

SECURITIES AND EXCHANGE COMMISSION

FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

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FILER

**SUPERIOR INDUSTRIES INTERNATIONAL INC**

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SIC: **3714** Motor vehicle parts & accessories

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**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 March 31, 2021

**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: 1-6615

**SUPERIOR INDUSTRIES INTERNATIONAL, INC.**

(Exact Name of Registrant as Specified in Its Charter)

Delaware  
(State or Other Jurisdiction of  
Incorporation or Organization)

95-2594729  
(I.R.S. Employer  
Identification No.)

26600 Telegraph Road, Suite 400  
Southfield, Michigan  
(Address of Principal Executive Offices)

48033  
(Zip Code)

Registrant's Telephone Number, Including Area Code: (248) 352-7300

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

Title of Each Class	Trading Symbol	Name of Each Exchange on Which Registered
Common Stock, \$0.01 par value	SUP	New York Stock Exchange

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   
Non-Accelerated Filer

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

Number of shares of common stock outstanding as of April 29, 2021: 25,947,462

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**PART I**  
**FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**SUPERIOR INDUSTRIES INTERNATIONAL, INC.**

**CONDENSED CONSOLIDATED STATEMENTS OF INCOME (LOSS)**

(Dollars in thousands, except per share amounts)

(Unaudited)

	<b>Three Months Ended</b>	
	<b>March 31, 2021</b>	<b>March 31, 2020</b>
NET SALES	\$ 358,196	\$ 301,112
Cost of sales	315,156	277,951
GROSS PROFIT	43,040	23,161
Selling, general and administrative expenses	17,321	12,535
Impairment of goodwill and indefinite-lived intangibles	—	193,641
INCOME (LOSS) FROM OPERATIONS	25,719	(183,015)
Interest expense, net	(10,273)	(11,850)
Other (expense) income, net	(1,514)	1,323
INCOME (LOSS) BEFORE INCOME TAXES	13,932	(193,542)
Income tax (provision) benefit	(810)	3,460
NET INCOME (LOSS)	\$ 13,122	\$ (190,082)
EARNINGS (LOSS) PER SHARE – BASIC	\$ 0.19	\$ (7.84)
EARNINGS (LOSS) PER SHARE – DILUTED	\$ 0.18	\$ (7.84)

The accompanying unaudited notes are an integral part of these condensed consolidated financial statements.

**SUPERIOR INDUSTRIES INTERNATIONAL, INC.****CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)**

(Dollars in thousands)

(Unaudited)

	<b>Three Months Ended</b>	
	<b>March 31, 2021</b>	<b>March 31, 2020</b>
Net income (loss)	\$ 13,122	\$ (190,082)
Other comprehensive income (loss), net of tax:		
Foreign currency translation loss	(15,678)	(35,533)
Change in unrecognized gains (losses) on derivative instruments:		
Change in fair value of derivatives	(9,140)	(58,426)
Tax benefit	678	13,129
Change in unrecognized losses on derivative instruments, net of tax	(8,462)	(45,297)
Defined benefit pension plan:		
Actuarial gains on pension obligation, net of amortization	97	72
Tax provision	(21)	(17)
Pension changes, net of tax	76	55
Other comprehensive loss, net of tax	(24,064)	(80,775)
Comprehensive loss	<u>\$ (10,942)</u>	<u>\$ (270,857)</u>

The accompanying unaudited notes are an integral part of these condensed consolidated financial statements.

**SUPERIOR INDUSTRIES INTERNATIONAL, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**

(Dollars in thousands)

(Unaudited)

	March 31, 2021	December 31, 2020
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 153,848	\$ 152,423
Accounts receivable, net	83,569	48,995
Inventories, net	164,695	154,980
Income taxes receivable	5,322	4,957
Other current assets	21,567	22,301
Total current assets	429,001	383,656
Property, plant and equipment, net	496,659	522,124
Deferred income tax assets, net	30,017	30,860
Goodwill	—	—
Intangibles, net	99,041	110,796
Other non-current assets	55,072	61,889
Total assets	<u>\$ 1,109,790</u>	<u>\$ 1,109,325</u>
<b>LIABILITIES, MEZZANINE EQUITY AND SHAREHOLDERS' EQUITY (DEFICIT)</b>		
Current liabilities:		
Accounts payable	\$ 168,351	\$ 151,839
Short-term debt	6,516	6,112
Accrued expenses	80,053	71,079
Income taxes payable	2,841	2,107
Total current liabilities	257,761	231,137
Long-term debt (less current portion)	613,140	625,492
Non-current income tax liabilities	7,972	7,635
Deferred income tax liabilities, net	5,582	9,104
Other non-current liabilities	79,698	76,426
Commitments and contingent liabilities (Note 17)	—	—
Mezzanine equity:		
Preferred stock, \$0.01 par value		
Authorized - 1,000,000 shares		
Issued and outstanding – 150,000 shares outstanding at March 31, 2021 and December 31, 2020	184,308	179,387
European non-controlling redeemable equity	1,591	1,666
Shareholders' equity (deficit):		
Common stock, \$0.01 par value		
Authorized - 100,000,000 shares		
Issued and outstanding – 25,947,462 and 25,591,930 shares at March 31, 2021 and December 31, 2020	95,752	95,247
Accumulated other comprehensive loss	(123,510)	(99,446)
Retained earnings	(12,504)	(17,323)
Total shareholders' equity (deficit)	(40,262)	(21,522)
Total liabilities, mezzanine equity and shareholders' equity (deficit)	<u>\$ 1,109,790</u>	<u>\$ 1,109,325</u>

The accompanying unaudited notes are an integral part of these condensed consolidated financial statements.

**SUPERIOR INDUSTRIES INTERNATIONAL, INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**

(Dollars in thousands)

(Unaudited)

	<b>Three Months Ended</b>	
	<b>March 31, 2021</b>	<b>March 31, 2020</b>
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net income (loss)	\$ 13,122	\$ (190,082)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	25,361	24,392
Income tax, non-cash changes	(2,818)	(5,849)
Impairment of goodwill and indefinite-lived intangibles	—	193,641
Stock-based compensation	1,847	(653)
Amortization of debt issuance costs	870	1,385
Other non-cash items	(4,528)	(3,600)
Changes in operating assets and liabilities:		
Accounts receivable	(36,981)	(423)
Inventories	(14,702)	(5,209)
Other assets and liabilities	13,875	2,897
Accounts payable	21,328	16,904
Income taxes	779	(2,090)
<b>NET CASH PROVIDED BY OPERATING ACTIVITIES</b>	<b>18,153</b>	<b>31,313</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Additions to property, plant, and equipment	(10,479)	(13,865)
<b>NET CASH USED IN INVESTING ACTIVITIES</b>	<b>(10,479)</b>	<b>(13,865)</b>
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Proceeds from issuance of long-term debt	1,658	11,690
Repayments of debt	(830)	(22,600)
Proceeds from borrowings on revolving credit facility	—	213,825
Repayments of borrowings on revolving credit facility	—	(5,992)
Cash dividends paid	(3,368)	(3,392)
Purchase of non-controlling redeemable shares	(9)	(4,190)
Payments related to tax withholdings for stock-based compensation	(1,342)	—
Finance lease payments	(288)	(292)
<b>NET CASH (USED IN) PROVIDED BY FINANCING ACTIVITIES</b>	<b>(4,179)</b>	<b>189,049</b>
Effect of exchange rate changes on cash	(2,070)	(2,261)
Net increase in cash and cash equivalents	1,425	204,236
Cash and cash equivalents at the beginning of the period	152,423	77,927
<b>Cash and cash equivalents at the end of the period</b>	<b>\$ 153,848</b>	<b>\$ 282,163</b>

The accompanying unaudited notes are an integral part of these condensed consolidated financial statements.



SUPERIOR INDUSTRIES INTERNATIONAL, INC.

CONDENSED CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY (DEFICIT)

(Dollars in thousands)

(Unaudited)

For the three months ended March 31, 2020

	Common Stock		Accumulated Other Comprehensive (Loss) Income				Retained Earnings	Total
	Number of Shares	Amount	Unrecognized Gains (Losses) on Derivative Instruments	Pension Obligations	Cumulative Translation Adjustment			
<b>BALANCE AT DECEMBER 31, 2019</b>	25,128,158	\$93,331	\$ 9,951	\$ (5,571)	\$(104,458)	\$ 258,437	\$ 251,690	
Net loss	—	—	—	—	—	(190,082)	(190,082)	
Change in unrecognized gains/losses on derivative instruments, net of tax	—	—	(45,297)	—	—	—	(45,297)	
Change in defined benefit plans, net of taxes	—	—	—	55	—	—	55	
Net foreign currency translation adjustment	—	—	—	—	(35,533)	—	(35,533)	
Common stock issued, net of shares withheld for employee taxes	346,319	—	—	—	—	—	—	
Stock-based compensation	—	(653)	—	—	—	—	(653)	
Redeemable preferred 9% dividend and accretion	—	—	—	—	—	(7,850)	(7,850)	
European non-controlling redeemable equity dividend	—	—	—	—	—	(20)	(20)	
<b>BALANCE AT MARCH 31, 2020</b>	<u>25,474,477</u>	<u>\$92,678</u>	<u>\$ (35,346)</u>	<u>\$ (5,516)</u>	<u>\$(139,991)</u>	<u>\$ 60,485</u>	<u>\$ (27,690)</u>	

For the three months ended March 31, 2021

	Common Stock		Accumulated Other Comprehensive (Loss) Income				Retained Earnings	Total
	Number of Shares	Amount	Unrecognized Gains (Losses) on Derivative Instruments	Pension Obligations	Cumulative Translation Adjustment			
<b>BALANCE AT DECEMBER 31, 2020</b>	25,591,930	\$95,247	\$ (1,738)	\$ (7,447)	\$ (90,261)	\$ (17,323)	\$ (21,522)	
Net income	—	—	—	—	—	13,122	13,122	
Change in unrecognized gains/losses on derivative instruments, net of tax	—	—	(8,462)	—	—	—	(8,462)	
Change in defined benefit plans, net of taxes	—	—	—	76	—	—	76	
Net foreign currency translation adjustment	—	—	—	—	(15,678)	—	(15,678)	
Common stock issued, net of shares withheld for employee taxes	355,532	—	—	—	—	—	—	
Stock-based compensation	—	505	—	—	—	—	505	
Redeemable preferred 9% dividend and accretion	—	—	—	—	—	(8,290)	(8,290)	
European non-controlling redeemable equity dividend	—	—	—	—	—	(13)	(13)	
<b>BALANCE AT MARCH 31, 2021</b>	<u>25,947,462</u>	<u>\$95,752</u>	<u>\$ (10,200)</u>	<u>\$ (7,371)</u>	<u>\$(105,939)</u>	<u>\$ (12,504)</u>	<u>\$ (40,262)</u>	

The accompanying unaudited notes are an integral part of these condensed consolidated financial statements.



**Superior Industries International, Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
**March 31, 2021**  
(Unaudited)

**NOTE 1 – NATURE OF OPERATIONS AND PRESENTATION OF CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**Nature of Operations**

Superior Industries International, Inc.'s (referred herein as the "Company," "Superior," or "we" and "our") principal business is the design and manufacture of aluminum wheels for sale to original equipment manufacturers ("OEMs") in North America and Europe and to the aftermarket in Europe. We employ approximately 7,600 full-time employees, operating in eight manufacturing facilities in North America and Europe. We are one of the largest aluminum wheel suppliers to global OEMs and we believe we are the #1 European aluminum wheel aftermarket manufacturer and supplier. Our OEM aluminum wheels accounted for approximately 93 percent of our sales in the first three months of 2021 and are primarily sold for factory installation on vehicle models manufactured by BMW (including Mini), Daimler AG Company (Mercedes-Benz, AMG, Smart), Ford, GM, Honda, Jaguar-Land Rover, Mazda, Nissan, PSA, Renault, Subaru, Stellantis, Suzuki, Toyota, VW Group (Volkswagen, Audi, SEAT, Skoda, Porsche, Bentley) and Volvo. We also sell aluminum wheels to the European aftermarket under the brands ATS, RIAL, ALUTEC and ANZIO. North America and Europe represent the principal markets for our products, but we have a diversified global customer base consisting of North American, European and Asian OEMs. We have determined that our North American and European operations should be treated as separate reportable segments as further described in Note 5, "Business Segments."

**Presentation of Condensed Consolidated Financial Statements**

The accompanying unaudited condensed consolidated financial statements have been prepared in conformity with U.S. Generally Accepted Accounting Principles ("GAAP") pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") for interim financial information. Accordingly, they do not include all the information and notes required by U.S. GAAP for complete financial statements. These unaudited condensed consolidated financial statements, in our opinion, include all adjustments, of a normal and recurring nature, which are necessary for fair presentation of (i) the condensed consolidated statements of income (loss) for the three-month periods ended March 31, 2021 and March 31, 2020, (ii) the condensed consolidated statements of comprehensive income (loss) for the three-month periods ended March 31, 2021 and March 31, 2020, (iii) the condensed consolidated balance sheets at March 31, 2021 and December 31, 2020, (iv) the condensed consolidated statements of cash flows for the three-month periods ended March 31, 2021 and March 31, 2020, and (v) the condensed consolidated statements of shareholders' equity (deficit) for the three-month periods ended March 31, 2021 and March 31, 2020. This Quarterly Report on Form 10-Q should be read in conjunction with our consolidated financial statements and notes thereto filed with the SEC in our 2020 Annual Report on Form 10-K.

Interim financial reporting standards require us to make estimates that are based on assumptions regarding the outcome of future events and circumstances not known at that time. Inevitably, some assumptions will not materialize, unanticipated events or circumstances may occur which vary from those estimates and such variations may significantly affect our future results. Additionally, interim results may not be indicative of our results for future interim periods or our annual results.

Certain prior year amounts have been reclassified to conform with the current year presentation.

**Cash Paid for Interest and Taxes and Non-Cash Investing Activities**

Cash paid for interest was \$5.2 million and \$6.0 million for the three months ended March 31, 2021 and March 31, 2020, respectively. Net cash income taxes paid was \$2.8 million and \$4.4 million for the three months ended March 31, 2021 and March 31, 2020, respectively. As of March 31, 2021 and March 31, 2020, \$4.3 million and \$4.1 million, respectively, of equipment had been purchased but not yet paid and was included in accounts payable in our condensed consolidated balance sheets.

## Accounting Standards Issued but Not Yet Adopted

*Accounting Standards Update (ASU) 2016-13, "Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments."* In June 2016, the Financial Accounting Standards Board ("FASB") issued ASU 2016-13, "Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments", which requires entities to use a new impairment model based on current expected credit losses ("CECL") rather than incurred losses. Under CECL, estimated credit losses would incorporate relevant information about past events, current conditions and reasonable and supportable forecasts and any expected credit losses would be recognized at the time of sale. As a smaller reporting company (as defined under SEC regulations), the Company is not required to adopt the standard until fiscal years beginning after December 31, 2022. We are evaluating the impact this standard will have on our financial statements and disclosures.

## NOTE 2 – REVENUE

The Company disaggregates revenue from contracts with customers into our reportable segments, North America and Europe. Revenues by segment for the three-month periods ended March 31, 2021 and March 31, 2020, respectively, are summarized in Note 5, "Business Segments."

The opening and closing balances of the Company's customer receivables and current and long-term contract liabilities balances are as follows:

(Dollars in thousands)	March 31, 2021	December 31, 2020	Change
Customer receivables	\$ 75,518	\$ 40,785	\$ 34,733
Contract liabilities—current	7,983	8,249	(266)
Contract liabilities—noncurrent	12,165	13,106	(941)

## NOTE 3 – FAIR VALUE MEASUREMENTS

The Company applies fair value accounting for all financial assets and liabilities and non-financial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring basis, while other assets and liabilities are measured at fair value on a nonrecurring basis, such as an asset impairment. Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

Level 1 - Quoted prices in active markets for identical assets or liabilities.

Level 2 - Observable inputs other than quoted prices in active markets for identical assets and liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 - Inputs that are generally unobservable and typically reflect management's estimate of assumptions that market participants would use in pricing the asset or liability.

The carrying amounts for cash and cash equivalents, accounts receivable, accounts payable and accrued expenses approximate their fair values due to the short period of time until maturity.

### *Derivative Financial Instruments*

Our derivatives are over-the-counter customized derivative transactions and are not exchange traded. We estimate the fair value of these instruments using industry-standard valuation models such as discounted cash flow. These models project future cash flows and discount the future amounts to a present value using market-based expectations for interest rates, foreign exchange rates, commodity prices and the contractual terms of the derivative instruments. The discount rate used is the relevant interbank deposit rate (e.g., LIBOR) plus an adjustment for non-performance risk.

The following tables categorize items measured at fair value as of March 31, 2021 and December 31, 2020:

	<b>Fair Value Measurement at Reporting Date Using</b>			
	<b>Quoted Prices in Active Markets for Identical Assets (Level 1)</b>	<b>Significant Other Observable Inputs (Level 2)</b>	<b>Significant Unobservable Inputs (Level 3)</b>	
<b>March 31, 2021</b>				
(Dollars in thousands)				
<b>Assets</b>				
Derivative contracts	\$ 6,323	\$ —	\$ 6,323	\$ —
Total	\$ 6,323	\$ —	\$ 6,323	\$ —
<b>Liabilities</b>				
Derivative contracts	\$ 23,443	\$ —	\$ 23,443	\$ —
Total	\$ 23,443	\$ —	\$ 23,443	\$ —

	<b>Fair Value Measurement at Reporting Date Using</b>			
	<b>Quoted Prices in Active Markets for Identical Assets (Level 1)</b>	<b>Significant Other Observable Inputs (Level 2)</b>	<b>Significant Unobservable Inputs (Level 3)</b>	
<b>December 31, 2020</b>				
(Dollars in thousands)				
<b>Assets</b>				
Derivative contracts	\$ 10,218	\$ —	\$ 10,218	\$ —
Total	\$ 10,218	\$ —	\$ 10,218	\$ —
<b>Liabilities</b>				
Derivative contracts	\$ 15,259	\$ —	\$ 15,259	\$ —
Total	\$ 15,259	\$ —	\$ 15,259	\$ —

#### *Debt Instruments*

The carrying values of the Company's debt instruments vary from their fair values. The fair values were determined by reference to transacted prices and quotes for these instruments (Level 2). The estimated fair value, as well as the carrying value, of the Company's debt instruments are shown below:

	<b>March 31, 2021</b>	<b>December 31, 2020</b>
(Dollars in thousands)		
Estimated aggregate fair value	\$ 628,761	\$ 624,207
Aggregate carrying value (1)	630,366	643,184

(1) Total debt excluding the impact of unamortized debt issuance costs.

#### NOTE 4 - DERIVATIVE FINANCIAL INSTRUMENTS

We use derivatives to partially offset our exposure to foreign currency, interest rate, aluminum and other commodity price risks. We may enter into forward contracts, option contracts, swaps, collars or other derivative instruments to offset some of the risk on expected future cash flows and on certain existing assets and liabilities. However, we may choose not to hedge certain exposures for a variety of reasons including, but not limited to, accounting considerations and the prohibitive economic cost of hedging particular exposures. There can be no assurance the hedges will offset the full financial impact resulting from movements in foreign currency exchange rates, interest rates, and aluminum or other commodity prices.

To help mitigate gross margin fluctuations due to changes in foreign currency exchange rates, certain of our subsidiaries, whose functional currency is the U.S. dollar or the Euro, hedge a portion of their forecasted foreign currency costs denominated in the Mexican Peso and Polish Zloty, respectively. We may hedge portions of our forecasted foreign currency exposure up to 48 months.

We record all derivatives in the condensed consolidated balance sheets at fair value. Our accounting treatment for these instruments is based on the hedge designation. Gains or losses on derivatives that are designated as hedging instruments are recorded in accumulated other comprehensive income (loss) ("AOCI") until the hedged item is recognized in earnings, at which point accumulated gains or losses will be recognized in earnings and classified with the underlying hedged transaction. Derivatives that are not designated as hedging instruments are adjusted to fair value through earnings in the financial statement line item to which the derivative relates. The Company has derivatives that are designated as hedging instruments, as well as derivatives that do not qualify for designation as hedging instruments.

The following tables display the fair value of derivatives by balance sheet line item at March 31, 2021 and December 31, 2020:

	March 31, 2021			
	Other Current Assets	Other Non-current Assets	Accrued Liabilities	Other Non-current Liabilities
(Dollars in thousands)				
Foreign exchange forward contracts designated as hedging instruments	\$ 537	\$ 3,383	\$ 5,484	\$ 7,504
Foreign exchange forward contracts not designated as hedging instruments	639	—	2,713	—
Aluminum forward contracts designated as hedging instruments	603	—	—	—
Natural gas forward contracts designated as hedging instruments	930	231	1	17
Interest rate swap contracts designated as hedging instruments	—	—	4,732	2,992
Total derivative financial instruments	<u>\$ 2,709</u>	<u>\$ 3,614</u>	<u>\$ 12,930</u>	<u>\$ 10,513</u>

	December 31, 2020			
	Other Current Assets	Other Non-current Assets	Accrued Liabilities	Other Non-current Liabilities
(Dollars in thousands)				
Foreign exchange forward contracts designated as hedging instruments	\$ 1,218	\$ 6,531	\$ 3,435	\$ 2,645
Foreign exchange forward contracts not designated as hedging instruments	1,167	—	122	—
Aluminum forward contracts designated as hedging instruments	262	—	—	—
Natural gas forward contracts designated as hedging instruments	816	224	22	70
Interest rate swap contracts designated as hedging instruments	—	—	4,771	4,194

Total derivative financial instruments	<u>\$ 3,463</u>	<u>\$ 6,755</u>	<u>\$ 8,350</u>	<u>\$ 6,909</u>
----------------------------------------	-----------------	-----------------	-----------------	-----------------

The following table summarizes the notional amount and estimated fair value of our derivative financial instruments:

	March 31, 2021		December 31, 2020	
	Notional U.S. Dollar Amount	Fair Value	Notional U.S. Dollar Amount	Fair Value
(Dollars in thousands)				
Foreign exchange forward contracts designated as hedging instruments	\$ 467,197	\$ (9,068)	\$ 421,253	\$ 1,669
Foreign exchange forward contracts not designated as hedging instruments	75,726	(2,074)	71,217	1,045
Aluminum forward contracts designated as hedging instruments	7,517	603	4,068	262
Natural gas forward contracts designated as hedging instruments	4,871	1,143	5,523	948
Interest rate swap contracts designated as hedging instruments	200,000	(7,724)	200,000	(8,965)
Total derivative financial instruments	<u>\$ 755,311</u>	<u>\$ (17,120)</u>	<u>\$ 702,061</u>	<u>\$ (5,041)</u>

Notional amounts are presented on a net basis. The notional amounts of the derivative financial instruments do not represent amounts exchanged by the parties and, therefore, are not a direct measure of our exposure to the financial risks. The amounts exchanged are calculated by reference to the notional amounts and by other terms of the derivatives, such as interest rates, foreign currency exchange rates or commodity prices.

The following tables summarize the gain or loss recognized in AOCI, the amounts reclassified from AOCI into earnings and the amounts recognized directly into earnings for the three months ended March 31, 2021 and 2020:

	Amount of Gain or (Loss) Recognized in AOCI on Derivatives	Amount of Pre-tax Gain or (Loss) Reclassified from AOCI into Income	Amount of Pre-tax Gain or (Loss) Recognized in Income on Derivatives
<b>Three Months Ended March 31, 2021</b>			
(Dollars in thousands)			
Derivative Contracts	\$ (8,462)	\$ (439)	\$ (2,904)
Total	<u>\$ (8,462)</u>	<u>\$ (439)</u>	<u>\$ (2,904)</u>

	Amount of Gain or (Loss) Recognized in AOCI on Derivatives	Amount of Pre-tax Gain or (Loss) Reclassified from AOCI into Income	Amount of Pre-tax Gain or (Loss) Recognized in Income on Derivatives
<b>Three Months Ended March 31, 2020</b>			
(Dollars in thousands)			
Derivative Contracts	\$ (45,297)	\$ (1,114)	\$ (5,439)
Total	<u>\$ (45,297)</u>	<u>\$ (1,114)</u>	<u>\$ (5,439)</u>

## NOTE 5 - BUSINESS SEGMENTS

The North American and European businesses represent separate operating segments in view of significantly different markets, customers and products in each of these regions. Within each of these regions, markets, customers, products and production processes are similar. Moreover, our business within each region generally leverages common systems, processes and infrastructure. Accordingly, North America and Europe comprise the Company's reportable segments.

	Net Sales		Income from Operations	
	March 31, 2021	March 31, 2020	March 31, 2021	March 31, 2020
(Dollars in thousands)				
Three months ended				
North America	\$ 191,971	\$ 155,551	\$ 17,841	\$ 6,109
Europe	166,225	145,561	7,878	(189,124)



	<u>\$ 358,196</u>	<u>\$ 301,112</u>	<u>\$ 25,719</u>	<u>\$ (183,015)</u>
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(Dollars in thousands)

Three months ended	Depreciation and Amortization		Capital Expenditures	
	March 31, 2021	March 31, 2020	March 31, 2021	March 31, 2020
North America	\$ 9,221	\$ 8,805	\$ 4,660	\$ 6,560
Europe	16,140	15,587	5,819	7,305
	<u>\$ 25,361</u>	<u>\$ 24,392</u>	<u>\$ 10,479</u>	<u>\$ 13,865</u>

(Dollars in thousands)

	Property, Plant and Equipment, net		Intangible Assets	
	March 31, 2021	December 31, 2020	March 31, 2021	December 31, 2020
North America	\$ 210,688	\$ 220,145	\$ —	\$ —
Europe	285,971	301,979	99,041	110,796
	<u>\$ 496,659</u>	<u>\$ 522,124</u>	<u>\$ 99,041</u>	<u>\$ 110,796</u>

(Dollars in thousands)

	Total Assets	
	March 31, 2021	December 31, 2020
North America	\$ 495,035	\$ 479,873
Europe	614,755	629,452
	<u>\$ 1,109,790</u>	<u>\$ 1,109,325</u>

## Geographic information

Net sales and long-lived assets by location are as follows:

(Dollars in thousands)

Three months ended	Net Sales	
	March 31, 2021	March 31, 2020
U.S.	\$ 1,270	\$ 16,177
Mexico	190,701	139,374
Germany	60,887	50,038
Poland	105,338	95,523
Consolidated net sales	<u>\$ 358,196</u>	<u>\$ 301,112</u>

(Dollars in thousands)

	Property, Plant and Equipment, net	
	March 31, 2021	December 31, 2020
U.S.	\$ 2,894	\$ 7,324
Mexico	207,794	212,821
Germany	79,611	82,162
Poland	206,360	219,817
Property, plant and equipment, net	<u>\$ 496,659</u>	<u>\$ 522,124</u>

## NOTE 6 - INVENTORIES

(Dollars in thousands)

	March 31, 2021	December 31, 2020
Raw materials	\$ 45,093	\$ 46,712
Work in process	53,728	45,394
Finished goods	65,874	62,874
Inventories, net	<u>\$ 164,695</u>	<u>\$ 154,980</u>

Service wheel and supplies inventory included in other non-current assets in the condensed consolidated balance sheets totaled \$10.7 million and \$12.1 million at March 31, 2021 and December 31, 2020, respectively.

## NOTE 7 - PROPERTY, PLANT AND EQUIPMENT

	March 31, 2021	December 31, 2020
(Dollars in thousands)		
Land and buildings	\$ 144,491	\$ 149,295
Machinery and equipment	867,347	899,764
Leasehold improvements and others	14,470	14,912
Construction in progress	41,549	46,718
	<u>1,067,857</u>	<u>1,110,689</u>
Accumulated depreciation	(571,198)	(588,565)
Property, plant and equipment, net	<u>\$ 496,659</u>	<u>\$ 522,124</u>

Depreciation expense for the three months ended March 31, 2021 and 2020 was \$18.7 million and \$18.3 million, respectively.

## NOTE 8 – GOODWILL AND OTHER INTANGIBLE ASSETS

At March 31, 2020, the impact of COVID-19 and uncertainty with respect to the economic effects of the pandemic had introduced significant volatility in the financial markets and was having a widespread adverse effect on the automotive industry. In response to the COVID-19 pandemic, our key customers temporarily closed nearly all their production facilities in Europe and North America (our primary markets) during the quarter ended March 31, 2020. As a result, we concluded that an interim test of our goodwill was required as of March 31, 2020. More specifically, the Company concluded that the following events and circumstances, in the aggregate, indicated that it was more likely than not that the carrying value of our European reporting unit exceeded its fair value: (1) our European reporting unit's carrying value was effectively set to fair value at December 31, 2019, due to the \$102.2 million impairment charges to goodwill and indefinite-lived intangibles, (2) lower forecasted 2020 industry production volumes for Western and Central Europe, including those for our primary European customers, due to OEM shutdowns to mitigate COVID-19 spread and subsequent reduced production levels over the remainder of the year, as compared to our prior production forecasts (including estimates used in our 2019 assessment) and (3) the volatility in financial markets that had both increased European interest rates due to rising credit spreads and risk premiums and lowered median European automotive market multiples. Based on the results of our quantitative analysis, we recognized a non-cash goodwill impairment charge equal to the remaining goodwill balance of \$182.6 million since the carrying value exceeded the fair value of the European reporting unit by more than the amount of the goodwill balance at March 31, 2020. Additionally, we recognized a non-cash impairment charge of \$11.0 million related to our aftermarket trade name indefinite-lived intangible asset which was primarily attributable to a further decline in forecasted aftermarket revenues and a decline in associated profitability. Total impairment charges of \$193.6 million were recognized as a separate charge at March 31, 2020 and included in income (loss) from operations.

We utilized both an income and a market approach, weighted 75 percent and 25 percent respectively, to determine the fair value of the European reporting unit as part of our goodwill impairment assessment. The income approach is based on projected debt-free cash flow, which is discounted to the present value using discount factors that consider the timing and risk of cash flows. The discount rate used is the weighted average of an estimated cost of equity and of debt ("weighted average cost of capital"). The weighted average cost of capital is adjusted as necessary to reflect risk associated with the business of the European reporting unit. Financial projections are based on estimated production volumes, product prices and expenses, including raw material cost, wages, energy and other expenses. Other significant assumptions include terminal value cash flow and growth rates, future capital expenditures and changes in future working capital requirements. The market approach is based on the observed ratios of enterprise value to earnings before interest, taxes, depreciation and amortization (EBITDA) of comparable, publicly traded companies. The market approach fair value is determined by multiplying historical and anticipated financial metrics of the European reporting unit by the EBITDA pricing multiples derived from comparable, publicly traded companies.

At March 31, 2020, we determined that the carrying value of the European reporting unit exceeded its fair value by an amount greater than the remaining goodwill balance. The decline in fair value was primarily due to significantly lower market multiples and increased discount rates, as well as further declines in forecasted industry production volumes in Western and Central Europe as a result of the COVID-19 pandemic and consequent economic instability. Forecasted revenues, EBITDA and cash flow for the European reporting unit also declined as compared to the prior year long-range plan due to lower forecasted industry production volumes which adversely impacted fair value under both the income and market approaches. Significant assumptions used under the income approach included a weighted average cost of capital (WACC) of 12.0 percent and a long-term growth rate of 1.5 percent, as compared to 10.0 percent and

2.0 percent, respectively, used in the 2019 assessment. In determining the WACC, management considered the level of risk inherent in the cash flow projections and current market conditions, including the significant increase in credit spreads and systemic

market and Company specific risk premiums. The decline in the fair value under the market approach is attributable to the decline in the average EBITDA market multiple (4.9X EBITDA in 2020, 5.7X EBITDA in 2019) and lower forecasted EBITDA, as compared to the 2019 assessment. The use of these unobservable inputs results in classification of the fair value estimate as a Level 3 measurement in the fair value hierarchy. A considerable amount of management judgment and assumptions are required in performing the quantitative impairment test, principally related to determining the fair value of the reporting unit. While the Company believes its judgments and assumptions are reasonable, different assumptions could change the estimated fair value.

Following is a summary of the Company's finite-lived and indefinite-lived intangible assets and goodwill as of March 31, 2021 and December 31, 2020.

