to comply, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(f) Except as would not reasonably be expected to have a Material Adverse Effect: (i) each Foreign Pension Plan has been maintained in substantial compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities; (ii) all contributions required to be made with respect to a Foreign Pension Plan have been timely made; and (iii) neither the Lead Borrower nor any of its Restricted Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Foreign Pension Plan.

Section 8.11 The Security Documents

(a) The provisions of the Security Agreement are effective to create in favor of the Collateral Agent for the benefit of the Secured Creditors a legal, valid and enforceable security interest (except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors’ rights and by equitable principles (regardless of whether enforcement is sought in equity or at law)) in all right, title and interest of the Credit Parties in the Collateral (as described in the Security Agreement), and upon (i) the timely and proper filing of financing statements listing each applicable Credit Party, as a debtor, and the Collateral Agent, as secured creditor, in the secretary of state’s office (or other similar governmental entity) of the jurisdiction of organization of such Credit Party, (ii) sufficient identification of commercial tort claims (as applicable), (iii) execution of a control agreement establishing the Collateral Agent’s “control” (within the meaning of the New York UCC) with respect to any deposit account, (iv) the recordation of the Patent Security Agreement, if applicable, and the Trademark Security Agreement, if applicable, in the respective form attached to the Security Agreement, in each case in the United States Patent and Trademark Office and (v) the Copyright Security Agreement in U.S. Copyrights, if applicable, in the form attached to the Security Agreement with the United States Copyright Office, the Collateral
Agent, for the benefit of the Secured Creditors, has (to the extent provided in the Security Agreement) a fully perfected security interest in all right, title and interest in all of the Collateral (as described in the Security Agreement), subject to no other Liens other than Permitted Liens, in each case, to the extent perfection can be accomplished under applicable law through these actions.

(b) The provisions of the Pledge Agreement are effective to create in favor of the Collateral Agent for the benefit of the Secured Creditors a legal, valid and enforceable security interest (except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors’ rights and by equitable principles (regardless of whether enforcement is sought in equity or at law)) in all right, title and interest of the Credit Parties in the Collateral (as described in the Pledge Agreement), upon the timely and proper filing of financing statements listing each applicable Credit Party, as a debtor, and Collateral Agent, as secured creditor, in the secretary of state’s office (or other similar governmental entity) of the jurisdiction of organization of such Credit Party, the security interests created under the Pledge Agreement in favor of the Collateral Agent, as Pledgee, for the benefit of the Secured Creditors, constitute perfected (to the extent provided in the Pledge Agreement) security interests in the Collateral (as described in the Pledge Agreement (other than Collateral in which a security interest cannot be perfected under the UCC as in effect at the relevant time in the relevant jurisdiction or by the taking of the foregoing actions)), subject to no other Liens other than Permitted Liens, in each case, to the extent perfection can be accomplished under applicable law through these actions.

Section 8.12 Properties

Except as would not reasonably be expected to have a Material Adverse Effect, the Lead Borrower and each of its Subsidiaries has good and marketable title or valid leasehold interest in the case of Real Property, and good and valid title in the case of tangible personal property, to all material tangible properties owned by it, including all material property reflected in the most recent historical balance sheets referred to in Section 8.05(a) (except as sold or otherwise disposed of since the date of such balance sheet in the ordinary course of business or as permitted by the terms of this Agreement), free and clear of all Liens, other than Permitted Liens.

Section 8.13 Capitalization

All outstanding shares of capital stock of the Lead Borrower have been duly and validly issued and are fully paid and non-assessable (other than any assessment on the shareholders of the Lead Borrower that may be imposed as a matter of law) and are owned by Holdings. All outstanding shares of capital stock of each Subsidiary Borrower are owned directly or indirectly by the Lead Borrower. The Lead Borrower does not have outstanding any capital stock or other securities convertible into or exchangeable for its capital stock or any rights to subscribe for or to purchase, or any options for the purchase of, or any agreement providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to, its capital stock.

Section 8.14 Subsidiaries

On and as of the Closing Date and after giving effect to the consummation of the Transaction, (i) Holdings has no direct Subsidiaries other than the Lead Borrower and (ii) the Lead Borrower has no Subsidiaries other than those Subsidiaries listed on Schedule 8.14. Schedule 8.14 correctly sets forth, as of the Closing Date and after giving effect to the Transaction, the percentage ownership (direct and indirect) of the Lead Borrower in each class of capital stock of each of its Subsidiaries and also identifies the direct owner thereof.
Section 8.15 Anti-Corruption Laws; Sanctioned Persons

The Lead Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by the Lead Borrower and its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Lead Borrower and its Subsidiaries and their respective directors and officers, and to the knowledge of the Lead Borrower, its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. None of (a) the Lead Borrower, any of its Subsidiaries or any of their respective directors, officers or employees, or (b) to the knowledge of the Lead Borrower, any agent of the Lead Borrower or any of its Subsidiaries that will act in any capacity in connection with or benefit from any credit facility established hereby, is a Sanctioned Person. No Borrowing or use of proceeds thereof or drawings under any Letter of Credit will be used for a purpose that would violate Anti-Corruption Laws or applicable Sanctions.

Section 8.16 Investment Company Act

None of the Lead Borrower or any of its Restricted Subsidiaries is an “investment company” within the meaning of the Investment Company Act of 1940, as amended, required to be registered as such.

Section 8.17 EEA Financial Institutions

No Credit Party is an EEA Affected Financial Institution.

Section 8.18 Environmental Matters

(a) The Lead Borrower and each of its Restricted Subsidiaries are in compliance with all applicable Environmental Laws and the requirements of any permits issued under such Environmental Laws. To the knowledge of any Credit Party, there are no pending or threatened Environmental Claims against the Lead Borrower or any of its Restricted Subsidiaries or any Real Property owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries (including any such claim arising out of the ownership, lease or operation by the Lead Borrower or any of its Restricted Subsidiaries of any Real Property formerly owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries but no longer owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries). There are no facts, circumstances, conditions or occurrences with respect to the business or operations of the Lead Borrower or any of its Restricted Subsidiaries, or to the knowledge of any Credit Party, any Real Property owner, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries (including any Real Property formerly owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries but no longer owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries) that would be reasonably expected (i) to form the basis of an Environmental Claim against the Lead Borrower or any of its Restricted Subsidiaries or (ii) to cause any Real Property owner, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries to be subject to any restrictions on the ownership, lease, occupancy or transferability of such Real Property by the Lead Borrower or any of its Restricted Subsidiaries under any applicable Environmental Law.

(b) To the knowledge of any Credit Party, except as would not reasonably be expected to have a Material Adverse Effect, Hazardous Materials have not at any time been generated, used, treated or stored on, or transported to or from, or Released on or from, any Real Property owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries where such generation, use, treatment, storage, transportation or Release has (i) violated or would be reasonably expected to violate any applicable Environmental Law, (ii) give rise to an Environmental Claim or (iii) give rise to liability under any applicable Environmental Law.
(c) Notwithstanding anything to the contrary in this Section 8.18, the representations and warranties made in this Section 8.18 shall be untrue only if the effect of any or all conditions, violations, claims, restrictions, failures and noncompliances of the types described above would, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 8.19 Labor Relations

Except as set forth in Schedule 8.19 or except to the extent the same has not, either individually or in the aggregate, had and would not reasonably be expected to have a Material Adverse Effect, (a) there are no strikes, lockouts, slowdowns or other labor disputes pending against the Lead Borrower or any of its Restricted Subsidiaries or, to the knowledge of each Credit Party, threatened against the Lead Borrower or any of its Restricted Subsidiaries, (b) to the knowledge of each Credit Party, there are no questions concerning union representation with respect to the Lead Borrower or any of its Restricted Subsidiaries, (c) the hours worked by and payments made to employees of the Lead Borrower or any of its Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable Federal, state, local, or foreign law dealing with such matters and (d) to the knowledge of each Credit Party, no wage and hour department investigation has been made of the Lead Borrower or any of its Restricted Subsidiaries.

Section 8.20 Intellectual Property

Each of the Lead Borrower and each of its Restricted Subsidiaries owns or has the right to use all the patents, trademarks, domain names, service marks, trade names, copyrights, inventions, trade secrets, formulas, proprietary information and know-how of any type and other intellectual property, whether or not written (including, but not limited to, rights in computer programs and databases) (collectively, “Intellectual Property”), used or held for use in or otherwise necessary for the present conduct of its business, without any known conflict with, infringement or violation of the Intellectual Property rights of others, except for such failures to own or have the right to use and/or conflicts, infringements or violations as have not had, and would not reasonably be expected to have, a Material Adverse Effect.

Section 8.21 Legal Names; Type of Organization (and Whether a Registered Organization); Jurisdiction of Organization; etc.

Schedule 8.21 contains for each Credit Party, as of the Closing Date, (i) the exact legal name of such Credit Party, (ii) the type of organization of such Credit Party, (iii) the jurisdiction of organization of such Credit Party, (iv) such Credit Party’s Location and (v) the organizational identification number (if any) of such Credit Party. To the extent that such Credit Party does not have an organizational identification number on the Closing Date and later obtains one, such Credit Party shall promptly thereafter notify the Collateral Agent of such organizational identification number and shall take all actions reasonably satisfactory to the Collateral Agent to the extent necessary to maintain the security interest of the Collateral Agent in the Collateral intended to be granted pursuant to the Security Documents fully perfected and in full force and effect.

Section 8.22 Borrowing Base Certificate.

At the time of delivery of each Borrowing Base Certificate, assuming that any eligibility criterion that requires the approval or satisfaction of the Administrative Agent has been approved by or is satisfactory to the Administrative Agent, each material Account reflected therein as eligible for inclusion in the Borrowing Base is an Eligible Account, Eligible Billed Hybrid Account or Eligible Unbilled Account, as applicable.

Section 8.23 EEA Financial Institution

No Credit Party is an EEA Financial Institution.
ARTICLE 9  Affirmative Covenants

The Lead Borrower and each of its Restricted Subsidiaries (and solely with respect to Section 9.05, Holdings) hereby covenants and agrees that on and after the Closing Date and so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than (i) any indemnification obligations arising hereunder which are not then due and payable and (ii) Secured Bank Product Obligations), or any Letter of Credit shall remain outstanding (unless Cash Collateralized or backstopped on terms reasonably satisfactory to the Administrative Agent).

Section 9.01  Information Covenants

The Lead Borrower will furnish to the Administrative Agent for distribution to each Lender:

(a)  Quarterly Financial Statements. Within 45 days after the close of each of the first three quarterly accounting periods in each fiscal year of the Lead Borrower (and within 60 days for the fiscal quarter ending September 30, 2016), (i) the consolidated balance sheet of the Lead Borrower and its Subsidiaries as at the end of such quarterly accounting period and the related consolidated statements of operations and changes in shareholder’s equity (deficit) and statement of cash flows for such quarterly accounting period and for the elapsed portion of the fiscal year ended with the last day of such quarterly accounting period, in each case setting forth comparative figures for the corresponding quarterly accounting period in the prior fiscal year and comparable forecasted figures for such quarterly accounting period based on the corresponding forecasts delivered pursuant to Section 9.01(d), all of which shall be certified by the chief financial officer of the Lead Borrower that they fairly present in all material respects in accordance with U.S. GAAP the financial condition of the Lead Borrower and its Subsidiaries as of the dates indicated and the results of their operations for the periods indicated, subject to normal year-end audit adjustments and the absence of footnotes, and (ii) management’s discussion and analysis of the important operational and financial developments during such quarterly accounting period. If the Lead Borrower has filed (within the time period required above) a Form 10-Q with the SEC for any fiscal quarter described above, then to the extent that such quarterly report on Form 10-Q contains any of the foregoing items, the Lenders shall accept such Form 10-Q in lieu of such items.

(b)  Annual Financial Statements. Within 120 days after the close of each fiscal year of the Lead Borrower, (i) the consolidated balance sheet of the Lead Borrower and its Subsidiaries as at the end of such fiscal year and the related consolidated statements of operations and changes in shareholder’s equity (deficit) and statement of cash flows for such fiscal year setting forth comparative figures for the preceding fiscal year and comparable forecasted figures for such fiscal year based on the corresponding forecasts delivered pursuant to Section 9.01(d) and certified, in the case of consolidated financial statements, by Ernst & Young LLP or any one of the “Big 4” public accounting firms or other independent certified public accountants of recognized national standing reasonably acceptable to the Administrative Agent, together with an opinion of such accounting firm (which opinion shall be without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit (other than as a result of an upcoming maturity date under any Loans under this Agreement or the Maturity Date (as defined in the First Lien Credit Agreement) under the First Lien Credit Agreement or the Maturity Date (as defined in the Second Lien Credit Agreement) under the Second Lien Credit Agreement, in each case occurring within one year from the time such opinion is delivered or any potential inability to satisfy the springing financial covenant set forth in Section 10.11 on a future date or in a future period)) which demonstrates that such statements fairly present in all material respects in accordance with U.S. GAAP the financial condition of the Lead Borrower and its Subsidiaries as of the date indicated and the results of their operations and changes in their cash flows for the periods indicated, and (ii) management’s discussion and analysis of the important operational and financial developments during such fiscal year. If the Lead Borrower has filed (within the time period required above) a Form 10-K with the SEC for any fiscal year described above, then to the extent that such annual report on Form 10-K contains any of the foregoing items, the Lenders shall accept such Form 10-K in lieu of such items.
(c) **Reporting.** Notwithstanding the foregoing, the obligations referred to in Sections 9.01(a) and 9.01(b) above may be satisfied with respect to financial information of the Lead Borrower and its Subsidiaries by furnishing (A) the applicable financial statements of any Parent Company or (B) the Lead Borrower’s or such Parent Company’s Form 10-K or 10-Q, as applicable, filed with the SEC (and the public filing of such report with the SEC shall constitute delivery under this Section 9.01); provided that with respect to each of the preceding clauses (A) and (B), (1) to the extent such information relates to a parent of the Lead Borrower, if and so long as such Parent Company will have Independent Assets or Operations, such information is accompanied by, or the Lead Borrower shall separately deliver within the applicable time periods set forth in Sections 9.01(c) and 9.01(b) above, consolidating information (which need not be audited) that explains in reasonable detail the differences between the information relating to such Parent Company and its Independent Assets or Operations, on the one hand, and the information relating to the Lead Borrower and the consolidated Restricted Subsidiaries on a stand-alone basis, on the other hand and (2) to the extent such information is in lieu of information required to be provided under Section 9.01(b) (it being understood that such information may be audited at the option of the Lead Borrower), such materials are accompanied by a report and opinion of Ernst & Young LLP or any one of the “Big 4” public accounting firms or other independent certified public accountants of recognized national standing firm reasonably acceptable to the Administrative Agent, which report and opinion (a) will be prepared in accordance with generally accepted auditing standards and (b) will be without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit (other than as a result of the Maturity Date under the First Lien Credit Agreement or the Maturity Date (as defined in the Second Lien Credit Agreement) under the Second Lien Credit Agreement occurring within one year from the time such opinion is delivered or any potential inability to satisfy the financial covenants set forth in Section 10.11 of the this Agreement on a future date or in a future period).

(d) **Forecasts.** Within 120 days after the close of each fiscal year of the Lead Borrower, a forecast in form reasonably satisfactory to the Administrative Agent (including projected statements of income, sources and uses of cash and balance sheets for the Lead Borrower and its Subsidiaries on a consolidated basis) for each of the twelve months of such fiscal year prepared in detail, with appropriate discussion, the principal assumptions upon which such forecast is based.

(e) **Officer’s Certificates.** At the time of the delivery of the Section 9.01 Financials, a compliance certificate from a Responsible Officer of the Lead Borrower substantially in the form of Exhibit J, certifying on behalf of the Lead Borrower that, to such Responsible Officer’s knowledge after due inquiry, no Default or Event of Default has occurred and is continuing or, if any Default or Event of Default has occurred and is continuing, specifying the nature and extent thereof, which certificate shall (i) to the extent Availability is less than 30% of the Aggregate Commitments at such time, set forth the reasonably detailed calculations with respect to the Consolidated Fixed Charge Coverage Ratio for such period, and (ii) certify that there have been no changes to Schedules 1(a), 2(b), 10, 11(a), 11(b), 12 and 13 of the Perfection Certificate, in each case since the Closing Date or, if later, since the date of the most recent certificate delivered pursuant to this Section 9.01(e), or if there have been any such changes, a list in reasonable detail of such changes (but, in each case with respect to this clause (ii), only to the extent that such changes are required to be reported to the Collateral Agent pursuant to the terms of such Security Documents) and whether the Lead Borrower and the other Credit Parties have otherwise taken all actions required to be taken by them pursuant to such Security Documents in connection with any such changes.

(f) **Notice of Default, Litigation and Material Adverse Effect.** Promptly after any officer of the Lead Borrower or any of its Subsidiaries obtains knowledge thereof, notice of (i) the occurrence of any event which constitutes a Default or an Event of Default or any default or event of default under the First Lien Credit Agreement, the Second Lien Credit Agreement or any refinancing thereof, any Permitted First Lien Notes Documents or any Permitted Junior Debt or other debt instrument in excess of the Threshold Amount, (ii) any litigation, or governmental investigation or proceeding pending against the Lead Borrower or any of its Subsidiaries (x) which, either individually or in the aggregate, has had, or would reasonably be expected to have, a Material Adverse Effect or (y) with respect
to any Credit Document, or (iii) any other event, change or circumstance that has had, or would reasonably be expected to have, a Material
Adverse Effect.

(g) Other Reports and Filings. Promptly after the filing or delivery thereof, copies of (i) all financial information, proxy materials and
reports, if any, which Holdings or any of its Subsidiaries shall publicly file with the Securities and Exchange Commission or
any successor thereto (the “SEC”) or (ii) reports or other information furnished to, or notices received from, holders of Indebtedness the aggregate
principal amount of which is equal to or in excess of the Threshold Amount, solely to the extent that substantially similar information has not been
provided to the Lenders, (iii) with reasonable promptness, such other information or documents (financial or otherwise) as the Administrative
Agent on its own behalf or on behalf of the Required Lenders may reasonably request from time to time and (iv) with reasonable promptness, such
other information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable
“know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act and the Beneficial
Ownership Regulation.

(h) Environmental Matters. Promptly after any officer of the Lead Borrower or any of its Subsidiaries obtains knowledge thereof, notice
of one or more of the following environmental matters to the extent that such environmental matters, either individually or when aggregated with
all other such environmental matters, would reasonably be expected to have a Material Adverse Effect:

(i) any pending or threatened Environmental Claim against the Lead Borrower or any of its Subsidiaries or any Real Property
owned, leased or operated by the Lead Borrower or any of its Subsidiaries;

(ii) any condition or occurrence on or arising from any Real Property owned, leased or operated by the Lead Borrower or any of its
Subsidiaries that (a) results in noncompliance by the Lead Borrower or any of its Subsidiaries with any applicable Environmental
Law or (b) would reasonably be expected to form the basis of an Environmental Claim against the Lead Borrower or any of its
Subsidiaries or any such Real Property;

(iii) any condition or occurrence on any Real Property owned, leased or operated by the Lead Borrower or any of its
Subsidiaries that could reasonably be expected to cause such Real Property to be subject to any restrictions on the ownership, lease,
occupancy, use or transferability by the Lead Borrower or any of its Subsidiaries of such Real Property under any Environmental Law;

(iv) the taking of any removal or remedial action in response to the actual or alleged presence of any Hazardous Material on
any Real Property owned, leased or operated by the Lead Borrower or any of its Subsidiaries as required by any Environmental Law or
any governmental or other administrative agency and all notices received by the Lead Borrower or any of its Subsidiaries from any
government or governmental agency under, or pursuant to, CERCLA which identify the Lead Borrower or any of its Subsidiaries as
potentially responsible parties for remediation costs or which otherwise notify the Lead Borrower or any of its Subsidiaries of potential
liability under CERCLA.

All such notices shall describe in reasonable detail the nature of the claim, investigation, condition, occurrence or removal or remedial
action and the Lead Borrower’s or such Subsidiary’s response thereto.

(i) Notices to Holders. Promptly after the sending, filing or receipt thereof, the Lead Borrower will provide to the Administrative Agent
any material notices provided to, or received from, holders of (I) the indebtedness evidenced by the Second Lien Credit Agreement or any
refinancing thereof, (II) Refinancing Notes, Permitted First Lien Notes, Permitted Junior Debt or other Indebtedness, in each case of this
clause (II), with a principal amount in excess of the Threshold Amount or
(III) the indebtedness evidenced by the First Lien Credit Agreement (including, for the avoidance of doubt, any notices relating to an actual or purported default or event of default thereunder and any notices to the extent the action or occurrence described therein would reasonably be expected to be materially adverse to the interests of the Lenders, but excluding any administrative notices or regular reporting requirements thereunder).

(j) Financial Statements of Unrestricted Subsidiaries. Simultaneously with the delivery of each set of Section 9.01 Financials, the related consolidating financial statements reflecting adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements.

Documents required to be delivered pursuant to Section 9.1 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Lead Borrower posts such documents, or provides a link thereto on the Lead Borrower’s website on the Internet; or (ii) on which such documents are posted on the Lead Borrower’s behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that (i) the Lead Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Lead Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Lead Borrower shall notify the Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Lead 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 Borrowers hereby acknowledge that (a) the Administrative Agent and/or the Lead Arrangers will make available to the Lenders materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on the Platform and (b) certain of the Lenders (each, a “Public Lender”) may have personnel who do not wish to receive material non-public information with respect to the Borrowers or their respective 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 Lead 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 (w) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Lead Borrower shall be deemed to have authorized the Administrative Agent, the Lead Arrangers 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 Borrowers or its respective securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Public Side Information, they shall be treated as set forth in Section 13.16); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information”; and (z) the Administrative Agent and the Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.”

Section 9.02 Books, Records and Inspections; Conference Calls

(a) The Lead Borrower will, and will cause each of its Restricted Subsidiaries to, keep proper books of record and accounts in which full, true and correct entries in conformity with U.S. GAAP and all material Requirements of Law shall be made of all dealings and transactions in relation to its business and activities.
The Lead Borrower will permit the Administrative Agent, subject to reasonable advance notice to, and reasonable coordination with, the Lead Borrower and normal business hours, to visit and inspect the properties of any Borrower, at the Borrowers’ expense as provided in clause (c) below, inspect, audit and make extracts from any Borrower’s corporate, financial or operating records, and discuss with its officers, employees, agents, advisors and independent accountants (subject to such accountants’ customary policies and procedures) such Borrower’s business, financial condition, assets and results of operations (it being understood that a representative of the Lead Borrower is allowed to be present in any discussions with officers, employees, agent, advisors and independent accountants); provided that the Administrative Agent shall only be permitted to conduct one field examination with respect to any Collateral comprising the Borrowing Base per 12-month period; provided further that (i) if at any time Availability is less than 33% of the Line Cap for a period of 5 consecutive Business Days during such 12-month period, one additional field examination of Revolver Priority Collateral will be permitted in such 12-month period and (ii) if at any time Availability is less than the greater of (x) 12.5% of the Line Cap and (y) $17,500,000 for a period of 5 consecutive Business Days during such 12-month period, two additional field examinations of Revolver Priority Collateral will be permitted in such 12-month period and (iii) during any Liquidity Period, one additional field examination of Revolver Priority Collateral be permitted in such 12-month period, except that during the existence and continuance of an Event of Default, there shall be no limit on the number of additional field examinations of Revolver Priority Collateral that shall be permitted at the Administrative Agent’s request. No such inspection or visit shall unduly interfere with the business or operations of any Borrower, nor result in any damage to the property or other Collateral. No inspection shall involve invasive testing without the prior written consent of the Lead Borrower.

Neither the Administrative Agent nor any Lender shall have any duty to any Borrower to make any inspection, nor to share any results of any inspection, appraisal or report with any Borrower. Each of the Lead Borrowers acknowledges that all inspections, appraisals and reports are prepared by the Administrative Agent and Lenders for their purposes, and the Borrowers shall not be entitled to rely upon them.

Reimburse the Administrative Agent for all reasonable out-of-pocket costs and expenses (other than any legal fees or costs and expenses covered under Section 13.01) of the Administrative Agent in connection with (i) one examination per fiscal year of any Borrower’s books and records or any other financial or Collateral matters as the Administrative Agent deems appropriate and (ii) field examinations of Collateral comprising the Borrowing Base in each case subject to the limitations on such examinations and audits permitted under the preceding paragraph. Subject to and without limiting the foregoing, the Borrowers specifically agree to pay the Administrative Agent’s then standard charges for examination activities. This Section shall not be construed to limit the Administrative Agent’s right to use third parties for such purposes.

The Lead Borrower will, within 30 days after the date of the delivery (or, if later, required delivery) of the quarterly and annual financial information pursuant to Sections 9.01(a) and (b), hold a conference call or teleconference, at a time selected by the Lead Borrower and reasonably acceptable to the Administrative Agent, with all of the Lenders that choose to participate, to review the financial results of the previous fiscal quarter or fiscal year, as the case may be, of the Lead Borrower (it being understood that any such call may be combined with any similar call held for any of the Borrowers’ other lenders or security holders).

(a) The Lead Borrower will, and will cause each of its Restricted Subsidiaries to, (i) keep all tangible property necessary to the business of and owned by the Lead Borrower and its Restricted
Subsidiaries in good working order and condition, ordinary wear and tear, casualty and condemnation excepted, (ii) maintain with financially sound and reputable insurance companies insurance on all such property and against all such risks as is consistent and in accordance with industry practice for companies similarly situated owning similar properties and engaged in similar businesses as the Lead Borrower and its Restricted Subsidiaries, and (iii) furnish to the Administrative Agent, upon its request therefor, full information as to the insurance carried. The provisions of this Section 9.03 shall be deemed supplemental to, but not duplicative of, the provisions of any Security Documents that require the maintenance of insurance.