<u>As of March 31, 2021</u>	<u>Gross Carrying Amount</u>	<u>Accumulated Impairment</u>	<u>Accumulated Amortization</u>	<u>Currency Translation</u>	<u>Net Carrying Amount</u>	<u>Remaining Weighted Average Amortization Period</u>
(Dollars in thousands)						
Brand name	\$ 9,000	\$ —	\$ (7,094)	\$ 281	\$ 2,187	2-3
Technology	15,000	—	(11,823)	469	3,646	1-3
Customer relationships	167,000	—	(79,706)	5,914	93,208	3-8
Total finite	191,000	—	(98,623)	6,664	99,041	
Trade names	14,000	(13,772)	—	(228)	—	Indefinite
Total intangibles	<u>\$ 205,000</u>	<u>\$ (13,772)</u>	<u>\$ (98,623)</u>	<u>\$ 6,436</u>	<u>\$ 99,041</u>	

<u>As of December 31, 2020</u>	<u>Gross Carrying Amount</u>	<u>Accumulated Impairment</u>	<u>Accumulated Amortization</u>	<u>Currency Translation</u>	<u>Net Carrying Amount</u>	<u>Remaining Weighted Average Amortization Period</u>
(Dollars in thousands)						
Brand name	\$ 9,000	\$ —	\$ (6,615)	\$ 399	\$ 2,784	2-3
Technology	15,000	—	(11,024)	666	4,642	1-3
Customer relationships	167,000	—	(74,322)	10,692	103,370	3-8
Total finite	191,000	—	(91,961)	11,757	110,796	
Trade names	14,000	(13,772)	—	(228)	—	Indefinite
Total intangibles	<u>\$ 205,000</u>	<u>\$ (13,772)</u>	<u>\$ (91,961)</u>	<u>\$ 11,529</u>	<u>\$ 110,796</u>	

**Year Ended December 31, 2020**

	<u>Beginning Balance</u>			<u>Currency Translation</u>	<u>Ending Balance</u>		
	<u>Gross</u>	<u>Accumulated Impairment</u>	<u>Net Balance</u>		<u>Gross</u>	<u>Accumulated Impairment</u>	<u>Net Balance</u>
(Dollars in thousands)							
Goodwill	<u>\$284,337</u>	<u>\$ (99,505)</u>	<u>\$184,832</u>	<u>\$ (2,230)</u>	<u>\$282,107</u>	<u>\$ (282,107)</u>	<u>\$ —</u>

Amortization expense for these intangible assets was \$6.7 million and \$6.1 million for the three months ended March 31, 2021 and 2020, respectively. The anticipated annual amortization expense for these intangible assets is \$26.1 million for 2021, \$23.2 million for 2022 and \$21.1 million for 2023 and 2024 and \$10.4 million for 2025.

**NOTE 9 – DEBT**

A summary of long-term debt and the related weighted average interest rates is shown below:

Debt Instrument	March 31, 2021 (Dollars in Thousands)			Weighted Average Interest Rate
	Total Debt	Debt Issuance Costs (1)	Total Debt, Net	
Term Loan Facility	\$ 349,200	\$ (6,531)	\$ 342,669	4.1%
6.00% Senior Notes	254,318	(4,179)	250,139	6.0%
European CapEx Loans	23,354	—	23,354	2.3%
Finance Leases	3,494	—	3,494	2.9%
	<u>\$ 630,366</u>	<u>\$ (10,710)</u>	619,656	
Less: Current portion			(6,516)	
Long-term debt			<u>\$ 613,140</u>	

Debt Instrument	December 31, 2020 (Dollars in Thousands)			Weighted Average Interest Rate
	Total Debt	Debt Issuance Costs (1)	Total Debt, Net	
Term Loan Facility	\$ 349,200	\$ (7,155)	\$ 342,045	4.1%
6.00% Senior Notes	266,928	(4,425)	262,503	6.0%
European CapEx Loans	23,668	—	23,668	2.3%
Finance Leases	3,388	—	3,388	3.0%
	<u>\$ 643,184</u>	<u>\$ (11,580)</u>	631,604	
Less: Current portion			(6,112)	
Long-term debt			<u>\$ 625,492</u>	

(1) Unamortized portion

### *Senior Notes*

On June 15, 2017, the Company issued €250.0 million aggregate principal amount of 6.00 percent Senior Notes (“Notes”) due June 15, 2025. Interest on the Notes is payable semiannually, on June 15 and December 15. The Company may redeem the Notes, in whole or in part, on or after June 15, 2020 at redemption prices of 103.0 percent and 101.5 percent of the principal amount thereof, if the redemption occurs during the 12-month period beginning June 15, 2020 or June 15, 2021, respectively, and a redemption price of 100 percent of the principal amount thereof on or after June 15, 2022, in each case plus accrued and unpaid interest to, but not including, the applicable redemption date. If we experience a change of control or sell certain assets, the Company may be required to offer to purchase the Notes from the holders. The Notes are senior unsecured obligations ranking equally in right of payment with all of its existing and future senior indebtedness and senior in right of payment to any subordinated indebtedness. The Notes are effectively subordinated in right of payment to the existing and future secured indebtedness of the Company, including the Senior Secured Credit Facilities (as defined below), to the extent of the assets securing such indebtedness.

### *Guarantee*

The Notes are unconditionally guaranteed by all material wholly-owned direct and indirect domestic restricted subsidiaries of the Company (the “Subsidiary Guarantors”), with customary exceptions including, among other things, where providing such guarantees is not permitted by law, regulation or contract, or would result in adverse tax consequences.

### *Covenants*

Subject to certain exceptions, the indenture governing the Notes contains restrictive covenants that, among other things, limit the ability of the Company and the Subsidiary Guarantors to: (i) incur additional indebtedness or issue certain preferred stock; (ii) pay dividends on, or make distributions in respect of, their capital stock; (iii) make certain investments or other restricted payments; (iv) sell certain assets or issue capital stock of restricted subsidiaries; (v) create liens; (vi) merge, consolidate, transfer or dispose of substantially all of their assets; and (vii) engage in certain transactions with affiliates. These covenants are subject to several important limitations and exceptions that are described in the indenture.

The indenture provides for customary events of default that include, among other things (subject in certain cases to customary grace and cure periods): (i) nonpayment of principal, premium, if any, and interest, when due; (ii) failure for 60 days to comply with any obligations, covenants or agreements in the indenture after receipt of written notice from the Bank of New York Mellon, London Branch (“the Trustee”) or holders of at least 30 percent in principal amount of the then outstanding Notes of such failure (other than defaults referred to in the foregoing clause (i)); (iii) default under any mortgage, indenture or instrument for money borrowed by the Company or certain of its subsidiaries, (iv) a failure to pay certain judgments; and (iv) certain events of bankruptcy and insolvency. If an event of default occurs and is continuing, the Trustee or holders of at least 30 percent in principal amount of the then outstanding Notes may declare the principal, premium, if any, and accrued and unpaid interest on all the Notes to be due and payable. These events of default are subject to several important qualifications, limitations and exceptions that are described in the indenture. As of March 31, 2021, the Company was in compliance with all covenants under the indenture governing the Notes.

### *Senior Secured Credit Facilities*

On March 22, 2017, the Company entered into a senior secured credit agreement (“Credit Agreement”) with Citibank, N.A., as Administrative Agent, Collateral Agent and Issuing Bank, JP Morgan Chase N.A., Royal Bank of Canada and Deutsche Bank A.G. New York Branch as Joint Lead Arrangers and Joint Book Runners, and the other lenders party thereto (collectively, the “Lenders”). The Credit Agreement consisted of a \$400.0 million senior secured term loan facility (“Term Loan Facility”), which matures on May 23, 2024, and a \$160.0 million revolving credit facility maturing on May 23, 2022 (the “Revolving Credit Facility”), together with the Term Loan Facility, the USD Senior Secured Credit Facilities (“USD SSCF”).

Borrowings under the Term Loan Facility will bear interest at a rate equal to, at the Company’s option, either (a) LIBOR for the relevant interest period, adjusted for statutory requirements, subject to a floor of 0.00 percent per annum, plus an applicable rate of 4.00 percent or (b) a base rate, subject to a floor of 2.00 percent per annum, equal to the highest of (1) the rate of interest in effect as publicly announced by the administrative agent as its prime rate, (2) the federal funds rate plus 0.50 percent and (3) LIBOR for an interest period of one month plus 1.00 percent, in each case, plus an applicable rate of 3.00 percent.



Borrowings under the Revolving Credit Facility bear interest at a rate equal to, at the Company's option, either (a) LIBOR for the relevant interest period, with a floor of 0.00 percent per annum, plus the applicable rate or (b) a base rate, with a floor of 0.00 percent, equal to the highest of (1) the rate of interest in effect as publicly announced by the administrative agent as its prime rate, (2) the federal funds effective rate plus 0.50 percent and (3) LIBOR for an interest period of one month plus 1.00 percent, in each case, plus the applicable rate. The applicable rates for borrowings under the Revolving Credit Facility and commitment fees for unused commitments under the Revolving Credit Facility are based upon the First Lien Net Leverage Ratio effective for the preceding quarter, with LIBOR applicable rates ranging between 3.50 percent and 3.00 percent, currently 3.25 percent, base rate applicable rates between 2.50 percent and 2.00 percent, currently 2.25 percent and commitment fees between 0.50 percent and 0.25 percent, currently 0.375 percent. Commitment fees are included in interest expense.

As of March 31, 2021, the Company had repaid \$50.8 million under the Term Loan Facility resulting in a balance of \$349.2 million. In addition, the Company had no borrowings outstanding under the Revolving Credit Facility, outstanding letters of credit of \$4.8 million and available unused commitments under this facility of \$155.2 million as of March 31, 2021.

### *Guarantees and Collateral Security*

Our obligations under the Credit Agreement are unconditionally guaranteed by the Subsidiary Guarantors, with customary exceptions including, among other things, where providing such guarantees is not permitted by law, regulation or contract or would result in adverse tax consequences. The guarantees of such obligations, will be secured, subject to permitted liens and other exceptions, by substantially all of our assets and the Subsidiary Guarantors' assets, including but not limited to: (i) a perfected pledge of all of the capital stock issued by each of the Subsidiary Guarantors (subject to certain exceptions) and up to 65 percent of the capital stock issued by each direct wholly-owned foreign restricted subsidiary of the Company (subject to certain exceptions) and (ii) perfected security interests in and mortgages on substantially all tangible and intangible personal property and material fee-owned real property of the Company and the Subsidiary Guarantors (subject to certain exceptions and exclusions).

### *Covenants*

The Credit Agreement contains a number of restrictive covenants that, among other things, restrict, subject to certain exceptions, our ability to incur additional indebtedness and guarantee indebtedness, create or incur liens, engage in mergers or consolidations, sell, transfer or otherwise dispose of assets, make investments, acquisitions, loans or advances, pay dividends, distributions or other restricted payments, or repurchase our capital stock, prepay, redeem, or repurchase any subordinated indebtedness, enter into agreements which limit our ability to incur liens on our assets or that restrict the ability of restricted subsidiaries to pay dividends or make other restricted payments to us, and enter into certain transactions with our affiliates, and, solely with respect to the Revolving Credit Facility, requires a Total Net Leverage Ratio (calculated as defined in the Credit Agreement) of not more than 4.5 to 1.0 as of each fiscal quarter-end when outstanding borrowings, together with undrawn letters of credit exceeding \$20 million, under the Revolving Credit Facility exceed 35 percent of the \$160 million commitment amount.

In addition, the Credit Agreement contains customary default provisions, representations and warranties and other covenants. The Credit Agreement also contains a provision permitting the Lenders to accelerate the repayment of all loans outstanding under the Senior Secured Credit Facilities during an event of default. As of March 31, 2021, the Company was in compliance with all covenants under the Credit Agreement.

### *European Debt*

In connection with the acquisition of UNIWHEELS AG, the Company assumed \$70.7 million of outstanding debt. At March 31, 2021, \$9.4 million of the assumed debt remained outstanding which matures March 31, 2024 and is collateralized by financed equipment, guaranteed by Superior and bears interest at 2.2 percent. Covenants under the loan agreement include a default provision for non-payment, as well as a material adverse change default provision pursuant to which the lender could accelerate the loan maturity. As of March 31, 2021, the Company was in compliance with all covenants under the credit agreement.

During the second quarter of 2019, the Company amended its European Revolving Credit Facility ("EUR SSCF"), increasing the available borrowing limit from €30.0 million to €45.0 million and extending the term to May 22, 2022. On January 31, 2020, the available borrowing limit of the EUR SSCF was increased from €45.0 million to €60.0 million. All other terms of the EUR SSCF remained unchanged. At March 31, 2021, the Company had no borrowings outstanding, outstanding letters of credit of \$0.5 million (€0.4 million) and available unused commitments under this facility of \$69.8 million (€59.6 million). The EUR SSCF bears interest at Euribor (with a floor of zero) plus a margin (ranging from 1.55 percent to 3.0 percent based on the net debt leverage ratio of Superior Industries Europe AG and its wholly owned subsidiaries, collectively "Superior Europe AG"), currently 1.55 percent. The annual

commitment fee for unused commitments (ranging from 0.50 percent to 1.05 percent based on the net debt leverage ratio of Superior Europe AG) is currently 0.50 percent per annum. In addition, a management fee is assessed equal to 0.07 percent of borrowings outstanding at each month end. The commitment and management fees are both included in interest expense. Superior Europe AG has

pledged substantially all of its assets, including land and buildings, receivables, inventory, and other moveable assets (other than collateral associated with equipment loans) as collateral under the EUR SSCF.

The EUR SSCF is subject to a number of restrictive covenants that, among other things, restrict, subject to certain exceptions, the ability of Superior Europe AG to incur additional indebtedness and guarantee indebtedness, create or incur liens, engage in mergers or consolidations, sell, transfer or otherwise dispose of assets, make investments, acquisitions, loans or advances, pay dividends or distributions, or repurchase our capital stock, prepay, redeem, or repurchase any subordinated indebtedness, and enter into agreements which limit our ability to incur liens on our assets. In addition, the EUR SSCF includes an annual pay down provision requiring outstanding balances to be repaid but not reborrowed for a period of three business days and a material adverse change default provision pursuant to which the lender could accelerate the loan maturity. At March 31, 2021, Superior Europe AG was in compliance with all covenants under the EUR SSCF.

During the fourth quarter of 2019, the Company entered into new equipment loan agreements totaling \$13.4 million (€12.0 million) which bear interest at 2.3 percent and mature on September 30, 2027. Interest and principal repayments are due quarterly. The loans are secured with liens on the financed equipment and are subject to covenants that, among other things, include a material adverse change default provision pursuant to which the lender could accelerate the loan maturity, as well as a provision that restricts the ability of Superior Europe AG to reduce its ownership interest in Superior Industries Production Germany GmbH, its wholly-owned subsidiary and the borrower under the loan. The Company drew down €10.6 million on these equipment loans in the first quarter of 2020 and drew the remaining €1.4 million in the first quarter of 2021, resulting in an outstanding balance of €12.0 million, or \$14.0 million as of March 31, 2021. Quarterly installment payments of \$0.5 million (€0.4 million) under the loan agreements will begin in June of 2021. At March 31, 2021, the Company was in compliance with all covenants under the loans.

Debt maturities as of March 31, 2021 which are due in the next five years and thereafter are as follows:

(Dollars in thousands)	
<b>Debt Maturities</b>	<b>Amount</b>
Nine remaining months of 2021	\$ 4,987
2022	6,334
2023	5,922
2024	352,360
2025	256,621
Thereafter	4,142
Total debt liabilities	<u>\$ 630,366</u>

#### **NOTE 10 - REDEEMABLE PREFERRED STOCK**

During 2017, we issued 150,000 shares of Series A (140,202 shares) and Series B (9,798 shares) Perpetual Convertible Preferred Stock, par value \$0.01 per share for \$150.0 million. On August 30, 2017, the Series B shares were converted into Series A redeemable preferred stock, the “redeemable preferred stock,” after approval by our shareholders. The redeemable preferred stock has an initial stated value of \$1,000 per share, par value of \$0.01 per share and liquidation preference over common stock.

The redeemable preferred stock is convertible into shares of our common stock equal to the number of shares determined by dividing the sum of the stated value and any accrued and unpaid dividends by the conversion price of \$28.162. The redeemable preferred stock accrues dividends at a rate of 9 percent per annum, payable at our election either in-kind or in cash and is also entitled to participate in dividends on common stock in an amount equal to that which would have been due had the shares been converted into common stock.

We may mandate conversion of the redeemable preferred stock if the price of the common stock exceeds \$84.49. The holder may redeem the shares upon the occurrence of any of the following events (referred to as a “redemption event”): a change in control, recapitalization, merger, sale of substantially all of the Company’s assets, liquidation or delisting of the Company’s common stock. In addition, the holder has the right, at its option, to unconditionally redeem the shares at any time after September 14, 2025. We may, at our option, redeem in whole at any time all of the shares of redeemable preferred stock outstanding. At redemption by either party, the redemption value will be the greater of two times the initial face value (\$150.0 million) and any accrued unpaid dividends or dividends paid-in-kind, currently \$300.0 million, or the product of the number of common shares into which the redeemable preferred stock could be converted (5.3 million shares currently) and the then current market price of the common stock. We have determined that the

conversion option and the redemption option exercisable upon occurrence of a “redemption event” which are embedded in the redeemable preferred stock must be accounted for separately from the redeemable preferred stock as a derivative liability.

Since the redeemable preferred stock may be redeemed at the option of the holder, but is not mandatorily redeemable, the redeemable preferred stock has been classified as mezzanine equity and initially recognized at fair value of \$150.0 million (the proceeds on the date of issuance) less issuance costs of \$3.7 million and \$10.9 million assigned to the embedded derivative liability at date of issuance, resulting in an initial value of \$135.5 million.

The difference between the redemption value of the redeemable preferred stock and the carrying value (the “premium”) is being accreted over the period from the date of issuance through September 14, 2025 using the effective interest method. The accretion is treated as a deemed dividend, recorded as a charge to retained earnings and deducted in computing earnings per share (analogous to the treatment for stated and participating dividends paid on the redeemable preferred stock). The cumulative premium accretion as of March 31, 2021 and December 31, 2020 was \$48.8 million and \$43.9 million, respectively, resulting in adjusted redeemable preferred stock balances of \$184.3 million and \$179.4 million, respectively.

#### NOTE 11 – EUROPEAN NON-CONTROLLING REDEEMABLE EQUITY

On May 30, 2017, the Company acquired 92.3 percent of the outstanding shares of UNIWHEELS AG. Subsequently, the Company commenced a delisting and associated tender offer for the remaining shares. On January 17, 2018, the Company entered into a Domination and Profit and Loss Transfer agreement (“DPLTA”) retroactively effective as of January 1, 2018 pursuant to which we offered to purchase the remaining outstanding shares at €62.18. This price may be subject to change based on appraisal proceedings initiated by the minority shareholders which have not yet been concluded. The Company must also pay an annual dividend of €3.23 as long as the DPLTA is in effect. For any shares tendered prior to the annual dividend payment, we must pay interest at a statutory rate, currently 4.12 percent, in place of the dividend. As a result of purchases pursuant to the tender offer and the DPLTA, the Company has increased its ownership to 99.9 percent as of March 31, 2021. The following table summarizes the European non-controlling redeemable equity activity through the period ended March 31, 2021:

(Dollars in thousands)	
Balance at December 31, 2019	\$ 6,525
Dividends accrued	205
Dividends paid	(46)
Translation adjustment	2
Purchase of shares	<u>(5,020)</u>
Balance at December 31, 2020	1,666
Dividends accrued	13
Dividends paid	—
Translation adjustment	(79)
Purchase of shares	<u>(9)</u>
Balance at March 31, 2021	<u>\$ 1,591</u>

## NOTE 12 – EARNINGS PER SHARE

Basic earnings per share is computed by dividing net income (loss), after deducting preferred dividends and accretion and European non-controlling redeemable equity dividends, by the weighted average number of common shares outstanding. For purposes of calculating diluted earnings per share, the weighted average shares outstanding includes the dilutive effect of outstanding stock options and time and performance based restricted stock units under the treasury stock method. The redeemable preferred shares discussed in Note 10, “Redeemable Preferred Stock” have not been included in the diluted earnings per share because the inclusion of such shares on an as converted basis would be anti-dilutive for the three months ended March 31, 2021 and 2020.

	Three Months Ended	
	March 31, 2021	March 31, 2020
(Dollars in thousands, except per share amounts)		
<b>Basic Earnings Per Share:</b>		
Net income (loss)	\$ 13,122	\$ (190,082)
Less: Redeemable preferred stock dividends and accretion	(8,290)	(7,850)
Less: European non-controlling redeemable equity dividend	(13)	(20)
Basic numerator	<u>\$ 4,819</u>	<u>\$ (197,952)</u>
Basic earnings (loss) per share	<u>\$ 0.19</u>	<u>\$ (7.84)</u>
Weighted average shares outstanding – Basic	<u>25,707</u>	<u>25,243</u>
<b>Diluted Earnings Per Share:</b>		
Net income (loss)	\$ 13,122	\$ (190,082)
Less: Redeemable preferred stock dividends and accretion	(8,290)	(7,850)
Less: European non-controlling redeemable equity dividend	(13)	(20)
Diluted numerator	<u>\$ 4,819</u>	<u>\$ (197,952)</u>
Diluted earnings (loss) per share	<u>\$ 0.18</u>	<u>\$ (7.84)</u>
Weighted average shares outstanding – Basic	25,707	25,243
Dilutive effect of common share equivalents	980	—
Weighted average shares outstanding – Diluted	<u>26,687</u>	<u>25,243</u>

## NOTE 13 - INCOME TAXES

The estimated annual effective tax rate is forecasted quarterly using actual historical information and forward-looking estimates and applied to year-to-date ordinary income. The tax effects of unusual or infrequently occurring items, including changes in judgment about valuation allowances, settlements with taxing authorities and effects of changes in tax laws or rates, are reported in the interim period in which they occur.

The income tax provision for the three months ended March 31, 2021 was \$0.8 million on a pre-tax income of \$13.9 million, resulting in an effective income tax rate of 5.8 percent. The effective income tax rate for the three months ending March 31, 2021 differs from the statutory rate primarily due to U.S. valuation allowances, the reversal of an uncertain tax position and the mix of earnings among tax jurisdictions.

The income tax benefit for the three months ended March 31, 2020, was \$3.5 million on a pre-tax loss of \$193.5 million, resulting in an effective income tax rate of 1.8 percent. The effective income tax rate for the three months ending March 31, 2020 differs from the statutory rate primarily due to the impairment of goodwill for which there was no corresponding tax benefit, the mix of earnings among tax jurisdictions, and recognition of a valuation allowance on non-deductible interest.

## NOTE 14 - LEASES

The Company determines whether an arrangement is or contains a lease at the inception of the arrangement. Operating leases are included in other non-current assets, accrued expenses and other non-current liabilities in our condensed consolidated balance sheets. Finance leases are included in property, plant and equipment, net, short-term debt and long-term debt (less current portion) in our condensed consolidated balance sheets.

Right-of-use (“ROU”) assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. Finance and operating lease ROU assets and liabilities are recognized at the commencement date based on the present value of the lease payments over the lease term. Since we generally do not have access to the interest rate implicit in the lease, the Company uses our incremental borrowing rate (for fully collateralized debt) at the inception of the lease in determining the present value of the lease payments. The implicit rate is, however, used where readily available. Lease expense under operating leases is recognized on a straight-line basis over the term of the lease. Certain of our leases contain both lease and non-lease components, which are accounted for separately.

The Company has operating and finance leases for office facilities, a data center and certain equipment. The remaining terms of our leases range from over one year to just under nine years. Certain leases include options to extend the lease term for up to ten years, as well as options to terminate which have been excluded from the term of the lease since exercise of these options is not reasonably certain.

Lease expense and cash flow for the three months ended March 31, 2021 and 2020 and operating and finance lease assets and liabilities, average lease term and average discount rate as of March 31, 2021 and December 31, 2020 are as follows:

	Three Months Ended	
	March 31, 2021	March 31, 2020
(Dollars in thousands)		
<b>Lease Expense</b>		
Finance lease expense:		
Amortization of right-of-use assets	\$ 321	\$ 354
Interest on lease liabilities	22	22
Operating lease expense	857	845
Total lease expense	<u>\$ 1,200</u>	<u>\$ 1,221</u>

### Cash Flow Components

Cash paid for amounts included in the measurement of lease liabilities:

Operating cash outflows from finance leases	\$ 22	\$ 22
Operating cash outflows from operating leases	932	891
Financing cash outflows from finance leases	288	292
Right-of-use assets obtained in exchange for finance lease liabilities, net of terminations and disposals	756	148
Right-of-use assets obtained in exchange for operating lease liabilities, net of terminations and disposals	152	65

	March 31, 2021	December 31, 2020
(Dollars in thousands, except lease term and discount rate)		
<b>Balance Sheet Information</b>		
Operating leases:		
Other non-current assets	<u>\$ 12,705</u>	<u>\$ 13,598</u>
Accrued liabilities	<u>\$ (2,672)</u>	<u>\$ (2,868)</u>
Other non-current liabilities	<u>(10,718)</u>	<u>(11,513)</u>
Total operating lease liabilities	<u>\$ (13,390)</u>	<u>\$ (14,381)</u>

Finance leases:

Property, plant and equipment gross	\$ 6,506	\$ 5,735
Accumulated depreciation	<u>(3,640)</u>	<u>(3,319)</u>
Property, plant and equipment, net	<u>\$ 2,866</u>	<u>\$ 2,416</u>
Current portion of long-term debt	\$ (1,240)	\$ (1,113)
Long-term debt (less current portion)	<u>(2,254)</u>	<u>(2,275)</u>
Total finance lease liabilities	<u>\$ (3,494)</u>	<u>\$ (3,388)</u>

### Lease Term and Discount Rates

Weighted-average remaining lease term - finance leases (years)	3.9	3.9
Weighted-average remaining lease term - operating leases (years)	5.9	6.1
Weighted-average discount rate - finance leases	2.9%	3.0%
Weighted-average discount rate - operating leases	3.7%	3.8%



Summarized future minimum payments under our leases as of March 31, 2021 are as follows:

(Dollars in thousands)	Amount	
	Finance Leases	Operating Leases
<b>Lease Maturities</b>		
Nine remaining months of 2021	\$ 1,030	\$ 2,412
2022	1,058	2,782
2023	647	2,418
2024	228	2,194
2025	153	2,145
Thereafter	555	2,803
<b>Total</b>	<b>3,671</b>	<b>14,754</b>
Less: Imputed interest	(177)	(1,364)
<b>Total lease liabilities, net of interest</b>	<b>\$ 3,494</b>	<b>\$ 13,390</b>

## NOTE 15 – RETIREMENT PLANS

We have an unfunded salary continuation plan covering certain directors, officers and other key members of management. Subject to certain vesting requirements, the plan provides for a benefit based on final average compensation, which becomes payable on the employee's death or upon attaining age 65, if retired. The plan was closed to new participants effective February 3, 2011.

For the three months ended March 31, 2021, payments to retirees or their beneficiaries totaled approximately \$0.4 million. We presently anticipate benefit payments in 2021 to total approximately \$1.2 million. The following table summarizes the components of net periodic pension cost for the three months ended March 31, 2021 and 2020.

(Dollars in thousands)	Three Months Ended	
	March 31, 2021	March 31, 2020
Interest cost	\$ 206	\$ 251
Net amortization	97	72
Net periodic pension cost	<b>\$ 303</b>	<b>\$ 323</b>

## NOTE 16 - STOCK-BASED COMPENSATION

### *Equity Incentive Plan*

Our 2018 Equity Incentive Plan (the "Plan") was approved by stockholders in May 2018. The Plan authorizes us to issue up to 4.35 million shares of common stock, along with non-qualified stock options, stock appreciation rights, restricted stock and performance units to our officers, key employees, non-employee directors and consultants. At March 31, 2021, there were 0.3 million shares available for future grants under this Plan. No more than 1.2 million shares may be used under the Plan as "full value" awards, which include restricted stock and performance units. The Company's Board of Directors has approved, subject to shareholder approval at the May 25, 2021 annual meeting of shareholders, an increase of 2.0 million in the shares authorized under the Plan and elimination of the 1.2 million limit on "full value" shares. It is our policy to issue shares from authorized but not issued shares upon the exercise of stock options.

Under the terms of the Plan, each year eligible participants are granted time value restricted stock units ("RSUs"), vesting ratably over a three-year period, and performance restricted stock units ("PSUs"), with three-year cliff vesting. Upon vesting, each restricted stock award is exchangeable for one share of the Company's common stock, with accrued dividends.

### *Other Awards*

On May 16, 2019 the Company granted the following equity awards to our then new President and Chief Executive Officer in connection with the 2019 Inducement Grant Plan (the "Inducement Plan"): (i) an initial award consisting of (a) 666,667 PSUs at target, vesting in three approximately equal installments, to the extent the performance metrics are satisfied, during each of three performance periods and (b) 333,333 RSUs, vesting in approximately equal installments on February 28, 2020, 2021 and 2022; (ii) a 2019-2021 PSU

grant, with the target number of 316,832 PSUs, which will vest to the extent the performance metrics are satisfied; and (iii) a 2019 RSU grant of 158,416 RSUs, vesting in approximately equal installments on February 28, 2020, 2021 and 2022. The PSU awards may be earned at up to 200 percent of target depending on the level of achievement of the performance metrics.

Restricted stock unit and restricted performance stock unit activity for the three months ended March 31, 2021 is summarized in the following table:

	Equity Incentive Awards					
	Restricted Stock Units	Weighted Average Grant Date Fair Value	Performance Shares	Weighted Average Grant Date Fair Value	Options	Weighted Average Exercise Price
Balance at December 31, 2020	1,213,667	\$ 3.59	2,176,290	\$ 4.88	24,000	\$ 20.39
Granted	1,787	5.41	21,352	5.67	—	—
Settled	(388,504)	4.05	(193,778)	5.45	—	—
Forfeited or expired	(31,092)	8.25	(142,769)	12.96	—	—
Balance at March 31, 2021	<u>795,858</u>	\$ 3.19	<u>1,861,095</u>	\$ 6.05	<u>24,000</u>	\$ 20.39
Awards estimated to vest in the future	724,142	\$ 3.16	1,341,900	\$ 6.09	24,000	\$ 20.39

Stock-based compensation expense was \$1.8 million for the three months ended March 31, 2021, as compared to income of \$0.2 million for the three months ended March 31, 2020. The higher expense for the three months ended March 31, 2021 was attributable to modification of the 2019 and 2020 PSU awards, substituting budgeted amounts for actual performance for the second quarter of 2020 (one of twelve quarters in the respective performance periods), to offset the impact of COVID-19. The modification increased stock-based compensation for the three months ended March 31, 2021 by \$1.1 million. The income for the three months ended March 31, 2020 was due to a reversal of \$1.2 million of previously accrued expense due to the reduction of our estimates regarding the achievement of the performance metric, to zero, in light of the global pandemic. Unrecognized stock-based compensation expense related to non-vested awards of \$8.4 million is expected to be recognized over a weighted average period of approximately 1.5 years as of March 31, 2021.

## NOTE 17 – COMMITMENTS AND CONTINGENCIES

### *Purchase Commitments*

When market conditions warrant, we may enter into purchase commitments to secure the supply of certain commodities used in the manufacture of our products, such as aluminum, natural gas and other raw materials. Prices under our aluminum contracts are based on a market index, the London Mercantile Exchange, and regional premiums for processing, transportation and alloy components which are adjusted quarterly for purchases in the ensuing quarter. Certain of our purchase agreements include volume commitments; however, any excess commitments are generally negotiated with suppliers and those which have occurred in the past have been carried over to future periods.

### *Contingencies*

We are party to various legal and environmental proceedings incidental to our business. Certain claims, suits and complaints arising in the ordinary course of business have been filed or are pending against us. Based on facts now known, we believe all such matters are adequately provided for, covered by insurance, are without merit and/or involve such amounts that would not materially adversely affect our consolidated results of operations, cash flows or financial position.

## NOTE 18 – RECEIVABLES FACTORING

The Company sells certain customer trade receivables on a non-recourse basis under factoring arrangements with designated financial institutions. These transactions are accounted for as sales and cash proceeds are included in cash provided by operating activities. Factoring arrangements incorporate customary representations and warranties, including representations as to validity of amounts due, completeness of performance obligations and absence of commercial disputes. During the three months ended March 31, 2021 and 2020, the Company sold trade receivables totaling \$186.7 million and \$69.9 million, respectively, and incurred factoring fees of \$0.5 million and \$0.2 million, respectively. As of March 31, 2021 and December 31, 2020, \$105.6 million and \$96.6 million, respectively, of receivables had been factored under the arrangements. The collective limit under our factoring arrangements as of March 31, 2021 was \$132.2 million which was reduced to \$121.7 million as of April 1, 2021 due to a \$10.5 million decrease in the North American factoring limit. The collective limit under our factoring arrangements as of December 31, 2020 was \$132.0 million which was reduced to \$122.0 million as of January 1, 2021 due to the reduction in the North American factoring limit.



## NOTE 19 – RESTRUCTURING

During the quarter ended June 30, 2020, the Company discontinued the manufacture and sale of high performance aftermarket wheels for the automotive racing market segment. The Company incurred a total non-cash charge of \$3.4 million, including \$2.8 million recorded in cost of sales, comprised of \$1.3 million relating to write-downs of certain after-market inventory to salvage value, \$1.0 million of employee severance costs and \$0.5 million in contract terminations and other costs, as well as a \$0.6 million non-cash charge recorded in selling, general and administrative expense related to non-production employee severance costs. In addition, during the six-month period ended December 31, 2020, we recognized an additional \$0.7 million of severance costs, including charges to costs of sales of \$0.4 million and selling, general and administrative expense of \$0.3 million. As of March 31, 2021, \$0.4 million of the restructuring severance accrual remains.

During the third quarter of 2019, the Company initiated a plan to significantly reduce production and manufacturing operations at its Fayetteville, Arkansas location. As a result, the Company recognized a non-cash charge of \$13.0 million in cost of sales, comprised of (1) \$7.6 million of accelerated depreciation for excess equipment, (2) \$3.2 million relating to the write-down of certain supplies inventory to net salvage value, (3) \$1.6 million of employee severance and (4) \$0.6 million of accelerated amortization of right of use assets under operating leases. In addition, relocation costs for redeployment of machinery and equipment of \$1.8 million were recognized in the fourth quarter of 2019. During 2020, we recognized additional charges to cost of sales of \$3.3 million, including relocation costs for redeployment of machinery and equipment of \$2.9 million and other costs of \$0.4 million. During the three months ended March 31, 2021, we recognized additional relocation costs in cost of sales for redeployment of machinery and equipment of \$0.8 million. Additional relocation costs are expected to be incurred over the next three months. As of March 31, 2021, \$0.3 million of the restructuring severance accrual remains. On April 14, 2021, the Company entered into an agreement to sell the Fayetteville facility for a net purchase price of \$7.6 million, subject to satisfactory completion of purchaser due diligence. We have not reclassified the related property to assets held for sale due to site preparation activities which must be completed prior to the consummation of the sale. Based on facility appraisals, as well as the sales price in the agreement, net of associated site remediation and selling costs, proceeds upon sale are expected to be sufficient to fully recover the carrying value.

## NOTE 20 – SUBSEQUENT EVENT

On May 3, 2021, the Company extended the term of its USD SSCF. The commitment under the facility was reduced from \$160.0 million to \$132.5 million, with \$25.0 million of the commitment maturing May 23, 2022 and the remaining \$107.5 million maturing October 31, 2023. The commitment fee for lenders with commitments maturing October 31, 2023 has been increased to a range of 0.375 percent to 0.625 percent, dependent upon the Company's First Lien Net Leverage Ratio. The amended credit agreement contains the representations, warranties and covenants applicable under the original USD SSCF, including restrictions, subject to certain exceptions, on mergers, acquisitions or sales of assets, incurrence of debt, prepayment, redemption or repurchase of any subordinated indebtedness, and share repurchases and dividends, as well as, solely with respect to the revolving credit facility, the requirement to maintain a Total Net Leverage Ratio, as defined under the credit agreement, of not more than 4.5 to 1.0 at each quarter-end. All other material terms of the USD SSCF remain unchanged.

## Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations

### Forward-Looking Statements

The Private Securities Litigation Reform Act of 1995 provides a safe harbor for forward-looking statements made by us or on our behalf. We have included or incorporated by reference in this Quarterly Report on Form 10-Q (including in the section entitled “Management’s Discussion and Analysis of Financial Condition and Results of Operations”) and from time to time our management may make statements that may constitute “forward-looking statements” within the meaning of Section 27A of the Securities Exchange Act of 1933 and Section 21E of the Securities Act of 1934. These forward-looking statements are based upon management’s current expectations, estimates, assumptions and beliefs concerning future events and conditions and may discuss, among other things, the impact of COVID-19 on our future business, results, operation and prospects, anticipated future performance (including sales and earnings), expected growth, future business plans and costs and potential liability for environmental-related matters. Any statement that is not historical in nature is a forward-looking statement and may be identified using words and phrases such as “expects,” “anticipates,” “believes,” “will,” “will likely result,” “will continue,” “plans to” and similar expressions. These statements include our belief regarding general automotive industry and market conditions and growth rates, as well as general domestic and international economic conditions.

Readers are cautioned not to place undue reliance on forward-looking statements. Forward-looking statements are necessarily subject to risks, uncertainties and other factors, many of which are outside the control of the Company, which could cause actual results to differ materially from such statements and from the Company’s historical results and experience. These risks, uncertainties and other factors include, but are not limited to, those described in Part I—Item 1A—“Risk Factors” and Part II—Item 7—“Management’s Discussion and Analysis of Financial Condition and Results of Operations” of our Annual Report on Form 10-K for the year ended December 31, 2020 and Part I—Item 2—“Management’s Discussion and Analysis of Financial Condition and Results of Operations” and elsewhere in this Quarterly Report and those described from time to time in our other reports filed with the Securities and Exchange Commission.

Readers are cautioned that it is not possible to predict or identify all the risks, uncertainties and other factors that may affect future results and that the risks described herein should not be considered to be a complete list. Any forward-looking statement speaks only as of the date on which such statement is made, and the company undertakes no obligation to update or revise any forward-looking statement, whether as a result of new information, future events or otherwise.

Management’s Discussion and Analysis of Financial Condition and Results of Operations should be read in conjunction with the accompanying unaudited condensed consolidated financial statements and notes thereto and with the audited consolidated financial statements and notes thereto and Management’s Discussion and Analysis of Financial Condition and Results of Operations included in our Annual Report on Form 10-K for the year ended December 31, 2020.

### Executive Overview

#### *Overview of Superior*

Superior Industries International, Inc.’s (referred herein as the “Company,” “Superior,” or “we” and “our”) principal business is the design and manufacture of aluminum wheels for sale to original equipment manufacturers (“OEMs”) in North America and Europe and to the aftermarket in Europe. We employ approximately 7,600 full-time employees, operating in eight manufacturing facilities in North America and Europe. We are one of the largest aluminum wheel suppliers to global OEMs and we believe we are the #1 European aluminum wheel aftermarket manufacturer and supplier. Our OEM aluminum wheels accounted for approximately 93 percent of our sales in the first three months of 2021 and are primarily sold for factory installation on vehicle models manufactured by BMW (including Mini), Daimler AG Company (Mercedes-Benz, AMG, Smart), Ford, GM, Honda, Jaguar-Land Rover, Mazda, Nissan, PSA, Renault, Stellantis, Subaru, Suzuki, Toyota, VW Group (Volkswagen, Audi, SEAT, Skoda, Porsche, Bentley) and Volvo. We also sell aluminum wheels to the European aftermarket under the brands ATS, RIAL, ALUTEC and ANZIO. North America and Europe represent the principal markets for our products, but we have a diversified global customer base consisting of North American, European and Asian OEMs.

Demand for our products is primarily driven by the production of light vehicles in North America and Europe and customer take rates on specific vehicle platforms that we serve and wheel SKUs that we produce. The majority of our customers’ wheel programs are awarded two to four years in advance. Our purchase orders with OEMs are typically specific to a particular vehicle model.

GM, VW Group and Ford were our only customers individually accounting for 10 percent or more of our consolidated sales for the three months ended March 31, 2021 and 2020. Our sales to these customers in 2021 and 2020 were as follows:

<u>Three months ended</u>	<u>March 31, 2021</u>		<u>March 31, 2020</u>	
	<u>Percent of Sales</u>	<u>Dollars</u>	<u>Percent of Sales</u>	<u>Dollars</u>
(Dollars in millions)				
GM	26%	\$ 94.1	23%	\$ 72.7
VW Group	15%	\$ 54.2	15%	\$ 43.9
Ford	14%	\$ 49.1	13%	\$ 39.4

### ***COVID-19 Pandemic Overview***

In 2020, the COVID-19 pandemic introduced significant volatility in the financial markets and it continues to have a widespread adverse effect on the automotive industry.

While navigating through this period of volatility and uncertainty, Superior’s top priorities continue to be:

- Ensuring the health and safety of our employees
- Maintaining the financial health of the Company, and
- Serving our customers.

Consistent with these priorities, to ensure the health and safety of our employees globally and respond to the current industry production environment, we closed production at our European facilities in late March 2020. In North America, our manufacturing operations ceased production in early April 2020. The Company reopened all of its facilities by June 1, 2020, in line with industry demand and finished goods levels, and in accordance with local government requirements.

Additionally, Superior developed and is executing a Safe Work Playbook across its footprint in connection with our employees’ return to work. We also instituted a Global Employee Health & Safety (“EH&S”) Steering Team, led by our Director of EH&S, and comprised of our global and regional leaders from Operations and Human Resources. We have invested in facility updates to ensure social distancing, including changes in cafeteria layout and practices, transportation services and marked spacing throughout our manufacturing facilities. In the event of a COVID-19 incident, the local COVID-19 response team immediately executes the defined protocols, including isolation of any employee showing symptoms, and conducts traceability activities to identify and quarantine all potentially exposed individuals.

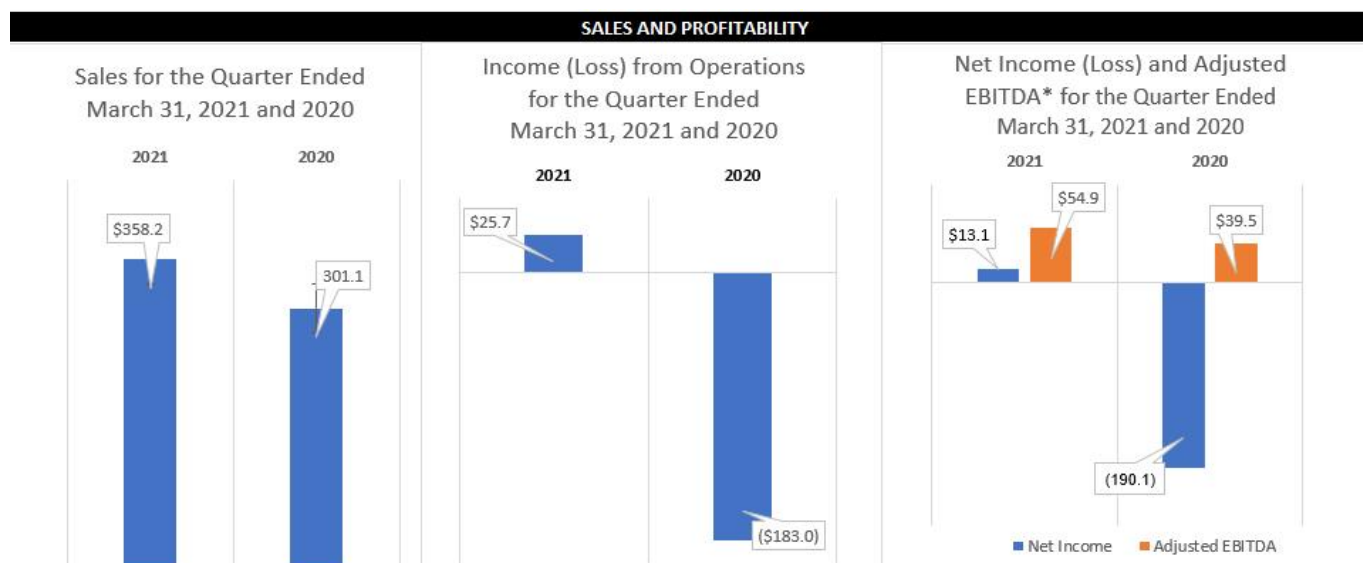
Based on recent IHS production forecasts, full-year 2021 industry volumes are expected to be up 17.3 percent in our key regions (20.4 percent in North America and 14.4 percent in Western and Central Europe) as compared to 2020, but 8.5 percent lower than 2019 (down 3.7 percent in North America and 12.9 percent in Europe). The ultimate impact that COVID-19 will have on our business, results of operations and financial condition in 2021 will depend on a number of evolving factors that we may not be able to accurately predict, including: the duration and scope of the pandemic; governmental, OEMs’, suppliers’, customers’ and individuals’ actions that have been and continue to be taken in response to the pandemic; and the impact of the pandemic on economic activity and actions that continue to be taken in response to such impact by the OEMs’ suppliers and customers. We are continuing to monitor the recent resurgence of the virus, including the emergence of new virus strains, in certain U.S. states and countries in which we operate, the progress of the vaccination deployment and supply chain shortages affecting the automotive industry (including semiconductors, steel, resin and foam), as well as the impact of these developments on OEM production plans for the year.

### ***Sustainability***

All Superior manufacturing plants have implemented Environmental Management Systems that are ISO14001 certified and are subject to annual audits by an independent third party. In 2019, we assessed the product carbon footprint of our European operations for the first time based on the Greenhouse Gas Protocol, and in 2021, we expect to assess the carbon footprint for our operations globally in connection with our first corporate sustainability report. These assessments can help us identify potential opportunities to reduce fuel consumption and greenhouse gas emissions. In this regard, we are focused on developing automotive lightweighting solutions such as our patented Alulite technology. Superior is committed to reducing natural gas, electricity, water, solid waste and air emissions at all of our facilities globally. We also hold our suppliers accountable for sustainability practices and have shifted our aluminum purchasing volume primarily to “green” suppliers who use renewable energy to produce the raw materials we purchase.

## Overview of the First Quarter of 2021

The following charts show the operational performance in the quarter ended March 31, 2021 in comparison to the quarter ended March 31, 2020 (\$ in millions):



\* See Non-GAAP Financial Measures section of this quarterly report for a reconciliation of our Adjusted EBITDA to Net Income (Loss).

## Results of Operations

	Three Months Ended		Net Change
	March 31, 2021	March 31, 2020	
<b>(Dollars in thousands, except per share amounts)</b>			
Net sales			
North America	\$ 191,971	\$ 155,551	\$ 36,420
Europe	166,225	145,561	20,664
Net sales	358,196	301,112	57,084
Cost of sales	315,156	277,951	(37,205)
Gross profit	43,040	23,161	19,879
Percentage of net sales	12.0%	7.7%	4.3%
Selling, general and administrative expenses	17,321	12,535	(4,786)
Impairment of goodwill and indefinite-lived intangibles	—	193,641	193,641
Income (loss) from operations	25,719	(183,015)	208,734
Percentage of net sales	7.2%	(60.8)%	68.0%
Interest expense, net	(10,273)	(11,850)	1,577
Other (expense) income, net	(1,514)	1,323	(2,837)
Income tax (provision) benefit	(810)	3,460	(4,270)
Net income (loss)	\$ 13,122	\$ (190,082)	\$ 203,204
Percentage of net sales	3.7%	(63.1)%	66.8%
Diluted earnings (loss) per share	\$ 0.18	\$ (7.84)	\$ 8.02
Value added sales <sup>(1)</sup>	\$ 207,259	\$ 170,091	\$ 37,168
Adjusted EBITDA <sup>(2)</sup>	\$ 54,923	\$ 39,530	\$ 15,393
Percentage of net sales	15.3%	13.1%	2.2%
Percentage of value added sales	26.5%	23.2%	3.3%



Unit shipments in thousands

4,515

4,307

208

- (1) Value added sales is a key measure that is not calculated according to U.S. GAAP. Refer to “Non-U.S. GAAP Financial Measures” for a definition of value added sales and a reconciliation of value added sales to net sales, the most comparable U.S. GAAP measure.
- (2) Adjusted EBITDA is a key measure that is not calculated according to U.S. GAAP. Refer to “Non-U.S. GAAP Financial Measures” for a definition of adjusted EBITDA and a reconciliation of our adjusted EBITDA to net income, the most comparable U.S. GAAP measure.

### **Shipments**

Wheel unit shipments were 4.5 million for the first quarter of 2021 compared to unit shipments of 4.3 million in the prior year period, an increase of 4.8 percent. The increase was driven by higher volumes in North America.

### **Net Sales**

Net sales for the first quarter of 2021 were \$358.2 million, compared to net sales of \$301.1 million for the same period in 2020. The increase in the quarter was driven by higher unit volumes in North America, stronger product mix in both North America and Europe and higher aluminum prices, as well as favorable foreign exchange.

### **Cost of Sales**

Cost of sales were \$315.2 million for the first quarter of 2021 compared to cost of sales of \$278.0 million for the same period in 2020. The increase in cost of sales was primarily due to higher North American unit volumes, higher aluminum prices and reduced prior period European manufacturing costs resulting from our production shutdowns in response to the onset of the pandemic during the latter part of March of 2020.

### **Selling, General and Administrative Expenses**

Selling, general and administrative (“SG&A”) expenses for the first quarter of 2021 were \$17.3 million compared to SG&A expense of \$12.5 million for same period in 2020. The increase in SG&A expenses is due to incremental 2021 compensation expense associated with the modification of certain stock awards to offset the impact of COVID-19, as well as lower prior period compensation and benefit accruals due to the COVID-19 pandemic (refer to Note 16, “Stock-Based Compensation in the notes to the condensed consolidated financial statements”).

### **Impairment of Goodwill and Indefinite-lived Intangibles**

In the first quarter of 2020, we recognized a goodwill and indefinite-lived intangible asset impairment charge totaling \$193.6 million relating to our European reporting unit (refer to Note 8, “Goodwill and Other Intangible Assets” in the notes to the condensed consolidated financial statements).

### **Net Interest Expense**

Net interest expense for the first quarter of 2021 was \$10.3 million compared to net interest expense of \$11.9 million for same period in 2020. The decrease was primarily due to lower interest rates on the Term Loan Facility.

### **Other Income (Expense)**

Other expense was \$1.5 million for the first quarter of 2021 compared to other income of \$1.3 million for the same period in 2020. The prior year income was primarily driven by foreign exchange gains. The current year expense is primarily attributable to an increase in the preferred stock embedded derivative liability due to increases in the Company’s stock price.

### **Income Tax (Provision) Benefit**

The income tax provision for the first quarter of 2021 was \$0.8 million on a pre-tax income of \$13.9 million, representing an effective income tax rate of 5.8 percent. This differs from the statutory rate primarily due to U.S. valuation allowances, the reversal of an uncertain tax position and the mix of earnings among tax jurisdictions. The income tax benefit for the first quarter of 2020 was \$3.5 million on a pre-tax loss of \$193.5 million, representing an effective income tax rate of 1.8 percent. The effective tax rate was lower than the statutory rate primarily due to the mix of earnings among tax jurisdictions, recognition of a valuation allowance on non-deductible interest and the impairment of goodwill for which there is no corresponding tax benefit.

### **Net Income (Loss)**

Net income for the first quarter of 2021 was \$13.1 million, or earnings of \$0.18 per diluted share, compared to a net loss of \$190.1 million, or a loss of \$7.84 per diluted share, for the same period in 2020.

## Segment Sales and Income from Operations

	Three Months Ended		
	March 31, 2021	March 31, 2020	Change
(Dollars in thousands)			
<u>Selected data</u>			
Net sales			
North America	\$ 191,971	\$ 155,551	\$ 36,420
Europe	166,225	145,561	20,664
Total net sales	<u>\$ 358,196</u>	<u>\$ 301,112</u>	<u>\$ 57,084</u>
Income (loss) from operations			
North America	\$ 17,841	\$ 6,109	\$ 11,732
Europe	7,878	(189,124)	197,002
Total income (loss) from operations	<u>\$ 25,719</u>	<u>\$ (183,015)</u>	<u>\$ 208,734</u>

### North America

Net sales for our North American segment for the first quarter of 2021 increased 23.4 percent, compared to the same period in 2020 due to a 10.6 percent increase in unit volumes, stronger product mix comprised of larger diameter wheels and premium wheel finishes and higher aluminum prices. For the first quarter of 2021, North American sales were almost exclusively from Mexico, which compares to a U.S. percent of 10.4 and a Mexico percent of 89.6 percent for the same period of the prior year. The change in North American sales by country is due to discontinuation of manufacturing activities at our Fayetteville, Arkansas location. North American segment income from operations for the first quarter of 2021 was higher than the same period of the prior year, due to higher volumes, stronger product mix, improved manufacturing performance and favorable foreign exchange, partially offset by increased compensation accruals.

### Europe

Net sales for our European segment for the first quarter of 2021 increased 14.2 percent, compared to the same period in 2020. This increase was driven by stronger product mix and higher aluminum prices, partially offset by a 1.3 percent reduction in unit volume. European segment sales in Germany and Poland were 36.6 percent and 63.4 percent, respectively, for the first quarter of 2021, which compares to 34.4 percent and 65.6 percent for the same period of the prior year. European segment income from operations for the first quarter of 2021 increased compared to the same period in 2020 due to favorable product mix, favorable foreign exchange and due to a goodwill and indefinite-lived intangible asset impairment charge totaling \$193.6 million taken in the prior year period.

### Financial Condition, Liquidity and Capital Resources

As of March 31, 2021, our cash and cash equivalents totaled \$153.8 million compared to \$282.2 million and \$152.4 million at March 31, 2020 and December 31, 2020, respectively. Our sources of liquidity primarily include cash and cash equivalents, cash provided by operating activities, borrowings under available debt facilities, factoring arrangements for trade receivables and, from time to time, other external sources of funds. Working capital (current assets minus current liabilities) and our current ratio (current assets divided by current liabilities) were \$171.2 million and 1.7:1.0, respectively, at March 31, 2021, versus \$152.5 million and 1.7:1.0, respectively, at December 31, 2020.

Our working capital requirements, investing activities and cash dividend payments have historically been funded from internally generated funds, debt facilities, cash and cash equivalents, and we believe these sources will continue to meet our future requirements. Capital expenditures relate to improving production quality and efficiency and extending the useful lives of existing property, plant and equipment ("maintenance"), as well as capital related to new product offerings and expanded capacity for existing products ("new business"). Over time capital expenditures have consisted of roughly equal components of maintenance and new business.

In connection with the acquisition of our European operations, we entered into several debt and equity financing arrangements during 2017. On March 22, 2017, we entered into a USD Senior Secured Credit facility ("USD SSCF") consisting of a \$400.0 million Senior Secured Term Loan Facility ("Term Loan Facility") and a \$160.0 million Revolving Credit Facility ("Revolving Credit Facility"). On May 22, 2017, we issued 150,000 shares of redeemable preferred stock for an aggregate purchase price of \$150.0 million. On June 15,

2017, we issued €250.0 million aggregate principal amount of 6.00 percent Senior Notes due June 15, 2025 (“the Notes”). Finally, as part of the European business acquisition, we also assumed \$70.7 million of outstanding debt, including a €30.0 million European Revolving Credit Facility (“EUR SSCF”) (subsequently increased to €45.0 million during the second quarter of 2019). On January 31,

2020, the available borrowing limit of the EUR SSCF was increased from €45.0 million to €60.0 million. All other terms of the EUR SSCF remained unchanged. In addition, the European business entered into equipment loan agreements totaling \$13.4 million (€12.0 million) in the fourth quarter of 2019. The Company drew down €10.6 million on these equipment loans in the first quarter of 2020 and drew the remaining €1.4 million in the first quarter of 2021, resulting in an outstanding balance of €12.0 million, or \$14.0 million as of March 31, 2021. With the onset of the COVID-19 pandemic and the ensuing economic uncertainty, the Company drew down on its USD SSCF and EUR SSCF revolving credit facilities to provide additional liquidity. As of March 31, 2020, the Company had borrowings outstanding under these facilities of \$207.9 million. The Company resumed all its operations by June of 2020 and generated sufficient cash flow in the third quarter of 2020 to fully repay borrowings under the revolving credit facilities by September 30, 2020.

As part of our ongoing efforts to improve our cash flow and related liquidity, we negotiate with suppliers to optimize our terms and conditions, including extended payment terms. Beginning in 2021, the Company will receive extended payment terms for a portion of our purchases with one of our principal aluminum suppliers in exchange for a nominal adjustment to the product pricing. The payment terms provided to us are consistent with aluminum industry norms, as well as those offered to the supplier's other customers. The supplier intends to finance these extended terms by factoring receivables due from us with a financial institution. We are not a party to the supplier's factoring agreement with the financial institution. We remit payments directly to our supplier, except with respect to product purchased under extended terms which have been factored by the supplier. These payments are remitted directly to the financial institution in accordance with the payment terms originally negotiated with our supplier. As of March 31, 2021, the Company owed \$12.5 million to the financial institution which is included in accounts payable in the Company's condensed consolidated balance sheet. The Company had not made any payments to the financial institution pursuant to the supplier's factoring arrangement since no invoices had yet become due as of March 31, 2021. All such payments will be included in cash flow from operations within the condensed consolidated statements of cash flows.

Balances outstanding under the Term Loan Facility, Notes and equipment loans as of March 31, 2021 were \$349.2 million, \$254.3 million and \$23.4 million, respectively. The redeemable preferred stock amounted to \$184.3 million as of March 31, 2021. Our liquidity totaled \$378.8 million at March 31, 2021, including cash on hand of \$153.8 million and available unused commitments under credit facilities of \$225.0 million.

On May 3, 2021, the Company extended the term of its USD SSCF. The commitment under the facility was reduced from \$160.0 million to \$132.5 million, with \$25.0 million of the commitment maturing May 23, 2022 and the remaining \$107.5 million maturing October 31, 2023 (refer to Note 20, "Subsequent Event" in the notes to the condensed consolidated financial statements). Our EUR SSCF matures in May 2022. Based on various forecasted scenarios, Superior expects, at this time, to remain compliant with the terms of these facilities. The Company has no other significant funded debt obligations maturing until May 2024.

The following table summarizes the cash flows from operating, investing and financing activities as reflected in the condensed consolidated statements of cash flows.

	<b>Three Months Ended</b>	
	<b>March 31, 2021</b>	<b>March 31, 2020</b>
(Dollars in thousands)		
Net cash provided by operating activities	18,153	31,313
Net cash used in investing activities	(10,479)	(13,865)
Net cash (used in) provided by financing activities	(4,179)	189,049
Effect of exchange rate changes on cash	(2,070)	(2,261)
Net increase in cash and cash equivalents	<u>\$ 1,425</u>	<u>\$ 204,236</u>

### *Operating Activities*

Net cash provided by operating activities was \$18.2 million for the first three months of 2021 compared to cash provided by operating activities of \$31.3 million for the same period in 2020. The decrease in cash flow provided by operating activities was primarily driven by working capital to support increased sales and production volumes, partially offset by increased profitability and lower cash taxes, as compared to the prior year period.

### *Investing Activities*

Net cash used in investing activities was \$10.5 million for the first three months of 2021 compared to \$13.9 million for the same period in 2020. The decrease in investing activities is driven by timing of pending capital projects to support increased production requirements in both regions.

### *Financing Activities*

Net cash used in financing activities was \$4.2 million for the first three months of 2021 compared to net cash provided by financing activities of \$189.0 million for the same period in 2020. This change was primarily due to the net effect of the draw downs on our revolving credit facilities in both Europe and North America and proceeds from new European equipment loans in 2020, which did not recur in 2021.

### **Off-Balance Sheet Arrangements**

As of March 31, 2021, we had no significant off-balance sheet arrangements other than factoring of \$105.6 million of our trade receivables.

### **Non-GAAP Financial Measures**

In this quarterly report, we discuss two important measures that are not calculated according to U.S. GAAP, value added sales and adjusted EBITDA.

Value added sales is a key measure that is not calculated according to U.S. GAAP. In the discussion of operating results, we provide information regarding value added sales. Value added sales represents net sales less the value of aluminum and services provided by outsourced service providers (“OSP”) that are included in net sales. Our presentation of value added sales is intended to allow users of the financial statements to consider our net sales information both with and without the aluminum and OSP cost components. Management utilizes value added sales as a key metric to determine growth of the Company because it eliminates the volatility of aluminum prices.

Adjusted EBITDA is a key measure that is not calculated according to U.S. GAAP. Adjusted EBITDA is defined as earnings before interest income and expense, income taxes, depreciation, amortization, restructuring charges and other closure costs and impairments of long-lived assets and investments, changes in fair value of redeemable preferred stock embedded derivative, acquisition and integration and other related costs, certain hiring and separation related costs, proxy contest fees, gains associated with early debt extinguishment and accounts receivable factoring fees. We use adjusted EBITDA as an important indicator of the operating performance of our business. Adjusted EBITDA is used in our internal forecasts and models when establishing internal operating budgets, supplementing the financial results and forecasts reported to our Board of Directors and evaluating short-term and long-term operating trends in our operations. We believe the adjusted EBITDA financial measure assists in providing a more complete understanding of our underlying operational measures to manage our business, to evaluate our performance compared to prior periods and the marketplace and to establish operational goals. Adjusted EBITDA is a non-GAAP financial measure and should not be considered in isolation or as a substitute for financial information provided in accordance with U.S. GAAP. This non-GAAP financial measure may not be computed in the same manner as similarly titled measures used by other companies.

The following table reconciles our net sales, the most directly comparable U.S. GAAP financial measure, to our value added sales:

	Three Months Ended	
	March 31, 2021	March 31, 2020
(Dollars in thousands)		
Net sales	\$ 358,196	\$ 301,112
Less: aluminum value and outside service provider costs	(150,937)	(131,021)
Value added sales	\$ 207,259	\$ 170,091

The following table reconciles our net income, the most directly comparable U.S. GAAP financial measure, to our adjusted EBITDA:

	Three Months Ended	
	March 31, 2021	March 31, 2020
(Dollars in thousands)		
Net income (loss)	\$ 13,122	\$ (190,082)
Interest expense, net	10,273	11,850
Income tax provision (benefit)	810	(3,460)
Depreciation	18,650	18,255
Amortization	6,711	6,137
Impairment of goodwill and indefinite-lived intangibles	—	193,641
Integration, restructuring, factoring fees and other (1)(2)	4,042	3,189
Change in fair value or redeemable preferred stock embedded derivative liability (3)	1,315	—
Adjusted EBITDA	<u>\$ 54,923</u>	<u>\$ 39,530</u>
Adjusted EBITDA as a percentage of net sales	15.3%	13.1%
Adjusted EBITDA as a percentage of value added sales	26.5%	23.2%

- (1) In the first quarter of 2021, we incurred approximately \$0.9 million of restructuring costs comprised of on-going fixed costs associated with our Fayetteville, Arkansas, facility, and relocation and installation costs of repurposed machinery. Additionally, we incurred \$2.3 million of certain hiring and separation costs, \$0.5 million of accounts receivable factoring fees, and \$0.3 million of other costs.
- (2) In the first quarter of 2020, we incurred approximately \$3.0 million of restructuring costs comprised of on-going fixed costs associated with our Fayetteville, Arkansas, location and relocation and installation costs on repurposed machinery, and \$0.2 million of accounts receivables factoring fees.
- (3) The change in the fair value is mainly driven by the change in our stock price during the respective periods.

### Critical Accounting Policies and Estimates

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management to apply significant judgment in making estimates and assumptions that affect amounts reported therein, as well as financial information included in this Management's Discussion and Analysis of Financial Condition and Results of Operations. These estimates and assumptions, which are based upon historical experience, industry trends, terms of various past and present agreements and contracts, and information available from other sources that are believed to be reasonable under the circumstances, form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent through other sources. We believe the accounting estimates employed are appropriate and the resulting balances are reasonable; however, due to the inherent uncertainties in developing estimates, actual results could differ from the original estimates, requiring adjustments to these balances in future periods. Critical accounting estimates that affect the condensed consolidated financial statements and the judgments and assumptions used are consistent with those described in the management's discussion and analysis in our 2020 Form 10-K (refer to "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II of our Annual Report on Form 10-K for the year ended December 31, 2020).

### Item 3. Quantitative and Qualitative Disclosures About Market Risk

As a smaller reporting company, as defined in Rule 10(f)(1) of Regulation S-K under the Securities and Exchange Act of 1934, as amended (the "Exchange Act"), the Company is not required to provide the information required by this item.

### Item 4. Controls and Procedures

#### *Evaluation of Disclosure Controls and Procedures*

The Company's management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) as of March 31, 2021. Our disclosure controls and procedures are designed to ensure that information required to be disclosed in reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in



SEC rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosures.

Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of March 31, 2021 our disclosure controls and procedures were effective.