(b) [Reserved].

(c) The Lead Borrower will, and will cause each of its Restricted Subsidiaries to, at all times keep its property insured in favor of the Collateral Agent, and all policies or certificates (or certified copies thereof) with respect to such insurance (and any other insurance maintained by the Lead Borrower and/or such Restricted Subsidiaries) (i) shall be endorsed to the Collateral Agent’s reasonable satisfaction for the benefit of the Collateral Agent (including, without limitation, by naming the Collateral Agent as loss payee and/or additional insured), (ii) if agreed by the insurer (which agreement the Lead Borrower shall use commercially reasonable efforts to obtain), shall state that such insurance policies shall not be canceled without at least 30 days’ prior written notice thereof (or, with respect to non-payment of premiums, 10 days’ prior written notice) by the respective insurer to the Collateral Agent; provided that the requirements of this Section 9.03(c) shall not apply to (x) insurance policies covering (1) directors and officers, fiduciary or other professional liability, (2) employment practices liability, (3) workers compensation liability, (4) automobile and aviation liability, (5) health, medical, dental and life insurance, and (6) such other insurance policies and programs as the Collateral Agent may approve; and (y) self-insurance programs and (iii) shall be deposited with the Collateral Agent.

(d) If the Lead Borrower or any of its Restricted Subsidiaries shall fail to maintain insurance in accordance with this Section 9.03, or the Lead Borrower or any of its Restricted Subsidiaries shall fail to so endorse and deposit all policies or certificates with respect thereto, after any applicable grace period, the Administrative Agent shall have the right (but shall be under no obligation) to procure such insurance and the Credit Parties jointly and severally agree to reimburse the Administrative Agent for all reasonable costs and expenses of procuring such insurance.

Section 9.04  Existence; Franchises

The Lead Borrower will, and will cause each of its Restricted Subsidiaries to, do or cause to be done, all things necessary to preserve and keep in full force and effect its existence and, in the case of the Lead Borrower and its Restricted Subsidiaries, its and their franchises, licenses and permits in each case to the extent material; provided, however, that nothing in this Section 9.04 shall prevent (i) sales of assets and other transactions by the Lead Borrower or any of its Restricted Subsidiaries in accordance with Section 10.02, (ii) the abandonment by the Lead Borrower or any of its Restricted Subsidiaries of any franchises, licenses or permits that the Lead Borrower reasonably determines are no longer material to the operations of the Lead Borrower and its Restricted Subsidiaries taken as a whole or (iii) the withdrawal by the Lead Borrower or any of its Restricted Subsidiaries of its qualification as a foreign corporation, partnership, limited liability company or unlimited liability company, as the case may be, in any jurisdiction if such withdrawal would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 9.05  Compliance with Statutes, etc.
Holdings will, and will cause each Subsidiary to, conduct its business in compliance with Anti-Corruption Laws and applicable Sanctions, as contemplated pursuant to Section 8.15 hereof.

Section 9.06 Compliance with Environmental Laws

The Lead Borrower will comply, and will cause each of its Restricted Subsidiaries to comply, with all Environmental Laws and permits applicable to, or required by, the ownership, lease or use of Real Property now or hereafter owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries, except such noncompliances as would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and will promptly pay or cause to be paid all costs and expenses incurred in connection with such compliance, and will keep or cause to be kept all such Real Property free and clear of any Liens imposed pursuant to such Environmental Laws (other than Liens imposed on leased Real Property resulting from the acts or omissions of the owner of such leased Real Property or of other tenants of such leased Real Property who are not within the control of the Lead Borrower). Except as have not had, and would not reasonably be expected to have, a Material Adverse Effect, neither the Lead Borrower nor any of its Restricted Subsidiaries will generate, use, treat, store, Release or dispose of, or permit the generation, use, treatment, storage, Release or disposal of Hazardous Materials on any Real Property now or hereafter owned, leased or operated by the Lead Borrower or any of its Restricted Subsidiaries, or transport or permit the transportation of Hazardous Materials to or from any such Real Property, except for Hazardous Materials generated, used, treated, stored, Released or disposed of at any such Real Properties or transported to or from such Real Properties in compliance with all applicable Environmental Laws.

Section 9.07 ERISA

As soon as possible and, in any event, within ten (10) Business Days after the Lead Borrower or any Restricted Subsidiary of the Lead Borrower knows of the occurrence of any of the following, the Lead Borrower will deliver to the Administrative Agent notice setting forth the full details as to such occurrence and the action, if any, that the Lead Borrower or any Restricted Subsidiary is required or proposes to take, together with any notices required or proposed to be given or filed by the Lead Borrower or Restricted Subsidiary or, to the knowledge of the Lead Borrower, the Plan administrator or any ERISA Affiliate to or with the PBGC or any other Governmental Authority, or a Plan participant (other than notices relating to an individual participant’s benefits) and any notices received by the Lead Borrower, or any Restricted Subsidiary from the PBGC or any other Governmental Authority, or a Plan participant (other than notices relating to an individual participant’s benefits) with respect thereto: that (a) an ERISA Event has occurred that is reasonably expected to result in a Material Adverse Effect; (b) there has been an increase in Unfunded Pension Liabilities since the date the representations hereunder are given, or from any prior notice, as applicable, in either case, which is reasonably expected to result in a Material Adverse Effect; (c) there has been an increase in the withdrawal liability under Section 4201 of ERISA that would be incurred by the Lead Borrower or any Restricted Subsidiary, if the Lead Borrower, any Restricted Subsidiary of the Lead Borrower and the ERISA Affiliates were to withdraw completely from any and all Multiemployer Plans which is reasonably expected to result in a Material Adverse Effect, (d) the Lead Borrower, any Restricted Subsidiary of the Lead Borrower or any ERISA Affiliate adopts, or commences contributions to, any Plan subject to Section 412 of the Code, or adopts any amendment to a Plan subject to Section 412 of the Code which is reasonably expected to result
in a Material Adverse Effect, (e) a contribution required to be made with respect to a Foreign Pension Plan has not been timely made which failure is reasonably likely to result in a Material Adverse Effect; or (f) a Foreign Pension Plan has been or is reasonably expected to be terminated, reorganized, partitioned or declared insolvent and such event is reasonably expected to result in a Material Adverse Effect. The Lead Borrower will also deliver to the Administrative Agent, upon request by the Administrative Agent, a complete copy of the most recent annual report (on Internal Revenue Service Form 5500-series, including, to the extent required, the related financial and actuarial statements and opinions and other supporting statements, certifications, schedules and information) filed with the Internal Revenue Service or other Governmental Authority of each Plan that is maintained or sponsored by the Lead Borrower or a Restricted Subsidiary.

Section 9.08 End of Fiscal Years; Fiscal Quarters

The Lead Borrower will cause (i) each of its, and each of its Restricted Subsidiaries', fiscal years to end on or near December 31 of each year and (ii) each of its, and each of its Restricted Subsidiaries', fiscal quarters to end on or near March 31, June 30, September 30 and December 31 of each year.

Section 9.09 Debarment/Suspension Event

Promptly, and in any event within five Business Days after Holdings or the Lead Borrower obtains knowledge thereof, the Lead Borrower shall notify the Administrative Agent of the occurrence of any Debarment/Suspension Event and, during the continuation of any Debarment/Suspension Event, shall promptly (a) deliver or otherwise provide to the Administrative Agent all information relating to such debarment or suspension (including, without limitation, certain financial information) as the Administrative Agent may reasonably request and (b) upon request of the Administrative Agent, provide reasonable access to the Administrative Agent to senior management of the Credit Parties and regulatory counsel to the Credit Parties that is engaged with respect to such debarment or suspension for purposes of discussing such debarment or suspension; provided that none of Holdings, any Borrower or any other Subsidiary will be required to disclose or permit the discussion of any document, information or other matter (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective designees) is prohibited by law or any contractual obligation or (iii) that is subject to attorney client or similar privilege or constitutes attorney work product.

Section 9.10 Payment of Taxes

Except as would not reasonably be expected to result in a Material Adverse Effect, the Lead Borrower will pay and discharge, and will cause each of its Subsidiaries to pay and discharge, all material Taxes imposed upon it or upon its income or profits or upon any properties belonging to it, prior to the date on which penalties attach thereto, and all material lawful claims which, if unpaid, might become a Lien or charge upon any properties of the Lead Borrower or any of its Subsidiaries not otherwise permitted under Section 10.01(i); provided that neither the Lead Borrower nor any of its Subsidiaries shall be required to pay any such Tax which is being contested in good faith and by appropriate proceedings if it has maintained adequate reserves with respect thereto in accordance with U.S. GAAP.

Section 9.11 Use of Proceeds

Each Borrower will use the proceeds of the Loans only as provided in Section 8.08.

Section 9.12 Additional Security; Further Assurances; etc.

(a) The Lead Borrower will, and will cause each of the other Credit Parties that are Restricted Subsidiaries of the Lead Borrower to, (x) comply with the requirements of Section 9.17(f) and
(y) grant to the Collateral Agent for the benefit of the Secured Creditors security interests in such assets of the Lead Borrower and such other Credit Parties that are Restricted Subsidiaries of the Lead Borrower as are not covered by the original Security Documents and as may be reasonably requested from time to time by the Administrative Agent or the Required Lenders (collectively, as may be amended, modified or supplemented from time to time, the “Additional Security Documents”); provided that (i) the pledge of the outstanding capital stock of any FSHCO or Foreign Subsidiary that is a CFC directly owned by the Lead Borrower or a Domestic Subsidiary that is a Credit Party shall be limited to (x) no more than sixty-five percent (65%) of the total combined voting power for all classes of the voting Equity Interests of such FSHCO or Foreign Subsidiary that is a CFC and (y) one hundred percent (100%) of the non-voting Equity Interests of such FSHCO or Foreign Subsidiary that is a CFC, and (ii) security interests shall not be required with respect to any assets to the extent that such security interests would result in a material adverse tax consequence to the Lead Borrower or its Restricted Subsidiaries, as reasonably determined by the Lead Borrower and notified in writing to the Administrative Agent. All such security interests shall be granted pursuant to documentation reasonably satisfactory in form and substance to the Administrative Agent and (subject to exceptions as are reasonably acceptable to the Administrative Agent) shall constitute, upon taking all necessary perfection action (which the Credit Parties agree to promptly take) valid and enforceable perfected security interests (except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws generally affecting creditors’ rights and by equitable principles (regardless of whether enforcement is sought in equity or at law)), subject to the Intercreditor Agreement, superior to and prior to the rights of all third Persons and subject to no other Liens except for Permitted Liens. The Additional Security Documents or instruments related thereto shall be duly recorded or filed in such manner and in such places as are required by law to establish, perfect, preserve and protect (subject to exceptions as are reasonably acceptable to the Administrative Agent) the Liens in favor of the Collateral Agent required to be granted pursuant to the Additional Security Documents and all Taxes, fees and other charges payable in connection therewith shall be paid in full. Notwithstanding any other provision in this Agreement or any other Credit Document, no FSHCO, Foreign Subsidiary that is a CFC or a Subsidiary of a CFC shall be required to pledge any of its assets to secure any obligations of the Borrowers under the Credit Documents or guarantee the obligations of the Lead Borrower under the Credit Documents unless it becomes a Guarantor pursuant to the proviso to the definition of Excluded Subsidiary.

(b) Subject to the terms of the Intercreditor Agreement, with respect to any person that is or becomes a Restricted Subsidiary after the Closing Date, promptly (i) deliver to the Collateral Agent the certificates, if any, representing all (or such lesser amount as is required) of the Equity Interests of such Subsidiary, together with undated stock powers or other appropriate instruments of transfer executed and delivered in blank by a duly authorized officer of the holder(s) of such Equity Interests, and all intercompany notes owing from such Subsidiary to any Credit Party together with instruments of transfer executed and delivered in blank by a duly authorized officer of such Credit Party (to the extent required pursuant to the Security Agreement), (ii) cause such new Subsidiary (other than an Excluded Subsidiary) to execute a joinder agreement to the Subsidiaries Guaranty and a joinder agreement to each applicable Security Document, substantially in the form annexed thereto, and a certificate attested to by the Secretary or any Assistant Secretary of such Credit Party, in the form of Exhibit E with all appropriate insertions and (B) to take all actions necessary or advisable in the opinion of the Administrative Agent or the Collateral Agent to cause the Lien created by the applicable Security Document to be duly perfected to the extent required by such agreement in accordance with all applicable Requirements of Law, including the filing of financing statements in such jurisdictions as may be reasonably requested by the Administrative Agent or the Collateral Agent, (iii) at the request of the Administrative Agent, deliver to the Administrative Agent a signed copy of an opinion, addressed to the Administrative Agent and the other Lenders, of counsel to the Credit Parties reasonably acceptable to the Administrative Agent as to
such matters set forth in this Section 9.12(b) as the Administrative Agent may reasonable request and (iv) comply with the requirements of Section 9.17(f).

(c) The Lead Borrower will, and will cause each of the other Credit Parties that are Restricted Subsidiaries of the Lead Borrower to, at the expense of the Lead Borrower, make, execute, endorse, acknowledge, file and/or deliver to the Collateral Agent, promptly, upon the reasonable request of the Administrative Agent or the Collateral Agent, at the Lead Borrower’s expense, any document or instrument supplemental to or confirmatory of the Security Documents, including opinions of counsel, or otherwise deemed by the Administrative Agent or the Collateral Agent reasonably necessary for the continued validity, perfection and priority (subject to the Intercreditor Agreement) of the Liens on the Collateral covered thereby subject to no other Liens except for Permitted Liens or as otherwise permitted by the applicable Security Document.

(d) [Reserved].

(e) The Lead Borrower agrees that each action required by clauses (a) through (d) of this Section 9.12 shall be completed as soon as reasonably practicable, but in no event later than 90 days after such action is required to be taken pursuant to such clauses or requested to be taken by the Administrative Agent or the Required Lenders (or such longer period as the Administrative Agent shall otherwise agree), as the case may be; provided that, in no event will the Lead Borrower or any of its Restricted Subsidiaries be required to take any action, other than using its commercially reasonable efforts, to obtain consents from third parties with respect to its compliance with this Section 9.12.

Section 9.13 Post-Closing Actions

The Lead Borrower agrees that it will, or will cause its relevant Subsidiaries to, complete each of the actions described on Schedule 9.13 as soon as commercially reasonable and by no later than the date set forth in Schedule 9.13 with respect to such action or such later date as the Administrative Agent may reasonably agree.

Section 9.14 Permitted Acquisitions

(a) Subject to the provisions of this Section 9.14 and the requirements contained in the definition of Permitted Acquisition, the Lead Borrower and its Restricted Subsidiaries may from time to time after the Closing Date effect Permitted Acquisitions, so long as (in each case except to the extent the Required Lenders otherwise specifically agree in writing in the case of a specific Permitted Acquisition): (i) the Payment Conditions shall be satisfied on a Pro Forma Basis for such Permitted Acquisition and (ii) the Lead Borrower shall have delivered to the Administrative Agent and each Lender a certificate executed by its chief financial officer or treasurer, certifying to the best of such officer’s knowledge, compliance with the requirements of the preceding clause (i), and containing the calculations (in reasonable detail) required by the preceding clause (i).

(b) At the time of each Permitted Acquisition involving the creation or acquisition of a Restricted Subsidiary, or the acquisition of Equity Interests of any Person, the Equity Interests thereof created or acquired in connection with such Permitted Acquisition shall be pledged for the benefit of the Secured Creditors pursuant to (and to the extent required by) the Pledge Agreement; provided that the pledge of the outstanding capital stock of any FSHCO or Foreign Subsidiary that is a CFC directly owned by the Lead Borrower or a Domestic Subsidiary that is a Credit Party shall be limited to (x) no more than sixty-five percent (65%) of the total combined voting power for all classes of the voting Equity Interests of such FSHCO or Foreign Subsidiary that is a CFC and (y) one-hundred percent (100%) of the non-voting Equity Interest of such FSHCO or Foreign Subsidiary that is a CFC; provided that for the
avoidance of doubt, no FSHCO, Foreign Subsidiary that is a CFC, or Subsidiary of a CFC shall be required to pledge any of its assets in connection with any such Permitted Acquisition.

(c) The Lead Borrower shall cause each Restricted Subsidiary (other than an Excluded Subsidiary) which is formed to effect, or is acquired pursuant to, a Permitted Acquisition to comply with, and to execute and deliver all of the documentation as and to the extent required by, Section 9.12, to the reasonable satisfaction of the Administrative Agent.

(d) The consummation of each Permitted Acquisition shall be deemed to be a representation and warranty by the Lead Borrower that the certifications pursuant to this Section 9.14 are true and correct in all material respects and that all conditions thereto have been satisfied and that same is permitted in accordance with the terms of this Agreement, which representation and warranty shall be deemed to be a representation and warranty for all purposes hereunder, including, without limitation, Sections 8 and 11.

(e) Notwithstanding anything to the contrary contained herein, if the Lead Borrower has made a LCT Election pursuant to Section 1.03 in respect of a Permitted Acquisition, then any determination of compliance with the provisions of Section 9.14(d) shall be made effective as of the date of entering the definitive agreement for such Permitted Acquisition.

Section 9.15 [Reserved]

Section 9.16 Designation of Subsidiaries

(a) The Lead Borrower may at any time after the Closing Date designate any Restricted Subsidiary of the Lead Borrower as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary by written notice to the Administrative Agent; provided that (i) immediately before and after such designation, no Event of Default shall have occurred and be continuing, (ii) in the case of the designation of any Subsidiary as an Unrestricted Subsidiary, such designation shall constitute an Investment in such Unrestricted Subsidiary (calculated as an amount equal to the sum of (x) the fair market value of the Subsidiary designated immediately prior to such designation (such fair market value to be calculated without regard to any Obligations of such Subsidiary under the Subsidiaries Guaranty) and (y) the aggregate principal amount of any Indebtedness owed by the Subsidiary to the Lead Borrower or any of its Subsidiaries immediately prior to such designation, all calculated, except as set forth in the parenthetical to clause (x) above, on a consolidated basis in accordance with U.S. GAAP), and such Investment shall be permitted under Section 10.05, (iii) no Subsidiary may be designated as an Unrestricted Subsidiary if it is a “Restricted Subsidiary” for the purpose of (I) the First Lien Credit Agreement, or (II) the Second Lien Credit Agreement or (III) any Refinancing Notes Indenture, any Permitted First Lien Notes Documents, any Permitted Junior Notes Document or other debt instrument, in each case of this clause (III), with a principal amount in excess of the Threshold Amount, (iv) immediately after giving effect to the designation of an Unrestricted Subsidiary as a Restricted Subsidiary, the Lead Borrower shall comply with the provisions of Section 9.12 with respect to such designated Restricted Subsidiary, (v) no Restricted Subsidiary may be a Subsidiary of an Unrestricted Subsidiary, (vi) in the case of the designation of any Subsidiary as an Unrestricted Subsidiary, no recourse whatsoever (whether by contract or by operation of law or otherwise) may be had to the Lead Borrower or any of its Restricted Subsidiaries or any of their respective properties or assets for any obligations of such Unrestricted Subsidiary, and (vii) the Lead Borrower shall have delivered to the Administrative Agent and each Lender a certificate executed by its chief financial officer or treasurer, certifying to the best of such officer’s knowledge, compliance with the requirements of the preceding clauses (i) through (vi),
The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute (i) the incurrence at the time of designation of any Investment, Indebtedness or Liens of such Subsidiary existing at such time and (ii) a return on any Investment by the Lead Borrower in Unrestricted Subsidiaries pursuant to the preceding sentence in an amount equal to the fair market value at the date of such designation of the Lead Borrower’s Investment in such Subsidiary.

Section 9.17 Collateral Monitoring and Reporting

(a) Borrowing Base Certificates. By the 20th day of each month, the Lead Borrower shall deliver to the Administrative Agent (and the Administrative Agent shall promptly deliver same to the Lenders) a Borrowing Base Certificate prepared as of the close of business on the last Business Day of the previous month (or more frequently, if the Lead Borrower in its sole discretion shall so elect; provided that if any such election is made by the Lead Borrower, the Lead Borrower shall continue to report on such more frequent basis for a period of at least 3 months; provided that, during a Liquidity Period, the Lead Borrower shall deliver to the Administrative Agent weekly Borrowing Base Certificates by Wednesday of every week prepared as of the close of business on Friday of the previous week, which weekly Borrowing Base Certificates shall be in standard form unless otherwise reasonably agreed to by the Administrative Agent; it being understood that the amount of Eligible Accounts, Eligible Billed Hybrid Account and Eligible Unbilled Account, as applicable, shown in such Borrowing Base Certificate will be based on the amount of the gross Accounts set forth in the most recent weekly report, less the amount of ineligible Accounts reported for the most recently ended month). All calculations of Availability in any Borrowing Base Certificate shall be made by the Lead Borrower and certified by a Responsible Officer, provided that the Administrative Agent may from time to time review and adjust any such calculation in consultation with the Lead Borrower to the extent the calculation is not made in accordance with this Agreement or does not accurately reflect the Reserves.

(b) Records and Schedules of Accounts. The Lead Borrower shall keep accurate and complete records of its Accounts, including all payments and collections thereon, and shall submit to the Administrative Agent, upon the Administrative Agent’s request, sales, collection, reconciliation and other reports in form reasonably satisfactory to the Administrative Agent on a periodic basis (but not more frequently than at the time of delivery of each of the financials required pursuant to Section 9.01(a) and (b)). The Lead Borrower shall also provide to the Administrative Agent (in the case of clause (i), upon the Administrative Agent’s request), on or before the 20th day of each month, (i) a detailed aged trial balance of all Accounts as of the end of the preceding month, specifying each Account’s Account Debtor name and the amount, invoice date and due date as the Administrative Agent may reasonably request, (ii) an unbilled A/R reconciliation by category, together with any relevant supporting information as the Administrative Agent may reasonably request and (iii) a report of all cash collections received by the Borrowers arising from Accounts during the preceding 30-day period. If Accounts in an aggregate face amount of $10,000,000 or more cease to be Eligible Accounts, the Borrowers shall notify the Administrative Agent of such occurrence promptly (and in any event within three Business Days) after any Responsible Officer of the Lead Borrower has actual knowledge thereof.

(c) Maintenance of Dominion Account. Within ninety (90) days (or such later date as Administrative Agent may agree in its reasonable discretion) of the Closing Date (or, with respect to any Deposit Account other than Excluded Deposit Accounts opened following the Closing Date, within sixty (60) days (or such later date as the Administrative Agent may agree in its reasonable discretion) of the opening or establishment of such Deposit Account or the date any Person becomes a Credit Party hereunder), (i) each Credit Party shall cause each bank or other depository institution at which any Deposit Account other than any Excluded Deposit Account is maintained, to enter into a Deposit Account
Control Agreement that provides for such bank or other depository institution to transfer to the Dominion Account, on a daily basis, all balances in each Deposit Account other than any Excluded Deposit Account maintained by any Credit Party with such depository institution for application to the Obligations then outstanding following the receipt by such bank or other depository institution of a Liquidity Notice (it being understood that the Administrative Agent shall reasonably promptly deliver a copy of such Liquidity Notice to the Lead Borrower), (ii) each Credit Party irrevocably appoints the Administrative Agent as such Credit Party’s attorney-in-fact to collect such balances during a Liquidity Period to the extent any such delivery is not so made and (iii) each Credit Party shall instruct each Account Debtor to make all payments with respect to Revolver Priority Collateral into Deposit Accounts subject to Deposit Account Control Agreements, or the Credit Parties shall immediately direct any such payments into Deposit Accounts subject to Deposit Account Control Agreements (it being understood that it shall not be a Default or Event of Default if any such payments are deposited in an Excluded Deposit Account pursuant to clause (v) of the definition thereof). The Administrative Agent and the Lenders assume no responsibility to the Borrowers for any lockbox arrangement or Dominion Account, including any claim of accord and satisfaction or release with respect to any check, draft or other item of payment payable to a Borrower (including those constituting proceeds of Collateral) accepted by any bank.

(d) **Proceeds of Collateral.** If any Borrower receives cash or any check, draft or other item of payment payable to a Borrower with respect to any Collateral, it shall hold the same in trust for the Administrative Agent and promptly deposit the same into any such Deposit Account or the Dominion Account (it being understood that it shall not be a Default or Event of Default if any such payments are deposited in an Excluded Deposit Account).

(e) **Administration of Deposit Accounts.** Schedule 9.17(a) sets forth all Deposit Accounts (other than Excluded Deposit Accounts) maintained by the Credit Parties, including the Dominion Account, as of the Closing Date. Subject to Section 9.17(c), each Credit Party shall take all actions necessary to establish the Administrative Agent’s control (within the meaning of the UCC) over each such Deposit Account other than Excluded Deposit Accounts at all times. Each Credit Party shall be the sole account holder of each Deposit Account and shall not allow any other Person (other than the Collateral Agent, the First Lien Collateral Agent and the Second Lien Collateral Agent and the applicable depositary bank, or any other secured parties (or representative therefor) permitted to have a security interest therein pursuant to Section 10.01) to have control over a Deposit Account or any deposits therein. The Lead Borrower shall promptly notify the Administrative Agent of any opening or closing of a Deposit Account (other than any Excluded Deposit Accounts), and shall not open any Deposit Accounts (other than any Excluded Deposit Accounts) at a bank not reasonably acceptable to the Administrative Agent.