*Changes in Internal Control Over Financial Reporting*

There has been no change in our internal control over financial reporting during the three months ended March 31, 2021 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**PART II**  
**OTHER INFORMATION**

**Item 1. Legal Proceedings**

We are party to various legal and environmental proceedings incidental to our business. Certain claims, suits and complaints arising in the ordinary course of business have been filed or are pending against us. Based on facts now known, we believe all such matters are adequately provided for, covered by insurance, are without merit, and/or involve such amounts that would not materially adversely affect our consolidated results of operations, cash flows or financial position. See also under Item 1A, “Risk Factors - We are from time to time subject to litigation, which could adversely impact our financial condition or results of operations” of our Annual Report on Form 10-K for the year ended December 31, 2020.

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

Not applicable.

**Item 5. Other Information**

Not applicable.

## Item 6. Exhibits

- 10.1 [Fifth Amendment to Credit Agreement, dated May 3, 2021, among Superior Industries International, Inc, the subsidiaries of Superior identified therein, CITIBANK, N.A., as Administrative Agent, JPMorgan Chase Bank N.A., as Sub-Agent, and the Lenders and Issuing Banks party thereto.\\*\\*](#)
- 31.1 [Chief Executive Officer Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302\(a\) of the Sarbanes-Oxley Act of 2002.\\*\\*](#)
- 31.2 [Chief Financial Officer Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302\(a\) of the Sarbanes-Oxley Act of 2002.\\*\\*](#)
- 32.1 [Certification of Majdi B. Abulaban, President and Chief Executive Officer, and C. Timothy Trenary, Executive Vice President and Chief Financial Officer, Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.\\*\\*](#)
- 101.INS Inline XBRL Instance Document—the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document \*\*\*\*
- 101.SCH Inline XBRL Taxonomy Extension Schema Document \*\*\*\*
- 101.CAL Inline XBRL Taxonomy Extension Calculation Linkbase Document \*\*\*\*
- 101.LAB Inline XBRL Taxonomy Extension Label Linkbase Document \*\*\*\*
- 101.PRE Inline XBRL Taxonomy Extension Presentation Linkbase Document \*\*\*\*
- 101.DEF Inline XBRL Taxonomy Extension Definition Linkbase Document \*\*\*\*
- 104 Cover Page Interactive Data File (formatted as Inline XBRL and contained in exhibit 101) \*\*\*\*

\*\* Filed herewith.

\*\*\*\*Submitted electronically with the report.

## 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.

SUPERIOR INDUSTRIES INTERNATIONAL, INC.  
(Registrant)

Date: May 5, 2021

/s/ Majdi B. Abulaban  
Majdi B. Abulaban  
President and Chief Executive Officer

Date: May 5, 2021

/s/ C. Timothy Trenary  
C. Timothy Trenary  
Executive Vice President and Chief Financial Officer

## FIFTH AMENDMENT TO CREDIT AGREEMENT

THIS FIFTH AMENDMENT TO CREDIT AGREEMENT (this “**Agreement**”), dated as of May 3, 2021, by and among Superior Industries International, Inc., a Delaware corporation (the “**Borrower**”), each other Loan Party party hereto, Citibank, N.A., as administrative agent and collateral agent (in such capacities, the “**Administrative Agent**”), JPMorgan Chase Bank N.A. (“**JPMorgan**”), as Sub-Agent (as defined below), and each Lender and Issuing Bank party hereto, amends that certain Credit Agreement, dated as of March 22, 2017 (as amended by the First Amendment to Credit Agreement, dated as of May 23, 2017, the Second Amendment to Credit Agreement, dated as of May 30, 2017, the Third Amendment to Credit Agreement, dated as of June 15, 2017, the Fourth Amendment to Credit Agreement, dated as of June 29, 2018, and as further amended, restated, amended and restated, supplemented, waived or otherwise modified from time to time prior to the date hereof, the “**Existing Credit Agreement**”; the Existing Credit Agreement as modified by this Agreement, the “**Amended Credit Agreement**”), among the Borrower, the Administrative Agent and each Lender and Issuing Bank from time to time party thereto. Capitalized terms used in this Agreement and not otherwise defined herein have the respective meanings assigned thereto in the Amended Credit Agreement.

## RECITALS:

WHEREAS, the Borrower has requested that the Revolving Lenders under the Existing Credit Agreement exchange, pursuant to the terms of Section 2.16 of the Existing Credit Agreement, their Revolving Commitments outstanding under the Existing Credit Agreement immediately prior to the effectiveness of the Fifth Amendment Effective Date (as defined below) (collectively, the “**Existing Revolving Commitments**”) for Extended Revolving Commitments in order to extend the scheduled Maturity Date applicable thereto,

WHEREAS, each institution listed on Schedule I hereto (each, an “**Extending Revolving Lender**” and, collectively, the “**Extending Revolving Lenders**”) (i) has agreed, on the terms and subject to the conditions set forth herein, to exchange (on a dollar-for-dollar basis) its Existing Revolving Commitments for Extended Revolving Commitments in the aggregate amount set forth opposite its name under the heading “2021 Extended Revolving Commitments” on Schedule I hereto (such Extended Revolving Commitments, the “**2021 Extended Revolving Commitments**” and the loans thereunder, the “**2021 Extended Revolving Loans**”) and (ii) by executing a signature page to this Agreement, approves the amendments to the Existing Credit Agreement set forth in this Agreement.

WHEREAS, the Existing Revolving Commitments that are not exchanged for 2021 Extended Revolving Commitments pursuant to the Revolving Commitment Extension (as defined below) (the “**Non-Extended Revolving Commitments**” and the Revolving Lenders in respect thereof, the “**Non-Extending Revolving Lenders**”) shall remain outstanding as “Closing Date Revolving Commitments” under the Amended Credit Agreement. The aggregate amount of Non-Extending Revolving Commitments of each Non-Extending Revolving Lender as of the Fifth Amendment Effective Date, immediately after giving effect to the Fifth Amendment Transactions (as defined below), is set forth opposite such Non-Extending Revolving Lender’s name on Schedule IV hereto. By executing a signature page to this Agreement, each Non-Extending Revolving Lender approves the amendments to the Existing Credit Agreement set forth in this Agreement

WHEREAS, on the Fifth Amendment Effective Date, the Borrower shall incur Other Revolving Commitments in an aggregate principal amount of \$107,500,000 (the “**Refinancing Revolving Commitments**” and the loans thereunder, the “**Refinancing Revolving Loans**”), pursuant to Section 2.15 of the Existing Credit Agreement. The net proceeds of the Revolving Loans borrowed on the Fifth Amendment Effective Date (the “**Fifth Amendment Effective Date Revolving Loans**”), if any, will be used, together with available cash on hand, to (i) finance the Fifth Amendment Effective Date Refinancing (as defined below) and (ii) pay fees and expenses (the “**Fifth Amendment Transaction Costs**”) incurred in connection with this Agreement and the transactions contemplated hereby.

WHEREAS, each institution listed on Schedule II hereto (each, a “**Refinancing Revolving Lender**” and, collectively, the “**Refinancing Revolving Lenders**”) (i) has agreed, on the terms and subject to the conditions set forth herein and in the Amended Credit Agreement, to provide the amount of Refinancing Revolving Commitments set forth opposite its name under the heading “Refinancing Revolving Commitments” on Schedule II hereto and (ii) by executing a signature page to this Agreement, approves the amendments to the Existing Credit Agreement set forth in this Agreement.

NOW, THEREFORE, the parties hereto therefore agree as follows:

**SECTION 1.** *References.* The rules of construction specified in Section 1.02 of the Existing Credit Agreement also apply to this Agreement. Each reference to “herein”, “hereto”, “hereof”, “hereunder” and “hereby” and each other similar reference and each reference to “this Agreement” and each other similar reference contained in the Existing Credit Agreement shall, after this Agreement becomes effective, refer to the Amended Credit Agreement.

**SECTION 2.** *Extended Revolving Commitments.*

(a) Effective as of the Fifth Amendment Effective Date, on the terms and subject to the conditions set forth herein, (x) each Extending Revolving Lender shall be deemed to have automatically exchanged (on a dollar-for-dollar basis) its Existing Revolving Commitments for 2021 Extended Revolving Commitments in the amount set forth opposite such Extending Revolving Lender’s name on Schedule I hereto (it being understood and agreed by the parties hereto that the requirement pursuant to Section 2.16(3) of the Existing Credit Agreement that the Borrower deliver the applicable Extension Request in respect of the Revolving Commitment Extension to the Administrative Agent not less than five (5) Business Days prior to the date on which the Lenders holding Existing Revolving Commitments are required to respond thereto is deemed satisfied hereby) and (y) each Revolving Loan (if any) then-outstanding under such Existing Revolving Commitments being exchanged pursuant to the foregoing clause (x) shall automatically be deemed to be outstanding under the 2021 Extended Revolving Commitments and shall constitute 2021 Extended Revolving Loans (the transactions described in this Section 2(a), the “**Revolving Commitment Extension**”).

(b) The 2021 Extended Revolving Commitments shall (x) constitute a Revolving Extension Series for all purposes of the Amended Credit Agreement, (y) constitute a separate class from the Existing Revolving Commitments and (z) have terms identical to those applicable to the Existing Revolving Commitments, except that the Maturity Date applicable to such 2021 Extended Revolving Commitments shall be October 31, 2023.

(c) From and after the Fifth Amendment Effective Date, (i) the Extending Revolving Lenders shall constitute “Revolving Lenders” and “Lenders”, (ii) the 2021 Extended Revolving Commitments shall constitute “Revolving Commitments” and “Commitments” and (iii) the 2021 Extended Revolving Loans shall constitute “Revolving Loans” and “Loans”, in each case, for all purposes of the Amended Credit Agreement and the other Loan Documents.

**SECTION 3.** *Refinancing Revolving Commitments*

(a) Effective as of the Fifth Amendment Effective Date, immediately after giving effect to the Revolving Commitment Extension, on the terms and subject to the conditions set forth herein and in the Amended Credit Agreement, (i) each Refinancing Revolving Lender severally agrees to provide Refinancing Revolving Commitments to the Borrower on and following the Fifth Amendment Effective Date in the amount set forth opposite such Refinancing Revolving Lender’s name on Schedule II hereto and (ii) each Issuing Bank listed on Schedule III hereto severally agrees to provide L/C Commitments to the Borrower on and following the Fifth Amendment Effective Date in the amount set forth opposite such Issuing Bank’s name on Schedule III hereto (it being understood and agreed that such L/C Commitments shall supersede and replace in full all L/C Commitments in effect under the Existing Credit Agreement immediately prior to giving effect to this Agreement).

(b) On the Fifth Amendment Effective Date, immediately after giving effect to the Revolving Commitment Extension, (i) all 2021 Extended Revolving Commitments shall automatically terminate in full (it being understood and agreed by the parties hereto that the requirement pursuant to Section 2.06(1) of the Existing Credit Agreement that the Borrower deliver written notice to the Administrative Agent not less than three (3) Business Days

prior to the date of such termination of the 2021 Extended Revolving Commitments is deemed satisfied hereby) and (ii) each Revolving Loan (if any) then-outstanding (including any 2021 Extended Revolving Loans) (collectively, the “**Existing Revolving Loans**”) shall be repaid in full in U.S. dollars in immediately available funds, together with all accrued and unpaid interest and commitment fees on, and all other amounts owing in respect of, (A) the Existing Revolving Loans, the Existing Revolving Commitments and the 2021 Extended Revolving Commitments and (B) each Letter of Credit outstanding under the Existing Credit Agreement immediately prior to the Fifth Amendment Effective Date (each, an “**Outstanding Letter of Credit**”) (the transactions described in the foregoing clauses (i) and (ii), collectively, the “**Fifth Amendment Effective Date Refinancing**”; the Fifth Amendment Effective Date Refinancing, together with the Revolving Commitment Extension, the execution and delivery of this Agreement, the incurrence of the Refinancing Revolving Commitments and any borrowings thereunder on the Fifth Amendment Effective Date and the payment of the Fifth Amendment Transaction Costs, are collectively referred to herein as the “**Fifth Amendment Transactions**”). On the Fifth Amendment Effective Date, (1) each Outstanding Letter of Credit will continue to remain outstanding and shall thereafter be deemed to be a Letter of Credit issued under the Amended Credit Agreement on the Fifth Amendment Effective Date for all purposes under the Amended Credit Agreement and the other Loan Documents and (2) the applicable Issuing Bank with respect to each Outstanding Letter of Credit shall be deemed to have sold to each Revolving Lender, and each Revolving Lender shall be deemed to have purchased from such Issuing Bank, without further action by any party hereto, an undivided interest and participation, pro rata (based on the percentage of the aggregate Revolving Commitments represented by such Revolving Lender’s Revolving Commitment), in such Outstanding Letter of Credit in accordance with Section 2.03 of the Amended Credit Agreement.

(c) Each of the parties hereto acknowledge and agrees that (x) effective as of the Fifth Amendment Effective Date, (i) KeyBank National Association (the “**Resigning Issuing Bank**”) shall cease to constitute an “Issuing Bank” for all purposes under the Amended Credit Agreement and the other Loan Documents and (ii) the L/C Commitments of the Resigning Issuing Bank outstanding immediately prior to giving effect to this Agreement are hereby terminated in full and (y) from and after the Fifth Amendment Effective Date, BMO Harris Bank, N.A. shall be an “Issuing Bank” under, and for all purposes of, the Amended Credit Agreement and the other Loan Documents, and shall be subject to the terms thereof, and shall perform all obligations of and shall have all rights and privileges of an Issuing Bank thereunder.

(d) From and after the Fifth Amendment Effective Date, (i) the Refinancing Revolving Lenders shall constitute “Revolving Lenders” and “Lenders”, (ii) the Refinancing Revolving Commitments shall constitute “Revolving Commitments” and “Commitments” and (iii) the Refinancing Revolving Loans shall constitute “Revolving Loans” and “Loans”, in each case, for all purposes of the Amended Credit Agreement and the other Loan Documents.

#### **SECTION 4.**        *Appointment of Sub-Agent.*

(a) In accordance with Section 9.07 of the Amended Credit Agreement and in reliance on the agreements set forth herein (including Section 4(b) below), effective as of the Fifth Amendment Effective Date, (x) the Administrative Agent hereby appoints JPMorgan to act as sub-agent (in such capacity, the “**Sub-Agent**”) with respect to the Delegated Duties (as defined below), and the Administrative Agent hereby authorizes the Sub-Agent to perform the Delegated Duties on behalf of the Administrative Agent in accordance with the terms of the Amended Credit Agreement, together with such powers as are reasonably incidental thereto and (y) the Sub-Agent agrees to act as such in accordance with the terms of the Amended Credit Agreement. In furtherance of the foregoing, any determinations, consents or requests with respect to the Delegated Duties shall be made solely by Sub-Agent and shall not be made by Administrative Agent without the consent of Sub-Agent. If Administrative Agent receives any written notices in respect of the Delegated Duties, Administrative Agent shall promptly provide a copy of such written notice to Sub-Agent. Except as expressly otherwise provided in this Agreement, Sub-Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Sub-Agent expressly is entitled to take or assert under or pursuant to this Agreement or, in its capacity as representative of the Administrative Agent, with respect to the Delegated Duties.



(b) The parties hereto acknowledge and agree as follows:

(i) The Administrative Agent shall not be liable for any action taken or not taken by or on behalf of the Sub-Agent. The Administrative Agent shall not be responsible for any negligence or misconduct of the Sub-Agent under any circumstances. Without limitation of the indemnification provisions set forth in Section 10.05 of the Amended Credit Agreement, the Borrower shall, on terms consistent with Section 10.05 of the Amended Credit Agreement (but without regard to the proviso to the first sentence of such Section 10.05 solely with respect to actions taken, or not taken, by or on behalf of the Sub-Agent), indemnify and hold harmless the Administrative Agent and its Related Parties from and against any and all losses, claims, damages, liabilities or expenses arising out of or related to any action taken, or not taken, by or on behalf of the Sub-Agent. To the extent that the undertakings to indemnify and hold harmless set forth in this Section 4(b)(i) may be unenforceable in whole or in part because they are violative of any applicable Law or public policy, the Borrower shall contribute the maximum portion that they are permitted to pay and satisfy under applicable Law to the payment and satisfaction of all applicable liabilities. The agreements set forth in this Section 4(b)(i) shall survive the resignation of the Administrative Agent, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

(ii) The Sub-Agent, in its capacity as sub-agent so appointed by the Administrative Agent, shall have all rights, benefits and privileges accorded to a sub-agent of the Administrative Agent pursuant to Article IX and Sections 10.04 and 10.05 of the Amended Credit Agreement.

(c) All notices and other communications under the Loan Documents in respect of the Revolving Facility shall be in writing to the Sub-Agent and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

JPMorgan Chase Bank, N.A.  
500 Stanton Christiana Rd  
Newark, DE 19713  
Attention: Elijah Mills; Mark Postupack  
Telephone: 302-634-4629; 302-634-1005  
Email: [elijah.mills@chase.com](mailto:elijah.mills@chase.com); [mark.postupack@chase.com](mailto:mark.postupack@chase.com)  
Fax: [12012443500@tls.ldsprod.com](mailto:12012443500@tls.ldsprod.com)

(d) JPMorgan may resign as Sub-Agent at any time by giving not less than ten (10) Business Days prior written notice (or such shorter period as reasonably agreed by the Administrative Agent) to the Administrative Agent and the Borrower. Termination pursuant to this Section shall be without prejudice to any rights of the Administrative Agent or Sub-Agent which may have accrued through the date of termination. Promptly upon such termination, Sub-Agent shall (a) remit all funds (if any) held by Sub-Agent to the Administrative Agent or such other Person designated by the Administrative Agent or as otherwise required by applicable law; (b) at the reasonable request of the Administrative Agent, turn over to the Administrative Agent (or any new sub-agent to the Administrative Agent), the Register maintained by the Sub-Agent, and (c) reasonably cooperate with the Administrative Agent and any new sub-agent to effectuate an orderly transition of the Delegated Duties.

(e) The provisions of this Section 4 are solely for the benefit of Sub-Agent and the Administrative Agent, and none of the Lenders, any other agents, the Borrower or any other Loan Party shall have any rights as a third party beneficiary of any of the provisions contained in this Agreement. Any provision to the contrary contained elsewhere in this Agreement or in the Amended Credit Agreement notwithstanding, Sub-Agent shall not have any duties or responsibilities, except those expressly set forth herein, nor shall Sub-Agent have or be deemed to have any fiduciary relationship with any Lender or any Agent, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or the Amended Credit Agreement or otherwise exist against Sub-Agent; it being expressly understood and agreed that the use of the word "Sub-Agent" is for convenience only, that JPMorgan is merely the representative of the Administrative Agent, and only has the contractual duties set forth herein.

(f) For purposes hereof, "**Delegated Duties**" shall mean (i) the receipt of all payments to the Administrative Agent in respect of the Revolving Facility for the benefit of the Revolving Lenders and Issuing Banks

pursuant to the terms of the Amended Credit Agreement or any other Loan Document and the application of such payments to the Obligations in respect of the Revolving Facility in accordance with the terms thereof; (ii) the distribution of payments received by Sub-Agent in respect of the Obligations under the Revolving Facility (including payments in respect of Unreimbursed Amounts) to the Revolving Lenders and Issuing Banks, and the receipt of Cash Collateral in respect of the Letters of Credit, in each case in accordance with the provisions of the Amended Credit Agreement; (iii) the receipt of proceeds of the Revolving Loans from the Revolving Lenders pursuant to the terms of the Amended Credit Agreement and the distribution of such proceeds to the Borrower or the applicable Issuing Bank, as applicable, in each case in accordance with the terms of the Amended Credit Agreement; (iv) the receipt of any Committed Loan Notice in respect of Revolving Loans and distribution of such notice to the Revolving Lenders, (v) the maintenance of the Register solely with respect to the Revolving Facility pursuant to the terms of Section 10.07(c) of the Amended Credit Agreement and the processing and recordation of any termination, reduction or assignment of the Revolving Credit Commitments, the “L/C Commitments or the L/C Sublimit and the receipt of notice thereof and the distribution of such notices to the Revolving Lenders, Administrative Agent and the Issuing Banks, in each case, in accordance with the terms of the Amended Credit Agreement; (vi) the determination of the Overnight Rate with respect to the Obligations under the Revolving Facility pursuant to the terms of the Amendment Credit Agreement; (vii) any determinations under Section 3.03(2) of the Amended Credit Agreement pursuant to the terms thereof, (viii) the provision or withholding of consent in respect of any assignment of Revolving Commitments or Revolving Exposure, (ix) the incurrence and payment of such expenses as the Sub-Agent may reasonably deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to this Section 4 and the Amended Credit Agreement, (x) the taking of such actions set forth in Section 8.02 of the Amended Credit Agreement under the circumstances described in clause (b) of the proviso to such Section 8.02, (xi) the taking of such actions, making of such determinations and exercising of such judgments or discretion, in each case, required or permitted to be taken, made or exercised, as the case may be, by the Administrative Agent pursuant to Article II of the Amended Credit Agreement solely with respect to the Revolving Facility and (xii) any other duties delegated by the Administrative Agent to the Sub-Agent from time to time.

**SECTION 5.** *Amendments to Existing Credit Agreement.* Effective as of the Fifth Amendment Effective Date:

(a) the Existing Credit Agreement is hereby amended, in accordance with the provisions of Section 2.15 thereof, to (i) delete each term thereof that is reflected in strike-through font (indicated textually in the same manner as the following example: ~~stricken text~~) and (ii) insert each term thereof that is reflected in double-underlined font (indicated textually in the same manner as the following example: double-underlined text), in each case, as set forth in the page attached as Exhibit A hereto; and

(b) Exhibit C to the Existing Credit Agreement is hereby amended and restated in the form of the Form of Compliance Certificate attached as Exhibit B hereto.

**SECTION 6.** *Closing Fee.* The Borrower agrees to pay to the Administrative Agent, for the account of each Refinancing Revolving Lender, a closing fee (the “Closing Fee”) in an amount equal to (x) with respect to each Refinancing Revolving Lender that (together with its affiliates and managed funds) provides not less than \$17.5 million of Refinancing Revolving Commitments on the Fifth Amendment Effective Date, 0.35% of the aggregate amount of Refinancing Revolving Commitments provided by such Refinancing Revolving Lender on the Fifth Amendment Effective Date and (y) with respect to each Refinancing Revolving Lender that (together with its affiliates and managed funds) provides less than \$17.5 million of Refinancing Revolving Commitments on the Fifth Amendment Effective Date, 0.30% of the aggregate amount of Refinancing Revolving Commitments provided by such Refinancing Revolving Lender on the Fifth Amendment Effective Date, which Closing Fee (A) will be shall be earned and due and payable in full on the Fifth Amendment Effective Date in U.S. dollars in immediately available funds and (B) once paid, in whole or in part, will not be refundable under any circumstances.

**SECTION 7.** *Representations of the Loan Parties.* Each Loan Party represents and warrants that, as of the date hereof:

(a) the representations and warranties of the Loan Parties set forth in the Loan Documents are true and correct in all material respects (or in all respects where qualified by materiality or Material Adverse Effect) on and as of the Fifth Amendment Effective Date after giving effect hereto 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 earlier date);

(b) no Default or Event of Default shall exist immediately prior to or after giving effect to the transactions contemplated hereunder;

(c) each Loan Party has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(d) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action or other organizational action on the part of each Loan Party that is a party hereto; and

(e) this Agreement has been duly executed and delivered by each Loan Party that is party hereto or thereto, as applicable. Each Loan Document constitutes a legal, valid and binding obligation of each Loan Party that is party thereto, enforceable against each such Loan Party in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws, by general principles of equity and principles of good faith and fair dealing generally applicable to entities such as the Loan Parties.

**SECTION 8.** *Conditions.* This Agreement shall become effective as of the first date (the “Amendment Effective Date”) when each of the following conditions shall have been satisfied (or waived by the Revolving Lenders constituting the Required Facility Lenders under the 2021 Revolving Facility):

(a) the Sub-Agent (or its counsel) shall have received a duly executed and delivered counterpart of this Agreement from each Loan Party, the Refinancing Revolving Lenders, the Extending Revolving Lenders, each Non-Extending Revolving Lender, each Issuing Bank, the Resigning Issuing Bank, the Sub-Agent and the Administrative Agent;

(b) (i) the representations and warranties set forth in Section 7 above shall be true and correct as of the Fifth Amendment Effective Date and (ii) each of the representations and warranties made by any Loan Party in or pursuant to the Loan Documents shall be true and correct in all material respects on and as of the Fifth Amendment Effective Date as if made on and as of such date (except to the extent already qualified by materiality, in which case, such representations and warranties shall be true and correct in all respects), except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects as of such earlier date (except to the extent already qualified by materiality, in which case, such representations and warranties shall be true and correct in all respects);

(c) no Default or Event of Default shall exist, or would result from this Agreement;

(d) the Sub-Agent shall have received a certificate from a Responsible Officer of the Borrower certifying as to the matters set forth in Sections 8(b) and 8(c);

(e) the Sub-Agent shall have received certificates of good standing from the secretary of state of the state of organization of each Loan Party (to the extent such concept exists in such jurisdiction), customary certificates of resolutions or other action, incumbency certificates or other certificates of Responsible Officers of each Loan Party certifying true and complete copies of the Organizational Documents (certified as of a recent date by the appropriate Governmental Authority in its jurisdiction of incorporation, organization or formation) attached thereto and evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Fifth Amendment Effective Date;

(f) the Sub-Agent shall have received a solvency certificate from a Financial Officer of the Borrower (after giving effect to this Agreement and the transactions contemplated hereby) substantially in the form of Exhibit I attached to the Existing Credit Agreement;

(g) the Sub-Agent shall have received a customary legal opinion from Weil, Gotshal & Manges LLP, counsel to the Loan Parties;

(h) the Fifth Amendment Effective Date Refinancing shall have been consummated or shall be consummated substantially concurrently with the effectiveness of the Agreement in accordance with the terms hereof (as applicable);

(i) the Borrower shall have paid (or caused to be paid) (i) the Closing Fee, (ii) the fees payable to the Refinancing Left Lead Arranger (as defined below) on the Fifth Amendment Effective Date pursuant to that certain Engagement Letter, dated April 5, 2021 (the “**Engagement Letter**”), by and among the Refinancing Left Lead Arranger and the Borrower and (iii) all expenses of the Refinancing Left Lead Arranger and the Administrative Agent payable pursuant to Section 10.04 of the Amended Credit Agreement or the Engagement Letter which have accrued to or are otherwise payable on the Fifth Amendment Effective Date (including reasonable and documented fees, disbursements and other charges of counsel), in each case to the extent the Borrower has received invoices therefor at least three Business Days prior to the Fifth Amendment Effective Date; and

(j) the Administrative Agent, the Sub-Agent and each Refinancing Revolving Lender shall have received, at least three (3) Business Days prior to the Fifth Amendment Effective Date, (i) all documentation and other information in respect of the Borrower and the Guarantors required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act and the Beneficial Ownership Regulation, that has been reasonably requested in writing by it no later than five (5) Business Days prior to the Fifth Amendment Effective Date and (ii) to the extent the Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation, a Beneficial Ownership Certification in relation to the Borrower (*provided* that, upon the execution and delivery by such Refinancing Revolving Lender of its signature page to this Agreement, the condition set forth in this Section 8(j) shall be deemed to be satisfied).

**SECTION 9.** *Governing Law.* THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

**SECTION 10.** *Refinancing Arrangers.* The Borrower and the Lenders party hereto agree that (i) JPMorgan (the “Refinancing Left Lead Arranger”), BMO Harris Bank, N.A, Deutsche Bank AG, New York Branch and RBC Capital Markets (collectively, the “Refinancing Arrangers”) shall each act as a joint lead arranger and joint bookrunner in respect of this Agreement (provided that, the Refinancing Left Lead Arranger shall have “left” placement in any marketing materials or other documentation used in connection with this Agreement) and shall be entitled to the privileges, indemnification, immunities and other benefits afforded to the Arrangers under the Amended Credit Agreement and (ii) except as otherwise agreed to in writing by the Borrower and such Refinancing Arranger, the Refinancing Arrangers shall have no duties, responsibilities or liabilities with respect to this Agreement, the Amended Credit Agreement or any other Loan Document (other than, for the avoidance of doubt, any duties, responsibilities or liabilities set forth in this Agreement or the Amended Credit Agreement).

**SECTION 11.** *Confirmation of Guaranties and Security Interests.* Each of the Loan Parties, by their signatures below, hereby (i) confirms that it consents to the terms of this Agreement and the Amended Credit Agreement, (ii) agrees that, notwithstanding the effectiveness of this Agreement, the Existing Credit Agreement, the Collateral Documents and the other Loan Documents continue to be in full force and effect (in the case of the Existing Credit Agreement, as amended hereby) and this Agreement shall not be considered a novation of the obligations and liabilities of the parties under the Existing Credit Agreement and (iii) affirms and confirms (x) its obligations under each of the Loan Documents to which it is a party, (y) the pledge of and/or grant of a lien or security interest, as applicable, in its assets as Collateral to secure such Obligations, all as provided in the Loan Documents as originally executed, and acknowledges and agrees that such pledge and/or grant continue in full force and effect in respect of, and to secure, such Obligations under the Amended Credit Agreement and the other Loan Documents and (z) in its capacity as a Guarantor under the Guaranty, its guarantee of the Obligations under the terms and conditions of the Guaranty and agrees that such guarantee remains in full force and effect to the extent set forth in such guarantee and after giving effect to this Agreement.

**SECTION 12.** *No Novation.* By its execution of this Agreement, each of the parties hereto acknowledges and agrees that the terms of this Agreement do not constitute a novation, but, rather, a supplement of the terms of a pre-existing indebtedness and related agreement, as evidenced by the Amended Credit Agreement.

**SECTION 13.** *Counterparts; Integration; Effectiveness.* This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire agreement among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or by email as a “.pdf” or “.tif” attachment shall be effective as delivery of a manually executed counterpart of this Agreement. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Agreement shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be. For purposes hereof, “Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

**SECTION 14.** *Miscellaneous.* This Agreement shall constitute a Loan Document for all purposes of the Amended Credit Agreement and the other Loan Documents. The execution, delivery and effectiveness of this Agreement shall not, except as expressly provided herein, operate as a waiver of any right, power or remedy of any Lender or the Administrative Agent under any of the Loan Documents, nor constitute a waiver of any provision of any of the Loan Documents.

**SECTION 15.** *Incorporation.* Sections 10.16 and 10.17 of the Existing Credit Agreement, relating to, among other things, jurisdiction, waiver of jury trial, venue, forum and service of process, are hereby incorporated and shall apply to the parties hereto *mutatis mutandis*, to the same extent as if fully set forth herein.

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

**BORROWER**

SUPERIOR INDUSTRIES INTERNATIONAL, INC.

By: /s/ Joanne M. Finnorn  
Name: Joanne M. Finnorn  
Title: Senior Vice President, General Counsel &  
Corporate Secretary

**GUARANTORS**

SUPERIOR INDUSTRIES INTERNATIONAL HOLDINGS, LLC  
SUPERIOR INDUSTRIES INTERNATIONAL ARKANSAS, LLC  
SUPERIOR INDUSTRIES INTERNATIONAL MICHIGAN, LLC

By: /s/ Joanne M. Finnorn  
Name: Joanne M. Finnorn  
Title: Senior Vice President and Secretary

ADMINISTRATIVE AGENT

CITIBANK, N.A., as Administrative Agent, an Extending Revolving Lender, a Refinancing Revolving Lender and an Issuing Bank

By: /s/ Matthew Burke

Name: Matthew Burke

Title: Managing Director & Vice President

JPMORGAN CHASE BANK, N.A., as Sub-Agent, an Extending Revolving Lender, a Refinancing Revolving Lender and an Issuing Bank

By: /s/ Krys Szremski

Name: Krys Szremski

Title: Executive Director

DEUTSCHE BANK AG, NEW YORK BRANCH, as an Extending Revolving Lender, a Refinancing Revolving Lender and an Issuing Bank

By: /s/ Philip Tancorra

Name: Philip Tancorra

Title: Vice President

By: /s/ Michael Strobel

Name: Michael Strobel

Title: Vice President

ROYAL BANK OF CANADA, as an Extending Revolving Lender, a Refinancing Revolving Lender and an Issuing Bank

By: /s/ Nikhil Madhok

Name: Nikhil Madhok

Title: Authorized Signatory

BMO HARRIS BANK, N.A., as an Extending Revolving Lender, a Refinancing Revolving Lender and an Issuing Bank

By: /s/ Josh Hovermale

Name: Josh Hovermale

Title: Director

KEYBANK NATIONAL ASSOCIATION, as a Non-Extending Revolving Lender and the Resigning Issuing Bank

By: /s/ Sally C. Barton

Name: Sally C. Barton

Title: Senior Vice President

**Schedule I**

**2021 EXTENDED REVOLVING COMMITMENTS**

<b>Extending Revolving Lender</b>	<b>2021 Extended Revolving Commitments</b>
JPMorgan Chase Bank, N.A.	\$35,000,000.00
Citibank, N.A.	\$35,000,000.00
Royal Bank of Canada	\$27,500,000.00
Deutsche Bank AG, New York Branch	\$22,500,000.00
BMO Harris Bank, N.A.	\$15,000,000.00
<b>Total</b>	<b>\$135,000,000.00</b>

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**Schedule II**

**REFINANCING REVOLVING COMMITMENTS**

<b>Refinancing Revolving Lender</b>	<b>Refinancing Revolving Commitments</b>
JPMorgan Chase Bank, N.A.	\$26,250,000.00
BMO Harris Bank, N.A.	\$26,250,000.00
Royal Bank of Canada	\$20,625,000.00
Citibank, N.A.	\$17,500,000.00
Deutsche Bank AG, New York Branch	\$16,875,000.00
<b>Total</b>	<b>\$107,500,000.00</b>

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**Schedule III**

L/C Commitments

<b>Issuing Bank</b>	<b>L/C Commitments</b>
JPMorgan Chase Bank, N.A.	\$3,052,325.58
BMO Harris Bank, N.A.	\$3,052,325.58
Royal Bank of Canada	\$2,398,255.82
Citibank, N.A.	\$2,034,883.72
Deutsche Bank AG, New York Branch	\$1,962,209.30
<b>Total</b>	<b>\$12,500,000.00</b>

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## Schedule IV

### Closing Date Revolving Commitments

Revolving Lender	Closing Date Revolving Commitments
KeyBank National Association	\$25,000,000
<b>Total</b>	<b>\$25,000,000</b>

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**Amended Credit Agreement**

\$560,000,000  
CREDIT AGREEMENT

Dated as of March 22, 2017

among

SUPERIOR INDUSTRIES INTERNATIONAL, INC.,  
as the Borrower,

CITIBANK, N.A.,  
as Administrative Agent, Collateral Agent and Issuing Bank,

KEYBANK NATIONAL ASSOCIATION and BMO Harris Bank, N.A.,  
as Co-Documentation Agents,

and

THE OTHER LENDERS PARTY HERETO

—————  
CITIGROUP GLOBAL MARKETS INC.,  
JPMORGAN CHASE BANK, N.A.,  
RBC CAPITAL MARKETS<sup>1</sup> and  
DEUTSCHE BANK SECURITIES INC.,  
as Joint Lead Arrangers and Joint Lead Bookrunners

AS AMENDED BY

THAT CERTAIN FIRST AMENDMENT TO CREDIT AGREEMENT DATED MAY 23, 2017  
AND  
THAT CERTAIN SECOND AMENDMENT TO CREDIT AGREEMENT DATED MAY 30, 2017  
AND  
THAT CERTAIN THIRD AMENDMENT TO CREDIT AGREEMENT DATED JUNE 15, 2017  
AND  
THAT CERTAIN FOURTH AMENDMENT TO CREDIT AGREEMENT DATED JUNE 29, 2018  
AND  
**THAT CERTAIN FIFTH AMENDMENT TO CREDIT AGREEMENT DATED May 3, 2021**

<sup>1</sup> RBC Capital Markets is the brand name for the capital markets activities of Royal Bank of Canada and its affiliates.

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## CREDIT AGREEMENT

This CREDIT AGREEMENT (this “**Agreement**”) is entered into as of March 22, 2017 by and among SUPERIOR INDUSTRIES INTERNATIONAL, INC., a Delaware corporation (the “**Borrower**”), CITIBANK, N.A., as administrative agent (in such capacity, including any successor thereto, the “**Administrative Agent**”) under the Loan Documents, as collateral agent (in such capacity, including any successor thereto, the “**Collateral Agent**”) under the Loan Documents and as an Issuing Bank, and each lender from time to time party hereto (collectively, the “**Lenders**” and individually, a “**Lender**”).

### PRELIMINARY STATEMENTS

The Borrower intends to acquire (the “**Closing Date Acquisition**”), directly or indirectly, Uniwheels AG, a stock corporation under German law (the “**Target**”), by way of a tender offer for not less than 75% of the shares of the Target (the “**Offer**”) with support of the Significant Holder (as defined herein).

In connection therewith, the Borrower has requested that (a) substantially simultaneously with the consummation of the Offer, the Lenders extend credit to the Borrower in the form of \$400.0 million of Closing Date Term Loans and \$150.0 million of Revolving Commitments on the Closing Date as secured credit facilities and (b) from time to time on and after the Closing Date, the Lenders lend to the Borrower and the Issuing Banks issue Letters of Credit for the account of the Borrower, each to provide working capital for, and for other general corporate purposes of, the Borrower and its Subsidiaries, pursuant to the Revolving Commitments hereunder and pursuant to the terms of, and subject to the conditions set forth in, this Agreement.

On the Effective Date, the Borrower will enter into the Bridge Loan Agreement (as defined herein) pursuant to which the lenders thereunder have agreed to make the Bridge Loans (as defined herein) to the Borrower on the Closing Date in an aggregate amount of €240.0 million.

The proceeds of the Closing Date Term Loans and the Closing Date Revolving Borrowings, together with the proceeds of the Bridge Loans, the Equity Contribution and cash on hand, will be used on the Closing Date, (i) to fund the Closing Date Refinancing and (ii) to pay (A) the Transaction Consideration, (B) the Transaction Expenses and (C) amounts required for working capital.

The applicable Lenders have indicated their willingness to lend, and the applicable Issuing Banks have indicated their willingness to issue Letters of Credit, in each case on the terms and subject to the conditions set forth herein.

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

### **Article I**

#### Definitions and Accounting Terms

SECTION 1.01 Defined Terms. As used in this Agreement (including the introductory paragraph hereof and the preliminary statements hereto), the following terms have the meanings set forth below:

“2021 Revolving Commitment” means, as to each Revolving Lender, its obligation to (1) make Revolving Loans to the Borrower pursuant to Section 2.01(2) and (2) purchase participations in L/C Obligations in respect of Letters of Credit in an aggregate principal amount at any one time outstanding not to exceed the amount specified opposite such Lender’s name on Schedule II of the Fifth Amendment or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate 2021 Revolving Commitments of all Revolving Lenders as of the Fifth Amendment Effective Date is \$107.5 million.

**“2021 Revolving Facility” means, collectively, the 2021 Revolving Commitments and the Revolving Loans and other extensions of credit made thereunder.**

**“2021 Revolving Facility Maturity Date” has the meaning specified in the definition of “Maturity Date.”**

“**Acceptable Discount**” has the meaning specified in Section 2.05(1)(e)(I).

“**Acceptable Prepayment Amount**” has the meaning specified in Section 2.05(1)(e)(J).

“**Acceptance and Prepayment Notice**” means a notice of the Borrower’s acceptance of the Acceptable Discount in substantially the form of Exhibit M.

“**Acceptance Date**” has the meaning specified in Section 2.05(1)(e)(I).

“**Acquired Indebtedness**” means, with respect to any specified Person,

(1) Indebtedness of any other Person existing at the time such other Person is merged, consolidated or amalgamated with or into or became a Restricted Subsidiary of such specified Person, including Indebtedness incurred in connection with, or in contemplation of, such other Person merging, amalgamating or consolidating with or into, or becoming a Restricted Subsidiary of, such specified Person, and

(2) Indebtedness secured by a Lien encumbering any asset acquired by such specified Person.

“**AcquisitionCo**” means Blitz F17-641 AG, having its registered office in Frankfurt am Main registered with the commercial register of the local court in Frankfurt am Main under docket number HRB 107708.

“**Additional Lender**” means, at any time, any bank, other financial institution or institutional lender or investor that, in any case, is not an existing Lender and that agrees to provide any portion of any (a) Incremental Loan in accordance with Section 2.14, (b) Other Loans pursuant to a Refinancing Amendment in accordance with Section 2.15 or (c) Replacement Loans pursuant to Section 10.01; *provided* that each Additional Lender shall be subject to the approval of the Administrative Agent, such approval not to be unreasonably withheld, conditioned or delayed, in each case solely to the extent that any such consent would be required from the Administrative Agent under Section 10.07(b)(iii)(B) for an assignment of Loans to such Additional Lender, and in the case of Incremental Revolving Commitments and Other Revolving Commitments and the Issuing Bank, such approval not to be unreasonably withheld, conditioned or delayed, in each case solely to the extent such consent would be required for any assignment to such Additional Lender under Section 10.07(b)(iii).

“**Administrative Agent**” has the meaning specified in the introductory paragraph to this Agreement.

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

“**Administrative Questionnaire**” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, “*control*” (including, with correlative meanings, the terms “*controlling*,” “*controlled by*” and “*under common control with*”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“**Affiliate Transaction**” has the meaning specified in Section 7.07.

“**Affiliated Lender**” means, at any time, any Lender that is an Investor or an Affiliate of an Investor (other than (a) the Borrower or any Subsidiary, (b) any Debt Fund Affiliate or (c) any natural person) at such time.

“**Affiliated Lender Assignment and Assumption**” has the meaning specified in Section 10.07(h)(vi).

“**Affiliated Lender Cap**” has the meaning specified in Section 10.07(h)(iv).

“**Agent Parties**” has the meaning specified in Section 10.02(4).

“**Agent-Related Distress Event**” means, with respect to the Administrative Agent or any other Person that directly or indirectly controls the Administrative Agent (each, a “**Distressed Person**”), (a) that such Distressed Person is or becomes subject to a voluntary or involuntary case under any Debtor Relief Law, (b) a custodian, conservator, receiver, or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person’s assets, or (c) such Distressed Person is subject to a forced liquidation, makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt; *provided* that an Agent-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in the Administrative Agent or any Person that directly or indirectly controls the Administrative Agent by a Governmental Authority or an instrumentality thereof so long as such ownership interest does not result in or provide the Administrative Agent 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 the Administrative Agent (or such Governmental Authority or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with the Administrative Agent.

“**Agent-Related Persons**” means the Agents, together with their respective Affiliates, and the officers, directors, employees, agents, attorney-in-fact, partners, trustees and advisors of such Persons and of such Persons’ Affiliates.

“**Agents**” means, collectively, the Administrative Agent, the Collateral Agent and the Supplemental Administrative Agents (if any).

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

**“Agreed Currency” means Dollars or any Alternative Currency.**

“**Agreement**” means this Credit Agreement, as amended, restated, amended and restated, modified or supplemented from time to time in accordance with the terms hereof.

“**Agreement for Standby Letter of Credit**” means the Agreement for Standby Letter of Credit, dated as of the Effective Date, among the Tender Issuing Bank and the Borrower as Applicant.

“**AHYDO Payment**” means any mandatory prepayment or redemption pursuant to the terms of any Indebtedness that is intended or designed to cause such Indebtedness not to be treated as an “applicable high yield discount obligation” within the meaning of Section 163(i) of the Code.

“**All-In Yield**” means, as to any Indebtedness, the yield thereof, whether in the form of interest rate, margin, OID, upfront fees, a LIBO Rate floor or Base Rate floor (with such increased amount being determined in the manner described in the final proviso of this definition), or otherwise, in each case, incurred or payable by the Borrower ratably to all lenders of such Indebtedness; *provided* that OID and upfront fees shall be equated to interest rate assuming a 4year life to maturity (or, if less, the stated life to maturity at the time of incurrence of the applicable Indebtedness); *provided, further*, that “AllIn Yield” shall not include arrangement fees, structuring fees, commitment fees, underwriting fees, success fees, advisory fees, ticking fees, consent or amendment fees and any similar fees

(regardless of how such fees are computed and whether shared or paid, in whole or in part, with or to any or all lenders) and any other fees not generally paid ratably to all lenders of such Indebtedness; *provided further* that, with respect to any Loans of an applicable Class that includes a LIBO Rate floor or Base Rate floor, (1) to the extent that the reference rate on the date that the AllIn Yield is being calculated is less than such floor, the amount of such difference shall be deemed added to the Applicable Rate for such Loans of such Class for the purpose of calculating the AllIn Yield and (2) to the extent that the reference rate on the date that the AllIn Yield is being calculated is greater than such floor, then the floor shall be disregarded in calculating the AllIn Yield.

“**Alternative Currency**” shall mean Euros.

“**Alternative Currency Loan**” shall mean a Loan denominated in an Alternative Currency, which shall include each Revolving Loan denominated in Euros.

“**Amendment No. 1 Effective Date**” shall mean May 23, 2017.

“**Amendment No. 2 Effective Date**” shall mean May 30, 2017.

“**Amendment No. 2 to the Credit Agreement**” shall mean that certain Second Amendment to the Credit Agreement dated as of the Amendment No. 2 Effective Date.

“**Applicable Discount**” has the meaning specified in Section 2.05(1)(e)(I).

“**Applicable Percentage**” means, in respect of the Revolving Facility, with respect to any Revolving Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Facility represented by such Revolving Lender’s Revolving Commitments at such time, subject to adjustment as provided in Section 2.17. If the commitment of each Revolving Lender to make Revolving Loans and the obligation of the Issuing Banks to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Revolving Commitments have otherwise expired in full, then the Applicable Percentage of each Revolving Lender in respect of the Revolving Facility shall be determined based on the Applicable Percentage of such Revolving Lender in respect of the Revolving Facility most recently in effect, giving effect to any subsequent assignments.

“**Applicable Rate**” means a percentage per annum equal to:

(a) with respect to Closing Date Term Loans, (i) 4.00% for LIBO Rate Loans and (ii) 3.00% for Base Rate Loans.

(b) with respect to Revolving Loans ~~and unused Revolving Commitments~~ under the Closing Date Revolving Facility and unused Closing Date Revolving Commitments and Letter of Credit fees under the Closing Date Revolving Facility, (i) until delivery of the financial statements for the first full fiscal quarter ending after the Closing Date pursuant to Section 6.01, (A) 3.50% for LIBO Rate Loans ~~and Letter of Credit fees~~, (B) 2.50% for Base Rate Loans and Letter of Credit fees and (C) 0.50% for the Commitment Fee Rate for unused Closing Date Revolving Commitments and (ii) thereafter, the following percentages per annum, based upon the First Lien Net Leverage Ratio as specified in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(1):

<u>Pricing Level</u>	<u>First Lien Net Leverage Ratio</u>	<u>LIBO Rate and Letter of Credit Fees</u>	<u>Base Rate</u>	<u>Commitment Fee Rate</u>
<u>1</u>	<u>&gt;1.50 to 1.00</u>	<u>3.50%</u>	<u>2.50%</u>	<u>0.50%</u>
<u>2</u>	<u>&lt;1.50 to 1.00 and &gt;1.25 to 1.00</u>	<u>3.25%</u>	<u>2.25%</u>	<u>0.375%</u>
<u>3</u>	<u>&lt;1.25 to 1.00</u>	<u>3.00%</u>	<u>2.00%</u>	<u>0.25%</u>

(c) with respect to Revolving Loans under the 2021 Revolving Facility and unused 2021 Revolving Commitments and Letter of Credit fees under the 2021 Revolving Facility, (i) until delivery of the Compliance Certificate pursuant to Section 6.02(1) for the fiscal quarter ended March 31, 2021, (A) 3.50% for LIBO Rate Loans and Letter of Credit fees, (B) 2.50% for Base Rate Loans and (C)

0.625% for the Commitment Fee Rate for unused 2021 Revolving Commitments and (ii) thereafter, the following percentages per annum, based upon the First Lien Net Leverage Ratio as specified in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.02(1):

<u>Pricing Level</u>	<u>First Lien Net Leverage Ratio</u>	<u>LIBO Rate and Letter of Credit Fees</u>	<u>Base Rate</u>	<u>Commitment Fee Rate</u>
1	>1.50 to 1.00	3.50%	2.50%	<del>0.50</del> <u>0.625%</u>
2	≤1.50 to 1.00 and >1.25 to 1.00	3.25%	2.25%	<del>0.375</del> <u>0.50%</u>
3	≤1.25 to 1.00	3.00%	2.00%	<del>0.25</del> <u>0.375%</u>

Any increase or decrease in the Applicable Rate resulting from a change in the First Lien Net Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(1); *provided* that, at the option of the Required Facility Lenders under the Closing Date Revolving Facility or 2021 Revolving Facility, as applicable, “Pricing Level 1” (as set forth above) shall apply as of (x) the first Business Day after the date on which a Compliance Certificate was required to have been delivered but was not delivered, and shall continue to so apply to and including the date on which such Compliance Certificate is so delivered (and thereafter the pricing level otherwise determined in accordance with this definition shall apply) or (y) the first Business Day after an Event of Default under Section 8.01(1) shall have occurred and be continuing, and shall continue to so apply to but excluding the date on which such Event of Default is cured or waived (and thereafter the pricing level otherwise determined in accordance with this definition shall apply).

“**Appropriate Lender**” means, at any time, (a) with respect to Loans of any Class, the Lenders of such Class and (b) with respect to Letters of Credit, (i) the relevant Issuing Banks and (ii) the relevant Revolving Lenders.

“**Approved Fund**” means, with respect to any Lender, any Fund that is administered, advised or managed by (a) such Lender, (b) an Affiliate of such Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages such Lender.

“**Arrangers**” means (x) Citigroup Global Markets Inc., JPMorgan Chase Bank, N.A., RBC Capital Markets and Deutsche Bank Securities Inc., each in its capacity as a joint lead arranger under this Agreement and (y) the Refinancing Arrangers (as defined in the Fifth Amendment), each in its capacity as a joint lead arranger and joint bookrunner under the Fifth Amendment.

“**Asset Sale**” means:

- (1) the sale, conveyance, transfer or other disposition, whether in a single transaction or a series of related transactions of property or assets of the Borrower or any Restricted Subsidiary (each referred to in this definition as a “**disposition**”); or
- (2) the issuance or sale of Equity Interests (other than Preferred Stock or Disqualified Stock of Restricted Subsidiaries issued in compliance with Section 7.02 and directors’ qualifying shares or shares or interests required to be held by foreign nationals or other third parties to the extent required by applicable Law) of any Restricted Subsidiary (other than to the Borrower or another Restricted Subsidiary), whether in a single transaction or a series of related transactions;

in each case, other than:

- (a) any disposition of:
  - (i) Cash Equivalents or Investment Grade Securities,
  - (ii) obsolete, damaged or worn out property or assets in the ordinary course of business or consistent with industry practice or any disposition of inventory or goods (or other assets) held for sale or no longer used or useful in the ordinary course,

- (iii) assets no longer economically practicable or commercially reasonable to maintain (as determined in good faith by the management of the Borrower),
- (iv) improvements made to leased real property to landlords pursuant to customary terms of leases entered into in the ordinary course of business and
- (v) assets for purposes of charitable contributions or similar gifts to the extent such assets are not material to the ability of the Borrower and its Restricted Subsidiaries, taken as a whole, to conduct its business in the ordinary course;
- (b) the disposition of all or substantially all of the assets of the Borrower in a manner permitted pursuant to Section 7.03 (other than Section 7.03(6) or Section 7.03(7));
- (c) any disposition in connection with the making of any Restricted Payment that is permitted to be made, and is made, under Section 7.05, any Permitted Investment or any acquisition otherwise permitted under this Agreement;
- (d) any disposition of property or assets or issuance or sale of Equity Interests of any Restricted Subsidiary with an aggregate fair market value for any individual transaction or series of related transactions of less than \$5.0 million;
- (e) any disposition of property or assets or issuance of securities by a Restricted Subsidiary to the Borrower or by the Borrower or a Restricted Subsidiary to a Restricted Subsidiary;
- (f) to the extent allowable under Section 1031 of the Code, any exchange of like property (excluding any boot thereon) for use in a Similar Business;
- (g) (i) the lease, assignment or sublease, license or sublicense of any real or personal property in the ordinary course of business or consistent with industry practice and (ii) the exercise of termination rights with respect to any lease, sublease, license or sublicense or other agreement;
- (h) any issuance, disposition or sale of Equity Interests in, or Indebtedness, assets or other securities of, an Unrestricted Subsidiary;
- (i) foreclosures, condemnation, expropriation, eminent domain or any similar action (including for the avoidance of doubt, any Casualty Event) with respect to assets or the granting of Liens not prohibited by this Agreement;
- (j) sales of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with any Qualified Securitization Facility, sales of receivables in connection with Receivables Financing Transactions or the disposition of an account receivable in connection with the collection or compromise thereof in the ordinary course of business or consistent with industry practice or in bankruptcy or similar proceedings;
- (k) any financing transaction with respect to property built or acquired by the Borrower or any Restricted Subsidiary after the Closing Date, including asset securitizations permitted hereunder;
- (l) the sale, lease, assignment, license, sublease or discount of inventory, equipment, accounts receivable, notes receivable or other current assets in the ordinary course of business or consistent with industry practice or the conversion of accounts receivable to notes receivable or other dispositions of accounts receivable in connection with the collection thereof in the ordinary course of business or consistent with past practice;
- (m) the licensing or sublicensing of intellectual property or other general intangibles in the ordinary course of business or consistent with industry practice;

- (n) any surrender or waiver of contract rights or the settlement, release or surrender of contract rights or other litigation claims in the ordinary course of business or consistent with industry practice;
- (o) the unwinding of any Hedging Obligations;
- (p) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements and similar binding arrangements;
- (q) the lapse, abandonment or other disposition of intellectual property rights in the ordinary course of business or consistent with industry practice, which in the reasonable good faith determination of the Borrower, are not material to the conduct of the business of the Borrower and its Restricted Subsidiaries taken as a whole;
- (r) the granting of a Lien that is permitted under Section 7.01;
- (s) the issuance of directors' qualifying shares and shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable Law;
- (t) the disposition of any assets (including Equity Interests) (i) acquired in a transaction permitted hereunder, which assets are not used or useful in the principal business of the Borrower and its Restricted Subsidiaries or (ii) made in connection with the approval of any applicable antitrust authority or otherwise necessary or advisable in the good faith determination of the Borrower to consummate any acquisition permitted hereunder;
- (u) dispositions of property to the extent that such property is exchanged for credit against the purchase price of similar replacement property;
- (v) dispositions of property in connection with any Sale-Leaseback Transaction;
- (w) [reserved]; and
- (x) the sales of property or assets for an aggregate fair market value since the date of this Agreement not to exceed \$50.0 million.

“**Assignee Group**” means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

“**Assignment and Assumption**” means an Assignment and Assumption substantially in the form of Exhibit D-1 or any other form approved by the Administrative Agent.

“**Attorney Costs**” means all reasonable fees, expenses and disbursements of any law firm or other external legal counsel, to the extent documented in reasonable detail and invoiced.

“**Attributable Indebtedness**” means, on any date, in respect of any Capitalized Lease Obligation of any Person, the amount thereof that would appear as a liability on a balance sheet of such Person prepared as of such date in accordance with GAAP.

“**Auction Agent**” means (a) the Administrative Agent or (b) any other financial institution or advisor engaged by the Borrower (whether or not an Affiliate of the Administrative Agent) to act as an arranger in connection with any Discounted Term Loan Prepayment pursuant to Section 2.05(1)(e); *provided* that the Borrower shall not designate the Administrative Agent as the Auction Agent without the written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Auction Agent); *provided further* that neither the Borrower nor any of its Affiliates may act as the Auction Agent.



“**Auto-Extension Letter of Credit**” has the meaning specified in Section 2.03(2)(c).

“**Available Incremental Amount**” has the meaning specified in Section 2.14(4).

“**Available Tenor**” means, as of any date of determination and with respect to the then-current Benchmark for any Agreed Currency, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (f) of Section 3.03(2).

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

“**Bail-In Legislation**” means, 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 for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“**Bankruptcy Code**” has the meaning specified in Section 8.02.

“**Base Rate**” means for any day a fluctuating rate per annum (subject solely in the case of the Term Facility to a floor of 2.00% 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 announced from time to time by the Administrative Agent as its “prime rate” and (c) the LIBO Rate on such day for an Interest Period of one (1) month *plus* 1.00% (or, if such day is not a Business Day, the immediately preceding Business Day); *provided* that, if the Base Rate determined based on the foregoing is less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. The “prime rate” is a rate set by the Administrative Agent based upon various factors including the Administrative Agent’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 the Administrative Agent shall take effect at the opening of business on the day specified in the announcement of such change.

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

“**Basket**” means any amount, threshold or other value permitted or prescribed with respect to any Lien, Indebtedness, Asset Sale, Investment, Restricted Payment, transaction value, judgment or other amount under any provision in Articles V, VI, VII or VIII and the definitions related thereto.

“**Benchmark**” means, initially, the LIBO Rate for such Agreed Currency; provided that if a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to the applicable LIBO Rate or the then-current Benchmark for such Agreed Currency, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to clause (b) or clause (c) of Section 3.03(2).

“**Benchmark Replacement**” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date; provided that, in the case of any Revolving Loan denominated in an Alternative Currency, “Benchmark Replacement” shall mean the alternative set forth in (3) below:

(1) in the case of any Loan denominated in Dollars, the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;

(2) in the case of any Loan denominated in Dollars, the sum of: (a) Daily Simple SOFR and (b) the related Benchmark Replacement Adjustment;



(3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for syndicated credit facilities denominated in the applicable Agreed Currency at such time in the United States and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1), such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion; provided further that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, upon the occurrence of a Term SOFR Transition Event, and the delivery of a Term SOFR Notice, on the applicable Benchmark Replacement Date the “Benchmark Replacement” shall revert to and shall be deemed to be the sum of (a) Term SOFR and (b) the related Benchmark Replacement Adjustment, as set forth in clause (1) of this definition (subject to the first proviso above).

If the Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the applicable Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with respect to the Revolving Facility with an Unadjusted Benchmark Replacement for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement:

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

(a) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;

(b) the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and

(2) for purposes of clause (3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities denominated in the applicable Agreed Currency at such time;

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

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means, with respect to any Benchmark with respect to the Revolving Facility, the earliest to occur of the following events with respect to such then-current Benchmark with respect to the Revolving Facility:

- (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof);
- (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein;
- (3) in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the date a Term SOFR Notice is provided to the Revolving Lenders and the Borrower pursuant to Section 3.03(2)(c); or
- (4) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Revolving Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Revolving Lenders, written notice of objection to such Early Opt-in Election from Revolving Lenders comprising the Required Facility Lenders under the Revolving Facility.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Event” means, with respect to any Benchmark with respect to the Revolving Facility, the occurrence of one or more of the following events with respect to such then-current Benchmark with respect to the Revolving Facility:

- (1) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such

administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(2) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, the central bank for the Agreed Currency applicable to such Benchmark, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), in each case, which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Unavailability Period” means, with respect to any Benchmark with respect to the Revolving Facility, the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.03(2) and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 3.03(2).

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

“**Beneficial Ownership Regulation**” means 31 C.F.R. § 1010.230.

“**Big Boy Letter**” means a letter from a Lender acknowledging that (1) an assignee may have information regarding the Borrower and any Subsidiary of the Borrower, their ability to perform the Obligations or any other material information that has not previously been disclosed to the Administrative Agent and the Lenders (“**Excluded Information**”), (2) the Excluded Information may not be available to such Lender, (3) such Lender has independently and without reliance on any other party made its own analysis and determined to assign Term Loans to such assignee pursuant to Section 10.07(h) or (l) notwithstanding its lack of knowledge of the Excluded Information and (4) such Lender waives and releases any claims it may have against the Administrative Agent, such assignee, the Borrower and the Subsidiaries of the Borrower with respect to the nondisclosure of the Excluded Information; or otherwise in form and substance reasonably satisfactory to such assignee, the Administrative Agent and assigning Lender.

“**Board of Directors**” means, for any Person, the board of directors or other governing body of such Person or, if such Person does not have such a board of directors or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, “Board of Directors” means the Board of Directors of the Borrower.

“**Borrower**” has the meaning specified in the introductory paragraph to this Agreement. Upon the consummation of any transaction permitted by Section 7.03(4), “Borrower” shall mean the Successor Borrower.

“**Borrower Annual Financial Statements**” means the audited consolidated balance sheets and related audited consolidated statements of operations, members’ equity (deficit) and cash flows of the Borrower and its Subsidiaries for the fiscal years ended December 31, 2014 and December 31, 2015.

“**Borrower Materials**” has the meaning specified in Section 6.02.

“**Borrower Offer of Specified Discount Prepayment**” means any offer by any Borrower Party to make a voluntary prepayment of Loans at a specified discount to par pursuant to Section 2.05(1)(e)(B).

“**Borrower Parties**” means the collective reference to the Borrower and each Subsidiary of the Borrower and “**Borrower Party**” means any of them.

“**Borrower Quarterly Financial Statements**” means the unaudited consolidated balance sheets and related unaudited consolidated statements of income, cash flows and members’ equity (deficit) of the Borrower and its Subsidiaries for the fiscal quarters ended March 31, 2016, June 30, 2016, September 30, 2016 and December 31, 2016.

“**Borrower Solicitation of Discount Range Prepayment Offers**” means the solicitation by any Borrower Party of offers for, and the corresponding acceptance by a Lender of, a voluntary prepayment of Loans at a specified range of discounts to par pursuant to Section 2.05(1)(e)(E).

“**Borrower Solicitation of Discounted Prepayment Offers**” means the solicitation by any Borrower Party of offers for, and the subsequent acceptance, if any, by a Lender of, a voluntary prepayment of Loans at a discount to par pursuant to Section 2.05(1)(e)(H).

“**Borrowing**” means a borrowing consisting of Loans of the same Class and Type made, converted or continued on the same date and, in the case of LIBO Rate Loans, having the same Interest Period.

“**Bridge Loan Agreement**” means that certain Bridge Credit Agreement, dated as of the Effective Date, among the Borrower and the lenders named therein, and Citibank, N.A., as administrative agent, as amended, restated or otherwise modified from time to time.

“**Bridge Loans**” means the €240 million senior unsecured increasing rate loans borrowed by the Borrower under the Bridge Loan Agreement; *provided* that if at any time after the Closing Date the Bridge Loans have been refinanced with the proceeds of any Senior Notes, “Bridge Loans” shall mean the Senior Notes (and, to the extent not so refinanced in full, the Bridge Loans).

“**Broker-Dealer Regulated Subsidiary**” means any Subsidiary of the Borrower that is registered as a broker-dealer under the Exchange Act or any other applicable Laws requiring such registration.

“**Business Day**” means any day that is not a Legal Holiday and, (i) with respect to any interest rate settings as to a LIBO Rate Loan denominated in Dollars, any fundings, disbursements, settlements and payments in respect of any such LIBO Rate Loan, or any other dealings to be carried out pursuant to this Agreement in respect of any such LIBO Rate Loan, any day on which dealings in deposits in Dollars are conducted by and between banks in the London interbank eurodollar market and (ii) with respect to any interest rate settings as to a LIBO Rate Loan denominated in Euros, any fundings, disbursements, settlements and payments of any such LIBO Rate Loan denominated in Euros, or any other dealings in Euros to be carried out pursuant to this Agreement in respect of any such LIBO Rate Loan, shall mean a TARGET Day.

“**Canadian Dollars**” means the lawful currency of Canada.

“**Capital Expenditures**” means, for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under Capitalized Lease Obligations) by the Borrower and the Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on the consolidated statement of cash flows of the Borrower and the Restricted Subsidiaries.

“**Capital Stock**” means:

- (1) in the case of a corporation, corporate stock or shares in the capital of such corporation;
- (2) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;
- (3) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and
- (4) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, but excluding from all of the foregoing any debt securities convertible into or exchangeable for Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

“**Capitalized Lease Obligation**” means, at the time any determination thereof is to be made, the amount of the liability in respect of a capital lease that would at such time be required to be capitalized and reflected as a liability on a balance sheet (excluding the footnotes thereto) prepared in accordance with GAAP; *provided* that all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the issuance by the Financial Accounting Standards Board on February 25, 2016 of an Accounting Standards Update (the “ASU”) shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purpose of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with the ASU (on a prospective or retroactive basis or otherwise) to be treated as Capitalized Lease Obligations in the financial statements to be delivered pursuant to Section 6.01.

“**Captive Insurance Subsidiary**” means any Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Subsidiary thereof).

“**Cash Collateral**” has the meaning specified in the definition of “Cash Collateralize.”

“**Cash Collateral Account**” means an account held at, and subject to the sole dominion and control of, the Collateral Agent.