(f) **Contract Assignment Requirement.** Within ninety (90) days (or such later date as Administrative Agent may agree in its sole discretion) of the Closing Date, the Borrowers shall deliver to the Administrative Agent an officer’s certificate to the effect that all documentation necessary to comply with the Federal Assignment of Claims Act has been executed by the Borrowers with regard to each Government Contract from which any Account included in the Borrowing Base may arise together with such original documentation. All such documentation shall be in form and substance reasonably satisfactory to the Administrative Agent and shall be effective to create a valid and effective right in favor of the Collateral Agent to receive all moneys due or to become due under such Government Contract. With respect to each new Government Contract with Accounts anticipated to be included in the Borrowing Base after the date hereof, the Borrower shall promptly deliver to the Administrative Agent all documentation necessary to comply with the Assignment of Claims Act with respect to such Government Contract. If at any time Availability falls below 15% of the Line Cap or there is an Event of Default, the Borrowers shall, upon the request of the Administrative Agent, promptly (and in any event within 5 Business Days) submit any of such documentation as may be selected by the Administrative Agent in its sole discretion.
ARTICLE 10  Negative Covenants

The Lead Borrower and each of its Restricted Subsidiaries (and Holdings in the case of Section 10.09(b)) hereby covenant and agree that on and after the Closing Date and so long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder (other than (i) any indemnification obligations arising hereunder which are not then due and payable and (ii) Secured Bank Product Obligations) or any Letter of Credit shall remain outstanding (unless Cash Collateralized or backstopped on terms reasonably satisfactory to the Administrative Agent):

Section 10.01  Liens

The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to, create, incur, assume or suffer to exist any Lien upon or with respect to any property or assets (real or personal, tangible or intangible) of the Lead Borrower or any of its Restricted Subsidiaries, whether now owned or hereafter acquired, or sell accounts receivable with recourse to the Lead Borrower or any of its Restricted Subsidiaries or authorize the filing of any financing statement under the UCC with respect to any Lien or any other similar notice of any Lien under any similar recording or notice statute; provided that the provisions of this Section 10.01 shall not prevent the creation, incurrence, assumption or existence of, or any filing in respect of, the following (Liens described below are herein referred to as “Permitted Liens”):

(i) Liens for Taxes, assessments or governmental charges or levies not overdue or Liens for Taxes being contested in good faith and by appropriate proceedings for which adequate reserves have been established in accordance with U.S. GAAP (or, for Foreign Subsidiaries, in conformity with generally accepted accounting principles that are applicable in their respective jurisdiction of organization);

(ii) Liens in respect of property or assets of the Lead Borrower or any of its Restricted Subsidiaries imposed by law, which were incurred in the ordinary course of business and do not secure Indebtedness for borrowed money, such as carriers’, warehousemen’s, contractors’, materialmen’s and mechanics’ liens and other similar Liens arising in the ordinary course of business, and which are being contested in good faith by appropriate proceedings, which proceedings have the effect of preventing the forfeiture or sale of the property or assets, subject to any such Lien for which adequate reserves have been established in accordance with U.S. GAAP;

(iii) Liens in existence on the Closing Date which are listed, and the property subject thereto described, in Schedule 10.01(iii) (or to the extent not listed on such Schedule 10.01(iii), where the fair market value of all property to which such Liens under this clause (iii) attach is less than $5,000,000 in the aggregate), plus modifications, renewals, replacements, refinancings and extensions of such Liens, provided that (x) the aggregate principal amount of the Indebtedness, if any, secured by such Liens does not increase from that amount outstanding at the time of any such renewal, replacement or extension, plus accrued and unpaid interest and cash fees and expenses (including premium) incurred in connection with such renewal, replacement or extension and (y) any such renewal, replacement or extension does not encumber any additional assets or properties of the Lead Borrower or any of its Restricted Subsidiaries (other than after-acquired property that is affixed or incorporated into the property encumbered by such Lien on the Closing Date and the proceeds and products thereof) unless such Lien is permitted under the other provisions of this Section 10.01.
(iv) (x) Liens created pursuant to the Credit Documents (including Liens on Secured Bank Product Obligations), and (y) Liens securing Obligations (as defined in the First Lien Credit Agreement) under the First Lien Credit Agreement and the credit documents related thereto (including any obligations secured ratably thereunder), in each case as in effect on the date hereof, and (z) Liens securing Obligations (as defined in the Second Lien Credit Agreement) under the Second Lien Credit Agreement and the credit documents related thereto, in each case as in effect on the date hereof, and in each case with respect to clauses (x) and (y), incurred pursuant to Section 10.04(i)(y); provided that in the case of Liens securing such Indebtedness under the First Lien Credit Agreement and/or the Second Lien Credit Agreement, the collateral agent under the First Lien Credit Agreement (or other applicable representative thereof on behalf of the holders of such Indebtedness) and/or the collateral agent under the Second Lien Credit Agreement (or other applicable representative thereof on behalf of the holders of such Indebtedness) shall have entered into with the Administrative Agent and/or the Collateral Agent the Intercreditor Agreement and (z) Liens securing (A) any Refinancing Term Loans (as defined in the First Lien Credit Agreement) incurred in accordance with Section 2.18(a) of the First Lien Credit Agreement (or any obligations secured ratably therewith) and (B) any Refinancing Term Loans (as defined in the Second Lien Credit Agreement) incurred in accordance with Section 2.18(a) of the Second Lien Credit Agreement (or any obligations secured ratably therewith), provided that, in each case, the applicable representative under such Indebtedness on behalf of the holders of such Indebtedness shall have entered into with the Administrative Agent and/or the Collateral Agent the Intercreditor Agreement;

(v) Leases, subleases, licenses or sublicenses (including licenses or sublicenses of Intellectual Property) granted to other Persons not materially interfering with the conduct of the business of the Lead Borrower or any of its Restricted Subsidiaries;

(vi) Liens upon assets of the Lead Borrower or any of its Restricted Subsidiaries subject to Capitalized Lease Obligations to the extent such Capitalized Lease Obligations are permitted by Section 10.04(iii), provided that (x) such Liens serve only to secure the payment of Indebtedness and/or other monetary obligations arising under such Capitalized Lease Obligation and (y) the Lien encumbering the asset or assets giving rise to such Capitalized Lease Obligation does not encumber any asset of the Lead Borrower or any of its Restricted Subsidiaries other than the proceeds of the assets giving rise to such Capitalized Lease Obligations;

(vii) Liens placed upon equipment, machinery or other fixed assets acquired or constructed after the Closing Date and used in the ordinary course of business of the Lead Borrower or any of its Restricted Subsidiaries and placed at the time of the acquisition or construction thereof by the Lead Borrower or such Restricted Subsidiary or within 270 days thereafter to secure Indebtedness incurred to pay all or a portion of the purchase or construction price thereof or to secure Indebtedness incurred solely for the purpose of financing the acquisition or construction of any such equipment, machinery or other fixed assets or extensions, renewals or replacements of any of the foregoing for the same or a lesser amount, provided that (x) the Indebtedness secured by such Liens is permitted by Section 10.04(iii) and (y) in all events, the Lien encumbering the equipment, machinery or other fixed assets so acquired or constructed does not encumber any other asset of the Lead Borrower or such Restricted Subsidiary; provided that individual financings of equipment provided by one lender may be cross collateralized to other financings of equipment provided by such lender on customary terms;
(viii) easements, rights-of-way, restrictions (including zoning restrictions), encroachments, protrusions and other similar charges or encumbrances and minor title deficiencies, which in the aggregate do not materially interfere with the conduct of the business of the Lead Borrower or any of its Restricted Subsidiaries;

(ix) Liens arising from precautionary UCC or other similar financing statement filings regarding operating leases or consignments entered into in the ordinary course of business;

(x) attachment and judgment Liens, to the extent and for so long as the underlying judgments and decrees do not constitute an Event of Default pursuant to Section 11.09;

(xi) statutory and common law landlords’ liens under leases to which the Lead Borrower or any of its Restricted Subsidiaries is a party;

(xii) Liens (other than Liens imposed under ERISA) incurred in the ordinary course of business in connection with workers’ compensation claims, unemployment insurance and social security benefits and Liens securing the performance of bids, tenders, leases and contracts in the ordinary course of business, statutory obligations, surety, stay, customs or appeal bonds, performance bonds and other obligations of a like nature (including (i) those to secure health, safety and environmental obligations and (ii) those required or requested by any Governmental Authority other than letters of credit) incurred in the ordinary course of business;

(xiii) **Permitted Encumbrances [reserved]**;

(xiv) Liens on property or assets (other than Accounts, unless such Liens are expressly made junior to the Liens in favor of the Administrative Agent) acquired pursuant to a Permitted Acquisition, or on property or assets of a Restricted Subsidiary of the Lead Borrower in existence at the time such Restricted Subsidiary is acquired pursuant to a Permitted Acquisition, provided that (x) any Indebtedness that is secured by such Liens is permitted to exist under Section 10.04, and (y) such Liens are not incurred in connection with, or in contemplation or anticipation of, such Permitted Acquisition and do not attach to any other asset of the Lead Borrower or any of its Restricted Subsidiaries; and any extensions, renewals and replacements thereof so long as the aggregate principal amount of the Indebtedness secured by such Liens does not increase from that amount outstanding at the time of any such extension, renewal or replacement, plus accrued and unpaid interest and cash fees and expenses (including premium) incurred in connection with such renewal, replacement or extension, and such extension, renewal or replacement does not encumber any asset or properties of the Lead Borrower or any of its Restricted Subsidiaries other than the proceeds of the assets subject to such Lien;

(xv) deposits or pledges to secure bids, tenders, contracts (other than contracts for the repayment of borrowed money), leases, statutory obligations, surety, stay, customs and appeal bonds and other obligations of like nature (including (i) those to secure health, safety and environmental obligations and (ii) those required or requested by any Governmental Authority other than letters of credit), and as security for the payment of rent, in each case arising in the ordinary course of business;

(xvi) Liens on assets of Foreign Subsidiaries securing Indebtedness of Foreign Subsidiaries permitted pursuant to Section 10.04;
(xvii) any interest or title of a lessor, sublessor, licensee, sublicensee, licensor or sublicensor under any lease, sublease, license or sublicense agreement (including software and other technology licenses) in the ordinary course of business;

(xviii) Liens on property subject to Sale-Leaseback Transactions to the extent such Sale-Leaseback Transactions are permitted by Section 10.02(xii);

(xix) any encumbrances or restrictions (including, without limitation, put and call agreements) with respect to the Equity Interests of any Permitted Joint Venture expressly permitted by the terms of this Agreement arising pursuant to the agreement evidencing such Permitted Joint Venture;

(xx) Liens on Collateral in favor of any Credit Party securing intercompany Indebtedness permitted by Section 10.05; provided that any Liens securing Indebtedness that is required to be subordinated pursuant to Section 10.05 shall be subordinated to the Liens created pursuant to the Security Documents;

(xxi) Liens on specific items of inventory or other goods (and proceeds thereof) of any Person securing such Person’s obligations in respect of bankers’ acceptances or letters of credit issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods, and pledges or deposits in the ordinary course of business;

(xxii) Liens on insurance policies and the proceeds thereof (whether accrued or not) and rights or claims against an insurer, in each case securing insurance premium financings permitted under Section 10.04(x);

(xxiii) Liens that may arise on inventory or equipment of the Lead Borrower or any of its Restricted Subsidiaries in the ordinary course of business as a result of such inventory or equipment being located on premises owned by Persons other than the Lead Borrower and its Restricted Subsidiaries;

(xxiv) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;

(xxv) Liens (i) of a collection bank arising under Section 4-210 of the UCC on items in the course of collection, (ii) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business and (iii) in favor of a banking or other financial institution arising as a matter of law or under customary general terms and conditions encumbering deposits (including the right of set-off) and which are within the general parameters customary in the banking industry;

(xxvi) Liens deemed to exist in connection with Investments in repurchase agreements permitted under Section 10.05(ii); provided that such Liens do not extend to any assets other than those that are the subject of such repurchase agreement;

(xxvii) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks or other financial institutions not given in connection with the incurrence or issuance of Indebtedness, (ii) relating to pooled deposit or sweep accounts of the Lead Borrower or any Restricted Subsidiary to permit satisfaction of overdraft or similar
obligations incurred in the ordinary course of business of the Lead Borrower or any Restricted Subsidiary or (iii) relating to purchase orders and other agreements entered into with customers of the Lead Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(xviii) Liens attaching solely to cash earnest money deposits in connection with any letter of intent or purchase agreement in connection with a Permitted Acquisition or other Investment permitted hereunder;

(xix) Liens not otherwise permitted by the foregoing clauses (i) through (xviii), or by following clauses (xx) through (xlii), to the extent attaching to properties and assets (other than Accounts, unless such Liens are expressly made junior to the Liens in favor of the Administrative Agent) with an aggregate fair market value not in excess of, and securing liabilities not in excess of, the greater of $35,000,000 and 3.0% of Consolidated Total Assets in the aggregate at any time outstanding;

(xx) (i) Liens on Collateral (as defined in the Security Documents) securing obligations of Credit Parties under Permitted First Lien Notes, Permitted Junior Loans, Permitted Junior Notes, Refinancing Notes and Refinancing Term Loans that are secured as provided in the definitions thereof, or (ii) Liens on assets of non-Credit Parties securing obligations of non-Credit Parties under Permitted Junior Loans and Permitted Junior Notes to the extent permitted by Section 10.04(xxix);

(xxi) cash deposits with respect to any Refinancing Notes, Permitted First Lien Notes or any Permitted Junior Debt or any other Indebtedness, in each case to the extent permitted by Section 10.07;

(xxii) Liens on accounts receivable sold in connection with the sale or discount of accounts receivable permitted by Section 10.02(iv);  

(xxiii) Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods entered into by the Lead Borrower or any Restricted Subsidiary in the ordinary course of business;

(xxiv) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(xxv) (i) zoning, building, entitlement and other land use regulations by Governmental Authorities with which the normal operation of the business of the Lead Borrower and the Restricted Subsidiaries complies, and (ii) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of the Lead Borrower or any Restricted Subsidiary;

(xxvi) deposits made in the ordinary course of business to secure liability to insurance carriers;

(xxvii) receipt of progress payments and advances from customers in the ordinary course of business to the extent the same creates a Lien on the related inventory and proceeds thereof;
so long as no Default has occurred and is continuing at the time of granting such Liens, Liens on cash deposits in an aggregate amount not to exceed $7,500,000 securing any Swap Contracts permitted hereunder;

reserved;

customary Liens granted in favor of a trustee to secure fees and other amounts owing to such trustee under an indenture or other agreement pursuant to which Indebtedness not prohibited by the indenture is issued (including the indenture under which the notes are to be issued);

leases and subleases of real property that do not materially interfere with the ordinary conduct of the business of the Lead Borrower or any of its Restricted Subsidiaries; and

Liens on cash or Cash Equivalents (and the related escrow accounts) in connection with the issuance into (and pending the release from) escrow of any Refinancing Notes, any Permitted Junior Debt or any Permitted First Lien Notes.

In connection with the granting of Liens of the type described in this Section 10.01 by the Lead Borrower or any of its Restricted Subsidiaries, the Administrative Agent and the Collateral Agent shall, and shall be authorized to, take any actions deemed appropriate by it in connection therewith (including, without limitation, by executing appropriate lien releases or lien subordination agreements in favor of the holder or holders of such Liens, in either case solely with respect to the item or items of equipment or other assets subject to such Liens).

Section 10.02 Consolidation, Merger, or Sale of Assets, etc.

The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to, wind up, liquidate or dissolve its affairs or enter into any partnership, joint venture, or transaction of merger or consolidation, or convey, sell, lease or otherwise dispose of all or any part of its property or assets (including, in each case, pursuant to a Delaware LLC Division), or enter into any sale-leaseback transactions of any Person, except that:

any Investment permitted by Section 10.05 may be structured as a merger, consolidation or amalgamation;

the Lead Borrower and its Restricted Subsidiaries may sell assets so long as (x) each such sale is on terms and conditions not less favorable to the Lead Borrower or such Restricted Subsidiary as would reasonably be obtained by the Lead Borrower or such Restricted Subsidiary at that time in a comparable arm’s-length transaction with a Person other than an Affiliate and the Lead Borrower or the respective Restricted Subsidiary receives at least fair market value (as determined in good faith by the Lead Borrower or such Restricted Subsidiary, as the case may be) and (y) in the case of any single transaction that involves assets or Equity Interests having a fair market value of more than $10,000,000, at least 75% of the consideration received by the Lead Borrower or such Restricted Subsidiary shall be in the form of cash, Cash Equivalents or, subject to the proviso below, Designated Non-cash Consideration (taking into account the amount of cash and Cash Equivalents, the principal amount of any promissory notes and the fair market value, as determined by the Lead Borrower or such Restricted Subsidiary, as the case may be, in good faith, of any other consideration (including Designated Non-cash Consideration)) and is paid at the time of the closing of such sale; provided, however, that for purposes of this clause (y), the following shall be deemed to be cash: (A) any liabilities (as shown on such Borrower’s or such Restricted Subsidiary’s most recent balance sheet provided...
Hereunder or in the footnotes thereto) of such Borrower or such Restricted Subsidiary (other than liabilities that are by their terms subordinated to the Obligations) that are assumed by the transferee with respect to the applicable disposition and for which the Lead Borrower and the Restricted Subsidiaries shall have been validly released by all applicable creditors in writing, (B) any securities received by such Borrower or such Restricted Subsidiary from such transferee that are converted by such Borrower or such Restricted Subsidiary into cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received in the conversion) within 180 days following the closing of the applicable asset sale, and (C) any Designated Non-cash Consideration received by the Lead Borrower or any of its Restricted Subsidiaries in such asset sale having an aggregate fair market value, taken together with all other Designated Non-cash Consideration received pursuant to this clause (y) that is at that time outstanding, not to exceed the greater of (A) $25,000,000 and (B) 2.0% of Consolidated Total Assets at the time of the receipt of such Designated Non-Cash Consideration (with the fair market value of each item of Designated Non-cash Consideration being measured at the time received and without giving effect to subsequent changes in value); provided that if any such disposition involves assets that accounted for more than 10% of the Borrowing Base at the time of such sale, the Borrowers shall deliver an updated Borrowing Base Certificate to the Administrative Agent recalculating the Borrowing Base after giving effect to such disposition in connection with such disposition;

(iii) each of the Lead Borrower and its Restricted Subsidiaries may lease (as lessee) or license (as licensee) real or personal property (so long as any such lease or license does not create a Capitalized Lease Obligation except to the extent permitted by Section 10.04(iii));

(iv) each of the Lead Borrower and its Restricted Subsidiaries may sell or discount, in each case in the ordinary course of business, accounts receivable arising in the ordinary course of business, but only in connection with the compromise or collection thereof and not as part of any financing transaction;

(v) each of the Lead Borrower and its Restricted Subsidiaries may grant licenses, sublicenses, leases or subleases to other Persons not materially interfering with the conduct of the business of the Lead Borrower or any of its Restricted Subsidiaries, including of Intellectual Property;

(vi) (w) any Domestic Subsidiary of the Lead Borrower may be merged, consolidated, dissolved, amalgamated or liquidated with or into the Lead Borrower (so long as the surviving Person of such merger, consolidation, dissolution, amalgamation or liquidation is a corporation, limited liability company or limited partnership organized or existing under the laws of the United States of America, any state thereof or the District of Columbia and, if such surviving Person is not the Lead Borrower, such Person expressly assumes, in writing, all the obligations of the Lead Borrower under the Credit Documents pursuant to an assumption agreement in form and substance reasonably satisfactory to the Administrative Agent) or any other Credit Party (so long as the surviving Person of such merger, consolidation, dissolution, amalgamation or liquidation is a Wholly-Owned Domestic Subsidiary of the Lead Borrower, is a corporation, limited liability company or limited partnership and is or becomes a Subsidiary Borrower or Subsidiary Guarantor concurrently with such merger, consolidation or liquidation), (x) any Foreign Subsidiary or Excluded Subsidiary of the Lead Borrower may be merged, consolidated, dissolved, amalgamated or liquidated with or into any Wholly-Owned Foreign Subsidiary of the Lead Borrower or any Wholly-Owned Domestic Subsidiary of the Lead Borrower that is an Excluded Subsidiary, so long as such Wholly-Owned Foreign Subsidiary or
such Excluded Subsidiary, as applicable, is the surviving corporation of such merger, consolidation, dissolution, amalgamation or liquidation and (y) any Foreign Subsidiary of the Lead Borrower may be merged, consolidated, dissolved, amalgamated or liquidated with or into any Credit Party (so long as such Credit Party is the surviving corporation of such merger, consolidation, dissolution, amalgamation or liquidation); provided that any such merger, consolidation, dissolution, amalgamation or liquidation shall only be permitted pursuant so long as (I) no Default and no Event of Default then exists or would exist immediately after giving effect thereto and (II) any security interests granted to the Collateral Agent for the benefit of the Secured Creditors in the assets (and Equity Interests) of any such Person subject to any such transaction shall remain in full force and effect and perfected and enforceable (to at least the same extent as in effect immediately prior to such merger, consolidation, amalgamation or liquidation), and any Guaranties shall continue in full force and effect;

(vii) each Credit Party may convey, sell, lease or otherwise dispose of all or any part of its property or assets to another Credit Party;

(viii) each of the Lead Borrower and its Restricted Subsidiaries may make sales or leases of (A) inventory, (B) goods held for sale and (C) immaterial assets with a fair market value, in the case of this clause (C), of less than $10,000,000 in the ordinary course of business;

(ix) each of the Lead Borrower and its Restricted Subsidiaries may sell or otherwise dispose of (i) outdated, obsolete, surplus or worn out property, in each case, in the ordinary course of business and (ii) property no longer used or useful in the conduct of the business of the Lead Borrower and its Restricted Subsidiaries;

(x) each of the Lead Borrower and its Restricted Subsidiaries may sell or otherwise dispose of assets acquired pursuant to a Permitted Acquisition so long as (w) such assets are not used or useful to the core or principal business of the Lead Borrower and its Restricted Subsidiaries, (x) such assets have a fair market value not in excess of $7,500,000, (y) the aggregate proceeds (determined in a manner consistent with clause (x) above) received by the Lead Borrower or such Restricted Subsidiary from all such sales, transfers or dispositions relating to a given Permitted Acquisition shall not exceed 30% of the aggregate consideration paid for such Permitted Acquisition, and (z) such assets are sold, transferred or disposed of on or prior to the first anniversary of the relevant Permitted Acquisition;

(xi) in order to effect a sale, transfer or disposition otherwise permitted by this Section 10.02, a Restricted Subsidiary of the Lead Borrower may be merged, amalgamated or consolidated with or into another Person, or may be dissolved or liquidated;

(xii) each of the Lead Borrower and its Restricted Subsidiaries may effect Sale-Leaseback Transactions involving real property acquired after the Closing Date and not more than 180 days prior to such Sale-Leaseback Transaction for cash in an amount at least equal to the cost of such property;

(xiii) [reserved];

(xiv) each of the Lead Borrower and its Restricted Subsidiaries may issue or sell Equity Interests in, or Indebtedness or other securities of, an Unrestricted Subsidiary;
(xv) each of the Lead Borrower and its Restricted Subsidiaries may make transfers of property subject to casualty or condemnation proceedings upon the occurrence of the related Recovery Event;

(xvi) each of the Lead Borrower and its Restricted Subsidiaries may abandon Intellectual Property rights in the ordinary course of business, in the exercise of its reasonable good faith judgment;

(xvii) each of the Lead Borrower and its Restricted Subsidiaries may make voluntary terminations of or unwind Swap Contracts;

(xviii) each of the Lead Borrower and its Restricted Subsidiaries may make dispositions resulting from foreclosures by third parties on properties of the Lead Borrower or any of its Restricted Subsidiaries and acquisitions by the Lead Borrower or any of its Restricted Subsidiaries resulting from foreclosures by such Persons or properties of third parties;

(xix) each of the Lead Borrower and its Restricted Subsidiaries may terminate leases and subleases;

(xx) each of the Lead Borrower and its Restricted Subsidiaries may use cash and Cash Equivalents to make payments that are otherwise permitted under Sections 10.03 and 10.07;

(xxi) each of the Lead Borrower or its Restricted Subsidiaries may sell or otherwise dispose of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such sale or disposition are promptly applied to the purchase price of such replacement property;

( xxii ) sales, dispositions or contributions of property (A) between Credit Parties (other than Holdings the Lead Borrower), (B) between Restricted Subsidiaries (other than Credit Parties), (C) by Restricted Subsidiaries that are not Credit Parties to the Credit Parties (other than Holdings the Lead Borrower) or (D) by Credit Parties to any Restricted Subsidiary that is not a Credit Party, provided with respect to clause (D) that (1) the portion (if any) of any such sale, disposition or contribution of property made for less than fair market value and (2) any noncash consideration received in exchange for any such sale, disposition or contribution of property, shall in each case constitute an Investment in such Restricted Subsidiary subject to Section 10.05;

( xxiii ) dispositions of Investments (including Equity Interests) in, and issuances of Equity Interests by, any Permitted Joint Venture or any Subsidiary that is not a Wholly-Owned Subsidiary to the extent required by, or made pursuant to customary buy/sell arrangements between the parties to such Permitted Joint Venture or equityholders of such Subsidiary set forth in, the joint venture agreement, operating agreement, shareholders agreement or similar agreement governing such Permitted Joint Venture or such Subsidiary;

( xxiv ) transfers of condemned property as a result of the exercise of “eminent domain” or other similar powers to the respective Governmental Authority or agency that has condemned the same (whether by deed in lieu of condemnation or otherwise), and transfers of property that have been subject to a casualty to the respective insurer of such real property as part of an insurance settlement;
any disposition of any asset between or among the Restricted Subsidiaries as a substantially concurrent interim disposition in connection with a disposition otherwise permitted pursuant to this Section 10.02; and

dispositions permitted by Section 10.03.

To the extent the Required Lenders waive the provisions of this Section 10.02 with respect to the sale of any Collateral, or any Collateral is sold as permitted by this Section 10.02 (other than to the Lead Borrower or a Restricted Subsidiary thereof), such Collateral shall be sold free and clear of the Liens created by the Security Documents, and the Administrative Agent and the Collateral Agent shall, and shall be authorized to, take any actions deemed appropriate in order to effect the foregoing.

Section 10.03 Dividends

The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to, authorize, declare or pay any Dividends with respect to the Lead Borrower or any of its Restricted Subsidiaries, except that:

(i) any Restricted Subsidiary of the Lead Borrower and any Credit Party (other than the Lead Borrower) may pay Dividends or return capital or make distributions and other similar payments with regard to its Equity Interests to the Lead Borrower or, to other Restricted Subsidiaries of the Lead Borrower or to another Credit Party which directly or indirectly own equity therein;

(ii) any non-Wholly-Owned Subsidiary of the Lead Borrower may declare and pay cash Dividends to its shareholders generally so long as the Lead Borrower or its Restricted Subsidiary which owns the Equity Interests in the Subsidiary paying such Dividends receives at least its proportionate share thereof (based upon its relative holding of the Equity Interests in the Subsidiary paying such Dividends and taking into account the relative preferences, if any, of the various classes of Equity Interests of such Subsidiary);

(iii) 

(iv) 

(v) 

(vi) 

(iii) so long as no Default or Event of Default exists at the time of the applicable Dividend, redemption or repurchase or would exist immediately after giving effect thereto, the Lead Borrower may pay cash Dividends to Holdings to allow Holdings to pay cash dividends to any other Parent Company to redeem or repurchase, contemporaneously with such Dividend, Equity Interests of such Parent Company from current or former members of management, employees, consultants, officers and directors (and their successors and assigns) of the Lead Borrower and its Restricted Subsidiaries, provided that (A) the aggregate amount of Dividends made by the Lead Borrower to Holdings pursuant to this clause (iii), and the aggregate amount paid by Holdings in respect of all such Equity Interests so redeemed or repurchased shall not (net of any cash proceeds received by Holdings (but in no event from any Initial Public Offering) from issuances of its Equity Interests and contributed to the Lead Borrower in connection with such redemption or repurchase), in either case, exceed during any fiscal year of the Lead Borrower,
$10,000,000 (provided that the amount of cash Dividends permitted to be, but not, paid in any fiscal year pursuant to this clause (iii) shall increase the amount of cash Dividends permitted to be paid in the succeeding two fiscal years pursuant to this clause (iii)); (B) such amount in any calendar year may be increased by an amount not to exceed: (I) the cash proceeds of key man life insurance policies received by the Lead Borrower or any of its Restricted Subsidiaries after the Closing Date, plus (II) the net proceeds from the sale of Equity Interests of Holdings, in each case to members of management, managers, directors or consultants of any Parent Company or any of its Subsidiaries that occurs after the Closing Date, where the net proceeds of such sale are received by or contributed to the Lead Borrower; less (III) the amount of any Dividends previously made with the cash proceeds described in the preceding clause (I), and (C) cancellation of Indebtedness owing to the Lead Borrower from current or former members of management, officers, directors, employees of the Lead Borrower or any of its Subsidiaries in connection with a repurchase of Equity Interests of any Parent Company will not be deemed to constitute a Dividend for purposes of this Agreement; (iv) the Lead Borrower may pay cash Dividends to Holdings so long as the proceeds thereof are promptly used by Holdings (or subsequently paid to any other Parent Company) to pay expenses incurred by Holdings or any other Parent Company in connection with offerings, registrations, or exchange listings of equity or debt securities and maintenance of same (A) where the net proceeds of such offering are to be received by or contributed to the Lead Borrower, (B) in a prorated amount of such expenses in proportion to the amount of such net proceeds intended to be so received or contributed or loaned, or (C) otherwise on an interim basis prior to completion of such offering so long as Holdings and any other Parent Company shall cause the amount of such expenses to be repaid to the Lead Borrower or the relevant Restricted Subsidiary of the Lead Borrower out of the proceeds of such offering promptly if such offering is completed; (v) the Lead Borrower may pay cash Dividends to Holdings so long as the proceeds thereof are promptly used by Holdings (or subsequently paid to any other Parent Company) to pay costs (including all professional fees and expenses) incurred by Holdings or any other Parent Company in connection with reporting obligations under or otherwise incurred in connection with compliance with applicable laws, applicable rules or regulations of any governmental, regulatory or self-regulatory body or stock exchange, including in respect of any reports filed with respect to the Securities Act, the Securities Exchange Act or the respective rules and regulations promulgated thereunder; (vi) the Lead Borrower may pay cash dividends or other distributions, or make loans or advances to, any Parent Company or the equity interest holders thereof in amounts required for any Parent Company or the equity interest holders thereof to pay, in each case without duplication:

(A) franchise Taxes (and other fees and expenses) required to maintain their existence;

(B) with respect to any taxable year (or portion thereof) ending after the Closing Date with respect to which the Lead Borrower (a) is treated as a corporation for U.S. federal, state, and/or local income tax purposes and (b) is a member of a consolidated, combined or similar income tax group (a “Tax Group”) of which any Parent Company or other entity is the common parent, federal, state and local income Taxes (including minimum Taxes) (or franchise and similar Taxes imposed in lieu of such minimum
Taxes) that are attributable to the taxable income of the Lead Borrower and its Subsidiaries; provided that for each taxable period, the amount of such payments made in respect of such taxable period in aggregate shall not exceed the amount that the Lead Borrower and its Subsidiaries would have been required to pay as a stand-alone Tax Group; provided, further, that the permitted payment pursuant to this clause (B) with respect to the Taxes of any Unrestricted Subsidiary for any taxable period shall be limited to the amount actually paid by such Unrestricted Subsidiary to the Lead Borrower or its Restricted Subsidiaries for the purposes of paying such consolidated, combined or similar Taxes;

(C) customary salary, bonus and other compensation and benefits payable to current and former officers, directors, consultants and employees of any Parent Company to the extent such salaries, bonuses and other compensation and benefits are reasonably attributable to the ownership or operations of the Lead Borrower and its Restricted Subsidiaries;

(D) general corporate operating and overhead costs and expenses (including administrative, legal, accounting and similar expenses provided by third parties) of any Parent Company to the extent such costs and expenses are reasonably attributable to the ownership or operations of the Lead Borrower and its Restricted Subsidiaries;

(E) cash payments in lieu of issuing fractional shares in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests of the Lead Borrower or any Parent Company;

(F) the purchase or other acquisition by any parent of the Lead Borrower of all or substantially all of the property and assets of any Person, or of assets constituting a business unit, a line of business or division of such Person, or of all of the Equity Interests in a Person; provided that if such purchase or other acquisition had been made by the Lead Borrower, it would have constituted a Permitted Acquisition permitted to be made pursuant to Section 9.14; provided that (A) such dividend, distribution, loan or advance shall be made concurrently with the closing of such purchase or other acquisition and (B) such parent shall, immediately following the closing thereof, cause (1) all property acquired (whether assets or Equity Interests) and any liabilities assumed to be contributed to the Lead Borrower or any Restricted Subsidiary or (2) the merger (to the extent permitted in Section 10.02) into the Lead Borrower or any Restricted Subsidiary of the Person formed or acquired in order to consummate such purchase or other acquisition;

(G) any customary fees and expenses related to any unsuccessful equity offering by any Parent Company directly attributable to the operations of the Lead Borrower and its Restricted Subsidiaries;

(vii) reasonable and customary indemnities to directors, officers and employees of any Parent Company, Lead Borrower in the ordinary course of business, to the extent reasonably attributable to the ownership or operation of the Lead Borrower and its Restricted Subsidiaries;

(viii) the Lead Borrower may pay cash Dividends to Holdings so long as the proceeds thereof are promptly used by Holdings (or subsequently paid to any other Parent Company) for
payment of (x) obligations under or in respect of director and officer insurance policies to the extent reasonably attributable to the ownership or operation of the Lead Borrower and its Restricted Subsidiaries or (y) indemnification obligations owing to the Sponsor and Sponsor Affiliates under the Advisory Agreement (as in effect on the Closing Date); [reserved];

(ix) any Dividend used to fund the Transaction, including Transaction Costs and the Special Dividend, and any Dividend from proceeds received in connection with any working capital adjustment pursuant to the Acquisition Agreement;

(x) the Lead Borrower may pay cash Dividends to Holdings (who may subsequently pay cash Dividends to any other Parent Company) so long as the proceeds thereof are used to pay the Sponsor or Sponsor Affiliate fees, expenses and indemnification payments that are then permitted to be paid pursuant to Sections 10.06(v) and 10.06(vii); [reserved];

(xi) repurchases of Equity Interests deemed to occur upon exercise of stock options or warrants or the settlement or vesting of other equity incentive awards;

(xii) a Dividend to any Parent Company to fund a payment of dividends on such Parent Company’s common stock following an Initial Public Offering of such common stock after the Closing Date, of up to 6% per annum of the net cash proceeds contributed to the capital of the Lead Borrower from any such Initial Public Offering; [reserved];

(xiii) the Lead Borrower may pay any Dividends so long as the Distribution Conditions are satisfied on a Pro Forma Basis immediately after giving effect to such Dividends;

(xiv) purchases of minority interests in non-Wholly-Owned Subsidiaries by the Lead Borrower and the Guarantors; provided that the aggregate amount of such purchases, when added to the aggregate amount of Investments pursuant to Section 10.05(xvii), shall not exceed $5,000,000 - $20,000,000;

(xv) the declaration and payment of dividends or the payment of other distributions by the Lead Borrower in an aggregate amount since the Closing Date not to exceed $35,000,000 (less any amounts used Section 10.07(a)(B)(ii) and Section 10.07(b)(ii)); [reserved];

(xvi) the Lead Borrower and each Restricted Subsidiary may declare and make dividend payments or other distributions payable solely in the Equity Interests of such Person so long as in the case of dividend or other distribution by a Restricted Subsidiary, the Lead Borrower or a Restricted Subsidiary receives at least its pro rata share of such dividend or distribution;

(xvii) the Lead Borrower may make payments with the cash proceeds contributed to its common equity from the net cash proceeds of any equity issuance by any Parent Company, so long as, with respect to any such payments, no Event of Default shall have occurred and be continuing or would result therefrom and provided such payments are made substantially contemporaneously with the receipt of such cash proceeds by the Lead Borrower; and [reserved]; and

(xviii) the Lead Borrower and any Restricted Subsidiary may pay dividends and distributions within 60 days after the date of declaration thereof, if at the date of declaration of such payment, such payment would have complied with another provision of this Section 10.03.
In determining compliance with this Section 10.03 (and in determining amounts paid as Dividends pursuant hereto for purposes of the definition of Consolidated EBITDA and Consolidated Net Income), amounts loaned or advanced to Holdings the Lead Borrower pursuant to Section 10.05(vi) shall be deemed to be cash Dividends paid to Holdings the Lead Borrower to the extent provided in said Section 10.05(vi).

Section 10.04 Indebtedness

The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to, contract, create, incur, assume or suffer to exist any Indebtedness, except:

(i) (x) Indebtedness incurred pursuant to this Agreement and the other Credit Documents; and (y) (1) Indebtedness incurred pursuant to the First Lien Credit Agreement and the other First Lien Credit Documents in a principal amount not to exceed $500,000,000, plus any amounts incurred under Section 2.15(a) or Section 10.04(a)(xxii) of the First Lien Credit Agreement (as in effect on the date hereof), (2) Indebtedness incurred pursuant to the Second Lien Credit Agreement and the other Second Lien Credit Documents in an amount not to exceed $210,000,000, plus any amounts incurred under Section 2.15(a) or Section 10.04(a)(xxii) of the Second Lien Credit Agreement (as in effect on the date hereof Amendment No. 3 Effective Date), and (2) Indebtedness under Refinancing Notes and Refinancing Term Loans;

(ii) Indebtedness under Swap Contracts entered into with respect to other Indebtedness permitted under this Section 10.04 so long as the entering into of such Swap Contracts are bona fide hedging activities and are not for speculative purposes;

(iii) Indebtedness of the Lead Borrower and its Restricted Subsidiaries evidenced by Capitalized Lease Obligations and purchase money Indebtedness (including obligations in respect of mortgages, industrial revenue bonds, industrial development bonds and similar financings); provided that in no event shall the aggregate principal amount of Capitalized Lease Obligations and the principal amount of all such Indebtedness incurred or assumed in each case after the Closing Date permitted by this clause (iii) exceed the greater of $20,000,000 and 5.00% of Consolidated Total Assets at any one time outstanding;

(iv) (A) Indebtedness in the form of any indemnification, adjustment of purchase price, earn-out, non-compete, consulting, deferred compensation and similar obligations of the Lead Borrower or its Restricted Subsidiaries and (B) Indebtedness incurred by the Lead Borrower or any of its Restricted Subsidiaries in any disposition permitted hereby under agreements providing for earn-outs or the adjustment of the purchase price or similar adjustments, in each case, in an aggregate amount not exceeding $20,000,000 and 1.50% of Consolidated Total Assets at any time outstanding;

(v) Indebtedness of a Restricted Subsidiary of the Lead Borrower acquired pursuant to a Permitted Acquisition (or Indebtedness assumed at the time of a Permitted Acquisition of an asset securing such Indebtedness), provided that (x) such Indebtedness was not incurred in connection with, or in anticipation or contemplation of, such Permitted Acquisition and (y) the Consolidated Total Net Leverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which Section 9.01 Financials were required to have been delivered, shall not exceed 5.25 to 1.00;

(vi) intercompany Indebtedness among the Lead Borrower and its Restricted Subsidiaries to the extent permitted by Section 10.05(vi);
Indebtedness outstanding on the Closing Date and listed on Schedule 10.04 ("Existing Indebtedness") and any subsequent extension, renewal or refinancing thereof; provided that the aggregate principal amount of the Indebtedness to be extended, renewed or refinanced does not increase from that amount outstanding at the time of any such extension, renewal or refinancing, plus accrued and unpaid interest and cash fees and expenses (including premium) incurred in connection with such renewal, replacement or extension; provided, however, that such refinancing Indebtedness: (x) has a Weighted Average Life to Maturity at the time such refinancing Indebtedness is incurred which is not less than the remaining Weighted Average Life to Maturity of the Indebtedness being extended, renewed or refinanced; (y) to the extent such refinancing Indebtedness extends, renewals or refinances Indebtedness subordinated or pari passu to the Loans, such refinancing Indebtedness is subordinated or pari passu to the Loans at least to the same extent as the Indebtedness being extended, renewed or refinanced; and (z) shall not include Indebtedness of a Subsidiary of the Lead Borrower that is not a Subsidiary Guarantor that refunds, refines, replaces, renews, extends or discharges Indebtedness of a Borrower or a Subsidiary Guarantor;

Indebtedness in respect of letters of credit or bonds backing obligations under insurance policies or related to self-insurance obligations or consisting of the financing of insurance premiums, in an aggregate amount not exceeding $15,000,000 at any time outstanding;

Indebtedness incurred in the ordinary course of business to finance insurance premiums or take-or-pay obligations contained in supply arrangements;

Indebtedness incurred in the ordinary course of business in respect of netting services, overdraft protections, employee credit card programs, automatic clearinghouse arrangements and other similar services in connection with cash management and deposit accounts and Indebtedness in connection with the honoring of a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, including in each case, Bank Product Debt;

Refinancings, renewals or extensions of any Indebtedness incurred pursuant to clause (v) above, provided that the aggregate principal amount of the Indebtedness to be refinanced, renewed or extended does not increase from that amount outstanding at the time of any such refinancing, renewal or extension, plus accrued and unpaid interest and cash fees and expenses (including premium) incurred in connection with such renewal, replacement or extension, and is on terms not less favorable in any material respect to the Lenders;

Additional Indebtedness of the Lead Borrower and its Restricted Subsidiaries not to exceed the greater of $20,000,000 and 1.75% of Consolidated Total Assets in aggregate principal amount outstanding at any time;
(xvi) Contingent Obligations for customs, stay, performance, appeal, judgment, replevin and similar bonds and suretyship arrangements, and completion guarantees and other obligations of a like nature, all in the ordinary course of business;

(xvii) Contingent Obligations to insurers required in connection with worker’s compensation and other insurance coverage incurred in the ordinary course of business;

(xviii) guarantees made by the Lead Borrower or any of its Restricted Subsidiaries of Indebtedness of the Lead Borrower or any of its Restricted Subsidiaries permitted to be outstanding under this Section 10.04; provided that such guarantees are permitted by Section 10.05;

(xix) guarantees made by any Foreign Subsidiary of Indebtedness of any other Foreign Subsidiary permitted to be outstanding under this Section 10.04;

(xx) guarantees made by Restricted Subsidiaries acquired pursuant to a Permitted Acquisition of Indebtedness acquired or assumed pursuant thereto in accordance with Section 10.04, or any refinancing thereof pursuant to Section 10.04; provided that such guarantees may only be made by Restricted Subsidiaries who were guarantors of the Indebtedness originally acquired or assumed pursuant to Section 10.04 at the time of the consummation of the Permitted Acquisition to which such Indebtedness relates;

(xxi) customary Contingent Obligations in connection with sales, other dispositions and leases permitted under Section 10.02 (but not in respect of Indebtedness for borrowed money or Capitalized Lease Obligations) including indemnification obligations with respect to leases, and guarantees of collectability in respect of accounts receivable or notes receivable for up to face value;

(xxii) guarantees of Indebtedness of directors, officers, consultants and employees of the Lead Borrower or any of its Restricted Subsidiaries in respect of expenses of such Persons in connection with relocations and other ordinary course of business purposes;

(xxiii) guarantees of Indebtedness of a Person in connection with a Permitted Joint Venture, provided that the aggregate principal amount of any Indebtedness so guaranteed, when added to the aggregate amount of unreimbursed payments theretofore made in respect of such guarantees and the amount of Investments then outstanding (and deemed outstanding) under clause (xix) of Section 10.05, shall not exceed the greater of $20,000,000, $50,000,000 and 1.75% of Consolidated Total Assets;

(xxiv) [reserved];

(xxv) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business, provided that such Indebtedness is extinguished within two Business Days of its incurrence;

(xxvi) (x) severance, pension and health and welfare retirement benefits or the equivalent thereof to current and former officers, employees, consultants and directors of the Lead Borrower or its Restricted Subsidiaries incurred in the ordinary course of business, (y) Indebtedness representing deferred compensation or equity-based compensation to current and
former officers, employees, consultants and directors of the Lead Borrower and the Restricted Subsidiaries and (z) Indebtedness
consisting of promissory notes issued by any Credit Party to current or former officers, directors, consultants and employees, their
respective estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of any Parent Company Credit
Party permitted by Section 10.03;

(xvii) [reserved];

(xviii) (x) guarantees made by the Lead Borrower or any of its Restricted Subsidiaries of obligations (not constituting debt for borrowed money) of the Lead Borrower or any of its Restricted Subsidiaries owing to vendors, suppliers and other third parties incurred in the ordinary course of business and (y) Indebtedness of any Credit Party (other than Holdings the Lead Borrower) as an account party in respect of trade letters of credit issued in the ordinary course of business;

(xix) Permitted Junior Debt of the Lead Borrower and its Restricted Subsidiaries incurred under Permitted Junior Debt Documents so long as (i) all such Indebtedness is incurred in accordance with the requirements of the definition of Permitted Junior Notes or Permitted Junior Loans, as the case may be, (ii) no Default or Event of Default then exists or would result therefrom, (iii) 100% of the net proceeds therefrom shall be used for working capital or other general corporate purchases (including without limitation, to finance one or more Permitted Acquisitions and to pay fees in connection therewith), (iv) the aggregate principal amount of secured Permitted Junior Debt issued or incurred after the Closing Date shall not cause the Consolidated Senior Secured Net Leverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which Section 9.01 Financials were required to have been delivered, to exceed $253.75 to 1.00, (v) the aggregate principal amount of unsecured Permitted Junior Debt issued or incurred after the Closing Date shall not cause the Consolidated Total Net Leverage Ratio, determined on a Pro Forma Basis as of the last day of the most recently ended Test Period for which Section 9.01 Financials were required to have been delivered, to exceed 5.25 to 1.00 and (vi) the Lead Borrower shall have furnished to the Administrative Agent a certificate from a Responsible Officer certifying as to compliance with the requirements of preceding clauses (i), (ii), (iii), (iv) and (v) and containing the calculations required by preceding clauses (iv) and (v); provided that the amount of Permitted Junior Debt which may be incurred pursuant to this clause (xxix) by non-Credit Parties shall not exceed $20,000,000;

(xxx) Indebtedness arising out of Sale-Leaseback Transactions permitted by Section 10.01(xviii);

(xxxi) obligations in respect of deposits and progress or similar payments arising in the ordinary course of business with respect to capital equipment and construction projects; and

(xxxii) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (xxx) above.

Section 10.05 Advances, Investments and Loans

The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, lend money or credit or make advances to any Person, or purchase or acquire any stock, obligations or securities of, or any other interest in, or make any capital contribution to, any other Person, or purchase or own a futures contract
or otherwise become liable for the purchase or sale of currency or other commodities at a future date in the nature of a futures contract, or hold any cash or Cash Equivalents or designate a Subsidiary as an Unrestricted Subsidiary (each of the foregoing, an “Investment” and, collectively, “Investments” and with the value of each Investment being measured at the time made and without giving effect to subsequent changes in value or any write-ups, write-downs or write-offs thereof but giving effect to any cash return or cash distributions received by the Lead Borrower and its Restricted Subsidiaries with respect thereto), except that the following shall be permitted:

(i) the Lead Borrower and its Restricted Subsidiaries may acquire and hold accounts receivable owing to any of them, if created or acquired in the ordinary course of business and payable or dischargeable in accordance with customary trade terms of the Lead Borrower or such Restricted Subsidiary;

(ii) the Lead Borrower and its Restricted Subsidiaries may acquire and hold cash and Cash Equivalents;

(iii) the Lead Borrower and its Restricted Subsidiaries may hold the Investments held by them on the Closing Date and described on Schedule 10.05(iii), and any modification, replacement, renewal or extension thereof that does not increase the principal amount thereof unless any additional Investments made with respect thereto are permitted under the other provisions of this Section 10.05;

(iv) the Lead Borrower and its Restricted Subsidiaries may acquire and hold Investments (including debt obligations and Equity Interests) received in connection with the bankruptcy or reorganization of suppliers and customers, and Investments received in good faith settlement of delinquent obligations of, and other disputes with, customers and suppliers arising in the ordinary course of business;

(v) the Lead Borrower and its Restricted Subsidiaries may enter into Swap Contracts to the extent permitted by Section 10.04(ii);

(vi) (a) the Lead Borrower and any Restricted Subsidiary may make intercompany loans to and other investments in Credit Parties (other than Holdings, unless otherwise permitted by Section 10.03), (b) any Foreign Subsidiary may make intercompany loans to and other investments in any the Lead Borrower or any of its Restricted Subsidiaries so long as in the case of such intercompany loans to Credit Parties (other than Holdings), all payment obligations of the respective Credit Parties are subordinated to their obligations under the Credit Documents on terms reasonably satisfactory to the Administrative Agent, (c) the Credit Parties may make intercompany loans to, guarantees on behalf of, and other investments in, Permitted Joint Ventures and Subsidiaries that are not Credit Parties so long as the aggregate amount of outstanding loans, guarantees and other Indebtedness made pursuant to this subclause (c) does not exceed the greater of $15,000,000 and $50,000,000 and $1.53.0% of Consolidated Total Assets, (d) any Restricted Subsidiary that is also not a Credit Party and (e) Credit Parties may make intercompany loans and other investments in any Restricted Subsidiary that is not a Credit Party so long as such Investment is part of a series of simultaneous Investments by Restricted Subsidiaries in other Restricted Subsidiaries that results in the proceeds of the initial Investment being invested in one or more Credit Parties (other than Holdings, the Lead Borrower, unless otherwise permitted by Section 10.03);

(vii) Permitted Acquisitions shall be permitted in accordance with Section 9.14;
loans and advances by the Lead Borrower and its Restricted Subsidiaries to officers, directors, consultants and employees of the Lead Borrower and its Restricted Subsidiaries in an aggregate amount not exceeding $10,000,000 at any time outstanding in connection with (i) business-related travel, relocations and other ordinary course of business purposes (including travel and entertainment expenses) shall be permitted and (ii) any such Person’s purchase of Equity Interests of Holdings or any Parent Company the Lead Borrower; provided that no cash is actually advanced pursuant to this clause (ii) unless immediately repaid;

advances of compensation to employees of the Lead Borrower and its Restricted Subsidiaries in the ordinary course of business;

non-cash consideration may be received in connection with any sale of assets permitted pursuant to Section 10.02(ii) or (x);

additional Restricted Subsidiaries of the Lead Borrower may be established or created if the Lead Borrower and such Subsidiary comply with the requirements of Section 9.12, if applicable; provided that to the extent any such new Subsidiary is created solely for the purpose of consummating a transaction pursuant to an acquisition permitted by this Section 10.05, and such new Subsidiary at no time holds any assets or liabilities other than any merger consideration contributed to it contemporaneously with the closing of such transaction, such new Subsidiary shall not be required to take the actions set forth in Section 9.12, as applicable, until the respective acquisition is consummated (at which time the surviving or transferee entity of the respective transaction and its Subsidiaries shall be required to so comply in accordance with the provisions thereof);

extensions of trade credit may be made in the ordinary course of business (including advances made to distributors consistent with past practice), Investments received in satisfaction or partial satisfaction of previously extended trade credit from financially troubled account debtors, Investments consisting of prepayments to suppliers made in the ordinary course of business and loans or advances made to distributors in the ordinary course of business;

earnest money deposits may be made to the extent required in connection with Permitted Acquisitions and other Investments to the extent permitted under Section 10.01(xviii);