“**Cash Collateralize**” means, in respect of an Obligation, to provide and pledge cash or Cash Equivalents in Dollars as collateral, at a location and pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent or the relevant Issuing Bank with respect to any Letter of Credit, as applicable (and “**Cash Collateralization**” has a corresponding meaning). “**Cash Collateral**” has a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“**Cash Equivalents**” means:

- (1) Dollars;
- (2) (a) Euros, Yen, Canadian Dollars, Sterling, Polish Zloty, Mexican Pesos or any national currency of any Participating Member State;

(b) in the case of any Foreign Subsidiary or any jurisdiction in which the Borrower or any Restricted Subsidiary conducts business, such local currencies held by it from time to time in the ordinary course of business or consistent with industry practice;

(3) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed or insured by the U.S. government or any agency or instrumentality thereof the securities of which are unconditionally guaranteed as a full faith and credit obligation of such government with maturities of 36 months or less from the date of acquisition;

(4) certificates of deposit, time deposits and eurodollar time deposits with maturities of three years or less from the date of acquisition, demand deposits, bankers' acceptances with maturities not exceeding three years and overnight bank deposits, in each case with any domestic or foreign commercial bank having capital and surplus of not less than \$500.0 million in the case of U.S. banks and \$100.0 million (or the U.S. dollar equivalent as of the date of determination) in the case of non-U.S. banks;

(5) repurchase obligations for underlying securities of the types described in clauses (3) and (4) above or clauses (7) and (8) below entered into with any financial institution or recognized securities dealer meeting the qualifications specified in clause (4) above;

(6) commercial paper and variable or fixed rate notes rated at least P-2 by Moody's or at least A-2 by S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) and in each case maturing within 36 months after the date of acquisition thereof;

(7) marketable short-term money market and similar liquid funds having a rating of at least P-2 or A-2 from either Moody's or S&P, respectively (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower);

(8) securities issued or directly and fully and unconditionally guaranteed by any state, commonwealth or territory of the United States or any political subdivision or taxing authority of any such state, commonwealth or territory or any public instrumentality thereof having maturities of not more than 36 months from the date of acquisition thereof;

(9) readily marketable direct obligations issued or directly and fully and unconditionally guaranteed by any foreign government or any political subdivision or public instrumentality thereof, in each case having an Investment Grade Rating from either Moody's or S&P (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of 36 months or less from the date of acquisition;

(10) Indebtedness or Preferred Stock issued by Persons with a rating of "A" or higher from S&P or "A2" or higher from Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower) with maturities of 36 months or less from the date of acquisition;

(11) Investments with average maturities of 36 months or less from the date of acquisition in money market funds rated AAA- (or the equivalent thereof) or better by S&P or Aaa3 (or the equivalent thereof) or better by Moody's (or, if at any time neither Moody's nor S&P is rating such obligations, an equivalent rating from another Rating Agency selected by the Borrower);

(12) investment funds investing substantially all of their assets in securities of the types described in clauses (1) through (11) above; and

(13) solely with respect to any Captive Insurance Subsidiary, any investment that the Captive Insurance Subsidiary is not prohibited to make in accordance with applicable Law.



In the case of Investments by any Foreign Subsidiary or Investments made in a country outside the United States of America, Cash Equivalents will also include (i) investments of the type and maturity described in clauses (1) through (13) above of foreign obligors, which investments or obligors (or the parents of such obligors) have ratings described in such clauses or equivalent ratings from comparable foreign rating agencies and (ii) other short-term investments utilized by Foreign Subsidiaries in accordance with normal investment practices for cash management in investments analogous to the foregoing investments in clauses (1) through (13) and in this paragraph.

Notwithstanding the foregoing, Cash Equivalents will include amounts denominated in currencies other than those set forth in clauses (1) and (2) above, *provided* that such amounts, except amounts used to pay non-Dollar denominated obligations of the Borrower or any Restricted Subsidiary in the ordinary course of business, are converted into any currency listed in clause (1) or (2) above as promptly as practicable and in any event within ten (10) Business Days following the receipt of such amounts.

**“Cash Management Agreement”** means any agreement entered into from time to time by the Borrower or any Restricted Subsidiary in connection with cash management services for collections, other Cash Management Services and for operating, payroll and trust accounts of such Person, including automatic clearing house services, controlled disbursement services, electronic funds transfer services, information reporting services, lockbox services, stop payment services and wire transfer services.

**“Cash Management Bank”** means any Person that is an Agent, a Lender or an Arranger or an Affiliate of an Agent or Lender or Arranger on the Effective Date or at the time it entered into a Secured Cash Management Agreement, whether or not such Person subsequently ceases to be an Agent, a Lender or an Affiliate of an Agent or Lender.

**“Cash Management Obligations”** means obligations owed by the Borrower or any Restricted Subsidiary to any Cash Management Bank in connection with, or in respect of, any Cash Management Services.

**“Cash Management Services”** means (a) commercial credit cards, merchant card services, purchase or debit cards, including non-card e-payables services, (b) treasury management services (including controlled disbursement, overdraft, automatic clearing house fund transfer services, return items and interstate depository network services), (c) foreign exchange, netting and currency management services and (d) any other demand deposit or operating account relationships or other cash management services, including under any Cash Management Agreements.

**“Casualty Event”** means any event that gives rise to the receipt by the Borrower or any Restricted Subsidiary of any insurance proceeds or condemnation awards in respect of any equipment, fixed assets or real property (including any improvements thereon) to replace or repair such equipment, fixed assets or real property.

**“CFC”** means a “controlled foreign corporation” within the meaning of Section 957(a) of the Code.

**“CFC Holdco”** means a Domestic Subsidiary that is treated as a disregarded entity for U.S. federal income tax purposes substantially all of whose assets consists (directly or indirectly through disregarded entities) of the Capital Stock or indebtedness of one or more Subsidiaries that are CFCs.

**“Change in Law”** means the occurrence, after the Effective Date, of any of the following: (a) the adoption of any law, rule, regulation or treaty (excluding the taking effect after the Effective Date of a law, rule, regulation or treaty adopted prior to the Effective Date), (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. It is understood and agreed that (i) the Dodd–Frank Wall Street Reform and Consumer Protection Act (Public Law 111-203, H.R. 4173), all Laws relating thereto and all interpretations and applications thereof and (ii) 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, shall, for the purpose of this Agreement, be deemed to be adopted subsequent to the Effective Date.

“**Change of Control**” means the occurrence of any of the following after the Closing Date:

(i) (a) any Person (other than a Permitted Holder) or (b) Persons (other than one or more Permitted Holders) constituting a “group” (as such term is used in Sections 13(d) and 14(d) of the Exchange Act), becoming the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of Equity Interests of the Borrower representing more than thirty-five percent (35%) of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Borrower and the percentage of aggregate ordinary voting power so held is greater than the percentage of the aggregate ordinary voting power represented by the Equity Interests of the Borrower beneficially owned, directly or indirectly, in the aggregate by the Permitted Holders (it being understood and agreed that for purposes of measuring beneficial ownership held by any Person that is not a Permitted Holder, Equity Interests held by any Permitted Holder will be excluded); or

(ii) any “Change of Control” (or any comparable term) in any document pertaining to the Bridge Loans or any Refinancing Indebtedness thereof, in each case with an aggregate outstanding principal amount in excess of the Threshold Amount;

unless, in the case of clause (1) above, the Permitted Holders have, at such time, directly or indirectly, the right or the ability by voting power, contract or otherwise to elect or designate for election at least a majority of the board of directors of the Borrower.

“**Class**” (a) when used with respect to Lenders, refers to whether such Lenders have Loans or Commitments with respect to a particular Class of Loans or Commitments, (b) when used with respect to Commitments, refers to whether such Commitments are Closing Date Term Loan Commitments, Closing Date Revolving Commitments, the 2021 Revolving Commitments, Incremental Revolving Commitments, Other Revolving Commitments, Incremental Term Commitments, Commitments in respect of any Class of Replacement Loans, Extended Revolving Commitments of a given Extension Series or Other Term Loan Commitments of a given Class of Other Loans, in each case not designated part of another existing Class and (c) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Closing Date Term Loans, Revolving Loans under the Closing Date Revolving Facility, Revolving Loans under the 2021 Revolving Facility, Incremental Term Loans, Incremental Revolving Loans, Other Revolving Loans, Replacement Loans, Extended Term Loans, Loans made pursuant to Extended Revolving Commitments, or Other Term Loans, in each case not designated part of another existing Class. Commitments (and, in each case, the Loans made pursuant to such Commitments) that have different terms and conditions shall be construed to be in different Classes. Commitments (and, in each case, the Loans made pursuant to such Commitments) that have identical terms and conditions shall be construed to be in the same Class.

“**Clean-Up Period**” means the period commencing on the Closing Date and ending 60 days (or such greater number of days as agreed by the Administrative Agent) after the Closing Date.

“**Closing Date**” means the first date on which all the conditions precedent in Section 4.02 are satisfied or waived in accordance with Section 10.01, and the Closing Date Term Loans are made to the Borrower pursuant to Section 2.01(1).

“**Closing Date Acquisition**” has the meaning specified in the introductory paragraph to this Agreement; for the avoidance of doubt, the Closing Date Acquisition shall include (i) the acquisition of any minority Equity Interests in the Target following the Closing Date, whether by way of a “squeeze out” process or otherwise and (ii) the execution and delivery of the Domination Agreement.

“**Closing Date First Lien Net Leverage Ratio**” means 1.80 to 1.00.

“**Closing Date Loans**” means the Closing Date Term Loans and any Closing Date Revolving Borrowing.



“Closing Date Refinancing” means the repayment of all outstanding Indebtedness under the Existing Credit Agreement (it being understood that letters of credit may remain outstanding to the extent collateralized or backstopped on the Closing Date) and termination of all commitments, guarantees and security interests in respect of such Indebtedness.

“Closing Date Revolving Borrowing” means the revolving loans made to the Borrower under this Agreement on the Closing Date.

“Closing Date Revolving ~~Borrowing~~” means one or more Borrowings of Commitment” means, as to each Revolving Lender, its obligation to (1) make Revolving Loans onto the Closing Date Borrower pursuant to Section 2.01(2) in accordance with the requirements specified or referred to in Section 6.14; provided, that, without limitation, Letters of Credit may be issued on the Closing Date to backstop or replace letters of credit outstanding on the Closing Date (other than any letter of credit issued in connection with the Offer) (including deemed issuances of Letters of Credit under this Agreement resulting from an existing issuer of letters of credit outstanding on the Closing Date agreeing to become an Issuing Bank under this Agreement); and (2) purchase participations in L/C Obligations in respect of Letters of Credit in an aggregate principal amount at any one time outstanding not to exceed the amount specified opposite such Lender’s name on Schedule 2 of the Amendment No. 2 to the Credit Agreement or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate Closing Date Revolving Commitments of all Revolving Lenders as of the Fifth Amendment Effective Date is \$25.0 million.

“Closing Date Revolving Facility” means the Revolving Facility made available by the Revolving Lenders as of collectively, the Closing Date Revolving Commitments and the Revolving Loans and other extensions of credit made thereunder.

“Closing Date Secured Net Leverage Ratio” means 1.80 to 1.00.

“Closing Date Term Loan Commitment” means, as to each Term Lender, its obligation to make a Closing Date Term Loan to the Borrower in an aggregate amount not to exceed the amount specified opposite such Lender’s name on Schedule 2.01 under the caption “Closing Date Term Loan Commitment” or in the Assignment and Assumption (or Affiliated Lender Assignment and Assumption) pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement (including pursuant to Section 2.14, 2.15 or 2.16). The initial aggregate amount of the Closing Date Term Loan Commitments is \$400.0 million.

“Closing Date Term Loans” means the Term Loans made by the Term Lenders on the Closing Date to the Borrower pursuant to Section 2.01(1).

“Closing Date Total Net Leverage Ratio” means 2.95 to 1.00.

“Co-Documentation Agents” means KeyBank National Association and BMO Harris Bank, N.A.

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

“Collateral” means all the “Collateral” (or equivalent term) as defined in any Collateral Document and the Mortgaged Properties, if any.

“Collateral Agent” has the meaning specified in the introductory paragraph to this Agreement.

“Collateral and Guarantee Requirement” means, at any time (from and after the Closing Date), the requirement that:

- (1) the Collateral Agent shall have received each Collateral Document required to be delivered (a) on the Effective Date pursuant to Section 4.01(1)(c) or (b) pursuant to the Security Agreement or

Section 6.11 or 6.13 at such time required by the Security Agreement or by such Sections to be delivered, in each case, duly executed by each Loan Party that is party thereto;

(2) except to the extent otherwise provided hereunder or under any Collateral Document, all Obligations shall have been unconditionally guaranteed by (a) the Borrower (other than in respect of its own Obligations) and each Restricted Subsidiary of the Borrower that is a wholly owned Material Subsidiary (other than any Excluded Subsidiary), which as of the Effective Date shall include those that are listed on Schedule 1.01(1) hereto and (b) any Restricted Subsidiary of the Borrower that Guarantees (or is the borrower or issuer of) (i) any Subordinated Indebtedness, (ii) the Bridge Loans, (iii) any Permitted Incremental Equivalent Debt or (iv) any Credit Agreement Refinancing Indebtedness (the Persons in the preceding clauses (a) through (b) collectively, the “**Guarantors**”);

(3) except to the extent otherwise provided hereunder or under any Collateral Document, the Obligations and the Guaranty shall have been secured by a perfected security interest, subject only to Liens permitted by Section 7.01, in

(a) all Equity Interests of each direct, wholly owned Material Domestic Subsidiary (other than any CFC Holdco) that is directly owned by any Loan Party and

(b) 65% of the issued and outstanding Equity Interests of each class of each (i) wholly owned Material Domestic Subsidiary that is (a) a CFC Holdco and (b) directly owned by a Loan Party and (ii) wholly owned Material Foreign Subsidiary that is directly owned by a Loan Party;

(4) except to the extent otherwise provided hereunder or under any Collateral Document, including subject to Liens permitted by Section 7.01, and in each case subject to exceptions and limitations otherwise set forth in this Agreement and the Collateral Documents, the Obligations and the Guaranty shall have been secured by a security interest in substantially all tangible and intangible personal property of the Borrower and each Guarantor (including accounts other than Securitization Assets), inventory, equipment, investment property, contract rights, applications and registrations of intellectual property filed in the United States, other general intangibles, and proceeds of the foregoing (in each case, other than Excluded Assets), in each case,

(a) that has been perfected (to the extent such security interest may be perfected) by

(i) delivering certificated securities and instruments, in which a security interest can be perfected by physical control, in each case to the extent required hereunder or the Security Agreement;

(ii) filing financing statements under the Uniform Commercial Code of any applicable jurisdiction,

(iii) making any necessary filings with the United States Patent and Trademark Office or United States Copyright Office or

(iv) filings in the applicable real estate records with respect to Mortgaged Properties (or any fixtures related to Mortgaged Properties) to the extent required by the Collateral Documents and

(b) with the priority required by the Collateral Documents; *provided* that any such security interests in the Collateral shall be subject to the terms of the Intercreditor Agreements to the extent applicable; and

(5) the Collateral Agent shall have received counterparts of a Mortgage, together with the other deliverables described in Section 6.11(2)(b), with respect to each Material Real Property listed on Schedule 1.01(2) to the extent required to be delivered pursuant to Section 6.11 or Section 6.13 (the “**Mortgaged**”

**Properties**”) duly executed and delivered by the record owner of such property within the time periods set forth in said Sections; *provided* that to the extent any Mortgaged Property is located in a jurisdiction which imposes mortgage recording taxes, intangibles tax, documentary tax or similar recording fees or taxes, (a) the relevant Mortgage shall not secure an amount in excess of the fair market value of the Mortgaged Property subject thereto and (b) the relevant Mortgage shall not secure the Indebtedness in respect of Letters of Credit or the Revolving Facility to the extent those jurisdictions impose such aforementioned taxes on paydowns or re-advances applicable to such Indebtedness unless it is feasible to limit recovery to a capped amount that would not be subject to re-borrowing.

The foregoing definition shall not require, and the Loan Documents shall not contain any requirements as to, the creation, perfection or maintenance of pledges of, or security interests in, Mortgages on, or the obtaining of Mortgage Policies, surveys, abstracts or appraisals or taking other actions with respect to, any Excluded Assets.

The Collateral Agent may grant extensions of time for the creation, perfection or maintenance of security interests in, or the execution or delivery of any Mortgage and the obtaining of title insurance, surveys or Opinions of Counsel with respect to, particular assets (including extensions beyond the Closing Date for the creation, perfection or maintenance of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrower, that creation, perfection or maintenance cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required by this Agreement or the Collateral Documents.

No actions required by the Laws of any non-U.S. jurisdiction shall be required in order to create any security interests in any assets or to perfect or make enforceable such security interests in any assets (including any intellectual property registered or applied for in any non-U.S. jurisdiction) (it being understood that there shall be no security agreements or pledge agreements governed under the Laws of any non-U.S. jurisdiction). No perfection through control agreements or perfection by “control” shall be required with respect to any assets (other than (x) the Controlled Account, in respect of the Excess Closing Date Cash and (y) in respect of any promissory note in excess of \$5.0 million, Indebtedness of any Restricted Subsidiary that is not a Guarantor that is owing to any Loan Party (which may be evidenced by the Intercompany Note and pledged to the Collateral Agent) and certificated Equity Interests of the wholly owned Restricted Subsidiaries that are Material Subsidiaries otherwise required to be pledged pursuant to the Collateral Documents to the extent required under clause (3) above). There shall be no (x) Guaranties governed under the laws of any non-U.S. jurisdiction, (y) requirement to obtain any landlord waivers, estoppels or collateral access letters or (z) requirement to perfect a security interest in any letter of credit rights, other than by the filing of a UCC financing statement.

Notwithstanding anything herein to the contrary, with respect to the requirements set forth in Section 4.01(1)(c)(i), each certificate required to be delivered pursuant to Section 4.01(1)(c)(i) on the Effective Date by any Loan Party will not constitute conditions precedent to the effectiveness of this Agreement on the Effective Date or the obligation of each Lender to make a Credit Extension hereunder on the Closing Date and that the only action with respect to the perfection of the Collateral that shall constitute conditions precedent to the effectiveness of this Agreement on the Effective Date shall be the delivery of the UCC-1 financing statements required pursuant to Section 4.01(1)(c)(ii); *provided* that the Borrower will use commercially reasonable efforts to effect the delivery of each certificate required to be delivered pursuant to Section 4.01(1)(c)(i) (and transfer powers with respect thereto) on or prior to the Closing Date without undue burden or expense; *provided further* that each of the Borrower and its wholly owned Material Domestic Subsidiaries (other than Excluded Subsidiaries) will execute and/or deliver any such document(s) that is not delivered and take any perfection action that is not taken on the Effective Date or on the Closing Date within 90 days after the Closing Date (or such later date as agreed to by the Administrative Agent).

“**Collateral Documents**” means, collectively, the Security Agreement, the Intellectual Property Security Agreements, the Mortgages (if any), each of the collateral assignments, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent, Collateral Agent or the Lenders pursuant to Sections 4.01(1)(c), 6.11 or 6.13 and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

“**Commitment**” means a Revolving Commitment, Incremental Revolving Commitment, Closing Date Term Loan Commitment, Incremental Term Commitment, Other Revolving Commitment, Other Term Loan Commitment, Extended Revolving Commitment of a given Extension Series, or any commitment in respect of Replacement Loans, as the context may require.

“**Commitment Letter**” means the Commitment Letter, dated as of the Effective Date, among the Arrangers and the Borrower.

“**Commitment Fee Rate**” means, (x) with respect to the Closing Date Revolving Facility, a percentage per annum equal to the Applicable Rate set forth in the “Commitment Fee Rate” column of the chart in clause (b) of the definition of “Applicable Rate.” and (y) with respect to the 2021 Revolving Facility, a percentage per annum equal to the Applicable Rate set forth in the “Commitment Fee Rate” column of the chart in clause (c) of the definition of “Applicable Rate.”

“**Committed Loan Notice**” means a notice of (1) a Borrowing with respect to a given Class of Loans, (2) a conversion of Loans of a given Class from one Type to the other or (3) a continuation of LIBO Rate Loans of a given Class, pursuant to Section 2.02(1), which, if in writing, shall be substantially in the form of Exhibit A, or such other form as may be approved by the Administrative Agent and the Borrower (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent and the Borrower), appropriately completed and signed by a Responsible Officer of the Borrower.

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

“**Compensation Period**” has the meaning specified in Section 2.12(3)(b).

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit C and which certificate shall in any event be a certificate of a Financial Officer of the Borrower:

(1) certifying as to whether a Default has occurred and is continuing and, if applicable, specifying the details thereof and any action taken or proposed to be taken with respect thereto (in each case, other than any Default with respect to which the Administrative Agent has otherwise obtained notice in accordance with Section 6.03(1)),

(2) in the case of financial statements delivered under Section 6.01(1), setting forth reasonably detailed calculations of (i), Excess Cash Flow for each fiscal year commencing with the financial statements for the fiscal year ending December 31, 2018 and (ii) the Net Proceeds received during the applicable period (after the Closing Date in the case of the fiscal year ending December 31, 2017) by or on behalf of the Borrower or any Restricted Subsidiary in respect of any Asset Sale or Casualty Event subject to prepayment pursuant to Section 2.05(2)(b)(i) and the portion of such Net Proceeds that has been invested or is intended to be reinvested in accordance with Section 2.05(2)(b)(ii),

(3) (x) so long as the provisions of Section 7.12 have not terminated in accordance with the terms thereof as of the last day of the relevant fiscal quarter (or as of any date thereafter), commencing with the certificate delivered pursuant to Section 6.02(1) for the ~~first full~~ fiscal quarter ~~ending after the Closing Date~~, ~~(x) if on the last day of the relevant fiscal quarter there are outstanding Revolving Loans and Letters of Credit (excluding (i) undrawn Letters of Credit in an aggregate amount of up to \$20.0 million and (ii) Letters of Credit (whether drawn or undrawn) to the extent Cash Collateralized or backstopped on terms reasonably acceptable to the applicable Issuing Bank) in an aggregate principal amount exceeding 35% of the aggregate principal amount of all Revolving Commitments under all outstanding Revolving Facilities (including any Incremental Revolving Facilities)~~ ended March 31, 2021, setting forth a calculation of the First Lien Total Net Leverage Ratio as of the last day of the most recent Test Period, or (y) if the First Lien Net Leverage Ratio as of the last day of the most recent Test Period would result in a change in the applicable “Pricing Level” as set forth in the definition of “Applicable Rate,” setting forth a calculation of such First Lien Net Leverage Ratio.

“**Consolidated Current Assets**” means, as at any date of determination, the total assets of the Borrower and the Restricted Subsidiaries on a consolidated basis that may properly be classified as current assets in conformity with GAAP, excluding cash and Cash Equivalents, amounts related to current or deferred taxes based on income or profits, assets held for sale, loans (permitted) to third parties, pension assets, deferred bank fees, derivative financial instruments and any assets in respect of Hedge Agreements, and excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition.

“**Consolidated Current Liabilities**” means, as at any date of determination, the total liabilities of the Borrower and the Restricted Subsidiaries on a consolidated basis that may properly be classified as current liabilities in conformity with GAAP, excluding (A) the current portion of any Funded Debt, (B) the current portion of interest, (C) accruals for current or deferred taxes based on income or profits, (D) accruals of any costs or expenses related to restructuring reserves or severance, (E) Revolving Loans and L/C Obligations under this Agreement or any other revolving loans and letter of credit obligations under any other revolving credit facility, (F) the current portion of any Capitalized Lease Obligation, (G) deferred revenue arising from cash receipts that are earmarked for specific projects, (H) liabilities in respect of unpaid earn-outs, (I) the current portion of any other long-term liabilities, (J) accrued litigation settlement costs and (K) any liabilities in respect of Hedge Agreements, and, furthermore, excluding the effects of adjustments pursuant to GAAP resulting from the application of recapitalization accounting or purchase accounting, as the case may be, in relation to the Transactions or any consummated acquisition.

“**Consolidated Depreciation and Amortization Expense**” means, with respect to any Person for any period, the total amount of depreciation and amortization expense of such Person and its Restricted Subsidiaries, including the amortization of intangible assets, deferred financing fees, debt issuance costs, commissions, fees and expenses of such Person and its Restricted Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

“**Consolidated EBITDA**” means, with respect to any Person for any period, the Consolidated Net Income of such Person and its Restricted Subsidiaries for such period:

(1) increased (without duplication) by the following, in each case (other than clauses (h) and (l)) to the extent deducted (and not added back) in determining Consolidated Net Income for such period:

(a) total interest expense and, to the extent not reflected in such total 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 or such derivative instruments, and bank and letter of credit fees, letter of guarantee and bankers’ acceptance fees and costs of surety bonds in connection with financing activities, together with items excluded from the definition of “Consolidated Interest Expense” pursuant to the definition thereof; *plus*

(b) provision for taxes based on income, profits, revenue or capital, including federal, foreign and state income, franchise, excise, value added and similar taxes, property taxes and similar taxes, and foreign withholding taxes paid or accrued during such period (including any future taxes or other levies that replace or are intended to be in lieu of taxes, and any penalties and interest related to taxes or arising from tax examinations) and the net tax expense associated with any adjustments made pursuant to the definition of “Consolidated Net Income,”; *plus*

(c) Consolidated Depreciation and Amortization Expense for such period; *plus*

(d) any other non-cash charges, including any write-offs or write-downs reducing Consolidated Net Income for such period (*provided* that if any such non-cash charges represent an accrual or reserve for potential cash items in any future period, (i) the Borrower may determine not to add back such non-cash charge in the current period and (ii) to the extent the Borrower does decide to add back such non-cash charge, the cash payment in respect thereof, with the exception of any cash payments related to the settlement of deferred compensation balances awarded prior to the Closing Date, 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*

(e) minority interest expense, the amount of any non-controlling interest consisting of income attributable to non-controlling interests of third parties in any non-wholly-owned Restricted Subsidiary, excluding cash distributions in respect thereof, and the amount of any reductions in arriving at Consolidated Net Income resulting from the application of Accounting Standards Codification Topic No. 810, *Consolidation*; *plus*

(f) (i) the amount of board of director fees and (ii) the amount of payments made to optionholders of such Person in connection with, or as a result of, any distribution being made to equityholders of such Person, which payments are being made to compensate such optionholders as though they were equityholders at the time of, and entitled to share in, such distribution, in each case to the extent permitted hereunder; *plus*

(g) the amount of loss or discount on sale of receivables, Securitization Assets and related assets to any Securitization Subsidiary in connection with a Qualified Securitization Facility; *plus*

(h) cash receipts (or any netting arrangements resulting in reduced cash expenditures) not representing Consolidated EBITDA or Consolidated Net Income in any prior period to the extent non-cash gains relating to such income were deducted in the calculation of Consolidated EBITDA pursuant to clause (2) below for any previous period and not added back; *plus*

(i) any costs or expenses incurred pursuant to any management equity plan, stock option plan or any other management or employee benefit plan, agreement or any stock subscription or shareholder agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the capital of such Person or net cash proceeds of an issuance of Equity Interests of such Person (other than Disqualified Stock); *plus*

(j) any net pension or other post-employment benefit costs representing amortization of unrecognized prior service costs, actuarial losses, including amortization of such amounts arising in prior periods, amortization of the unrecognized net obligation (and loss or cost) existing at the date of initial application of *FASB Accounting Standards Codification Topic 715—Compensation—Retirement Benefits*, and any other items of a similar nature, *plus*

(k) [reserved]; *plus*

(l) (x) the amount of “run-rate” cost savings, synergies and operating expense reductions related to restructurings, cost savings initiatives or other initiatives that are projected by the Borrower in good faith to result from actions either taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) within 24 months after the end of such period (or, with respect to cost savings, synergies and operating expense reductions related to the Transactions, within 36 months after the Closing Date or, to the extent identified in the Quality of Earnings Analysis of PricewaterhouseCoopers LLP dated February 25, 2017 or otherwise identified to the Arrangers, undertaken or implemented prior to the Closing Date) (which cost savings, synergies or operating expense reductions shall be calculated on a *pro forma* basis as though such cost savings, synergies or operating expense reductions had been realized on the first day of such period), net of the amount of actual benefits realized from such actions during such period (it is understood and agreed that “run-rate” means the full recurring benefit that is associated with any action taken or with respect to which substantial steps have been taken or are expected to be taken, whether prior to or following the Closing Date) (which adjustments may be incremental to (but not duplicative of) *pro forma* cost savings, synergies or operating expense reduction adjustments made pursuant to Section 1.07); *provided* that (i) such cost savings, synergies and operating expense reductions are reasonably identifiable and factually supportable and (ii) the aggregate amount of cost savings, synergies and operating expense reductions included pursuant to this clause (l), taken together with the aggregate amount included pursuant to Section 1.07(3), shall not exceed 25% of Consolidated EBITDA (prior to giving effect



to Section 1.07(3) or this clause (l)); and (y) add-backs of the type identified in the Quality of Earnings Analysis of PricewaterhouseCoopers LLP dated February 25, 2017; *plus*

(m) [reserved]; *plus*

(n) any payments in the nature of compensation or expense reimbursement made to independent board members; *plus*

(o) internal software development costs that are expensed during the period but could have been capitalized in accordance with GAAP; *plus*

(p) any loss from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of); and

(2) decreased (without duplication) by the following, in each case to the extent included in determining Consolidated Net Income for such period:

(a) non-cash gains for such period (excluding any non-cash gain to the extent it represents the reversal of an accrual or reserve for a potential cash item that reduced Consolidated Net Income or Consolidated EBITDA in any prior period other than any such accrual or reserve that has been added back to Consolidated Net Income in calculating Consolidated EBITDA in accordance with this definition),

(b) the amount of any non-controlling interest consisting of loss attributable to non-controlling interests of third parties in any non-wholly owned Restricted Subsidiary added to (and not deducted from) Consolidated Net Income in such period, and

(c) any net income from discontinued operations (but if such operations are classified as discontinued due to the fact that they are subject to an agreement to dispose of such operations, only when and to the extent such operations are actually disposed of).

For the avoidance of doubt, Consolidated EBITDA shall be calculated, including *pro forma* adjustments, in accordance with Section 1.07.

**“Consolidated First Lien Secured Debt”** means, as of any date of determination, subject to the definition of “Designated Revolving Commitments,” the aggregate principal amount of Indebtedness of the Borrower and the Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness, in each case secured by a first priority lien on the assets of the Borrower or any Restricted Subsidiary; provided, Consolidated First Lien Secured Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The Dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar-equivalent principal amount of such Indebtedness.

**“Consolidated Interest Expense”** means, with respect to any Person for any period, without duplication, the sum of:

(a) cash interest expense (including that attributable to Capitalized Lease Obligations), net of cash interest income, with respect to Indebtedness of such Person and its Restricted Subsidiaries for such period, other than Non-Recourse Indebtedness, including commissions, discounts and other fees and charges

owed with respect to letters of credit and bankers' acceptance financing and net cash costs under hedging agreements (other than in connection with the early termination thereof); *plus*

(b) non-cash interest expense resulting solely from (a) the amortization of original issue discount from the issuance of Indebtedness of such Person and its Restricted Subsidiaries at less than par (excluding the Bridge Loans and any Indebtedness borrowed under the Facilities in connection with the Transactions and any Non-Recourse Indebtedness), *plus* (b) pay-in-kind interest expense of such Person and its Restricted Subsidiaries payable pursuant to the terms of the agreements governing Indebtedness for borrowed money;

excluding, in each case:

(i) amortization of deferred financing costs, debt issuance costs, commissions, fees and expenses and any other amounts of non-cash interest other than referred to in clauses (2)(a) and (2)(b) above (including as a result of the effects of acquisition method accounting or pushdown accounting),

(ii) interest expense attributable to the movement of the mark-to-market valuation of obligations under Hedging Obligations or other derivative instruments, including pursuant to FASB Accounting Standards Codification Topic 815, *Derivatives and Hedging*,

(iii) costs associated with incurring or terminating Hedging Obligations and cash costs associated with breakage in respect of hedging agreements for interest rates,

(iv) commissions, discounts, yield, make-whole premium and other fees and charges (including any interest expense) incurred in connection with any Non-Recourse Indebtedness,

(v) "additional interest" owing pursuant to a registration rights agreement with respect to any securities,

(vi) any payments with respect to make-whole premiums or other breakage costs of any Indebtedness, including any Indebtedness issued in connection with the Transactions,

(vii) penalties and interest relating to taxes,

(viii) accretion or accrual of discounted liabilities not constituting Indebtedness,

(ix) [reserved],

(x) any expense resulting from the discounting of Indebtedness in connection with the application of recapitalization or purchase accounting,

(xi) any interest expense attributable to the exercise of appraisal rights and the settlement of any claims or actions (whether actual, contingent or potential) with respect thereto in connection with the Transactions, any acquisition or Investment and

(xii) annual agency fees paid to any administrative agents and collateral agents with respect to any secured or unsecured loans, debt facilities, debentures, bonds, commercial paper facilities or other forms of Indebtedness (including any security or collateral trust arrangements related thereto), including the Facilities and the Bridge Loans.