Investments in deposit accounts or securities accounts opened in the ordinary course of business;

Investments in the nature of pledges or deposits with respect to leases or utilities provided to third parties in the ordinary course of business;

Investments in the ordinary course of business consisting of UCC Article 3 endorsements for collection or deposit;

purchases of minority interests in non-Wholly-Owned Subsidiaries by the Borrowers and the Guarantors; provided that the aggregate amount of such purchases, when added to the aggregate amount of Dividends pursuant to Section 10.03(xiv), shall not exceed $5,000,000 or $20,000,000;
Investments (other than Permitted Acquisitions) so long as the Payment Conditions are satisfied on a Pro Forma Basis immediately after giving effect to such Investments;

in addition to Investments permitted by clauses (i) through (xviii) and (xx) through (xxxii) of this Section 10.05, the Lead Borrower and its Restricted Subsidiaries may make additional loans, advances and other Investments to or in a Person (including a Permitted Joint Venture) in an aggregate amount for all loans, advances and other Investments made pursuant to this clause (xix), not to exceed, when added to the aggregate amount then guaranteed under clause (xxiii) of Section 10.04 and all unreimbursed payments theretofore made in respect of guarantees pursuant to clause (xxiii) of Section 10.04, the greater of $15,000,000, 50,000,000 and 1.5% of Consolidated Total Assets plus the amount of cash common equity contributions to Holdings and by Holdings to the Lead Borrower made at any time after the Closing Date through such time;

the licensing, sublicensing or contribution of Intellectual Property rights pursuant to arrangements with Persons other than the Lead Borrower and the Restricted Subsidiaries in the ordinary course of business for fair market value, as determined by the Lead Borrower or such Restricted Subsidiary, as the case may be, in good faith;

loans and advances to any Parent Company in lieu of, and not in excess of the amount of (after giving effect to any other loans, advances or Dividends made to any Parent Company), Dividends permitted to be made to any Parent Company in accordance with Section 10.03, provided that any such loan or advance shall reduce the amount of such applicable Dividend thereafter permitted under Section 10.03 by a corresponding amount (if such applicable subsection of Section 10.03 contains a maximum amount);

Investments to the extent that payment for such Investments is made solely by the issuance of Equity Interests constituting common stock or Qualified Preferred Stock of Holdings (or any Equity Interests of any other Parent Company) to the seller of such Investments;

Investments of a Person that is acquired and becomes a Restricted Subsidiary or of a company merged or amalgamated or consolidated into any Restricted Subsidiary, in each case after the Closing Date and in accordance with this Section 10.05 and/or Section 10.02, as applicable, to the extent that such Investments were not made in contemplation of or in connection with such acquisition, merger, amalgamation or consolidation, do not constitute a material portion of the aggregate assets acquired in such transaction and were in existence on the date of such acquisition, merger, amalgamation or consolidation;

Investments in a Restricted Subsidiary that is not a Credit Party or in a Joint Venture, in each case, to the extent such Investment is substantially contemporaneously repaid in full with a dividend or other distribution from such Restricted Subsidiary or Joint Venture;

to the extent that they constitute Investments, purchases and acquisitions of inventory, supplies, materials and equipment or purchases of contract rights or licenses or leases of Intellectual Property, in each case, in the ordinary course of business;
Investments by the Lead Borrower and its Restricted Subsidiaries consisting of deposits, prepayment and other credits to suppliers or landlords made in the ordinary course of business;

guarantees made in the ordinary course of business of obligations owed to landlords, suppliers, customers, franchisees and licensees of the Lead Borrower or its Subsidiaries;

Investments consisting of the licensing, sublicensing or contribution of Intellectual Property pursuant to joint marketing arrangements with other Persons;

Investments in Unrestricted Subsidiaries having an aggregate fair market value (measured on the date each such Investment was made and without giving effect to subsequent changes in value), when taken together with all other Investments made pursuant to this Section 10.05(xxix) that are at that time outstanding not to exceed $15,000,00025,000,000, at any one time outstanding;

Investments by the Lead Borrower or any Restricted Subsidiary in Permitted Joint Ventures in an aggregate amount outstanding at any time (valued at cost and net of any return representing return of (but not return on) any such Investment) not to exceed the greater of $15,000,00050,000,000 and 1.53.0% of Consolidated Total Assets;

Investments by the Lead Borrower in (i) Landmarc Support Services Limited, (ii) Computer Sciences Raytheon or (iii) Aerospace Testing Alliance, in each case to fund or reimburse payments by such Permitted Joint Venture in respect of its pension obligations solely to the extent the Lead Borrower or any other Credit Party either received an amount equal to such Investment from a third party for the purposes of funding such pension obligations or is entitled to reimbursement for such amount from a third party; and

deposits and progress or similar payments made in the ordinary course of business with respect to capital equipment and construction projects.

Section 10.06 Transactions with Affiliates

The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to, enter into any transaction or series of related transactions with any Affiliate of the Lead Borrower or any of its Subsidiaries, other than on terms and conditions deemed in good faith by the board of directors of the Lead Borrower (or any committee thereof) to be not less favorable to the Lead Borrower or such Restricted Subsidiary as would reasonably be obtained by the Lead Borrower or such Restricted Subsidiary at that time in a comparable arm’s-length transaction with a Person other than an Affiliate, except:

(i) Dividends may be paid to the extent provided in Section 10.03;

(ii) loans and other transactions among Holdings, the Lead Borrower and its Restricted Subsidiaries (and any Parent Company) may be made to the extent otherwise expressly permitted under Section 10;

(iii) customary fees and indemnification (including the reimbursement of out-of-pocket expenses) may be paid to directors of Holdings, the Lead Borrower and its Restricted
Subsidiaries (and, to the extent directly attributable to the operations of the Lead Borrower and the other Restricted Subsidiaries, to any other Parent Company);

(iv) Holdings, the Lead Borrower and its Restricted Subsidiaries may enter into, and may make payments under, employment or other service-related agreements, employee benefits plans, incentive plans, indemnification provisions, stay bonuses, severance and other similar compensatory arrangements with current and former officers, employees, consultants and directors of Holdings, the Lead Borrower and its Restricted Subsidiaries in the ordinary course of business;

(v) so long as no Event of Default shall exist (both before and immediately after giving effect thereto) under Section 11.01 or 11.05, Holdings and/or the Lead Borrower may pay fees to the Sponsor or the Sponsor Affiliates (or dividend such funds to any Parent Company to be paid to the Sponsor or the Sponsor Affiliates) in an amount not to exceed $5,000,000 in any calendar year and perform its other obligations pursuant to the terms of the Advisory Agreement as in effect on the Closing Date; provided further that upon the occurrence and during the continuance of Event of Default under Section 11.01 or 11.05, such amounts may accrue on a subordinated basis, but not be payable in cash during such period, but all such accrued amounts (plus accrued interest, if any, with respect thereto) may be payable in cash upon the cure or waiver of such Event of Default;

(vi) _[reserved];_

(vi) the Transaction (including Transaction Costs) shall be permitted;

(vii) to the extent not otherwise prohibited by this Agreement, transactions between or among the Lead Borrower and any of its Restricted Subsidiaries shall be permitted (including equity issuances); the Borrowers may make payments (or make dividends to a Parent Company to make payments) to reimburse the Sponsor or the Sponsor Affiliates for its reasonable out-of-pocket expenses, and to indemnify it, pursuant to the terms of the Advisory Agreement entered into in connection with the Transaction, as in effect on the Closing Date, subject to amendments not adverse to the Lenders in any material respect;

(viii) transactions described on Schedule 10.06(x) or any amendment thereto to the extent such an amendment is not adverse to the Lenders in any material respect;

(ix) Investments in the Lead Borrower’s Subsidiaries and Permitted Joint Ventures (to the extent any such Subsidiary that is not a Restricted Subsidiary or any such Permitted Joint Venture is only an Affiliate as a result of Investments by Holdings, the Lead Borrower and the Restricted Subsidiaries in such Subsidiary or Permitted Joint Venture) to the extent otherwise permitted under Section 10.05;

(x) any payments required to be made pursuant to the Acquisition Agreement; and

(xi) transactions between the Lead Borrower and any Person that is an Affiliate solely due to the fact that a director of such Person is also a director of the Lead Borrower or any Parent Company; provided, however, that such director abstains from voting as a director of the Lead Borrower or such Parent Company, as the case may be, on any matter involving such other Person.
(xii) payments by the Lead Borrower or any of its Restricted Subsidiaries to the Sponsor or any Parent Company for any financial advisory, financing, underwriting or placement services or in respect of other investment banking activities, including, without limitation, in connection with the acquisitions or divestitures, which payments are approved by a majority of the board of directors of the Lead Borrower in good faith;

(xiii) [reserved]; and

(xiv) the issuance of Equity Interests in the form of common stock or Qualified Preferred Stock or phantom equity to the Sponsor or any Parent Company, or to any current or former director, officer, employee or consultant thereof.

Notwithstanding anything to the contrary contained above in this Section 10.06, in no event shall the Lead Borrower or any of its Restricted Subsidiaries pay any management, consulting or similar fee to the Sponsor or any Affiliate of the Sponsor except as specifically provided in clauses (v) and (vii) of this Section 10.06.

Section 10.07 Limitations on Payments, Certificate of Incorporation, By-Laws and Certain Other Agreements, etc.

The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to:

(a) make (or give any notice (other than any such notice that is expressly contingent upon the repayment in full in cash of all Obligations other than any indemnification obligations arising hereunder which are not due and payable) in respect of) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, Change of Control or similar event of (including, in each case without limitation, by way of depositing with the trustee with respect thereto or any other Person money or securities before due for the purpose of paying when due), any Indebtedness under the Second Lien Credit Documents or Refinancing Notes or Refinancing Term Loans (other than Refinancing Notes or Refinancing Term Loans secured by Liens ranking pari passu with the Liens securing the Indebtedness under the First Lien Credit Agreement), except that (A) the Lead Borrower may consummate the Transaction, and (B) so long as no Default under Section 11.01 or 11.05 and no Event of Default then exists or would exist immediately after giving effect to the respective repayment, redemption or repurchase, Indebtedness under the Second Lien Credit Documents and Refinancing Notes or Refinancing Term Loans may be repaid, redeemed, repurchased or defeased (so long as then retired or the required deposit under the applicable indenture is then made) or the applicable indenture discharged (so long as any such Indebtedness under the Second Lien Credit Documents—Refinancing Notes or Refinancing Term Loans will be paid in full within the time period set forth in the applicable indenture or credit document), (i) so long as the Payment Conditions are satisfied on a Pro Forma Basis immediately after giving effect to the consummation of the proposed repayment or prepayment and (ii) with amounts not to exceed $35,000,000, less any amounts used under Section 10.03(xv) or Section 10.07(b)(ii); provided that nothing in this clause (a) shall be deemed to limit the ability to consummate the Transaction (including the repayment, redemption and defeasance (and the giving of notice with respect thereto) in connection with the Existing Credit Agreement Refinancing on the Closing Date;

(b) make (or give any notice (other than any such notice that is expressly contingent upon the repayment in full in cash of all Obligations other than any indemnification obligations arising hereunder which are not due and payable) in respect of) any voluntary or optional payment or prepayment on or redemption or acquisition for value of, or any prepayment or redemption as a result of any asset sale, Change of Control or similar event of (including, in each case without limitation, by way of depositing with the trustee with respect thereto or any other Person money or securities before due for the purpose of paying when due), any Permitted Junior Debt, except that so long as no Default under Section 11.01 or 11.05 and no Event of Default then exists or would exist immediately after giving effect to the respective
repayment, redemption or repurchase, Permitted Junior Debt may be repaid, redeemed, repurchased or defeased (so long as then retired or the required deposit under the applicable indenture is then made) or the applicable indenture discharged (so long as the Permitted Junior Debt will be paid in full within the time period set forth in the applicable indenture) (i) so long as the Payment Conditions are satisfied on a Pro Forma Basis immediately after giving effect to the consummation of the proposed repayment or prepayment and (ii) with amounts not to exceed $35,000,000, less any amounts used under Section 10.03(xv) or 10.07(a)(B)(ii):

(c) amend or modify, or permit the amendment or modification of any provision of, any Second Lien Credit Document or documentation governing any Refinancing Notes or Refinancing Term Loans (after the entering into thereof) other than any amendment or modification that is not adverse to the interests of the Lenders in any material respect;

(d) amend or modify, or permit the amendment or modification of any provision of, any Permitted Junior Debt Document (after the entering into thereof) with a principal amount in excess of the Threshold Amount, other than any amendment or modification that is not adverse to the interests of the Lenders in any material respect; or

(e) amend, modify or change its certificate or articles of incorporation (including, without limitation, by the filing or modification of any certificate or articles of designation) or certificate of formation; limited liability company agreement or by-laws (or the equivalent organizational documents); accounting policies, reporting policies or fiscal year (except as required by U.S. GAAP), as applicable, or any agreement entered into by it with respect to its Equity Interests, or enter into any new agreement with respect to its Equity Interests, unless such amendment, modification, change or other action contemplated by this clause (e) could not reasonably be expected to be adverse in any material respect to the interests of the Lenders.

Section 10.08 Limitation on Certain Restrictions on Subsidiaries

The Lead Borrower will not, and will not permit any of its Restricted Subsidiaries to, directly or indirectly, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any such Restricted Subsidiary to (a) pay dividends or make any other distributions on its capital stock or any other interest or participation in its profits owned by the Lead Borrower or any of its Restricted Subsidiaries, or pay any Indebtedness owed to the Lead Borrower or any of itsRestricted Subsidiaries, (b) make loans or advances to the Lead Borrower or any of its Restricted Subsidiaries or (c) transfer any of its properties or assets to the Lead Borrower or any of its Restricted Subsidiaries, except for such encumbrances or restrictions existing under or by reason of:

(i) applicable law;

(ii) this Agreement and the other Credit Documents, the First Lien Credit Agreement, the Second Lien Credit Agreement, and other definitive documentation entered into in connection therewith;

(iii) any Refinancing Term Loans and Refinancing Note Documents;

(iv) customary provisions restricting subletting or assignment of any lease governing any leasehold interest of the Lead Borrower or any of its Restricted Subsidiaries;

(v) customary provisions restricting assignment of any licensing agreement (in which the Lead Borrower or any of its Restricted Subsidiaries is the licensee) or other contract entered into by the Lead Borrower or any of its Restricted Subsidiaries in the ordinary course of business;
(vi) restrictions on the transfer of any asset pending the close of the sale of such asset;

(vii) any agreement or instrument governing Indebtedness assumed in connection with a Permitted Acquisition, to the extent the relevant encumbrance or restriction was not agreed to or adopted in connection with, or in anticipation of, the respective Permitted Acquisition and does not apply to the Lead Borrower or any Restricted Subsidiary of the Lead Borrower, or the properties of any such Person, other than the Persons or the properties acquired in such Permitted Acquisition;

(viii) encumbrances or restrictions on cash or other deposits or net worth imposed by customers under agreements entered into in the ordinary course of business;

(ix) any agreement or instrument relating to Indebtedness of a Foreign Subsidiary incurred pursuant to Section 10.04 to the extent such encumbrance or restriction only applies to such Foreign Subsidiary;

(x) an agreement effecting a refinancing, replacement or substitution of Indebtedness issued, assumed or incurred pursuant to an agreement or instrument referred to in clause (vii) above; provided that the provisions relating to such encumbrance or restriction contained in any such refinancing, replacement or substitution agreement are no less favorable to the Lead Borrower or the Lenders in any material respect than the provisions relating to such encumbrance or restriction contained in the agreements or instruments referred to in such clause (vii);

(xi) restrictions on the transfer of any asset subject to a Lien permitted by Section 10.01;

(xii) restrictions and conditions imposed by the terms of the documentation governing any Indebtedness of a Restricted Subsidiary of the Lead Borrower that is not a Credit Party, which Indebtedness is permitted by Section 10.04;

(xiii) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 10.05 and applicable solely to such joint venture;

(xiv) on or after the execution and delivery thereof, the Permitted Junior Debt Documents and the definitive documentation relating to any Permitted First Lien Notes and Refinancing Notes;

(xv) customary restrictions in respect of intellectual property contained in licenses or sublicenses of, or other grants of rights to use or exploit, such intellectual property; and

(xvi) negative pledges and restrictions on Liens in favor of any holder of Indebtedness for borrowed money permitted under Section 10.04 but only if such negative pledge or restriction expressly permits Liens for the benefit of the Administrative Agent and/or the Collateral Agent and the Secured Creditors with respect to the credit facilities established hereunder and the Obligations under the Credit Documents on a senior basis and without a requirement that such holders of such Indebtedness be secured by such Liens securing the Obligations under the Credit Documents equally and ratably or on a junior basis.
Section 10.09 Business

(a) The Lead Borrower will not permit at any time the business activities taken as a whole conducted by the Lead Borrower and its Restricted Subsidiaries to be materially different from the business activities taken as a whole conducted by the Lead Borrower and its Restricted Subsidiaries on the Closing Date (after giving effect to the Transaction) and Similar Business.

(b) Holdings will not engage in any business other than its ownership of the capital stock of, and the management of, the Lead Borrower and, indirectly, its Subsidiaries and activities incidental thereto; provided that Holdings may engage in those activities that are incidental to (i) the maintenance of its existence in compliance with applicable law, (ii) legal, tax and accounting matters in connection with any of the foregoing or following activities, (iii) the entering into, and performing its obligations under, this Agreement and the Advisory Agreement, (iv) the issuance, sale or repurchase of its Equity Interests and the receipt of capital contributions, (v) the making of dividends or distributions on its Equity Interests, (vi) the filing of registration statements, and compliance with applicable reporting and other obligations, under federal, state or other securities laws, (vii) the listing of its equity securities and compliance with applicable reporting and other obligations in connection therewith, (viii) the retention of (and the entry into, and exercise of rights and performance of obligations in respect of, contracts and agreements with) transfer agents, private placement agents, underwriters, counsel, accountants and other advisors and consultants, (ix) the performance of obligations under and compliance with its certificate of incorporation and by-laws, or any applicable law, ordinance, regulation, rule, order, judgment, decree or permit, including, without limitation, as a result of or in connection with the activities of its Subsidiaries, (x) the incurrence and payment of its operating and business expenses and any taxes for which it may be liable (including reimbursement to Affiliates for such expenses paid on its behalf), (xi) the consummation of the Transaction, and (xii) the making of loans to or other Investments in, or incurrence of Indebtedness from, the Lead Borrower or in the case of incurrence of Indebtedness, from any Wholly-Owned Domestic Subsidiary, which is a Subsidiary Guarantor, as and to the extent not prohibited by this Agreement.

Section 10.10 Negative Pledges

The Lead Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, agree or covenant with any Person to restrict in any way its ability to grant any Lien on its assets in favor of the Lenders, other than pursuant to the Intercreditor Agreement, any Additional Intercreditor Agreement or any other intercreditor agreement contemplated by this agreement, and except that this Section 10.10 shall not apply to:

(i) any covenants contained in this Agreement or any other Credit Documents or that exist on the Closing Date;

(ii) covenants existing under the First Lien Credit Agreement as in effect on the Closing Date and the other credit documents pursuant thereto;

(iii) the covenants contained in the Second Lien Credit Agreement, any Refinancing Term Loans, any Refinancing Note Documents, any Permitted First Lien Notes or any Permitted Junior Debt (in each case so long as same do not restrict the granting of Liens to secure Indebtedness pursuant to this Agreement);

(iv) covenants and agreements made in connection with any agreement relating to secured Indebtedness permitted by this Agreement but only if such covenant or agreement applies solely to the specific asset or assets to which such Lien relates;
(v) customary provisions in leases, subleases, licenses or sublicenses and other contracts restricting the right of assignment thereof;

(vi) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures that are applicable solely to such joint venture;

(vii) restrictions imposed by law;

(viii) customary restrictions and conditions contained in agreements relating to any sale of assets or Equity Interests pending such sale, provided such restrictions and conditions apply only to the Person or property that is to be sold;

(ix) contractual obligations binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Restricted Subsidiary, so long as such contractual obligations were not entered into solely in contemplation of such Person becoming a Restricted Subsidiary;

(x) negative pledges and restrictions on Liens in favor of any holder of Indebtedness for borrowed money entered into after the Closing Date and otherwise permitted under Section 10.04 but only if such negative pledge or restriction expressly permits Liens for the benefit of the Administrative Agent and/or the Collateral Agent and the Secured Creditors with respect to the credit facilities established hereunder and the Obligations under the Credit Documents on a senior basis and without a requirement that such holders of such Indebtedness be secured by such Liens securing the Obligations under the Credit Documents equally and ratably or on a junior basis;

(xi) restrictions on any Foreign Subsidiary pursuant to the terms of any Indebtedness of such Foreign Subsidiary permitted to be incurred hereunder;

(xii) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business; and

(xiii) any restrictions on Liens imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (i), (ii), (iii), (ix), (x) and (xi) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Lead Borrower, no more restrictive with respect to such encumbrance and other restrictions than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing.

Section 10.11 Financial Covenant

(a) The Lead Borrower and its Restricted Subsidiaries shall, on any date when Availability is less than the greater of (a) 12.5% of the Aggregate Commitments, and (b) $17,500,000 (the “FCCR Test Amount”), have a Consolidated Fixed Charge Coverage Ratio of at least 1.0 to 1.0, tested for the four fiscal quarter period ending on the last day of the most recently ended fiscal quarter for which the Lead Borrower was required to deliver Section 9.01 Financials, and at the end of each succeeding fiscal quarter thereafter until the date on which Availability has exceeded the FCCR Test Amount for 30 consecutive days.
For purposes of determining compliance with the financial covenant set forth in Section 10.11(a) above, cash equity contributions (which equity shall be common equity or otherwise in a form reasonably acceptable to the Administrative Agent) made to Holdings (which shall be contributed in cash to the common equity of the Lead Borrower) after the end of the relevant fiscal quarter and on or prior to the day that is 10 Business Days after the Lead Borrower and its Restricted Subsidiaries become subject to testing the financial covenant under clause (a) of this Section 10.11 for such fiscal quarter (such 10-Business Day period being referred to herein as the “Interim Period”) will, at the request of the Lead Borrower, be included in the calculation of Consolidated EBITDA solely for the purposes of determining compliance with such financial covenant at the end of such fiscal quarter and applicable subsequent periods which include such fiscal quarter (any such equity contribution so included in the calculation of Consolidated EBITDA, a “Specified Equity Contribution”); provided that (a) Specified Equity Contributions may be made no more than two times in any twelve fiscal month period and no more than five times during the term of this Agreement, (b) the amount of any Specified Equity Contribution shall be no greater than the amount required to cause the Borrowers to be in pro forma compliance with such financial covenant, (c) the Borrowers shall not be permitted to borrow hereunder during the Interim Period until the relevant Specified Equity Contribution has been made, (d) all Specified Equity Contributions shall be disregarded for purposes of determining any baskets calculated on the basis of Consolidated EBITDA contained herein and in the other Credit Documents, (e) there shall be no pro forma or other reduction in Indebtedness with the proceeds of any Specified Equity Contribution for determining compliance with the financial covenant for the fiscal quarter in which such Specified Equity Contribution is made and (f) from the date of the Administrative Agent’s receipt of a written notice from the Lead Borrower that the Lead Borrower intends to exercise its cure rights under this Section 10.11(b) through the last Business Day of the Interim Period, neither the Administrative Agent nor any Lender shall have any right to accelerate the Loans or terminate the Commitments, and none of the Administrative Agent nor any Lender shall have any right to foreclose on or take possession of the Collateral or any other right or remedy under the Credit Documents that would be available on the basis of an Event of Default resulting from the failure to comply with Section 10.11(a).

ARTICLE 11 Events of Default
Upon the occurrence of any of the following specified events (each, an “Event of Default”):

Section 11.01 Payments
Any Borrower shall (i) default in the payment when due of any principal of any Loan or any Note or (ii) default, and such default shall continue unremedied for five or more Business Days, in the payment when due of any interest on any Loan or Note, or any Fees or any other amounts owing hereunder or under any other Credit Document; or

Section 11.02 Representations, etc.
Any representation, warranty or statement made or deemed made by any Credit Party herein or in any other Credit Document or in any certificate delivered to the Administrative Agent, the Collateral Agent or any Lender pursuant hereto or thereto shall prove to be untrue in any material respect on the date as of which made or deemed made; or

Section 11.03 Covenants
Holdings, the Lead Borrower or any of its Restricted Subsidiaries shall (i) default in the due performance or observance by it of any term, covenant or agreement contained in Section 9.01(f)(i) (solely with respect to any notice of Default or Event of Default under this Agreement), 9.02(b), 9.04 (as to the Lead Borrower), 9.08, 9.11, 9.14(a), 9.17(c) (other than any such default which is not directly caused by the action or inaction of
Holdings, the Lead Borrower or any of its Restricted Subsidiaries, which such default shall be subject to clause (iii) below), or Section 10. (ii) fail to deliver a Borrowing Base Certificate required to be delivered pursuant to Section 9.17(g) within five (5) Business Days of the date such Borrowing Base Certificate is required to be delivered (other than during the occurrence of a Liquidity Event, in which case such period shall be three (3) Business Days), (iii) default in the due performance or observance by it of any other term, covenant or agreement contained in this Agreement or in any other Credit Document (other than those set forth in Sections 11.01 and 11.02), and such default shall continue unremedied for a period of 30 days after written notice thereof to the defaulting party by the Administrative Agent or the Required Lenders; or

Section 11.04 Default Under Other Agreements

(i) Holdings, the Lead Borrower or any of its Restricted Subsidiaries shall (x) default in any payment of any Indebtedness (other than the Obligations) beyond the period of grace, if any, provided in an instrument or agreement under which such Indebtedness was created or (y) default in the observance or performance of any agreement or condition relating to any Indebtedness (other than the Obligations) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause (determined without regard to whether any notice is required), any such Indebtedness to become due prior to its stated maturity or (ii) any Indebtedness (other than the Obligations) of Holdings, the Lead Borrower or any of its Restricted Subsidiaries shall be declared to be (or shall become) due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof, provided that (A) it shall not be a Default or an Event of Default under this Section 11.04 unless the aggregate principal amount of all Indebtedness as described in preceding clauses (i) and (ii) is at least equal to the Threshold Amount and (B) the preceding clause (ii) shall not apply to Indebtedness that becomes due as a result of a voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is otherwise permitted hereunder; or

Section 11.05 Bankruptcy, etc.

Holdings, the Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated) shall commence a voluntary case concerning itself under Title 11 of the United States Code entitled “Bankruptcy,” as now or hereafter in effect, or any successor thereto (the “Bankruptcy Code”); or an involuntary case is commenced against Holdings, the Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated), and the petition is not dismissed within 60 days, after commencement of the case; or a custodian (as defined in the Bankruptcy Code), receiver, receiver-manager, trustee, monitor is appointed for, or takes charge of, all or substantially all of the property of Holdings, the Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated), or Holdings, the Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated) commences any other proceeding under any reorganization, bankruptcy, insolvency, arrangement, winding-up, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to Holdings, the Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated) and the petition is not dismissed within 60 days, after commencement of the case; or Holdings, the Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated) adjudicates insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or Holdings, the Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated) suffers any appointment of any custodian, receiver, receiver-manager, trustee, monitor or the like for it or any substantial part of its property to continue undischarged or unstayed for a period of 60 days; or Holdings, the Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated) makes a general assignment for the benefit of creditors; or any corporate, limited liability company or similar action is taken by Holdings, the Lead Borrower or any of its Restricted Subsidiaries (other than any Immaterial Subsidiary, whether or not so designated) for the purpose of effecting any of the foregoing; or
Section 11.06 ERISA

(a) An ERISA Event has occurred with respect to a Plan or Multiemployer Plan which has resulted or would reasonably be expected to result in a Material Adverse Effect; (b) there is or arises Unfunded Pension Liability which has resulted or would reasonably be expected to result in a Material Adverse Effect, (c) there is or arises any withdrawal liability incurred by the Lead Borrower or any Restricted Subsidiary of the Lead Borrower under Section 4201 of ERISA, resulting from the Lead Borrower, any Restricted Subsidiary of the Lead Borrower or the ERISA Affiliates complete withdrawal from any or all Multiemployer Plans which has resulted or would reasonably be expected to result in a Material Adverse Effect, (d) a Foreign Pension Plan has failed to comply with, or be funded in accordance with, applicable law which has resulted or would reasonably be expected to result in a Material Adverse Effect, or (e) the Lead Borrower or any of its Restricted Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Foreign Pension Plan that, in each case, has resulted or would reasonably be expected to result in a Material Adverse Effect; or

Section 11.07 Documents

Any Credit Document shall cease to be, or shall be asserted by any Credit Party not to be, in full force and effect, or any of the Security Documents shall cease to be in full force and effect, or shall cease to give the Collateral Agent for the benefit of the Secured Creditors the rights, powers and privileges purported to be created thereby (including, without limitation (to the extent provided therein), a perfected security interest, to the extent required by the Credit Documents, in, and Lien on, all of the Collateral (other than (x) any immaterial portion of the Collateral or (y) the failure of the Collateral Agent (or the First Lien Collateral Agent) to maintain possession of possessory collateral delivered to it), in favor of the Collateral Agent, superior to and prior to the rights of all third Persons (except as permitted by Section 10.01); or

Section 11.08 Guaranties

Any Guaranty or any provision thereof shall cease to be in full force or effect as to any Guarantor (other than any Guarantor otherwise qualifying as an Excluded Subsidiary, whether or not so designated), or any Guarantor or any Person acting for or on behalf of such Guarantor shall deny or disaffirm in writing such Guarantor’s obligations under the Guaranty to which it is a party or any Guarantor (other than any Guarantor otherwise qualifying as an Excluded Subsidiary, whether or not so designated) shall default in the due performance or observance of any term, covenant or agreement on its part to be performed or observed pursuant to the Guaranty to which it is a party; or

Section 11.09 Judgments

One or more judgments or decrees shall be entered against Holdings, the Lead Borrower or any Restricted Subsidiary (other than any Immaterial Subsidiary) of the Lead Borrower involving in the aggregate for Holdings, the Lead Borrower and its Restricted Subsidiaries (other than any Immaterial Subsidiary) a liability or liabilities (not paid or fully covered by a reputable and solvent insurance company with respect to judgments for the payment of money) and such judgments and decrees either shall be final and non-appealable or shall not be vacated, discharged or stayed or bonded pending appeal for any period of 60 consecutive days, and the aggregate amount of all such judgments and decrees (to the extent not paid or fully covered by such insurance company) equals or exceeds the Threshold Amount; or

Section 11.10 Change of Control

A Change of Control shall occur;

then and in any such event, and at any time thereafter, if any Event of Default shall then be continuing, the Administrative Agent, upon the written request of the Required Lenders, shall by written notice to the Lead
Borrower, take any or all of the following actions, without prejudice to the rights of the Administrative Agent, any Lender or the holder of any Note to enforce its claims against any Credit Party (provided that, if an Event of Default specified in Section 11.05 shall occur with respect to any Credit Party, the result which would occur upon the giving of written notice by the Administrative Agent as specified in clauses (i) and (ii) below shall occur automatically without the giving of any such notice): (i) declare the Aggregate Commitments terminated, whereupon all Commitments of each Lender shall forthwith terminate immediately; (ii) declare the principal of and any accrued interest in respect of all Loans and the Notes and all Obligations owing hereunder and thereunder to be, whereupon the same shall become, forthwith due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Credit Party; (iii) enforce, as Collateral Agent, all of the Liens and security interests created pursuant to the Security Documents; (iv) enforce each Guaranty, (v) terminate, reduce or condition any Revolving Commitment, or make any adjustment to the Borrowing Base and (vi) require the Credit Parties to Cash Collateralize LC Obligations, and, if the Credit Parties fail promptly to deposit such Cash Collateral, the Administrative Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Revolving Loans (whether or not an Overadvance exists or is created thereby, or the conditions in Section 7.01 are satisfied).

Section 11.11 Application of Funds

After the exercise of remedies provided for above (or after the Loans have automatically become immediately due and payable and the LC Exposure has automatically been required to be Cash Collateralized as set forth above), any amounts received on account of the Obligations (including without limitation, proceeds received by the Administrative Agent in respect of any sale of, collection from, or other realization upon, all or any part of the Collateral (including, without limitation, pursuant to the exercise by the Administrative Agent of its remedies during the continuance of an Event of Default) or otherwise received on account of the Obligations) shall, subject to the provisions of Sections 2.11 and 2.13(j), be applied in the following order:

First, to the payment of all reasonable costs and out-of-pocket expenses, fees, commissions and taxes of such sale, collection or other realization including, without limitation, compensation to the Administrative Agent and its agents and counsel, and all expenses, liabilities and advances made or incurred by the Administrative Agent in connection therewith;

Second, to the payment of all other reasonable costs and out-of-pocket expenses of such sale, collection or other realization including, without limitation, costs and expenses and all costs, liabilities and advances made or incurred by the other Secured Creditors in connection therewith (other than in respect of Secured Bank Product Obligations);

Third, to interest then due and payable on the Lead Borrower’s Swingline Loan;

Fourth, to the principal balance of the Swingline Loan outstanding until the same has been prepaid in full;

Fifth, to interest then due and payable on Revolving Loans and other amounts due pursuant to Sections 3.01, 3.02 and 5.01;

Sixth, to Cash Collateralize all LC Exposures (to the extent not otherwise Cash Collateralized pursuant to the terms hereof) plus any accrued and unpaid interest thereon;

Seventh, to the principal balance of Revolving Borrowings then outstanding and all Obligations on account of Noticed Hedges with Secured Creditors, pro rata;

Eighth, to all other Obligations pro rata; and
Ninth, the balance, if any, as required by the Intercreditor Agreement or any Additional Intercreditor Agreement or, in the absence of any such requirement, to the Person lawfully entitled thereto (including the applicable Credit Party or its successors or assigns).

Amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Sixth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above. Amounts distributed with respect to any Secured Bank Product Obligations shall be the lesser of the maximum Secured Bank Product Obligations last reported to the Administrative Agent or the actual Secured Bank Product Obligations as calculated by the methodology reported to the Administrative Agent for determining the amount due. The Administrative Agent shall have no obligation to calculate the amount to be distributed with respect to any Secured Bank Product Obligations, and may request a reasonably detailed calculation of such amount from the applicable Secured Creditor. If a Secured Creditor fails to deliver such calculation within five Business Days following written request by the Administrative Agent, the Administrative Agent may assume the amount to be distributed is zero.

In the event that any such proceeds are insufficient to pay in full the items described in clauses First through Eighth of this Section 11.11, the Credit Parties shall remain liable for any deficiency. Notwithstanding the foregoing provisions, this Section 11.11 is subject to the provisions of the Intercreditor Agreement and any Additional Intercreditor Agreement.

ARTICLE 12 The Administrative Agent

Section 12.01 Appointment and Authorization

(a) Each of the Lenders hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Credit Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Section 12 (other than Sections 12.06, 12.10 and 12.11) are solely for the benefit of the Administrative Agent, the Issuing Bank and the Lenders, and neither the Lead Borrower nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Credit Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the “collateral agent” and “security trustee” under the Credit Documents, and each of the Lenders (including in its capacity as Secured Bank Product Provider) 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 Credit Party 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” or “security trustee” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 12.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security 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 Section 12 and Section 13 (including Section 13.01, as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” or “security trustee” under the Credit Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize
the Administrative Agent to execute any and all documents (including releases) with respect to the Collateral and the rights of the Guaranteed Creditors with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

(c) The Lenders hereby authorize the Administrative Agent to enter into the Intercreditor Agreement, any Additional Intercreditor Agreement and any other intercreditor agreement or arrangement permitted under this Agreement and any such intercreditor agreement shall be binding upon the Lenders.

Section 12.02 Delegation of Duties

The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section 12 shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Section 12.03 Exculpatory Provisions

The Administrative Agent the Lead Arrangers, the Amendment No. 1 Lead Arranger, the Amendment No. 2 Lead Arranger or the Amendment No. 3 Lead Arranger, as applicable, shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents. Without limiting the generality of the foregoing, the Administrative Agent, the Lead Arrangers, the Amendment No. 1 Lead Arranger, the Amendment No. 2 Lead Arranger or the Amendment No. 3 Lead Arranger, as applicable:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Credit Document or applicable law;

(c) shall not have any duty or responsibility to disclose, and shall not be liable for the failure to disclose to any Lender, any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any of the Credit Parties or any of their Affiliates, that is communicated to, obtained or in the possession of, the Administrative Agent, the Lead Arrangers, the Amendment No. 1 Lead Arranger, the Amendment No. 2 Lead Arranger or the Amendment No. 3 Lead Arranger or any of their respective Related Parties in any capacity, except for notices, reports and other documents expressly required herein to be furnished to the Lenders by the Administrative Agent, the Lead Arrangers, the Amendment No. 1 Lead Arranger, the Amendment No. 2 Lead Arranger or the Amendment No. 3 Lead Arranger, as applicable;

(d) shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11 and 13.12) or (ii) in the absence of its own gross negligence or willful misconduct.
The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Lead Borrower or a Lender; and

(e) shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Credit Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (v) the satisfaction of any condition set forth in Section 6 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

Section 12.04 Reliance by Administrative Agent

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 12.05 No Other Duties, Etc.

Anything herein to the contrary notwithstanding, none of the Lead Arrangers, the Syndication Agents, the Documentation Agents, the Amendment No. 1 Lead Arranger, the Amendment No. 2 Lead Arranger or the Amendment No. 3 Lead Arranger shall have any powers, duties or responsibilities under this Agreement or any of the other Credit Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender hereunder.

Section 12.06 Non-reliance on the Administrative Agent, the Lead Arrangers, the Amendment No. 1 Lead Arranger, the Amendment No. 2 Lead Arranger, the Amendment No. 3 Lead Arranger and Other Lenders. Each Lender expressly acknowledges that none of the Administrative Agent, the Lead Arrangers, the Amendment No. 1 Lead Arranger, the Amendment No. 2 Lead Arranger, the Amendment No. 3 Lead Arranger has made any representation or warranty to it, and that no act by the Administrative Agent, the Lead Arrangers, the Amendment No. 1 Lead Arranger, the Amendment No. 2 Lead Arranger or the Amendment No. 3 Lead Arranger hereafter taken, including any consent to, and acceptance of any assignment or review of the affairs of any Credit Party or any Affiliate thereof, shall be deemed to constitute any representation or warranty by the Administrative Agent, the Lead Arrangers, the Amendment No. 1 Lead Arranger, the Amendment No. 2 Lead Arranger or the Amendment No. 3 Lead Arranger to any Lender as to any matter, including whether the Administrative Agent, the Lead Arrangers, the Amendment No. 1 Lead Arranger, the Amendment No. 2 Lead Arranger or the Amendment No. 3 Lead Arranger have disclosed material information in their (or their Related Parties’) possession. Each Lender represents to the Administrative Agent, the Lead Arrangers, the Amendment No. 1 Lead Arranger and the Amendment No. 2 Lead Arranger or the Amendment No. 3 Lead Arranger that it has, independently and without reliance upon the Administrative Agent, the Lead Arrangers, the
Amendment No. 1 Lead Arranger or the Amendment No. 2 Lead Arranger or the Amendment No. 3 Lead Arranger or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis of, appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of the Credit Parties and their Subsidiaries, and all applicable bank or other regulatory laws, statutes, regulations or orders relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to the Lead Borrower hereunder. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent, the Lead Arrangers, the Amendment No. 1 Lead Arranger or the Amendment No. 2 Lead Arranger or the Amendment No. 3 Lead Arranger or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Credit Document or any related agreement or any document furnished hereunder or thereunder and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of the Credit Parties. Each Lender represents and warrants that (i) the Credit Documents set forth the terms of a commercial lending facility and (ii) it is engaged in making, acquiring or holding commercial loans in the ordinary course and is entering into this Agreement as a Lender for the purpose of making, acquiring or holding commercial loans and providing other facilities set forth herein as may be applicable to such Lender, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument, and each Lender agrees not to assert a claim in contravention of the foregoing. Each Lender represents and warrants that 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, 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.

Section 12.07  Indemnification by the Lenders

To the extent that the Borrowers for any reason fail to pay any amount required under Section 13.01(a) to be paid by them to the Administrative Agent or Collateral Agent (or any sub-agent of either of them), or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent or Collateral Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender’s pro rata share (based on the amount of then outstanding Loans held by such Lender or, if the Loans have been repaid in full, based on the amount of outstanding Loans held by each Lender immediately prior to such repayment in full) of (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided 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 Collateral Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender’s pro rata share (based on the amount of then outstanding Loans held by such Lender or, if the Loans have been repaid in full, based on the amount of outstanding Loans held by each Lender immediately prior to such repayment in full) of (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided 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 Collateral Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent or Collateral Agent (or any such sub-agent) in connection with such capacity. The obligations of the Lenders under this Section 12.07 are subject to the provisions of Section 5.01.

Section 12.08  Rights as a Lender

The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Lead Borrower or any Subsidiary.
Section 12.09 Administrative Agent May File Proofs of Claim; Credit Bidding

In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or LC Exposure 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 Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Exposure 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 Bank and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Bank and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Bank and the Administrative Agent under Sections 4.01 and 13.01) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the Issuing Bank 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 and the Issuing Bank, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 4.01 and 13.01.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the Issuing Bank to authorize the Administrative Agent to vote in respect of the claim of any Lender or the Issuing Bank or in any such proceeding.

The Secured Creditors 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 Credit Party is subject or (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 law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Creditors 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) 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 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)(i) through (a)(v) of Section 13.04 of this Agreement), and (iii) 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 Creditor or any acquisition vehicle to take any further action.

Section 12.10  Resignation of the Agents

(a) The Administrative Agent may at any time give notice of its resignation (including as Collateral Agent) to the Lenders and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the Lead Borrower’s consent (other than during the existence of an Event of Default under Section 11.01 or 11.05), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders (and consented to by the Lead Borrower, to the extent so required) and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, with the Lead Borrower’s consent (other than during the existence of an Event of Default under Section 11.01 or 11.05), on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrowers and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Credit Documents, the retiring Administrative Agent shall continue to hold such collateral security solely for purposes of maintaining the Secured Creditors’ security interest thereon until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders (with the consent of the Lead Borrower, to the extent so required) appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents (if not already discharged therefrom as provided above in this Section). After the retiring Administrative Agent’s resignation hereunder and under the other Credit Documents, the provisions of this Section 12 and Section 13.01 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.

(b) Any resignation by Bank of America, N.A. as administrative agent pursuant to this Section 12.10 shall also constitute its resignation as lender of the Swingline Loans to the extent that Bank of America, N.A. is acting in such capacity at such time. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring lender of the Swingline Loans and (ii) the retiring lender of the Swingline Loans shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents.

Section 12.11  Collateral Matters and Guaranty Matters
(a) The Lenders and the Issuing Bank irrevocably authorize the Administrative Agent and the Collateral Agent, as applicable (and subject to the provisions of the Intercreditor Agreement and any Additional Intercreditor Agreement),

(i) to release any Lien on any property granted to or held by the Collateral Agent under any Credit Document (A) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (i) contingent indemnification obligations and expense reimbursement obligations which are not then due and payable and (ii) Secured Bank Product Obligations not then due) and the expiration or termination of all Letters of Credit (unless Cash Collateralized or backstopped on terms reasonably satisfactory to the Administrative Agent), (B) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any other Credit Document to a Person that is not a Credit Party, (C) subject to Section 13.12, if approved, authorized or ratified in writing by the Required Lenders, (D) that constitutes Excluded Collateral or (E) if the property subject to such Lien is owned by a Subsidiary Guarantor, subject to Section 13.12, upon release of such Subsidiary Guarantor from its obligations under the Subsidiaries Guaranty pursuant to clause (ii) below;

(ii) to release any Subsidiary Guarantor from its obligations under the Subsidiaries Guaranty if such Person ceases to be a Restricted Subsidiary or becomes an Excluded Subsidiary as a result of a transaction permitted hereunder; and

(iii) at the request of the Lead Borrower, to subordinate any Lien on any property granted to or held by the Collateral Agent or Administrative Agent under any Credit Document to the holder of any Lien on such property that is permitted by Sections 10.01(iv)(y), (iv)(z), (vi), (vii), (xiv), (xxx) (in the case of clause (ii)) or any other Lien that is expressly permitted by Section 10.01 to be senior to the Lien securing the Obligations, but only to the extent such sections permit such Lien to be prior to the Liens held by the Collateral Agent and the Administrative Agent under the Credit Documents.

Upon request by the Administrative Agent or the Collateral Agent at any time, the Required Lenders will confirm in writing the Administrative Agent’s or the Collateral Agent’s, as applicable, authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 12.11. In each case as specified in this Section 12.11, the Administrative Agent will (and each Lender irrevocably authorizes the Administrative Agent to), at the Borrowers’ expense, execute and deliver to the applicable Credit Party such documents as such Credit Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Credit Documents and this Section 12.11.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representations 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 Credit 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.

Section 12.12 Bank Product Providers

Each Secured Bank Product Provider, by delivery of a notice to the Administrative Agent of such agreement, agrees to be bound by this Section 12. Each such Secured Bank Product Provider shall indemnify and hold harmless the Administrative Agent and the Collateral Agent, to the extent not reimbursed by the Credit Parties,
against all claims that may be incurred by or asserted against the Administrative Agent and the Collateral Agent in connection with such provider’s Secured Bank Product Obligations.

Section 12.13 Withholding Taxes

To the extent required by any applicable law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the Internal Revenue Service or any other authority of the United States or 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 for any reason (including, without limitation, because the appropriate form was not delivered or not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstance that rendered the exemption from, or reduction of withholding Tax ineffective), such Lender shall, within 10 days after written demand therefor, indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrowers pursuant to Section 5.01 and without limiting or expanding the obligation of the Borrowers to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Taxes or otherwise, together with all expenses incurred, including legal expenses and any other out-of-pocket expenses, whether or not such Tax was 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 Credit Document against any amount due the Administrative Agent under this Section 12.13. The agreements in this Section 12.13 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender and the repayment, satisfaction or discharge of all other Obligations.

Section 12.14 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 not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Credit 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 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 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 subsections (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.

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 not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Credit Party, that the Administrative Agent is not 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 Credit Document or any documents related hereto or thereto).

ARTICLE 13  Miscellaneous

Section 13.01  Payment of Expenses, etc.

(a) The Credit Parties hereby jointly and severally agree to: (i) if the Closing Date occurs, pay all reasonable invoiced out-of-pocket costs and expenses of the Agents, Lenders and Issuing Banks (including, without limitation, the reasonable fees and disbursements of one primary counsel to all Agents, Lenders and Issuing Banks and, if reasonably necessary, one local counsel in any relevant jurisdiction and, in the case of an actual or perceived conflict of interest where the Indemnified Person (as defined below) affected by such conflict informs you of such conflict and thereafter, retains its own counsel, of another firm of counsel for such affected Indemnified Person but excluding, other than as indicated under Section 13.01(a)(ii), Taxes other than Taxes that represent liabilities, obligations, losses, damages, penalties, actions, costs, expenses and disbursements arising from a non-Tax claim) in connection with the preparation, execution and delivery of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein, the administration hereof and thereof and any amendment, waiver or consent relating hereto or thereto (whether or not effective), of the Agents in connection with their syndication efforts with respect to this Agreement and of the Agents, each Issuing Bank and each Lender in connection with the enforcement of this Agreement and the other Credit Documents and the documents and instruments referred to herein and therein or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a “work-out” or pursuant to any insolvency or bankruptcy proceedings (which shall be limited to one primary counsel to all Agents, Issuing Banks and Lenders to be retained by the Agent and, if reasonably necessary, one local counsel in any relevant jurisdiction and, in the case of an actual or perceived conflict of interest where the Indemnified Person affected by such conflict informs you of such conflict and thereafter, retains its own counsel, of another firm of counsel for such affected Indemnified Person); (ii) pay and hold each Agent, each Lender and each Issuing Bank harmless from and against any and all Other Taxes with respect to the foregoing matters and save each Agent, each Issuing Bank and each Lender harmless from and against any and all liabilities with respect to or
resulting from any delay or omission (other than to the extent attributable to such Agent, such Lender or such Issuing Bank) to pay such Other Taxes; and (iii) indemnify each Agent, each Lender, each Issuing Bank and their respective Affiliates, and the officers, directors, employees, agents, trustees, representatives and investment advisors of each of the foregoing (each, an “Indemnified Person”) from and hold each of them harmless against any and all liabilities, obligations (including removal or remedial actions), losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements (including reasonable attorneys’ and consultants’ fees and disbursements) (but excluding Taxes other than Taxes that represent liabilities, obligations, losses, damages, penalties, actions, costs, expenses and disbursements arising from a non-Tax claim) incurred by, imposed on or assessed against any of them as a result of, or arising out of, or in any way related to, or by reason of, (a) any investigation, litigation or other proceeding (whether or not any Agent, any Issuing Bank or any Lender is a party thereto and whether or not such investigation, litigation or other proceeding is brought by or on behalf of any Credit Party) related to the entering into and/or performance of this Agreement or any other Credit Document or the proceeds of any Loans hereunder or the consummation of the Transaction or any other transactions contemplated herein or in any other Credit Document or the exercise of any of their rights or remedies provided herein or in the other Credit Documents, or (b) the actual or alleged presence of Hazardous Materials in the Environment relating in any way to any Real Property owned, leased or operated, at any time, by the Lead Borrower or any of its Subsidiaries; the generation, storage, transportation, handling, Release or threat of Release of Hazardous Materials by the Lead Borrower or any of its Subsidiaries at any location, whether or not owned, leased or operated by the Lead Borrower or any of its Subsidiaries; the non-compliance by the Lead Borrower or any of its Subsidiaries with any Environmental Law (including applicable permits thereunder) applicable to any Real Property; or any Environmental Claim asserted against the Lead Borrower, any of its Subsidiaries or relating in any way to any Real Property at any time owned, leased or operated by the Lead Borrower or any of its Subsidiaries, including, in each case, without limitation, the reasonable fees and disbursements of counsel and other consultants incurred in connection with any such investigation, litigation or other proceeding, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnified Person (but excluding in each case any losses, liabilities, claims, damages or expenses (i) to the extent incurred by reason of the gross negligence, bad faith or willful misconduct of the applicable Indemnified Person, any Affiliate of such Indemnified Person or any of their respective directors, officers, employees, representatives, agents, Affiliates, trustees or investment advisors, (ii) to the extent incurred by reason of any material breach of the obligations of such Indemnified Person under this Agreement or the other Credit Documents (in the case of each of preceding clauses (i) and (ii), as determined by a court of competent jurisdiction in a final and non-appealable decision) or (iii) that do not involve or arise from an act or omission by the Lead Borrower or Guarantors or any of their respective affiliates and is brought by an Indemnified Person (other than claims against any Agent in its capacity as such or in its fulfilling such role)). To the extent that the undertaking to indemnify, pay or hold harmless any Agent, any Issuing Bank or any Lender or other Indemnified Person set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, the Credit Parties shall make the maximum contribution to the payment and satisfaction of each of the indemnified liabilities which is permissible under applicable law.
(b) No Agent or any Indemnified Person shall be responsible or liable to any Credit Party or any other Person for (x) any determination made by it pursuant to this Agreement or any other Credit Document in the absence of gross negligence, bad faith or willful misconduct on the part of such Indemnified Person (in each case, as determined by a court of competent jurisdiction in a final and non-appealable judgment), (y) any damages arising from the use by others of information or other materials obtained through electronic, telecommunications or other information transmission systems or (z) any indirect, special, exemplary, incidental, punitive or consequential damages (including, without limitation, any loss of profits, business or anticipated savings) which may be alleged as a result of this Agreement or any other Credit Document or the financing contemplated hereby; provided that nothing in this Section 13.01(b) shall relieve any Credit Party of any obligation it may have to indemnify an Indemnified Person against special, indirect, consequential or punitive damages asserted against such Indemnified Person by a third party.