For purposes of this definition, interest on a Capitalized Lease Obligation will be deemed to accrue at an interest rate reasonably determined by such Person to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.



“**Consolidated Net Income**” means, with respect to any Person for any period, the net income (loss) of such Person and its Restricted Subsidiaries for such period determined on a consolidated basis in accordance with GAAP, excluding (and excluding the effect of), without duplication,

(1) extraordinary, non-recurring or unusual gains, losses, fees, costs, charges or expenses (including relating to any strategic initiatives and accruals and reserves in connection with such gains, losses, charges or expenses); restructuring costs, charges, accruals or reserves (including restructuring and integration costs related to acquisitions and adjustments to existing reserves, and in each case, whether or not classified as such under GAAP); costs and expenses related to any reconstruction, decommissioning, recommissioning or reconfiguration of facilities and fixed assets for alternative uses; Public Company Costs; costs and expenses related to the integration, consolidation, opening, pre-opening and closing of facilities and fixed assets; severance and relocation costs and expenses, one-time compensation costs and expenses, consulting fees, signing, retention or completion bonuses, and executive recruiting costs; costs and expenses incurred in connection with strategic initiatives; transition costs and duplicative running costs; costs and expenses incurred in connection with non-ordinary course product and intellectual property development; costs incurred in connection with acquisitions (or purchases of assets) prior to or after the Closing Date (including integration costs); business optimization expenses (including costs and expenses relating to business optimization programs, new systems design, retention charges, system establishment costs and implementation costs and project start-up costs), accruals and reserves; operating expenses attributable to the implementation of cost-savings initiatives; curtailments and modifications to pension and post-employment employee benefit plans (including any settlement of pension liabilities and charges resulting from changes in estimates, valuations and judgments);

(2) the cumulative effect of a change in accounting principles and changes as a result of the adoption or modification of accounting policies during such period whether effected through a cumulative effect adjustment or a retroactive application, in each case in accordance with GAAP;

(3) Transaction Expenses;

(4) any gain (loss) on asset sales, disposals or abandonments (other than asset sales, disposals or abandonments in the ordinary course of business);

(5) the Net Income for such period of any Person that is an Unrestricted Subsidiary and, solely for the purpose of determining the amount available for Restricted Payments under clause (3)(a) of Section 7.05(a), the Net Income for such period of any Person that is not a Subsidiary or that is accounted for by the equity method of accounting; *provided* that the Consolidated Net Income of a Person will be increased by the amount of dividends or distributions or other payments that are actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents) to such Person or a Restricted Subsidiary thereof in respect of such period;

(6) solely for the purpose of determining the amount available for Restricted Payments under clause (3)(a) of Section 7.05(a), the Net Income for such period of any Restricted Subsidiary (other than any Guarantor) to the extent that the declaration or payment of dividends or similar distributions by that Restricted Subsidiary of its Net Income is not at the date of determination permitted without any prior governmental approval (which has not been obtained) or, directly or indirectly, by the 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 restriction with respect to the payment of dividends or similar distributions has been legally waived (or the Borrower reasonably believes such restriction could be waived and is using commercially reasonable efforts to pursue such waiver); *provided* that Consolidated Net Income of a Person will be increased by the amount of dividends or other distributions or other payments actually paid in cash or Cash Equivalents (or to the extent converted into cash or Cash Equivalents), or the amount that could have been paid in cash or Cash Equivalents without violating any such restriction or requiring any such approval, to such Person or a Restricted Subsidiary thereof in respect of such period, to the extent not already included therein;

(7) effects of adjustments (including the effects of such adjustments pushed down to such Person and its Restricted Subsidiaries) related to the application of recapitalization accounting or purchase accounting (including in the inventory, property and equipment, software, goodwill, intangible assets, in process research and development, deferred revenue and debt line items);

(8) income (loss) from the early extinguishment or conversion of (a) Indebtedness, (b) Hedging Obligations or (c) other derivative instruments;

(9) any impairment charge or asset write-off or write-down in each case, pursuant to GAAP, and the amortization of intangibles arising pursuant to GAAP;

(10) (a) any equity based or non-cash compensation charge or expense, including any such charge or expense arising from grants of stock appreciation, equity incentive programs or similar rights, stock options, restricted stock or other rights to, and any cash charges associated with the rollover, acceleration or payout of, Equity Interests by management of such Person or of a Restricted Subsidiary, (b) noncash compensation expense resulting from the application of Accounting Standards Codification Topic No. 718, *Compensation—Stock Compensation* or Accounting Standards Codification Topic 505-50, *Equity-Based Payments to Non-Employees*, and (c) any income (loss) attributable to deferred compensation plans or trusts;

(11) any fees, expenses or charges incurred during such period, or any amortization thereof for such period, in connection with any acquisition, Investment, Asset Sale, disposition, incurrence or repayment of Indebtedness (including such fees, expenses or charges related to the offering and issuance of the Bridge Loans and the syndication and incurrence of any Facilities), issuance of Equity Interests (including by any direct or indirect parent of the Borrower), recapitalization, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of the Bridge Loans and other securities and any Facilities) and including, in each case, any such transaction whether consummated on, after or prior to the Closing Date and any such transaction undertaken but not completed, and any charges or nonrecurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful or consummated (including, for the avoidance of doubt, the effects of expensing all transaction related expenses in accordance with Accounting Standards Codification Topic No. 805, *Business Combinations*);

(12) accruals and reserves that are established or adjusted in connection with the Transactions, an Investment or an acquisition that are required to be established or adjusted as a result of the Transactions, such Investment or such acquisition, in each case in accordance with GAAP;

(13) any expenses, charges or losses to the extent covered by insurance that are, directly or indirectly, reimbursed or reimbursable by a third party, and any expenses, charges or losses that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted under this Agreement;

(14) any non-cash gain (loss) attributable to the mark to market movement in the valuation of Hedging Obligations or other derivative instruments pursuant to FASB Accounting Standards Codification Topic 815—*Derivatives and Hedging* or mark to market movement of other financial instruments pursuant to FASB Accounting Standards Codification Topic 825—*Financial Instruments*;

(15) any net unrealized gain or loss (after any offset) resulting in such period from currency transaction or translation gains or losses including those related to currency remeasurements of Indebtedness (including any net loss or gain resulting from (a) Hedging Obligations for currency exchange risk and (b) resulting from intercompany indebtedness) and any other foreign currency transaction or translation gains and losses, to the extent such gain or losses are non-cash items;

(16) any adjustments resulting from the application of Accounting Standards Codification Topic No. 460, *Guarantees*, or any comparable regulation;

- (17) any non-cash rent expense;
- (18) [reserved];
- (19) any non-cash expenses, accruals or reserves related to adjustments to historical tax exposures; and
- (20) earn-out and contingent consideration obligations (including to the extent accounted for as bonuses or otherwise) and adjustments thereof and purchase price adjustments.

In addition, to the extent not already included in the Consolidated Net Income of such Person and its Restricted Subsidiaries, Consolidated Net Income will include the amount of proceeds received or receivable from business interruption insurance, the amount of any expenses or charges incurred by such Person or its Restricted Subsidiaries during such period that are, directly or indirectly, reimbursed or reimbursable by a third party, and amounts that are covered by indemnification or other reimbursement provisions in connection with any acquisition, Investment or any sale, conveyance, transfer or other disposition of assets permitted hereunder.

Notwithstanding the foregoing, for the purpose of Section 7.05(a) (other than clause (3)(d) of Section 7.05(a)), there will be excluded from Consolidated Net Income any income arising from any sale or other disposition of Restricted Investments made by such Person and its Restricted Subsidiaries, any repurchases and redemptions of Restricted Investments from such Person and its Restricted Subsidiaries, any repayments of loans and advances which constitute Restricted Investments by such Person or any Restricted Subsidiary, any sale of the stock of an Unrestricted Subsidiary or any distribution or dividend from an Unrestricted Subsidiary, in each case only to the extent such amounts increase the amount of Restricted Payments permitted under clause (3)(d) of Section 7.05(a).

**“Consolidated Secured Debt”** means, as of any date of determination, subject to the definition of “Designated Revolving Commitments,” the aggregate principal amount of Indebtedness of the Borrower and the Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness, in each case secured by a lien on the assets of the Borrower or any Restricted Subsidiary; provided, Consolidated Secured Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The Dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar-equivalent principal amount of such Indebtedness.

**“Consolidated Senior Debt”** means all Consolidated Total Debt other than Subordinated Indebtedness.

**“Consolidated Total Debt”** means, as of any date of determination, subject to the definition of “Designated Revolving Commitments,” the aggregate principal amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on such date, determined on a consolidated basis in accordance with GAAP, consisting only of Indebtedness for borrowed money, Capitalized Lease Obligations and purchase money Indebtedness; *provided*, Consolidated Total Debt will not include Non-Recourse Indebtedness, undrawn amounts under revolving credit facilities and Indebtedness in respect of any (1) letter of credit, bank guarantees and performance or similar bonds, except to the extent of obligations in respect of drawn standby letters of credit which have not been reimbursed within three (3) Business Days and (2) Hedging Obligations. The Dollar-equivalent principal amount of any Indebtedness denominated in a foreign currency will reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations for currency exchange risks with respect to the applicable currency in effect on the date of determination of the Dollar-equivalent principal amount of such Indebtedness.

“**Consolidated Working Capital**” means, as at any date of determination, the excess of Consolidated Current Assets over Consolidated Current Liabilities.

“**Contingent Obligations**” means, with respect to any Person, any obligation of such Person guaranteeing any leases, dividends or other monetary obligations that do not constitute Indebtedness (“**primary obligations**”) of any other Person (the “**primary obligor**”) in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent:

- (1) to purchase any such primary obligation or any property constituting direct or indirect security therefor;
- (2) to advance or supply funds:
  - (a) for the purchase or payment of any such primary obligation or
  - (b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor; or
- (3) 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 against loss in respect thereof.

“**Contract Consideration**” has the meaning specified in clause (2)(k) of the definition of “Excess Cash Flow.”

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“**Controlled Account**” means a restricted deposit account of the Borrower to be maintained with the Administrative Agent into which shall be deposited, on the Closing Date, the Excess Closing Date Cash.

“**Controlled Investment Affiliate**” means, as to any Person, any other Person, other than any Investor, which directly or indirectly is in control of, is controlled by, or is under common control with such Person and is organized by such Person (or any Person controlling such Person) primarily for making direct or indirect equity or debt investments in the Borrower or other companies.

“**Corrective Extension Amendment**” has the meaning specified in Section 2.16(6).

“**Corresponding Tenor**” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“**Credit Agreement Refinanced Debt**” has the meaning assigned to such term in the definition of “Credit Agreement Refinancing Indebtedness.”

“**Credit Agreement Refinancing Indebtedness**” means (a) Permitted Equal Priority Refinancing Debt, (b) Permitted Junior Priority Refinancing Debt or (c) Permitted Unsecured Refinancing Debt; *provided* that, in each case, such Indebtedness is issued, incurred or otherwise obtained (including by means of the extension or renewal of existing Indebtedness) to Refinance, in whole or in part, existing Loans (or, if applicable, unused Commitments) or any then-existing Credit Agreement Refinancing Indebtedness (“**Credit Agreement Refinanced Debt**”); *provided, further*, that (i) the terms of any such Indebtedness (excluding, for the avoidance of doubt, interest rates (including through fixed interest rates), interest margins, rate floors, fees, funding discounts, original issue discounts and prepayment or redemption premiums and terms) shall either, at the option of the Borrower, (A) reflect market terms and conditions (taken as a whole) at the time of incurrence of such Indebtedness (as determined by the Borrower in

good faith) or (B) if otherwise not consistent with the terms of such Credit Agreement Refinanced Debt, not be materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms of such Credit Agreement Refinanced Debt, except in the case of clauses (A) and (B) to the extent necessary to provide for (1) covenants and other terms applicable to any period after the Latest Maturity Date of the Loans in effect immediately prior to such Refinancing or (2) subject to the immediately succeeding proviso, a Previously Absent Financial Maintenance Covenant; *provided* that, notwithstanding anything to the contrary contained herein, if any such terms of such Indebtedness contain a Previously Absent Financial Maintenance Covenant that is in effect prior to the applicable Latest Maturity Date, such Previously Absent Financial Maintenance Covenant shall be included for the benefit of each Facility; *provided further*, that if (x) such Indebtedness that includes a Previously Absent Financial Maintenance Covenant consists of a revolving credit facility (whether or not the documentation therefor includes any other facilities) and (y) the applicable Previously Absent Financial Maintenance Covenant is included only for the benefit of such revolving credit facility, the Previously Absent Financial Maintenance Covenant shall not be required to be included in this Agreement for the benefit of any Term Facility hereunder, (ii) any such Indebtedness shall have a maturity date that is no earlier than the Credit Agreement Refinanced Debt and a Weighted Average Life to Maturity equal to or greater than that of the Credit Agreement Refinanced Debt as of the date of determination, (iii) except to the extent otherwise permitted under this Agreement (subject to a dollar for dollar usage of any other basket set forth in Section 7.02, if applicable), such Indebtedness shall not have a greater principal amount (or shall not have a greater accreted value, if applicable) than the principal amount (or accreted value, if applicable) of the Credit Agreement Refinanced Debt *plus* accrued interest, fees and premiums (including tender premium) and penalties (if any) thereon and fees, expenses, original issue discount and upfront fees incurred in connection with such Refinancing, (iv) such Credit Agreement Refinanced Debt shall be repaid, defeased or satisfied and discharged, and all accrued interest, fees and premiums (if any) in connection therewith shall be paid, within five (5) Business Days after the date such Credit Agreement Refinancing Indebtedness is issued, incurred or obtained with the Net Proceeds received from the incurrence or issuance of such Indebtedness and (v) any mandatory prepayments of (I) any Permitted Junior Priority Refinancing Debt or Permitted Unsecured Refinancing Debt may not be made and to the extent required hereunder or pursuant to the terms of any Permitted Equal Priority Refinancing Debt, first made or offered to the holders of the Term Loans constituting First Lien Obligations and any such Permitted Equal Priority Refinancing Debt, and (II) any Permitted Equal Priority Refinancing Debt in respect of events described in Section 2.05(2)(a), (b) and (d)(i), shall be made on a pro rata basis, less than a pro rata basis or greater than a pro rata basis (but not greater than a pro rata basis as compared to any Class of Term Loans unless the Credit Agreement Refinanced Debt was so entitled to participate on a greater than a pro rata basis) with each Class of Term Loans constituting First Lien Obligations under Section 2.05(2)(a), (b) and (d)(i), *provided, further*, that “Credit Agreement Refinancing Indebtedness” may be incurred in the form of a bridge or other interim credit facility intended to be Refinanced with long-term indebtedness (and such bridge or other interim credit facility shall be deemed to satisfy clause (ii) of the second proviso in this definition so long as (x) such credit facility includes customary “rollover” provisions and (y) assuming such credit facility were to be extended pursuant to such “rollover” provisions, such extended credit facility would comply with clause (ii) above) and in which case, on or prior to the first anniversary of the incurrence of such “bridge” or other interim credit facility, clause (v) of the preceding proviso in this definition shall not prohibit the inclusion of customary terms for “bridge” facilities, including customary mandatory prepayment, repurchase or redemption provisions.

“**Credit Extension**” means each of the following: (i) a Borrowing and (ii) an L/C Credit Extension.

“**Cure Amount**” has the meaning specified in Section 8.04(1).

“**Cure Expiration Date**” has the meaning specified in Section 8.04(1)(a).

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

“**Debt Fund Affiliate**” means any Affiliate of an Investor that is a bona fide diversified debt fund that is not (a) a natural person or (b) the Borrower or any Subsidiary of the Borrower.

**“Debt Representative”** means, with respect to any series of Indebtedness, the trustee, administrative agent, collateral agent, security agent or similar agent under the indenture or agreement pursuant to which such Indebtedness is issued, incurred or otherwise obtained, as the case may be, and each of their successors in such capacities.

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

**“Declined Proceeds”** has the meaning specified in Section 2.05(2)(g).

**“Default”** means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

**“Default Rate”** means an interest rate equal to (a) the Base Rate *plus* (b) the Applicable Rate applicable to Base Rate Loans that are Revolving Loans *plus* (c) 2.00% per annum; *provided* that with respect to the outstanding principal amount of any Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan (giving effect to Section 2.02(3)) *plus* 2.00% per annum, in each case, to the fullest extent permitted by applicable Laws.

**“Defaulting Lender”** means, subject to Section 2.17(2), any Lender that (a) has refused (which refusal may be given verbally or in writing and has not been retracted) or failed to perform any of its funding obligations hereunder, including in respect of its Loans or participations in respect of L/C Obligations, within one Business Day of the date required to be funded by it hereunder, (b) has failed to pay over to the Administrative Agent, any Issuing Bank or any other Lender any other amount required to be paid by it hereunder within one Business Day of the date when due, unless the subject of a good faith dispute, (c) has notified the Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or generally under other agreements in which it commits to extend credit, (d) has failed, within three (3) Business Days after request by the Administrative Agent, to confirm in a manner satisfactory to the Administrative Agent that it will comply with its funding obligations, or (e) has, or has a direct or indirect parent company that has, either (i) admitted in writing that it is insolvent or (ii) become subject to a Lender-Related Distress Event. Any determination by the Administrative Agent as to whether a Lender is a Defaulting Lender shall be conclusive absent manifest error.

**“Designated Non-Cash Consideration”** means the fair market value of non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-Cash Consideration pursuant to an Officer’s Certificate, setting forth the basis of such valuation, *less* the amount of cash or Cash Equivalents received in connection with a subsequent sale, redemption or repurchase of, or collection or payment on, such Designated Non-Cash Consideration.

**“Designated Preferred Stock”** means Preferred Stock of the Borrower or any Restricted Subsidiary thereof (in each case other than Disqualified Stock) that is issued for cash (other than to a Restricted Subsidiary or an employee stock ownership plan or trust established by the Borrower or any of its Subsidiaries) and is so designated as Designated Preferred Stock, pursuant to an Officer’s Certificate, on or promptly after the issuance date thereof, the cash proceeds of which are excluded from the calculation set forth in clause (3) of Section 7.05(a).

**“Designated Revolving Commitments”** means any commitments to make loans or extend credit on a revolving basis to the Borrower or any Restricted Subsidiary by any Person other than the Borrower or any Restricted Subsidiary that have been designated in an Officer’s Certificate delivered to the Administrative Agent as “Designated Revolving Commitments” until such time as the Borrower subsequently delivers an Officer’s Certificate to the Administrative Agent to the effect that such commitments will no longer constitute “Designated Revolving Commitments”; *provided* that, during such time, except for purposes of determining actual compliance with the Financial Covenant, such Designated Revolving Commitments will be deemed an incurrence of Indebtedness on such date and will be deemed outstanding for purposes of calculating the Interest Coverage Ratio, Total Net Leverage Ratio, First Lien Net Leverage Ratio, Secured Net Leverage Ratio and the availability of any Baskets hereunder.



“**Discharge**” means, with respect to any Indebtedness, the repayment, prepayment, repurchase (including pursuant to an offer to purchase), redemption, defeasance or other discharge of such Indebtedness, in any such case in whole or in part.

“**Discount Prepayment Accepting Lender**” has the meaning assigned to such term in Section 2.05(1)(e)(C).

“**Discount Range**” has the meaning assigned to such term in Section 2.05(1)(e)(E).

“**Discount Range Prepayment Amount**” has the meaning assigned to such term in Section 2.05(1)(e)(E).

“**Discount Range Prepayment Notice**” means a written notice of a Borrower Solicitation of Discount Range Prepayment Offers made pursuant to Section 2.05(1)(e)(E) substantially in the form of Exhibit J.

“**Discount Range Prepayment Offer**” means the written offer by a Lender, substantially in the form of Exhibit K, submitted in response to an invitation to submit offers following the Auction Agent’s receipt of a Discount Range Prepayment Notice.

“**Discount Range Prepayment Response Date**” has the meaning assigned to such term in Section 2.05(1)(e)(E).

“**Discount Range Proration**” has the meaning assigned to such term in Section 2.05(1)(e)(G).

“**Discounted Prepayment Determination Date**” has the meaning assigned to such term in Section 2.05(1)(e)(J).

“**Discounted Prepayment Effective Date**” means in the case of a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offer or Borrower Solicitation of Discounted Prepayment Offer, five (5) Business Days following the Specified Discount Prepayment Response Date, the Discount Range Prepayment Response Date or the Solicited Discounted Prepayment Response Date, as applicable, in accordance with Section 2.05(1)(e)(B), Section 2.05(1)(e)(E) or Section 2.05(1)(e)(H), respectively, unless a shorter period is agreed to between the Borrower and the Auction Agent.

“**Discounted Term Loan Prepayment**” has the meaning assigned to such term in Section 2.05(1)(e)(A).

“**disposition**” has the meaning set forth in the definition of “Asset Sale.”

“**Disqualified Institution**” means (a) any competitor of the Borrower or its Subsidiaries identified in writing by or on behalf of the Borrower to (i) the Arrangers on or prior to the Effective Date or (ii) the Administrative Agent from time to time after the Effective Date, (b) those particular banks, financial institutions, other institutional lenders and other Persons identified by the Borrower to the Arrangers on or prior to March 22, 2017 (or related funds of any such Persons) and (c) any Affiliate of the entities described in the preceding clauses (a) or (b) that are either (x) reasonably identifiable as such or associated on the basis of their name or (y) are identified as such in writing by or on behalf of the Borrower to (i) the Arrangers on or prior to the Effective Date or (ii) the Administrative Agent from time to time after the Effective Date (other than financial investors in competitors that are not operating companies or Affiliates of operating companies and other than bona fide diversified debt funds); *provided* that any Person that is a Lender and subsequently becomes a Disqualified Institution (but was not a Disqualified Institution at the time it became a Lender) shall be deemed to not be a Disqualified Institution hereunder. The identity of Disqualified Institutions may be communicated by the Administrative Agent to a Lender upon request, but will not be otherwise posted or distributed to any Person.

“**Disqualified Stock**” means, with respect to any Person, any Capital Stock of such Person which, by its terms, or by the terms of any security into which it is convertible or for which it is redeemable or exchangeable,

or upon the happening of any event, matures or is mandatorily redeemable (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain) pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof (other than (i) for any Qualified Equity Interests or (ii) solely as a result of a change of control, asset sale, casualty, condemnation or eminent domain), in whole or in part, in each case prior to the date 91 days after the earlier of the then Latest Maturity Date or the date the Loans are no longer outstanding and the Commitments have been terminated; *provided* that if such Capital Stock is issued pursuant to any plan for the benefit of future, current or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower or its Subsidiaries or by any such plan to such employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof), such Capital Stock will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's, consultant's or independent contractor's termination, death or disability; *provided* further any Capital Stock held by any future, current or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower, any of its Subsidiaries or any other entity in which the Borrower or a Restricted Subsidiary has an Investment and is designated in good faith as an "affiliate" by the Board of Directors (or the compensation committee thereof), in each case pursuant to any equity subscription or equity holders' agreement, management equity plan or stock option plan or any other management or employee benefit plan or agreement will not constitute Disqualified Stock solely because it may be required to be repurchased by the Borrower or any Subsidiary in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's, director's, officer's, management member's, consultant's or independent contractor's termination, death or disability. For the purposes hereof, the aggregate principal amount of Disqualified Stock will be deemed to be equal to the greater of its voluntary or involuntary liquidation preference and maximum fixed repurchase price, determined on a consolidated basis in accordance with GAAP, and the "maximum fixed repurchase price" of any Disqualified Stock that does not have a fixed repurchase price will be calculated in accordance with the terms of such Disqualified Stock as if such Disqualified Stock were purchased on any date on which the Consolidated Total Debt, Consolidated First Lien Secured Debt or Consolidated Secured Debt, as applicable, will be required to be determined pursuant to this Agreement, and if such price is based upon, or measured by, the fair market value of such Disqualified Stock, such fair market value shall be determined in good faith by the Borrower. For the avoidance of doubt, none of the Equity Interests issued in connection with the Equity Contribution (or any value or payment associated therewith) shall be included in the calculation of any financial ratio or test where Disqualified Stock may otherwise be included therein.

**"Distressed Person"** shall have the meaning provided in the definition of the term Lender-Related Distress Event.

**"Dollar"** and **"\$"** mean lawful money of the United States.

**"Dollar Equivalent"** shall mean, at any time, (a) with respect to any amount denominated in U.S. Dollars, such amount, and (b) with respect to any amount denominated in any currency other than U.S. Dollars, the equivalent amount thereof in Dollars as determined by the Administrative Agent or an Issuing Bank, as the case may be, at such time on the basis of the Exchange Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such currency.

**"Domestic Subsidiary"** means any direct or indirect Subsidiary of the Borrower that is organized under the Laws of the United States, any state thereof or the District of Columbia.

**"Domination Agreement"** means the Domination Profit and Loss Pooling Agreement (*Beherrschungs-und Gewinnabführungsvertrag*) according to Sec. 291 of the German Stock Corporation Act (AktG) to be entered into by and between the Target and AcquisitionCo.

**"Early Opt-in Effective Date" means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Revolving Lenders under the Revolving Facility, so long as the Administrative Agent has not received, by 5:00 p.m. (New York**



City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Revolving Lenders under the Revolving Facility, written notice of objection to such Early Opt-in Election from Revolving Lenders comprising the Required Facility Lenders in respect of the Revolving Facility.

“Early Opt-in Election” means, if the then current Benchmark with respect to Dollars is LIBO Rate, the occurrence of:

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

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from LIBO Rate with respect to the Revolving Facility and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrower and the Revolving Lenders.

“ECF Payment Amount” has the meaning specified in Section 2.05(2)(a).

“ECF Percentage” has the meaning specified in Section 2.05(2)(a).

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

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

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

“Effective Date” means the date on which the conditions precedent set forth in Section 4.01 hereof shall have been satisfied, which date is March 22, 2017.

“Eligible Assignee” has the meaning specified in Section 10.07(a).

“EMU” means the economic and monetary union as contemplated in the Treaty on European Union.

“EMU Legislation” shall mean the legislative measures of the EMU for the introduction of, changeover to, or operation of the Euro in one or more member states.

“Enterprise Transformative Event” means any merger, acquisition, Investment, dissolution, liquidation, consolidation or disposition, in any such case by the Borrower or any Restricted Subsidiary that is either (a) not permitted by the terms of any Loan Document immediately prior to the consummation of such transaction or (b) if permitted by the terms of the Loan Documents immediately prior to the consummation of such transaction, would not provide the Borrower and the Borrower’s Restricted Subsidiaries with adequate flexibility under the Loan Documents for the continuation or expansion of their combined operations following such consummation, as reasonably determined by the Borrower acting in good faith.

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

“**Environmental Claim**” means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, notices of noncompliance or violation, investigations (other than internal reports prepared by any Loan Party or any of its Subsidiaries (a) in the ordinary course of such Person’s business or (b) as required in connection with a financing transaction or an acquisition or disposition of real estate) or proceedings with respect to any Environmental Liability or Environmental Law (hereinafter “**Claims**”), including (i) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any Environmental Law and (ii) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief pursuant to any Environmental Law.

“**Environmental Laws**” means any and all Laws relating to pollution or the protection of the Environment or, to the extent relating to exposure to Hazardous Materials, human health.

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

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

“**Equal Priority Intercreditor Agreement**” means, to the extent executed in connection with the incurrence of Indebtedness secured by Liens on the Collateral which are intended to rank equal in priority to the Liens on the Collateral securing the First Lien Obligations under this Agreement (but without regard to the control of remedies), at the option of the Borrower and the Administrative Agent acting together in good faith, either (a) an intercreditor agreement substantially in the form of Exhibit G-1 or (b) a customary intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and the Borrower, which agreement shall provide that the Liens on the Collateral securing such Indebtedness shall rank equal in priority to the Liens on the Collateral securing the First Lien Obligations under this Agreement (but without regard to the control of remedies), in each case with such modifications thereto as the Administrative Agent and the Borrower may agree.

“**Equity Contribution**” means, collectively, the direct or indirect contribution to the Borrower by the Investors of an aggregate amount of not less than \$150.0 million in the form of either preferred equity and/or, solely in the event that the Borrower has not received the requisite approvals by the Mexican Competition Bureau and pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (as amended), in each case prior to the Closing Date, subordinated convertible payment-in-kind notes issued by the Borrower to the Investor (such debt, the “**Sponsor Subordinated Debt**” and, such issuance, the “**Sponsor Subordinated Debt Issuance**”), in each case on the terms and conditions set forth in the Investment Agreement (as in effect on the Effective Date, and as amended, restated or otherwise modified in a manner not materially adverse to the Administrative Agent and the Lenders).

“**Equity Interests**” means, with respect to any Person, the Capital Stock of such Person and all warrants, options or other rights to acquire Capital Stock of such Person, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock of such Person.

“**Equity Offering**” means any public or private sale of common equity or Preferred Stock of the Borrower (excluding Disqualified Stock), other than:

- (1) public offerings with respect to the Borrower’s common equity registered on Form S-4 or Form S-8;
- (2) issuances to any Restricted Subsidiary of the Borrower; and
- (3) any such public or private sale that constitutes an Excluded Contribution.

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

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that together with any Loan Party is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“**ERISA Event**” means (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any of their respective ERISA Affiliates from a Multiemployer Plan, written notification of any Loan Party or any of their respective ERISA Affiliates concerning the imposition of withdrawal liability or written notification that a Multiemployer Plan is “insolvent” (within the meaning of Section 4245 of ERISA) or has been determined to be in “endangered” or “critical” status (within the meaning of Section 432 of the Code or Section 305 of ERISA); (d) the filing under Section 4041(c) of ERISA of a notice of intent to terminate a Pension Plan, the treatment of a Pension Plan or Multiemployer Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement in writing of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) the imposition of any liability under Title IV of ERISA with respect to the termination of any Pension Plan or Multiemployer Plan, other than for the payment of PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any of their respective ERISA Affiliates; (f) an event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) a failure to satisfy the minimum funding standard (within the meaning of Section 302 of ERISA or Section 412 of the Code) with respect to a Pension Plan, whether or not waived; (h) the application for a minimum funding waiver under Section 302(c) of ERISA with respect to a Pension Plan; (i) the imposition of a lien under Section 303(k) of ERISA or Section 430(k) of the Code with respect to any Pension Plan; (j) a determination that any Pension Plan is in “at risk” status (within the meaning of Section 303 of ERISA or Section 430 of the Code); or (k) the occurrence of a nonexempt prohibited transaction with respect to any Pension Plan maintained or contributed to by any Loan Party or any of their respective ERISA Affiliates (within the meaning of Section 4975 of the Code or Section 406 of ERISA) which could result in liability to any Loan Party.

“**Erroneous Payment**” has the meaning specified in Section 9.10(1).

“**Erroneous Payment Deficiency Assignment**” has the meaning specified in Section 9.10(1).

“**Erroneous Payment Impacted Class**” has the meaning specified in Section 9.10(1).

“**Erroneous Payment Return Deficiency**” has the meaning specified in Section 9.10(1).

“**Erroneous Payment Subrogation Rights**” has the meaning specified in Section 9.10(1).

“**Escrowed Proceeds**” means the proceeds from the offering of any debt securities or other Indebtedness paid into an escrow account with an independent escrow agent on the date of the applicable offering or incurrence pursuant to escrow arrangements that permit the release of amounts on deposit in such escrow account upon satisfaction of certain conditions or the occurrence of certain events. The term “Escrowed Proceeds” shall include any interest earned on the amounts held in escrow.

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

“**EU Treaty**” ~~shall mean~~ means the Treaty on European Union.

“**Euro**” or “**euro**” or “**€**” shall mean the single currency of the Participating Member States introduced in accordance with the provisions of Article 109(i)4 of the EU Treaty.