Section 13.02 Right of Set-off

In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent, each Issuing Bank and each Lender is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to any Credit Party or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special) (other than accounts used exclusively for payroll, payroll taxes, fiduciary and trust purposes, and employee benefits) and any other Indebtedness at any time held or owing by the Administrative Agent, such Issuing Bank or such Lender (including, without limitation, by branches and agencies of the Administrative Agent or such Lender wherever located) to or for the credit or the account of the Lead Borrower or any of its Subsidiaries against and on account of the Obligations and liabilities of the Credit Parties to the Administrative Agent, such Issuing Bank or such Lender under this Agreement or under any of the other Credit Documents, including, without limitation, all claims of any nature or description arising out of or connected with this Agreement or any other Credit Document, irrespective of whether or not the Administrative Agent, such Issuing Bank or such Lender shall have made any demand hereunder and although said Obligations, liabilities or claims, or any of them, shall be contingent or unmatured.

Section 13.03 Notices

(a) Except as otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing (including telegraphic, telex, telecopier, cable communication or electronic transmission) and mailed, telegraphed, telexed, telecopied, cabled, delivered or transmitted: if to any Credit Party, c/o PAE Holding Corporation, c/o Platinum Equity, LLC, 360 North Crescent Drive, Beverly Hills, CA 90210, Attention: Legal Department, Telecopier No.: (310) 712-1863; if to any Lender, at its address specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Lead Borrower); and if to the Administrative Agent, at the Notice Office; or, if to any Credit Party or the Administrative Agent, at such other address as shall be designated by such party in a written notice to the other parties hereto and, as to each Lender, at such other address as shall be designated by such Lender in a written notice to the Lead Borrower and the Administrative Agent. All such notices and communications shall, when mailed, telegraphed, telexed, telecopied, or cabled or sent by overnight courier, be effective when deposited in the mails, delivered to the telegraph company, cable company or overnight courier, as the case may be, or sent by telex or telecopier, except that notices and communications to the Administrative Agent and the Borrowers shall not be effective until received by the Administrative Agent or the Lead Borrower, as the case may be.
(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Section 2 unless otherwise agreed by the Administrative Agent and the applicable Lender. Each of the Administrative Agent, the Lead Borrower or Holdings may, 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.

(c) THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS, NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to Holdings, the Borrowers, the Subsidiary Guarantors, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of a Borrower’s, any Credit Party’s or the Administrative Agent’s transmission of Borrower Materials or notices through the Platform, any other electronic messaging service, or through the Internet.

Section 13.04 Benefit of Agreement; Assignments; Participations, etc.

(a) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; provided, however, that no Borrower may assign or transfer any of its rights, obligations or interest hereunder without the prior written consent of the Lenders and, provided, further, that, although any Lender may transfer, assign or grant participation in its rights or obligations hereunder, such Lender shall remain a “Lender” for all purposes hereunder (and may not transfer or assign all or any portion of its Commitments hereunder except as provided in Sections 2.13 and 13.04(b)) and the transferee, assignee or participant, as the case may be, shall not constitute a “Lender” hereunder and, provided, further, that any Lender may transfer, assign or grant participation in its rights or obligations hereunder to an Affiliate or other Lender without the prior consent of any Borrower and, provided, further, that no Lender shall transfer or grant any participation under which the participant shall have rights to approve any amendment to or waiver of this Agreement or any other Credit Document except to the extent such amendment or waiver would (i) extend the final scheduled maturity of any Revolving Loan or Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or Fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant’s participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory repayment of any Revolving Loan shall not constitute a change in the terms of such participation, and that an increase in any Commitment (or the available portion thereof) or Revolving Loan shall be permitted without the consent of any participant if the participant’s participation is not increased as a result thereof), (ii) consent to the assignment or transfer by any Borrower of any of its rights and obligations under this Agreement, (iii) modify any of the voting percentages set forth in Section 13.12 or the underlying definitions, (iv) except as otherwise expressly provided in the Security Documents, release all or substantially all of the Collateral under all the Security Documents supporting the Revolving Loans in which such participant is participating or (v)
except as otherwise provided in the Credit Documents, release all or substantially all of the value of the Guaranty supporting the Loans in
which such participant is participating. In the case of any such participation, the participant shall not have any rights under this Agreement or
any of the other Credit Documents (the participant’s rights against such Lender in respect of such participation to be those set forth in the
agreement executed by such Lender in favor of the participant relating thereto). Each Borrower agrees that each participant shall be entitled
to the benefits of Sections 3.01 and 5.01 (subject to the limitations and requirements of such Sections) to the same extent as if it were a
Lender and had acquired its interest by assignment; provided, however, that a participant shall not be entitled to receive any greater payment
under Section 3.01 or Section 5.01 than the applicable Lender would have been entitled to receive with respect to the participation sold to
such participant except to the extent such entitlement to a greater payment results from a change in law after the sale of the participation takes
place. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Lead Borrower, maintain a register on
which it enters the name and address of each participant and the principal amounts (and interest amounts) of each participant’s interest in the
Loans or other obligations under the Credit 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, Loan, or its other obligations under any Credit Document) to any Person except to the extent that such
disclosure is necessary to establish that such Commitment, Loan or other obligation is in registered form under Section 5f.103-1(c) of the
U.S. 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.

(b) Notwithstanding the foregoing, any Lender (or any Lender together with one or more other Lenders) may (x) assign all or a
portion of its Commitments and related outstanding Obligations hereunder to (i)(A) its parent company and/or any affiliate of such Lender
which is at least 50% owned by such Lender or its parent company or (B) to one or more other Lenders or any affiliate of any such other
Lender which is at least 50% owned by such other Lender or its parent company (provided that any fund that invests in loans and is managed
or advised by the same investment advisor of another fund which is a Lender (or by an Affiliate of such investment advisor) shall be treated
as an affiliate of such other Lender for the purposes of this subclause (x)(i)(B)); provided that no such assignment may be made to any such
Person that is, or would at such time constitute, a Defaulting Lender, or (ii) in the case of any Lender that is a fund that invests in loans, any
other fund that invests in loans and is managed or advised by the same investment advisor of any Lender or by an Affiliate of such
investment advisor or (y) assign all, or if less than all, a portion equal to at least $5,000,000 (or such lesser amount as may be agreed to by the
Administrative Agent and, so long as no Event of Default then exists under Section 11.01 or 11.05, the Lead Borrower, whose consent shall
not be unreasonably withheld or delayed) in the aggregate for the assigning Lender or assigning Lenders, of such Commitments and related
outstanding Obligations hereunder to one or more Eligible Transferees (treating any fund that invests in loans and any other fund that invests
in loans and is managed or advised by the same investment advisor of such fund or by an Affiliate of such investment advisor as a single
Eligible Transferee), each of which assignees shall become a party to this Agreement as a Lender by execution of an Assignment and
Assumption Agreement (which Assignment and Assumption Agreement shall contain an acknowledgement and agreement by the respective
assignee that, as a Lender, it shall be subject to, and bound by the terms of the Intercreditor Agreement), provided that (i) at such time,
Schedule 2.01 shall be deemed modified to reflect the Commitments of such new Lender and of the existing Lenders, (ii) upon the surrender
of the relevant Notes by the assigning Lender (or, upon such assigning Lender’s indemnifying the Borrowers for any lost Note pursuant to a
customary indemnification agreement) new Notes will be issued, at the Borrowers’
expense, to such new Lender and to the assigning Lender upon the request of such new Lender or assigning Lender, such new Notes to be in conformity with the requirements of Section 2.04 (with appropriate modifications) to the extent needed to reflect the revised Commitments and/or outstanding Loans, as the case may be, (iii) the consent of the (A) Administrative Agent, (B) the Issuing Bank and the Swingline Lender and (C) so long as no Event of Default then exists under Section 11.01 or 11.05, the consent of the Lead Borrower shall (in either case) be required in connection with any such assignment pursuant to clause (y) above (which consent, in the case of each of clauses (A), (B) and (C), shall not be unreasonably withheld or delayed); provided that the Lead Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 10 Business Days after having received notice thereof, (iv) the Administrative Agent shall receive at the time of each such assignment, from the assigning or assignee Lender, the payment of a non-refundable assignment fee of $3,500 and (v) no such transfer or assignment shall be effective until recorded by the Administrative Agent on the Register pursuant to Section 13.15. To the extent of any assignment pursuant to this Section 13.04(b), the assigning Lender shall be relieved of its obligations hereunder with respect to its assigned Commitments and outstanding Revolving Loans. At the time of each assignment pursuant to this Section 13.04(b) to a Person that is not already a Lender hereunder, such assignee shall provide to the Administrative Agent and the Borrowers such Tax forms as are required to be provided under clauses (b) and (c) of Section 5.01 and shall deliver to the Administrative Agent an Administrative Questionnaire.

To the extent that an assignment of all or any portion of a Lender’s Commitments and related outstanding Obligations pursuant to Section 3.04 or this Section 13.04(b) would, at the time of such assignment, result in increased costs under Section 3.01 or 5.01 from those being charged by the assigning Lender prior to such assignment, then the Borrowers shall not be obligated to pay such increased costs (although the Borrowers, in accordance with and pursuant to the other provisions of this Agreement, shall be obligated to pay any other increased costs of the type described above resulting from changes after the date of the respective assignment).

(c) [Reserved].

(d) Nothing in this Agreement shall prevent or prohibit any Lender from pledging its Loans and Notes hereunder to a Federal Reserve Bank in support of borrowings made by such Lender from such Federal Reserve Bank and, with prior notification to the Administrative Agent (but without the consent of the Administrative Agent or the Borrowers), any Lender which is a fund may pledge all or any portion of its Loans and Notes to its trustee or to a collateral agent providing credit or credit support to such Lender in support of its obligations to such trustee, such collateral agent or a holder of such obligations, as the case may be. No pledge pursuant to this clause (c) shall release the transferor Lender from any of its obligations hereunder.

(e) Each Lender acknowledges and agrees to comply with the provisions of Section 13.04 applicable to it as a Lender hereunder.

(f) The Administrative Agent shall have the right, and the Lead Borrower hereby expressly authorizes the Administrative Agent, to provide to any requesting Lender, the list of Disqualified Lenders provided to the Administrative Agent by the Lead Borrower and any updates thereto. The Lead Borrower hereby agrees that any such requesting Lender may share the list of Disqualified Lenders with any potential assignee, transferee or participant. Notwithstanding the foregoing, each Credit Party and Lender acknowledges and agrees that the Administrative Agent shall not be responsible for or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions of this Agreement relating to Disqualified Lenders. Without limiting the generality of the foregoing, the Administrative Agent shall not (x) be obligated to ascertain, monitor or inquire as to whether any Lender
or participant or prospective Lender or participant is a Disqualified Lender or (y) have any liability with respect to or arising out of any assignment or participation of Loans, or disclosure of confidential information, to any Disqualified Lender.

(g) Notwithstanding the foregoing, each Credit Party and the Lenders acknowledge and agree that the Administrative Agent shall not have any responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Lender and the Administrative Agent shall have no liability with respect to any assignment made to a Disqualified Lender.

Section 13.05 No Waiver; Remedies Cumulative

No failure or delay on the part of the Administrative Agent, the Collateral Agent or any Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between the Borrowers or any other Credit Party and the Administrative Agent, the Collateral Agent or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Credit Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Administrative Agent, the Collateral Agent or any Lender would otherwise have. No notice to or demand on any Credit Party in any case shall entitle any Credit Party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Administrative Agent, the Collateral Agent or any Lender to any other or further action in any circumstances without notice or demand.

Section 13.06 [Reserved]

Section 13.07 Calculations; Computations

(a) The financial statements to be furnished to the Lenders pursuant hereto shall be made and prepared in accordance with U.S. GAAP consistently applied throughout the periods involved (except as set forth in the notes thereto); provided that (i) except as otherwise specifically provided herein, all computations of the Applicable Margin, and all computations and all definitions (including accounting terms) used in determining compliance with Section 9.14, shall utilize U.S. GAAP and policies in conformity with those used to prepare the audited financial statements of the Lead Borrower referred to in Section 8.05(a)(i) for the fiscal year of the Lead Borrower ended December 31, 2015 and, (ii) to the extent expressly provided herein, certain calculations shall be made on a Pro Forma Basis; provided, further, that if the Lead Borrower notifies the Administrative Agent that the Lead Borrower wishes to amend any leverage calculation or any financial definition used therein to implement the effect of any change in U.S. GAAP or the application thereof occurring after the Closing Date on the operation thereof (or if the Administrative Agent notifies the Lead Borrower that the Required Lenders wish to amend any leverage test or any financial definition used therein for such purpose), then the Borrowers and the Administrative Agent shall negotiate in good faith to amend such leverage test or the definitions used therein (subject to the approval of the Required Lenders) to preserve the original intent thereof in light of such changes in U.S. GAAP; provided, further, that all determinations made pursuant to any applicable leverage test or any financial definition used therein shall be determined on the basis of U.S. GAAP as applied and in effect immediately before the relevant change in U.S. GAAP or the application thereof became effective, until such leverage test or such financial definition is amended. 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, without giving effect to Statement of Financial Accounting Standards 141R or ASC 805 (or any other financial accounting standard having a similar result or effect).
The calculation of any financial ratios under 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-down if there is no nearest number).

Section 13.08 GOVERNING LAW; SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL

(a) THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL, EXCEPT AS OTHERWISE PROVIDED IN THE RELEVANT SECURITY DOCUMENT, BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT (EXCEPT THAT, (X) IN THE CASE OF ANY SECURITY DOCUMENT, PROCEEDINGS MAY ALSO BE BROUGHT BY THE ADMINISTRATIVE AGENT OR COLLATERAL AGENT IN THE STATE IN WHICH THE RELEVANT COLLATERAL IS LOCATED OR ANY OTHER RELEVANT JURISDICTION AND (Y) IN THE CASE OF ANY BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS WITH RESPECT TO ANY CREDIT PARTY, ACTIONS OR PROCEEDINGS RELATED TO THIS AGREEMENT AND THE OTHER CREDIT DOCUMENTS MAY BE BROUGHT IN SUCH COURT HOLDING SUCH BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE WHICH ARE LOCATED IN THE COUNTY OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, EACH OF THE PARTIES HERETO OR THERETO HEREBY IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HERETO HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH COURTS LACK PERSONAL JURISDICTION OVER IT, AND AGREES NOT TO PLEAD OR CLAIM, IN ANY LEGAL ACTION PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENTS BROUGHT IN ANY OF THE AFOREMENTIONED COURTS, THAT SUCH COURTS LACK PERSONAL JURISDICTION OVER IT. EACH PARTY HERETO IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, SUCH PARTY, AS THE CASE MAY BE, AT ITS ADDRESS SET FORTH OPPOSITE ITS SIGNATURE BELOW, SUCH SERVICE TO BECOME EFFECTIVE 30 DAYS AFTER SUCH MAILING. EACH PARTY HERETO IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT BROUGHT IN THE COURTS REFERRED.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT BROUGHT IN THE COURTS REFERRED
TO IN CLAUSE (a) ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN
ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN
AN INCONVENIENT FORUM.

(c) EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY
JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE
OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 13.09 Counterparts

This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when
so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument, Delivery of an executed counterpart
to this Agreement by facsimile transmission (or other electronic transmission pursuant to procedures approved by the Administrative Agent) shall be as
effective as delivery of a manually signed original. A set of counterparts executed by all the parties hereto shall be lodged with the Lead Borrower and the
Administrative Agent.

Section 13.10 [Reserved]

Section 13.11 Headings Descriptive

The headings of the several Sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the
meaning or construction of any provision of this Agreement.

Section 13.12 Amendment or Waiver; etc.

(a) Neither this Agreement nor any other Credit Document nor any terms hereof or thereof may be changed, waived,
discharged or terminated unless such change, waiver, discharge or termination is in writing signed by the Credit Parties party hereto
or thereto and the Required Lenders (although additional parties may be added to (and annexes may be modified to reflect such
additions) the Subsidiaries Guaranty and the Security Documents in accordance with the provisions hereof and thereof without the
consent of the other Credit Parties party thereto or the Required Lenders), provided that no such change, waiver, discharge or
termination shall (i) without the prior written consent of each Lender (and Issuing Bank, if applicable) directly and adversely affected
thereby, extend the final scheduled maturity of any Revolving Commitment, or reduce the rate or extend the time of payment of
interest or Fees thereon (except in connection with applicability of any post-default increase in interest rates) or reduce or forgive the
principal amount thereof, (ii) except as otherwise expressly provided in the Security Documents, release all or substantially all of the
Collateral under all the Security Documents without the prior written consent of each Lender, (iii) except as otherwise provided in
the Credit Documents, release all or substantially all of the value of the Guaranty without the prior written consent of each Lender,
(iv) amend, modify or waive any pro rata sharing provision of Section 2.10, the payment waterfall provision of Section 11.11, or any
provision of this Section 13.12(a) (except for technical amendments with respect to additional extensions of credit pursuant to this
Agreement which afford the protections to such additional extensions of credit of the type provided to the Revolving Commitments
on the Closing Date), in each case, without the prior written consent of each Lender directly and adversely affected thereby, (v)
reduce the percentage specified in the definition of Required Lenders or Supermajority Lenders without the prior written consent of
each Lender (it being understood that, with the prior written consent of the Required Lenders or Supermajority Lenders, as applicable, additional extensions of credit pursuant to this Agreement may be included in the determination of the Required Lenders or Supermajority Lenders, as applicable, on substantially the same basis as the extensions of Revolving Commitments are included on the Closing Date) or (vi) consent to the assignment or transfer by any Borrower of any of its rights and obligations under this Agreement without the consent of each Lender; provided further that no such change, waiver, discharge or termination shall (1) increase the Commitments of any Lender over the amount thereof then in effect without the consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the Aggregate Commitments shall not constitute an increase of the Commitment of any Lender, and that an increase in the available portion of any Commitment of any Lender shall not constitute an increase of the Commitment of such Lender), (2) without the consent of each Agent adversely affected thereby, amend, modify or waive any provision of Section 12 or any other provision as same relates to the rights or obligations of such Agent, (3) without the consent of Collateral Agent, amend, modify or waive any provision relating to the rights or obligations of the Collateral Agent, (4) without the consent of an Issuing Bank or the Swingline Lender, amend, modify or waive any provision relating to the rights or obligations of the such Issuing Bank or Swingline Lender, (5) without the prior written consent of the Supermajority Lenders, change the definition of the term “Availability” or “Borrowing Base” or any component definition used therein (including, without limitation, the definition of “Eligible Accounts”) if, as a result thereof, the amounts available to be borrowed by the Borrowers would be increased; provided that the foregoing shall not limit the discretion of the Administrative Agent to change, establish or eliminate any Reserves or to add Accounts and Inventory acquired in a Permitted Acquisition to the Borrowing Base as provided herein or (6) without the prior written consent of the Supermajority Lenders, increase the percentages set forth in the term “Borrowing Base” or add any new classes of eligible assets thereto.

(b) If, in connection with any proposed change, waiver, discharge or termination of any of the provisions of this Agreement as contemplated by clauses (i) through (v), inclusive, of the first proviso to Section 13.12(a), the consent of the Required Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then the Lead Borrower shall have the right, so long as all non-consenting Lenders whose individual consent is required are treated as described in either clause (A) or (B) below, to either (A) replace each such non-consenting Lender or Lenders with one or more Replacement Lenders pursuant to Section 3.04 so long as at the time of such replacement, each such Replacement Lender consents to the proposed change, waiver, discharge or termination or (B) terminate such non-consenting Lender’s Commitments and/or repay the outstanding Revolving Loans of such Lender in accordance with Section 3.04; provided that, unless the Commitments that are terminated, and Revolving Loans repaid, pursuant to the preceding clause (B) are immediately replaced in full at such time through the addition of new Lenders or the increase of outstanding Loans of existing Lenders (who in each case must specifically consent thereto), then in the case of any action pursuant to preceding clause (B) the Required Lenders (determined after giving effect to the proposed action) shall specifically consent thereto; provided further that in any event the Lead Borrower shall not have the right to replace a Lender, terminate its Commitments or repay its Revolving Loans solely as a result of the exercise of such Lender’s rights (and the withholding of any required consent by such Lender) pursuant to the second proviso to Section 13.12(a).

(c) Notwithstanding anything to the contrary contained in clause (a) of this Section 13.12, the Borrowers, the Administrative Agent and each Lender providing the relevant Revolving Commitment Increase may (i), in accordance with the provisions of Section 2.15, enter into an Incremental Revolving
Commitment Agreement, and (ii) in accordance with the provisions of Section 2.19, enter into an Extension Amendment; provided that after the execution and delivery by the Borrowers, the Administrative Agent and each such Lender may thereafter only be modified in accordance with the requirements of clause (a) above of this Section 13.12.

(d) [Reserved.]

(e) Notwithstanding anything to the contrary herein, any fee letter may be amended, or rights and privileges thereunder waived, in a writing executed only by the parties thereto.

(f) Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, to the fullest extent permitted by applicable law, such Lender will not be entitled to vote in respect of amendments, waivers and consents hereunder and the Commitment and the outstanding Loans or other extensions of credit of such Lender hereunder will not be taken into account in determining whether the Required Lenders or all of the Lenders, as required, have approved any such amendment, waiver or consent (and the definitions of “Supermajority” and “Required Lenders” will automatically be deemed modified accordingly for the duration of such period); provided that any such amendment or waiver that would increase or extend the term of the Commitment of such Defaulting Lender, extend the date fixed for the payment of principal or interest owing to such Defaulting Lender hereunder, reduce the principal amount of any obligation owing to such Defaulting Lender, reduce the amount of or the rate or amount of interest on any amount owing to such Defaulting Lender or of any fee payable to such Defaulting Lender hereunder, or alter the terms of this proviso, will require the consent of such Defaulting Lender.

(g) Further, notwithstanding anything to the contrary contained in this Section 13.12, if following the Closing Date, the Administrative Agent and any Credit Party shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Credit Documents, then the Administrative Agent and the Credit 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 Credit Documents if the same is not objected to in writing by the Required Lenders within five (5) Business Days following receipt of notice thereof.

Section 13.13 Survival

All indemnities set forth herein including, without limitation, in Sections 3.01, 3.02, 5.01, 12.07 and 13.01 shall survive the execution, delivery and termination of this Agreement and the Notes and the making and repayment of the Obligations.

Section 13.14 Domicile of Loans

Each Lender may transfer and carry its Revolving Loans at, to or for the account of any office, Subsidiary or Affiliate of such Lender. Notwithstanding anything to the contrary contained herein, to the extent that a transfer of Loans pursuant to this Section 13.14 would, at the time of such transfer, result in increased costs under Section 3.01 or 5.01 from those being charged by the respective Lender prior to such transfer, then the Borrowers shall not be obligated to pay such increased costs (although the Borrowers shall be obligated to pay any other increased costs of the type described above resulting from changes after the date of the respective transfer).

Section 13.15 Register

The Borrowers hereby designate the Administrative Agent to serve as their agent, solely for purposes of this Section 13.15, to maintain a register (the “Register”) on which the Administrative Agent will record the
Commitments from time to time of each of the Lenders, the Revolving Commitments and principal amount of Revolving Loans and LC Obligations by each of the Lenders and each repayment in respect of the principal amount of the Loans of each Lender. Holdings, the Lead 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 (and the entries in the Register shall be conclusive for such purposes), notwithstanding notice to the contrary. With respect to any Lender, the transfer of the Commitments of, and the principal (and interest) amounts of the Revolving Loans owing to, such Lender and the rights to the principal of, and interest on, any Loan made pursuant to such Commitments shall not be effective until such transfer is recorded on the Register maintained by the Administrative Agent with respect to ownership of such Commitments and Revolving Loans and prior to such recordation all amounts owing to the transferor with respect to such Commitments and Revolving Loans shall remain owing to the transferor. The registration of assignment or transfer of all or part of any Commitments and Revolving Loans shall be recorded by the Administrative Agent on the Register only upon the acceptance by the Administrative Agent of a properly executed and delivered Assignment and Assumption Agreement pursuant to Section 13.04(b).

Coincident with the delivery of such an Assignment and Assumption Agreement to the Administrative Agent for acceptance and registration of assignment or transfer of all or part of a Loan, or as soon thereafter as practicable, the assigning or transferor Lender shall surrender the Note (if any) evidencing such Revolving Loan, and thereupon one or more new Notes in the same aggregate principal amount shall be issued to the assigning or transferor Lender and/or the new Lender at the request of any such Lender. The registration of any provision of Revolving Commitment Increases pursuant to Section 2.15 shall be recorded by the Administrative Agent on the Register only upon the acceptance of the Administrative Agent of a properly executed and delivered Incremental Revolving Commitment Agreement. Coincident with the delivery of such Incremental Revolving Commitment Agreement for acceptance and registration of the provision of Revolving Commitment Increases, as the case may be, or as soon thereafter as practicable, to the extent requested by any Lender of a Revolving Commitment Increase, Notes shall be issued, at the Borrowers' expense, to such Lender to be in conformity with Section 2.04 (with appropriate modification) to the extent needed to reflect Revolving Commitment Increases, and outstanding Revolving Loans made by such Lender.

Section 13.16 Confidentiality

(a) Subject to the provisions of clause (b) of this Section 13.16, each Agent, Lead Arranger and Lender agrees that it will use its commercially reasonable efforts not to disclose without the prior consent of the Lead Borrower (other than to its affiliates and its and their respective directors, officers, employees, auditors, advisors or counsel) or to another Lender if such Lender or such Lender's holding or parent company in its sole discretion determines that any such party should have access to such information; provided such Persons shall be subject to the provisions of this Section 13.16 to the same extent as such Lender (or language substantially similar to this Section 13.16(a)) any information with respect to the Lead Borrower or any of its Subsidiaries which is now or in the future furnished pursuant to this Agreement or any other Credit Document, provided that any Lender may disclose any such information (i) as has become generally available to the public other than by virtue of a breach of this Section 13.16(a) by such Lender, (ii) as may be required or appropriate in any report, statement or testimony submitted to any municipal, state or Federal regulatory body having or claiming to have jurisdiction over such Lender or to the Federal Reserve Board or the Federal Deposit Insurance Corporation or similar organizations (whether in the United States or elsewhere) or their successors, (iii) as may be required or appropriate in respect to any summons or subpoena or in connection with any litigation, (iv) in order to comply with any law, order, regulation or ruling applicable to such Lender, (v) to the Administrative Agent or the Collateral Agent, (vi) to any prospective or actual direct or indirect contractual counterparty in any swap, hedge or similar agreement (or to any such contractual counterparty’s professional advisor), so long as such contractual counterparty (or such professional advisor) agrees to be bound by the provisions of this Section 13.16 (or language substantially similar to this Section 13.16(a)), (vii) to any prospective or actual transferee, pledgee or participant in connection with any contemplated transfer, pledge or participation of any of the Notes or Commitments or any...
interest therein by such Lender, (viii) has become available to any Agent, the Lead Arranger, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than Holdings, the Borrowers or any Subsidiary thereof, and which source is not known by such Person to be subject to a confidentiality restriction in respect thereof in favor of the Borrowers or any Affiliate of the Borrowers, provided that such prospective transferee, pledge or participant agrees to be bound by the confidentiality provisions contained in this Section 13.16 (or language substantially similar to this Section 13.16(a)), (ix) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder or (x) on a confidential basis to (A) any rating agency in connection with rating any Credit Party or the credit facilities provided hereunder or (B) 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; provided, further, that, to the extent permitted pursuant to any applicable law, order, regulation or ruling, and other than in connection with credit and other bank examinations conducted in the ordinary course with respect to such Lender, in the case of any disclosure pursuant to the foregoing clause (ii), (iii) or (iv), such Lender will use its commercially reasonable efforts to notify the Lead Borrower in advance of such disclosure so as to afford the Lead Borrower the opportunity to protect the confidentiality of the information proposed to be so disclosed. In addition, the Agents, Lead Arrangers and Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents, the Lead Arrangers and the Lenders in connection with the administration of this Agreement, the other Credit Documents, and the Commitments.

(b) The Borrowers hereby acknowledge and agree that each Lender may share with any of its affiliates, and such affiliates may share with such Lender, any information related to Holdings, the Lead Borrower or any of its Subsidiaries (including, without limitation, any non-public customer information regarding the creditworthiness of Holdings, the Lead Borrower and its Subsidiaries); provided such Persons shall be subject to the provisions of this Section 13.16 to the same extent as such Lender.

Section 13.17 USA Patriot Act Notice

Each Lender hereby notifies Holdings and the Borrowers that pursuant to the requirements of the USA PATRIOT Act Title III of Pub. 107-56 (signed into law October 26, 2001 and amended on March 9, 2009) (the “Patriot Act”), it is required to obtain, verify, and record information that identifies Holdings, the Borrowers and each Subsidiary Guarantor, which information includes the name of each Credit Party and other information that will allow such Lender to identify the Credit Party in accordance with the Patriot Act, and each Credit Party agrees to provide such information from time to time to any Lender.

Section 13.18 [Reserved]

Section 13.19 Waiver of Sovereign Immunity

Each of the Credit Parties, in respect of itself, its Subsidiaries, its process agents, and its properties and revenues, hereby irrevocably agrees that, to the extent that Holdings, the Borrowers, or any of their respective Subsidiaries or any of their respective properties has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, whether in the United States or elsewhere, to enforce or collect upon the Loans or any Credit Document or any other liability or obligation of Holdings, the Borrowers, or any of their respective Subsidiaries related to or arising from the transactions contemplated by any of the Credit Documents, including, without limitation, immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment, and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, Holdings and the Borrowers, for themselves and on behalf of their respective...
Subsidiaries, hereby expressly waive, to the fullest extent permissible under applicable law, any such immunity, and agree not to assert any such right or claim in any such proceeding, whether in the United States or elsewhere. Without limiting the generality of the foregoing, Holdings and the Borrowers further agree that the waivers set forth in this Section 13.19 shall have the fullest extent permitted under the Foreign Sovereign Immunities Act of 1976 of the United States and are intended to be irrevocable for purposes of such Act.

Section 13.20 [Reserved]

Section 13.21 INTERCREDITOR AGREEMENT

(a) EACH LENDER PARTY HERETO UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT IT (AND EACH OF ITS SUCCESSORS AND ASSIGNS) AND EACH OTHER LENDER (AND EACH OF THEIR SUCCESSORS AND ASSIGNS) SHALL BE BOUND BY THE INTERCREDITOR AGREEMENT, WHICH IN CERTAIN CIRCUMSTANCES MAY REQUIRE (AS MORE FULLY PROVIDED THEREIN) THE TAKING OF CERTAIN ACTIONS BY THE LENDERS, INCLUDING THE PURCHASE AND SALE OF PARTICIPATIONS BY VARIOUS LENDERS TO EACH OTHER IN ACCORDANCE WITH THE TERMS THEREOF.

(b) THE PROVISIONS OF THIS SECTION 13.21 ARE NOT INTENDED TO SUMMARIZE OR FULLY DESCRIBE THE PROVISIONS OF THE INTERCREDITOR AGREEMENT. REFERENCE MUST BE MADE TO THE INTERCREDITOR AGREEMENT ITSELF TO UNDERSTAND ALL TERMS AND CONDITIONS THEREOF. EACH LENDER IS RESPONSIBLE FOR MAKING ITS OWN ANALYSIS AND REVIEW OF THE INTERCREDITOR AGREEMENT AND THE TERMS AND PROVISIONS THEREOF, AND NO AGENT OR ANY OF AFFILIATES MAKES ANY REPRESENTATION TO ANY LENDER AS TO THE SUFFICIENCY OR ADVISABILITY OF THE PROVISIONS CONTAINED IN THE INTERCREDITOR AGREEMENT. A COPY OF THE INTERCREDITOR AGREEMENT MAY BE OBTAINED FROM THE ADMINISTRATIVE AGENT.

(c) THE INTERCREDITOR AGREEMENT IS AN AGREEMENT SOLELY AMONGST THE LENDERS (AND THEIR SUCCESSORS AND ASSIGN) AND IS NOT AN AGREEMENT TO WHICH HOLDINGS THE LEAD BORROWER OR ANY OF ITS SUBSIDIARIES IS PARTY. AS MORE FULLY PROVIDED THEREIN, THE INTERCREDITOR AGREEMENT CAN ONLY BE AMENDED BY THE PARTIES THEREO IN ACCORDANCE WITH THE PROVISIONS THEREOF.

Section 13.22 Absence of Fiduciary Relationship

Notwithstanding any other provision of this Agreement or any provision of any other Credit Document, (i) none of the Lead Arrangers, the Documentation Agents, the Syndication Agents, the Amendment No. 1 Lead Arranger, the Amendment No. 2 Lead Arranger, the Amendment No. 3 Lead Arranger or any Lender shall, solely by reason of this Agreement or any other Credit Document, have any fiduciary, advisory or agency relationship or duty in respect of any Lender or any other Person and (ii) Holdings and the Lead Borrower hereby waive, to the fullest extent permitted by law, any claims they may have against the Lead Arrangers, the Documentation Agents, the Syndications Agents, the Amendment No. 1 Lead Arranger, the Amendment No. 2 Lead Arranger, the Amendment No. 3 Lead Arranger or any Lender for breach of fiduciary duty or alleged breach of fiduciary duty. Each Agent, Lender and their Affiliates may have economic interests that conflict with those of the Credit Parties, their stockholders and/or their affiliates.

Section 13.23 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 and the transactions contemplated hereby (including without limitation Assignment and Assumption Agreements, amendments or other Notices of Borrowing, 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 This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a “Communication”), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Credit Parties agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on each of the Credit Parties to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding obligation of each of the Credit Parties enforceable against such in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the Administrative Agent and each of the Lenders of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. The Administrative Agent and each of the Lenders may, at its option, create one or more copies of any Communication in the form of an imaged Electronic Record (“Electronic Copy”), which shall be deemed created in the ordinary course of the such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable 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, the Administrative Agent is under no obligation to agree to accept electronic signatures as an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Administrative Agent has agreed to accept such Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Credit Party without further verification and (b) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, “Electronic Record” and “Electronic Signature” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

Section 13.24 Entire Agreement

This Agreement and the other Credit Documents represent the final agreement among the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements among the parties.

Section 13.25 Acknowledgement and Consent to Bail-In of EEA Affected Financial Institutions

Solely to the extent an EEA Affected Financial Institution is a party to this Agreement and notwithstanding anything to the contrary in any Credit Document or in any other agreement, arrangement or
understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an EEA Affected Financial Institution arising under any Credit Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender or Issuing Bank that is an EEA Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(A) a reduction in full or in part or cancellation of any such liability;

(B) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Affected Financial Institution, its parent undertaking, 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 Credit Document; or

(C) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA the applicable Resolution Authority.

Section 13.26 Acknowledgement Regarding any Supported QFCs

To the extent that the Credit 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 Credit Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Credit 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 Credit Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 13.26, the following terms have the following meanings:

“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.

“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).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“Swap Contract” shall mean (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.

ARTICLE 14 Credit Agreement Party Guaranty

Section 14.01 The Guaranty

In order to induce the Agents, the Collateral Agent and the Lenders to enter into this Agreement and to extend credit hereunder, and to induce the other Guaranteed Creditors to enter into Secured Bank Product Obligations in recognition of the direct benefits to be received by each Credit Agreement Party from the proceeds of the Revolving Loans and the entering into of such Secured Bank Product Obligations, each Credit Agreement Party hereby agrees with the Guaranteed Creditors as follows: each Credit Agreement Party hereby unconditionally and irrevocably guarantees as primary obligor and not merely as surety the full and prompt payment when due, whether upon maturity, acceleration or otherwise, of any and all of its Relevant Guaranteed Obligations to the Guaranteed
Creditors. If any or all of the Relevant Guaranteed Obligations of any Credit Agreement Party to the Guaranteed Creditors becomes due and payable hereunder, such Credit Agreement Party, unconditionally and irrevocably, promises to pay such indebtedness to the Administrative Agent and/or the other Guaranteed Creditors, or order, on demand, together with any and all expenses which may be incurred by the Administrative Agent and the other Guaranteed Creditors in collecting any of the Relevant Guaranteed Obligations. This Credit Agreement Party Guaranty is a guaranty of payment and not of collection. This Credit Agreement Party Guaranty is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. If claim is ever made upon any Guaranteed Creditor for repayment or recovery of any amount or amounts received in payment or on account of any of the Relevant Guaranteed Obligations and any of the aforesaid payees repays all or part of said amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property or (ii) any settlement or compromise of any such claim effected by such payee with any such claimant (including any Relevant Guaranteed Party), then and in such event the respective Credit Agreement Party agrees that any such judgment, decree, order, settlement or compromise shall be binding upon such Credit Agreement Party, notwithstanding any revocation of this Credit Agreement Party Guaranty or any other instrument evidencing any liability of any Relevant Guaranteed Party, and each Credit Agreement Party shall be and remain liable to the aforesaid payees hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by any such payee.

Section 14.02 Bankruptcy

Additionally, each Credit Agreement Party unconditionally and irrevocably guarantees the payment of any and all of its Relevant Guaranteed Obligations to the Guaranteed Creditors whether or not due or payable by any Relevant Guaranteed Party upon the occurrence of any of the events specified in Section 11.05, and irrevocably and unconditionally promises to pay such indebtedness to the Guaranteed Creditors, or order, on demand, in lawful money of the United States.

Section 14.03 Nature of Liability

The liability of each Credit Agreement Party hereunder is primary, absolute and unconditional, exclusive and independent of any security for or other guaranty of the Relevant Guaranteed Obligations, whether executed by any other guarantor or by any other party, and each Credit Agreement Party understands and agrees, to the fullest extent permitted under law, that the liability of such Credit Agreement Party hereunder shall not be affected or impaired by (a) any direction as to application of payment by any Relevant Guaranteed Party or by any other party, or (b) any other continuing or other guaranty, undertaking or maximum liability of a guarantor or of any other party as to the Relevant Guaranteed Obligations, or (c) any payment on or in reduction of any such other guaranty or undertaking (other than payment in cash of the Relevant Guaranteed Obligations), or (d) any dissolution, termination or increase, decrease or change in personnel by any Relevant Guaranteed Party, or (e) any payment made to any Guaranteed Creditor on the Relevant Guaranteed Obligations which any such Guaranteed Creditor repays to any Relevant Guaranteed Party pursuant to court order in any bankruptcy, reorganization, arrangement, moratorium or other debtor relief proceeding, and each Credit Agreement Party waives any right to the deferral or modification of its obligations hereunder by reason of any such proceeding, or (f) any action or inaction by the Guaranteed Creditors as contemplated in Section 14.05, or (g) any invalidity, irregularity or enforceability of all or any part of the Relevant Guaranteed Obligations or of any security therefor.

Section 14.04 Independent Obligation

The obligations of each Credit Agreement Party hereunder are independent of the obligations of any other guarantor, any other party or any Relevant Guaranteed Party, and a separate action or actions may be brought and prosecuted against any Credit Agreement Party whether or not action is brought against any other guarantor, any other party or any Relevant Guaranteed Party and whether or not any other guarantor, any other party or any Relevant Guaranteed Party be joined in any such action or actions. Each Credit Agreement Party waives, to the fullest extent permitted by law, the benefit of any statute of limitations affecting its liability hereunder or the enforcement thereof. Any payment by any Relevant Guaranteed Party or other circumstance which operates to toll
any statute of limitations as to such Relevant Guaranteed Party shall operate to toll the statute of limitations as to the relevant Credit Agreement Party.

Section 14.05 Authorization

To the fullest extent permitted under law, each Credit Agreement Party authorizes the Guaranteed Creditors without notice or demand, and without affecting or impairing its liability hereunder, from time to time to:

(a) change the manner, place or terms of payment of, and/or change or extend the time of payment of, renew, increase, accelerate or alter, any of the Relevant Guaranteed Obligations (including any increase or decrease in the principal amount thereof or the rate of interest or fees thereon), any security therefor, or any liability incurred directly or indirectly in respect thereof, and this Credit Agreement Party Guaranty shall apply to the Relevant Guaranteed Obligations as so changed, extended, renewed or altered;

(b) take and hold security for the payment of the Relevant Guaranteed Obligations and sell, exchange, release, impair, surrender, realize upon or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Relevant Guaranteed Obligations or any liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and/or any offset there against;

(c) exercise or refrain from exercising any rights against any Relevant Guaranteed Party, any other Credit Party or others or otherwise act or refrain from acting;

(d) release or substitute any one or more endorsers, guarantors, any Relevant Guaranteed Party, other Credit Parties or other obligors;

(e) settle or compromise any of the Relevant Guaranteed Obligations, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of any Relevant Guaranteed Party to its creditors other than the Guaranteed Creditors;

(f) apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of any Relevant Guaranteed Party to the Guaranteed Creditors regardless of what liability or liabilities of such Relevant Guaranteed Party remain unpaid;

(g) consent to or waive any breach of, or any act, omission or default under, this Agreement, any other Credit Document, any Secured Bank Product Obligation or any of the instruments or agreements referred to herein or therein, or otherwise amend, modify or supplement this Agreement, any other Credit Document, any Secured Bank Product Obligation or any of such other instruments or agreements; and/or

(h) take any other action which would, under otherwise applicable principles of common law, give rise to a legal or equitable discharge of such Credit Agreement Party from its liabilities under this Credit Agreement Party Guaranty.

Section 14.06 Reliance

It is not necessary for any Guaranteed Creditor to inquire into the capacity or powers of any Relevant Guaranteed Party or the officers, directors, partners or agents acting or purporting to act on their behalf, and any Relevant Guaranteed Obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed hereunder.

Section 14.07 Subordination
Any indebtedness of any Relevant Guaranteed Party now or hereafter owing to any Credit Agreement Party is hereby subordinated to the Relevant Guaranteed Obligations of such Relevant Guaranteed Party owing to the Guaranteed Creditors; and if the Administrative Agent so requests at a time when an Event of Default exists, all such indebtedness of such Relevant Guaranteed Party to such Credit Agreement Party shall be collected, enforced and received by such Credit Agreement Party for the benefit of the Guaranteed Creditors and be paid over to the Administrative Agent on behalf of the Guaranteed Creditors on account of the Relevant Guaranteed Obligations of such Relevant Guaranteed Party to the Guaranteed Creditors, but without affecting or impairing in any manner the liability of any Credit Agreement Party under the other provisions of this Credit Agreement Party Guaranty. Without limiting the generality of the foregoing, each Credit Agreement Party hereby agrees with the Guaranteed Creditors that it will not exercise any right of subrogation which it may at any time otherwise have as a result of this Credit Agreement Party Guaranty (whether contractual, under Section 509 of the Bankruptcy Code or otherwise) until all Relevant Guaranteed Obligations have been irrevocably paid in full in cash.

Section 14.08 Waiver

(a) Each Credit Agreement Party waives any right (except as shall be required by applicable law and cannot be waived) any right to require any Guaranteed Creditor to (i) proceed against any Relevant Guaranteed Party, any other guarantor or any other party, (ii) proceed against or exhaust any security held from any Relevant Guaranteed Party, any other guarantor or any other party or (iii) pursue any other remedy in any Guaranteed Creditor’s power whatsoever. Each Credit Agreement Party waives any defense (except as shall be required by applicable statute and cannot be waived) based on or arising out of any defense of any Relevant Guaranteed Party, any other guarantor or any other party, other than payment of the Relevant Guaranteed Obligations to the extent of such payment, based on or arising out of the disability of any Relevant Guaranteed Party, any other guarantor or any other party, or the validity, legality or unenforceability of the Relevant Guaranteed Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any Relevant Guaranteed Party other than payment of the Relevant Guaranteed Obligations to the extent of such payment. The Guaranteed Creditors may, at their election, foreclose on any security held by the Administrative Agent, the Collateral Agent or any other Guaranteed Creditor by one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable (to the extent such sale is permitted by applicable law), or exercise any other right or remedy the Guaranteed Creditors may have against any Relevant Guaranteed Party or any other party, or any security, without affecting or impairing in any way the liability of any Credit Agreement Party hereunder except to the extent the Relevant Guaranteed Obligations have been paid. Each Credit Agreement Party waives, to the fullest extent permitted under law, any defense arising out of any such election by the Guaranteed Creditors, even though such election operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of such Credit Agreement Party against any Relevant Guaranteed Party or any other party or any security.

(b) Each Credit Agreement Party waives, to the fullest extent permitted under law, all presentments, demands for performance, protests and notices, including, without limitation, notices of nonperformance, notices of protest, notices of dishonor, notices of acceptance of this Credit Agreement Party Guaranty, and notices of the existence, creation or incurring of new or additional Relevant Guaranteed Obligations. Each Credit Agreement Party assumes all responsibility for being and keeping itself informed of each Relevant Guaranteed Party’s financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Relevant Guaranteed Obligations and the nature, scope and extent of the risks which such Credit Agreement Party assumes and incurs hereunder, and agrees that neither the Administrative Agent nor any of the other Guaranteed Creditors shall have any duty to advise any Credit Agreement Party of information known to them regarding such circumstances or risks.
Section 14.09 Maximum Liability

It is the desire and intent of each Credit Agreement Party and the Guaranteed Creditors that this Credit Agreement Party Guaranty shall be enforced against such Credit Agreement Party to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. If, however, and to the extent that, the obligations of any Credit Agreement Party under this Credit Agreement Party Guaranty shall be adjudicated to be invalid or unenforceable for any reason (including, without limitation, because of any applicable state or federal law relating to fraudulent conveyances or transfers), then the amount of such Credit Agreement Party’s obligations under this Credit Agreement Party Guaranty shall be deemed to be reduced and such Credit Agreement Party shall pay the maximum amount of the Relevant Guaranteed Obligations which would be permissible under applicable law.

Section 14.10 Payments

All payments made by a Credit Agreement Party pursuant to this Section 14 will be made without set-off, counterclaim or other defense, and shall be subject to the provisions of Section 2.06.

Section 14.11 Keepwell

Each Credit Agreement Party that is a Qualified ECP Guarantor (as defined below) at the time the Credit Agreement Party Guaranty or the grant of the security interest under the Credit Documents, in each case, by any Specified Credit Party, becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Credit Party with respect to such Swap Obligation as may be needed by such Specified Credit Party from time to time to honor all of its obligations under this Credit Agreement Party Guaranty and the other Credit Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor’s obligations and undertakings under this Section 14.11 voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section 14.11 shall remain in full force and effect until the Guaranteed Obligations have been indefeasibly paid and performed in full. Each Qualified ECP Guarantor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a “keepwell, support, or other agreement” for the benefit of, each Specified Credit Party for all purposes of the Commodity Exchange Act. “Qualified ECP Guarantor” shall mean, in respect of any Swap Obligation, each Credit Agreement Party that has total assets exceeding $10,000,000 at the time the Guaranty or grant of the relevant security interest becomes 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. A “Specified Credit Party” shall mean any Credit Agreement Party that is not “an eligible contract participant” under the Commodity Exchange Act (determined after giving effect to this Section 14.11).

*   *   *

*   *   *
Exhibit 31.1  

Section 302 Certification

I, John E. Heller, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of PAE Incorporated (the “Registrant”);

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;

4. The Registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:
   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   (c) Evaluated the effectiveness of the Registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   (d) Disclosed in this report any change in the Registrant’s internal control over financial reporting that occurred during the Registrant’s most recent fiscal quarter (the Registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant’s internal control over financial reporting; and

5. The Registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant’s auditors and the audit committee of the Registrant’s board of directors (or persons performing the equivalent function):
   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to affect the Registrant’s ability to record, process, summarize, and report financial information; and
   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant’s internal control over financial reporting.

Date November 5, 2020

/s/ John E. Heller                    

John E. Heller  
President,  
Chief Executive Officer and Director  
(Principal Executive Officer)
Exhibit 31.2

Section 302 Certification

I, Charles D. Peiffer, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of PAE Incorporated (the “Registrant”);

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;

4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent function):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to affect the Registrant's ability to record, process, summarize, and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal controls over financial reporting.

Date: November 5, 2020

/s/ Charles D. Peiffer
Charles D. Peiffer
Executive Vice President, Chief Financial Officer
(Principal Financial Officer)
Section 906 Certification

In connection with the quarterly report on Form 10-Q of PAE Incorporated (the “Company”) for the period ended September 27, 2020, as filed with the Securities and Exchange Commission on the date hereof (the “Report”), the undersigned President and Chief Executive Officer of the Company certifies, to the best of his knowledge and belief pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 5, 2020

/s/ John E. Heller

John E. Heller
President,
Chief Executive Officer and Director
(Principal Executive Officer)
Exhibit 32.2

Section 906 Certification

In connection with the quarterly report on Form 10-Q of PAE Incorporated (the "Company") for the period ended September 27, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned Executive Vice President, Chief Financial Officer of the Company certifies, to the best of his knowledge and belief pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 5, 2020

/s/ Charles D. Peiffer
Charles D. Peiffer
Executive Vice President, Chief Financial Officer
(Principal Financial Officer)