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

“**Excess Cash Flow**” means, for any period, an amount equal to the excess of:

(1) the sum, without duplication, of:

(a) Consolidated Net Income of the Borrower for such period,

(b) an amount equal to the amount of all non-cash charges (including depreciation and amortization) for such period to the extent deducted in arriving at such Consolidated Net Income, but excluding any such non-cash charges representing an accrual or reserve for potential cash items in any future period and excluding amortization of a prepaid cash item that was paid in a prior period,

(c) decreases in Consolidated Working Capital (except as a result of the reclassification of items from short-term to long-term or vice versa) and, without duplication, decreases in long-term accounts receivable and increases in the long-term portion of deferred revenue (except as a result of the reclassification of items from short-term to long-term or vice versa), in each case, for such period (other than any such decreases or increases, as applicable, arising from acquisitions or Asset Sales outside the ordinary course of assets by the Borrower or any Restricted Subsidiary during such period or the application of recapitalization or purchase accounting),

(d) [reserved];

(e) the amount deducted as tax expense in determining Consolidated Net Income to the extent in excess of cash taxes paid in such period and

(f) net cash receipts in respect of Hedge Agreements during such fiscal year to the extent not otherwise included in such Consolidated Net Income; over

(2) the sum, without duplication, of:

(a) an amount equal to the amount of all non-cash credits (including, to the extent constituting non-cash credits, amortization of deferred revenue acquired as a result of the Closing Date Acquisition or any Permitted Acquisition or other investment permitted hereunder) included in arriving at such Consolidated Net Income (but excluding any non-cash credit to the extent representing the reversal of an accrual or reserve described in clause (1)(b) above) and cash losses, charges (including any reserves or accruals for potential cash charges in any future period), expenses, costs and fees excluded by virtue of the definition of “Consolidated Net Income,”

(b) [reserved],

(c) the aggregate amount of all principal payments of Indebtedness of the Borrower and the Restricted Subsidiaries (including (i) the principal component of payments in respect of Capitalized Lease Obligations, (ii) all scheduled principal repayments of Loans, the Bridge Loans, Permitted Incremental Equivalent Debt and Credit Agreement Refinancing Indebtedness (or any Indebtedness representing Refinancing Indebtedness of any of the foregoing in accordance with the corresponding provisions of the governing documentation thereof), in each case to the extent such payments are permitted hereunder and actually made and (iii) the amount of any scheduled repayment of Term Loans pursuant to Section 2.07 and mandatory prepayment of Term Loans pursuant to Section 2.05(2)(b), any mandatory Discharge of the Bridge Loans (or any Indebtedness representing Refinancing Indebtedness in respect thereof in accordance with the corresponding provisions of the governing documentation thereof) and any mandatory Discharge of Permitted Incremental Equivalent Debt or Credit Agreement Refinancing Indebtedness (or any Indebtedness representing Refinancing Indebtedness of any of the foregoing in accordance with the corresponding provisions of the governing documentation thereof) pursuant to the corresponding provisions of the

governing documentation thereof, in each case, to the extent required due to an Asset Sale or Casualty Event that resulted in an increase to Consolidated Net Income for such period and not in excess of the amount of such increase, but excluding (x) all other prepayments of Term Loans, (y) all prepayments of Revolving Loans and all prepayments in respect of any other revolving credit facility, except to the extent there is an equivalent permanent reduction in commitments thereunder and (z) payments on any Subordinated Indebtedness, except in each case to the extent permitted to be paid pursuant to Section 7.05) made during such period, and other than Investments in the Borrower or any Subsidiaries, in each case, except to the extent financed with the proceeds of Funded Debt (other than any Indebtedness under any revolving credit facilities) of the Borrower or any Restricted Subsidiary (unless such Indebtedness has been repaid),

(d) [Reserved];

(e) increases in Consolidated Working Capital (except as a result of the reclassification of items from short-term to long-term or vice versa) and, without duplication, increases in long-term accounts receivable and decreases in the long-term portion of deferred revenue (except as a result of the reclassification of items from short-term to long-term or vice versa), in each case, for such period (other than any such increases or decreases, as applicable, arising from acquisitions or Asset Sales outside the ordinary course by the Borrower or any Restricted Subsidiary during such period or the application of recapitalization or purchase accounting),

(f) cash payments by the Borrower and the Restricted Subsidiaries during such period in respect of long-term liabilities of the Borrower and the Restricted Subsidiaries (other than Indebtedness) to the extent such payments are not expensed during such period or are not deducted in calculating Consolidated Net Income,

(g) without duplication of amounts deducted pursuant to clause (k) below in prior fiscal years, the amount of cash consideration paid by the Borrower and the Restricted Subsidiaries (on a consolidated basis) in connection with investments made during such period (including Permitted Acquisitions, investments constituting Permitted Investments and investments made pursuant to Section 7.05, but other than Investments in cash and Cash Equivalents), except to the extent such investments were financed with the proceeds of Funded Debt (other than any Indebtedness under any revolving credit facilities) of the Borrower or any Restricted Subsidiary (unless such Indebtedness has been repaid),

(h) the amount of Restricted Payments paid in cash during such period (other than Restricted Payments made pursuant to Section 7.05(b)(10) and Section 7.05(b)(15), except to the extent such Restricted Payments were financed with the proceeds of Funded Debt (other than any Indebtedness under any revolving credit facilities) of the Borrower or any Restricted Subsidiary (unless such Indebtedness has been repaid),

(i) the aggregate amount of expenditures (including expenditures for the payment of financing fees) paid in cash during such period to the extent that such expenditures are not expensed during such period or are not deducted in calculating Consolidated Net Income, except to the extent such expenditures were financed with the proceeds of Funded Debt (other than any Indebtedness under any revolving credit facilities) of the Borrower or any Restricted Subsidiary (unless such Indebtedness has been repaid),

(j) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and the Restricted Subsidiaries during such period that are made in connection with any prepayment or redemption of Indebtedness to the extent (x) such premium, make-whole or penalty payments were not expensed during such period or are not deducted in calculating Consolidated Net Income and (y) such prepayments or redemptions reduced Excess Cash Flow pursuant to clause (2)(c) above or reduced the mandatory prepayment required by Section 2.05(2)(a),

(k) without duplication of amounts deducted from Excess Cash Flow in other periods, and at the option of the Borrower, (1) the aggregate consideration required to be paid in cash by the Borrower or any of its Restricted Subsidiaries pursuant to binding contracts (the “Contract Consideration”) entered into prior to or during such period and (2) any planned cash expenditures by the Borrower or any of its Restricted Subsidiaries (the “Planned Expenditures”), in the case of each of the preceding clauses (1) and (2), relating to Permitted Acquisitions or other investments, Capital Expenditures, Restricted Payments, acquisitions of intellectual property, any scheduled payment of Indebtedness that was permitted by the terms of this Agreement to be incurred and paid or permitted tax distributions, in each case, to be consummated or made, as applicable, during the period of four consecutive fiscal quarters of the Borrower following the end of such period (except to the extent financed with the proceeds of long-term Indebtedness (other than revolving Indebtedness)); provided that to the extent that the aggregate amount of internally generated cash flow actually utilized to finance such Permitted Acquisitions or other investments, Capital Expenditures, Restricted Payments, acquisitions of intellectual property, permitted scheduled payments of Indebtedness that were permitted by the terms of this Agreement to be incurred and paid or permitted tax distributions during such following period of four consecutive fiscal quarters is less than the Contract Consideration and Planned Expenditures, 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,

(l) the amount of cash taxes (including penalties and interest) paid or tax reserves set aside or payable (without duplication) in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period,

(m) cash expenditures in respect of Hedging Obligations during such fiscal year to the extent not deducted in arriving at such Consolidated Net Income,

(n) any fees, expenses or charges incurred during such period (including the Transaction Expenses), or any amortization thereof for such period, in connection with any acquisition, investment, disposition, incurrence or repayment of Indebtedness, issuance of Equity Interests, refinancing transaction or amendment or modification of any debt instrument (including any amendment or other modification of this Agreement, the other Loan Documents, the Bridge Loan Agreement, any Senior Notes Indenture and related documents) and including, in each case, any such transaction consummated prior to the Closing Date and any such transaction undertaken but not completed, and any charges or non-recurring merger costs incurred during such period as a result of any such transaction, in each case whether or not successful, and

(o) at the option of the Borrower, any amounts in respect of investments (including Permitted Acquisitions, Investments constituting Permitted Investments and Investments made pursuant to Section 7.05) and Restricted Payments (including related earnouts and similar payments) which could have been deducted pursuant to clauses (g) or (h) above if made in such period, but which are made after the end of such period and prior to the date upon which a mandatory prepayment for such period would be required under Section 2.05(2)(a) (which amounts, if so deducted in accordance with this clause (o), shall not affect the calculation of Excess Cash Flow in any future period).

“**Excess Closing Date Cash**” means an amount equal to the aggregate amount of proceeds of the Closing Date Term Loans that are not (i) used on the Closing Date for the payment of the Transaction Consideration, the Transaction Expenses and the Closing Date Refinancing or otherwise reserved to satisfy Transaction Expenses within 60 days following the Closing Date and (ii) the Target Term Loan Reserve Amount.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Exchange Rate**” means on any day with respect to any currency other than U.S. Dollars, the rate at which such currency may be exchanged into U.S. Dollars, as set forth at approximately 11:00 a.m. (London time)



on such day on the Reuters “FXFIX” Page for such currency; in the event that such rate does not appear on any Reuters “FXFIX” Page, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the Borrower, or, in the absence of such agreement, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about 10:00 a.m. (New York City time) on such date for the purchase of U.S. Dollars for delivery two Business Days later.

“**Excluded Assets**” means (i) any fee-owned real property (other than Material Real Property) and any leasehold interest in real property, (ii) motor vehicles and other assets subject to certificates of title, except to the extent a security interest therein can be perfected by the filing of a UCC financing statement, (iii) all commercial tort claims that are not expected to result in a judgment or settlement payment in excess of \$5.0 million (as determined by the Borrower in good faith), (iv) any governmental or regulatory licenses, authorizations, certificates, charters, franchises, approvals and consents (whether Federal, State, Provincial or otherwise) to the extent a security interest therein is prohibited or restricted thereby or requires any consent or authorization from a Governmental Authority not obtained (without any requirement to obtain such consent or authorization other than any approval or other authorization of any Governmental Authority otherwise required to be obtained pursuant to any Tender Document) other than to the extent such prohibition or restriction is ineffective under the UCC or other applicable Law notwithstanding such prohibition and other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC, (v) assets to the extent the pledge thereof or grant of security interests therein (x) is prohibited or restricted by any applicable Law, rule or regulation (other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC or other applicable Law notwithstanding such prohibition), (y) would cause the destruction, invalidation or abandonment of such asset under applicable Law (solely with respect to any intellectual property), or (z) requires any consent, approval, license or other authorization of any third party (other than the Borrower or its Subsidiaries) pursuant to a contract binding on such asset (*provided* that such requirement existed on the Effective Date or at the time of the acquisition of such asset and was not incurred in contemplation thereof (other than in the case of capital leases and purchase money financings)) or Governmental Authority not obtained (without any requirement to obtain such consent, approval, license or other authorization after giving effect to the anti-assignment provisions of the UCC, (vi) margin stock and Equity Interests in any Person other than the Borrower and wholly owned Restricted Subsidiaries, (vii) Equity Interests in Immaterial Subsidiaries and Excluded Subsidiaries (other than first tier Foreign Subsidiaries and first tier CFC Holdcos that are Restricted Subsidiaries; *provided* that in the case of any first tier Foreign Subsidiary or first tier CFC Holdco, the pledge of the Equity Interests of such Subsidiary shall be subject to clause (viii) below), (viii) Equity Interests in excess of 65% of the total issued and outstanding Equity Interests of a Foreign Subsidiary or CFC Holdco, (ix) any lease, license or agreement (not otherwise subject to clause (iv) above) or any property that is subject to a purchase money security interest or similar arrangement, in each case permitted by this Agreement, to the extent that a grant of a security interest therein (x) would violate or invalidate such lease, license or agreement or purchase money security interest or similar arrangement or create a right of termination in favor of any other party thereto (other than the Borrower or any of its Subsidiaries) after giving effect to the applicable anti-assignment provisions of the UCC or other applicable Law or (y) would require governmental or regulatory approval, consent or authorization not obtained (without any requirement to obtain such approval, consent or authorization), other than proceeds and receivables thereof, the assignment of which is expressly deemed effective under the UCC or other applicable Law notwithstanding such prohibition), (x) letter of credit rights, except to the extent the security interest therein is accomplished by the filing of a UCC financing statement, (xi) any intent-to-use trademark applications filed in the United States Patent and Trademark Office, pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. Section 1051, prior to the accepted filing of a “Statement of Use” and issuance of a “Certificate of Registration” pursuant to Section 1(d) of the Lanham Act or an accepted filing of an “Amendment to Allege Use” whereby such intent-to-use trademark application is converted to a “use in commerce” application pursuant to Section 1(c) of the Lanham Act, (xii) assets where the burden or cost (including any adverse tax consequences) of obtaining a security interest therein or perfection thereof exceeds the practical benefit to the Lenders afforded thereby as reasonably determined between the Borrower and the Administrative Agent, (xiii) any assets to the extent a security interest in such assets or perfection thereof would result in material adverse tax consequences to the Borrower or any Restricted Subsidiary as reasonably determined by the Borrower in good faith, in consultation with the Administrative Agent, (xiv) any assets located in or governed by any non-U.S. jurisdiction law or regulation (other than (x) equity interests and intercompany debt of Foreign Subsidiaries and certain disregarded entities otherwise required to be pledged pursuant to the Collateral Documents and (y) assets that can be perfected by the filing of a UCC financing statement), including any intellectual property located in a non-

U.S. jurisdiction, (xv) any “Collateral” under and as defined in the Agreement for Standby Letter of Credit granted to the Tender Issuing Bank as security for the obligations of the Borrower thereunder; *provided* that such exclusion shall only apply until the later of (x) the termination, undrawn, of the Tender Letter of Credit and (y) if the Tender Letter of Credit is drawn upon, the repayment in full of all “Obligations” under and as defined in the Agreement for Standby Letter of Credit in accordance with the terms thereof, including any reimbursement obligations and all commissions, fees (including under the L/C Fee Letter), expenses, interest (including any interest accruing after the filing of any petition in bankruptcy, whether or not a claim for post-petition interest is allowed in such proceeding) and additional costs thereunder, other than contingent indemnification obligations not then due and payable and (xvi) cash and Cash Equivalents (except to the extent constituting identifiable proceeds of Collateral which is perfected by the filing of a UCC financing statement), deposit, securities, commodities and other accounts, securities entitlements and related assets held in such account except, in each case, to the extent a security interest therein is perfected by filing of a UCC financing statement and other than any Cash Collateral, Cash Collateral Account or other cash or assets deposited with a Secured Party as Collateral.

“**Excluded Contribution**” means net cash proceeds or the fair market value of marketable securities or the fair market value of Qualified Proceeds received by the Borrower from:

- (1) contributions to its common equity capital;
- (2) dividends, distributions, fees and other payments from any joint ventures that are not Restricted Subsidiaries; and
- (2) the sale (other than to a Restricted Subsidiary of the Borrower or to any management equity plan or stock option plan or any other management or employee benefit plan or agreement of the Borrower) of Capital Stock (other than Disqualified Stock and Designated Preferred Stock) of the Borrower; in each case, designated as Excluded Contributions pursuant to an Officer’s Certificate and that are excluded from the calculation set forth in clause (3) of Section 7.05(a); *provided* that Excluded Contributions shall not include Cure Amounts.

“**Excluded Proceeds**” means, with respect to any Asset Sale or Casualty Event, the sum of, (1) any Net Proceeds therefrom that constitute Declined Proceeds and (2) any Net Proceeds therefrom that otherwise are waived by the Required Facility Lenders from the requirement to be applied to prepay the applicable Term Loans pursuant to Section 2.05(2)(b).

“**Excluded Subsidiaries**” means all of the following and “**Excluded Subsidiary**” means any of them:

- (1) any Subsidiary that is not a direct, wholly owned Subsidiary of the Borrower or a Guarantor,
- (2) any Foreign Subsidiary,
- (3) any CFC Holdco,
- (4) any Domestic Subsidiary that is a Subsidiary of any CFC,
- (5) any Subsidiary (including any regulated entity that is subject to net worth or net capital or similar capital and surplus restrictions) that is prohibited or restricted by applicable Law or by Contractual Obligation (including in respect of assumed Indebtedness permitted hereunder) existing on the Effective Date (or, with respect to any Subsidiary acquired by the Borrower or a Restricted Subsidiary after the Effective Date (and so long as such Contractual Obligation was not incurred in contemplation of such acquisition), on the date such Subsidiary is so acquired) from providing a Guaranty (including any Broker-Dealer Regulated Subsidiary) or if such Guaranty would require governmental (including regulatory) or third party (other than any Loan Party or their respective Subsidiaries) consent, approval, license or authorization (other than any



governmental approval required to be obtained under the Tender Documents) unless such consent, approval, license or authorization has been obtained,

- (6) any special purpose vehicle (or similar entity) or any Securitization Subsidiary,
- (7) any Captive Insurance Subsidiary or not-for-profit Subsidiary,
- (8) any Subsidiary that is not a Material Subsidiary,
- (9) any Subsidiary with respect to which, in the reasonable judgment of the Administrative Agent and the Borrower, the burden or cost (including any adverse tax consequences) of providing the Guaranty will outweigh the benefits to be obtained by the Lenders therefrom, and
- (10) any Unrestricted Subsidiary.

“**Excluded Swap Obligation**” means, with respect to any Loan Party, (a) 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 (each such obligation, a “**Swap Obligation**”), if, and to the extent that, all or a portion of the guarantee of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation, or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (i) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder (determined after giving effect to Section 3.02 of the Guaranty and any other “keepwell, support or other agreement” for the benefit of such Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act) at the time the guarantee of such Loan Party, or a grant by such Loan Party of a security interest, becomes effective with respect to such Swap Obligation, or (ii) in the case of a Swap Obligation that is subject to a clearing requirement pursuant to section 2(h) of the Commodity Exchange Act, because such Loan Party is a “financial entity,” as defined in section 2(h)(7)(C) of the Commodity Exchange Act, at the time the guarantee of (or grant of such security interest by, as applicable) such Loan Party becomes or would become effective with respect to such Swap Obligation, or (b) any other Swap Obligation designated as an “Excluded Swap Obligation” of such Loan Party as specified in any agreement between the relevant Loan Parties and hedge counterparty applicable to such Swap Obligations. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest becomes excluded in accordance with the first sentence of this definition.

“**Excluded Taxes**” means, with respect to each Agent and each Lender,

- (1) any tax imposed on (or measured by) such Agent or Lender’s net income or profits (or franchise or net worth tax in lieu of such tax on net income or profits) imposed by a jurisdiction as a result of such Agent or Lender being organized under the laws of or having its principal office or applicable Lending Office located in such jurisdiction or as a result of any other present or former connection between such Agent or Lender and the jurisdiction (including as a result of such Agent or Lender carrying on a trade or business, having a permanent establishment or being a resident for tax purposes in such jurisdiction), other than a connection arising solely from such Agent or Lender having executed, delivered, enforced, 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 sold or assigned an interest in, any Loan or Loan Document,
- (2) any branch profits tax under Section 884(a) of the Code, or any similar tax, imposed by any jurisdiction described in clause (1),
- (3) other than with respect to and to the extent that any Lender becomes a party hereto pursuant to the Borrower’s request under Section 3.07, any U.S. federal tax that is withheld or required to be withheld on amounts payable to or for the account of a Lender with respect to an applicable interest in a Loan or

Commitment pursuant to a Law in effect on the date such Lender (i) acquires such interest in the applicable Commitment or, if such Lender did not fund the applicable Loan pursuant to a prior Commitment, on the date such Lender acquires the applicable interest in such Loan (or where the Lender is a partnership for U.S. federal income tax purposes, pursuant to a Law in effect on the later of the date on which such Lender acquires such interest or the date on which the affected partner becomes a partner of such Lender), or (ii) designates a new Lending Office (or where the Lender is a partnership for U.S. federal income tax purposes, pursuant to a Law in effect on the later of the date on which the Lender designates a new Lending Office or, if applicable, the date on which the affected partner designates a new Lending Office) except, in the case of a Lender or partner that designates a new Lending Office or is an assignee, to the extent that such Lender or partner (or its assignor, if any) was entitled, immediately prior to the time of designation of a new Lending Office (or assignment), to receive additional amounts from a Loan Party with respect to such U.S. federal tax pursuant to Section 3.01,

- (4) any withholding tax attributable to such Lender's failure to comply with Section 3.01(3),
- (5) any tax imposed under FATCA,
- (6) any U.S. federal backup withholding under Section 3406 of the Code, and
- (7) any interest, additions to taxes and penalties with respect to any taxes described in clauses (1) through (6) of this definition.

**"Existing Credit Agreement"** means that certain Credit Agreement, dated as of December 19, 2014, by and among the Borrower, the banks, financial institutions and other investors from time to time parties thereto and JPMorgan Chase Bank, as administrative agent, as amended, restated or otherwise modified from time to time.

**"Existing Letters of Credit"** means the following letters of credit issued by JPMorgan Chase Bank, N.A. for the account of the Borrower under the Existing Credit Agreement: (i) letter of credit no. S-793457 in the amount of \$2,100,000.00, (ii) letter of credit no. S-829984 in the amount of \$265,000.00 and (iii) letter of credit no. S-851505 in the amount of \$440,000.00.

**"Existing Revolving Class"** has the meaning specified in Section 2.16(2).

**"Existing Term Loan Class"** has the meaning specified in Section 2.16(1).

**"Extended Revolving Commitments"** has the meaning specified in Section 2.16(2).

**"Extended Term Loans"** has the meaning specified in Section 2.16(1).

**"Extending Lender"** means an Extending Revolving Lender or an Extending Term Lender, as the case may be.

**"Extending Revolving Lender"** has the meaning specified in Section 2.16(3).

**"Extending Term Lender"** has the meaning specified in Section 2.16(3).

**"Extension"** means the establishment of an Extension Series by amending a Loan pursuant to Section 2.16 and the applicable Extension Amendment.

**"Extension Amendment"** has the meaning specified in Section 2.16(4).

**"Extension Election"** has the meaning specified in Section 2.16(3).

“**Extension Minimum Condition**” means a condition to consummating any Extension that a minimum amount (to be determined and specified in the relevant Extension Request, in the Borrower’s sole discretion) of any or all applicable Classes be submitted for Extension.

“**Extension Request**” means any Term Loan Extension Request or any Revolving Extension Request, as the case may be.

“**Extension Series**” means any Term Loan Extension Series or a Revolving Extension Series, as the case may be.

“**Facilities**” means the Closing Date Term Loans, the Revolving Facility, a given Extension Series of Extended Revolving Commitments, a given Class of Other Term Loans, a given Extension Series of Extended Term Loans, a given Class of Incremental Term Loans, a given Class of Incremental Revolving Commitments, any Other Revolving Loan (or Commitment) or a given Class of Replacement Loans, as the context may require, and “**Facility**” means any of them.

“**fair market value**” means, with respect to any asset or liability, the fair market value of such asset or liability as determined by the Borrower in good faith.

“**FATCA**” means Sections 1471 through 1474 of the Code as in effect on the Effective Date or any amended or successor version thereof that is substantively comparable and not materially more onerous to comply with (and, in each case, any current or future regulations promulgated thereunder or official interpretations thereof), any applicable intergovernmental agreement entered into in respect thereof, and any provision of law or administrative guidance implementing or interpreting such provisions, including any agreements entered into pursuant to any such intergovernmental agreement or Section 1471(b)(1) of the Code as of the Effective Date (or any amended or successor version described above).

“**FCA**” has the meaning specified in Section 3.03(2).

“**FCPA**” has the meaning specified in Section 5.17.

“**Federal Funds Rate**” means, 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 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%) of the quotations for the day for such transactions received by the Administrative Agent from three depository institutions of recognized standing selected by it.

“**Fee Letter**” means the Fee Letter, dated as of the Effective Date, among the Arrangers and the Borrower.

“**Fifth Amendment**” means that certain Fifth Amendment to Credit Agreement, dated as of May 3, 2021, by and among the Borrower, the other Loan Parties party thereto, the Administrative Agent, the Collateral Agent, the Sub-Agent (as defined therein) and the Lenders and Issuing Banks party thereto.

“**Fifth Amendment Effective Date**” has the meaning assigned to such term in the Fifth Amendment, which date occurred on May 3, 2021.

“**Fifth Amendment Effective Date Refinancing**” has the meaning assigned to such term in the Fifth Amendment.

“**Fifth Amendment Transaction Costs**” has the meaning assigned to such term in the Fifth Amendment.

“**Financial Covenant**” means the covenant specified in Section 7.12(1).

“**Financial Covenant Cross Default**” has the meaning specified in Section 8.01(2).

“**Financial Covenant Event of Default**” has the meaning specified in Section 8.01(2).

“**Financial Officer**” means, with respect to a Person, the chief financial officer, accounting officer, treasurer, controller or other senior financial or accounting officer of such Person, as appropriate.

“**First Lien Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated First Lien Secured Debt outstanding as of the last day of such Test Period, *minus*, the aggregate amount of cash and Cash Equivalents of the Borrower and the Restricted Subsidiaries on such date (other than cash in the Controlled Account) that (x) would not appear as “restricted” on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries or (y) are restricted in favor of the Facilities (which may also secure other Indebtedness secured by a *pari passu* or junior Lien on the Collateral along with the Facilities) to (b) Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a *pro forma* basis with such *pro forma* adjustments as are appropriate and consistent with Section 1.07.

“**First Lien Obligations**” means the Obligations, the Permitted Incremental Equivalent Debt and the Credit Agreement Refinancing Indebtedness, in each case, that are, or purported to be, secured by the Collateral on an equal priority basis (but without regard to the control of remedies) with liens on the Collateral securing the Closing Date Term Loans, [the Closing Date Revolving Facility and the 2021 Revolving Facility](#). For the avoidance of doubt, “First Lien Obligations” shall include the Closing Date Term Loans, [the Revolving Loans under the Closing Date Revolving Facility and the Revolving Loans under the 2021 Revolving Facility](#).

“**Flood Insurance Laws**” means, collectively, (i) National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

“**floor**” means, with respect to any reference rate of interest, any fixed minimum amount specified for such rate.

“**Floor**” means the benchmark rate floor with respect to the Revolving Facility, if any, provided in this [Agreement initially \(as of the Fifth Amendment Effective Date, the modification, amendment or renewal of this Agreement or otherwise\) with respect to LIBO Rate.](#)

“**Foreign Asset Sale**” has the meaning specified in Section 2.05(2)(h).

“**Foreign Casualty Event**” has the meaning specified in Section 2.05(2)(h).

“**Foreign Lender**” means a Lender that is not a United States person within the meaning of Section 7701(a)(30) of the Code.

“**Foreign Plan**” means any employee benefit plan, program or agreement maintained or contributed to by, or entered into with, the Borrower or any Subsidiary of the Borrower with respect to employees employed outside the United States (other than benefit plans, programs or agreements that are mandated by applicable Laws).

“**Foreign Subsidiary**” means any direct or indirect Restricted Subsidiary of the Borrower that is not a Domestic Subsidiary.

“**Fourth Amendment Effective Date**” shall mean the first date when each of the conditions under Section 6 of the Fourth Amendment to the Credit Agreement have been met.

“**Fourth Amendment to the Credit Agreement**” shall mean that certain Fourth Amendment to Credit Agreement dated as of the Fourth Amendment Effective Date.

“**Fronting Exposure**” means, at any time there is a Defaulting Lender, with respect to an Issuing Bank, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations, other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

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

“**Funded Debt**” means all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including Indebtedness in respect of the Loans.

“**GAAP**” means generally accepted accounting principles in the United States of America set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, as in effect from time to time. At any time after the Effective Date, the Borrower may elect to apply IFRS accounting principles in lieu of GAAP and, upon any such election, references herein to GAAP will thereafter be construed to mean IFRS (except as otherwise provided in this Agreement); *provided, however*, that any such election, once made, will be irrevocable; *provided further* that any calculation or determination in this Agreement that requires the application of GAAP for periods that include fiscal quarters ended prior to the Borrower’s election to apply IFRS will remain as previously calculated or determined in accordance with GAAP. The Borrower will give notice of any such election made in accordance with this definition to the Administrative Agent. Notwithstanding any other provision contained herein the amount of any Indebtedness under GAAP with respect to Capitalized Lease Obligations and Attributable Indebtedness shall be determined in accordance with the definition of Capitalized Lease Obligations and Attributable Indebtedness, respectively.

Notwithstanding the foregoing, if at any time any change occurs after the Effective Date in GAAP (or IFRS) or in the application thereof on the computation of any financial ratio or financial requirement, or compliance with any covenant, set forth in any Loan Document, and the Borrower shall so request (regardless of whether any such request is given before or after such change), the Administrative Agent, the Lenders and the Borrower will negotiate in good faith to amend (subject to the approval of the Required Lenders) such ratio, requirement or covenant to preserve the original intent thereof in light of such change in GAAP (or IFRS); *provided further* that until so amended, (a) such ratio, requirement or covenant shall continue to be computed in accordance with GAAP (or IFRS) prior to such change therein and (b) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP (or IFRS).

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

“**Governmental Authorizations**” means all permits, authorizations, certificates, waivers, concessions, exemptions, orders and other and approvals issued by or obtained from a Governmental Authority by the Borrower or any of the Restricted Subsidiaries, and in effect as of the date of the Agreement.

“**Granting Lender**” has the meaning specified in Section 10.07(g).

“**guarantee**” means a guarantee (other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice), direct or indirect, in any manner (including letters of credit and reimbursement agreements in respect thereof), of all or any part of any Indebtedness or other obligations.

“**Guarantee**” means, as to any Person, without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing any Indebtedness or other monetary obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other monetary obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance of such Indebtedness or other monetary obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other monetary obligation or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other monetary obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part) or (b) any Lien on any assets of such Person securing any Indebtedness or other monetary obligation of any other Person, whether or not such Indebtedness or other monetary obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien); *provided* that the term “Guarantee” shall not include endorsements for collection or deposit, in either case in the ordinary course of business, or customary and reasonable indemnity obligations in effect on the Effective Date or entered into in connection with the Transaction or any acquisition or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

“**Guarantor**” has the meaning specified in clause (2) of the definition of “Collateral and Guarantee Requirement.” For avoidance of doubt, the Borrower may, in its sole discretion, cause any Restricted Subsidiary that is not required to be a Guarantor to Guarantee the Obligations by causing such Restricted Subsidiary to execute a joinder to the Guaranty (substantially in the form provided therein or as the Administrative Agent, the Borrower and such Guarantor may otherwise agree), and any such Restricted Subsidiary shall be a Guarantor hereunder for all purposes; *provided* that (i) in the case of any Restricted Subsidiary organized in a foreign jurisdiction, the Administrative Agent shall be reasonably satisfied with the jurisdiction of organization of such Restricted Subsidiary and (ii) the Administrative Agent shall have received at least two (2) Business Days prior to the effectiveness of such joinder all documentation and other information in respect of such Guarantor required under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

“**Guaranty**” means (a) the Guaranty substantially in the form of Exhibit E made by each Guarantor, (b) each other guaranty and guaranty supplement delivered pursuant to Section 6.11 and (c) each other guaranty and guaranty supplement delivered by any Restricted Subsidiary pursuant to the second sentence of the definition of “Guarantor.”

“**Hazardous Materials**” means all explosive or radioactive substances or wastes, and all other substances, wastes, pollutants and contaminants and chemicals in any form, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas and infectious or medical wastes, to the extent any of the foregoing are regulated pursuant to, or can form the basis for liability under, any Environmental Law.

“**Hedge Agreement**” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master



agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement or any other master agreement (any such master agreement, together with any related schedules, a **“Master Agreement”**), including any such obligations or liabilities under any Master Agreement.

**“Hedge Bank”** means any Person party to a Secured Hedge Agreement that is an Agent, a Lender, an Arranger, any person set forth on Schedule 1.01(3) or an Affiliate of any of the foregoing on the Effective Date or at the time it enters into such Secured Hedge Agreement, in its capacity as a party thereto, whether or not such Person subsequently ceases to be an Agent, a Lender, an Arranger or an Affiliate of any of the foregoing.

**“Hedging Obligations”** means, with respect to any Person, the obligations of such Person under any Hedge Agreement.

**“Honor Date”** has the meaning specified in Section 2.03(3)(a).

**“Identified Participating Lenders”** has the meaning specified in Section 2.05(1)(e)(G).

**“Identified Qualifying Lenders”** has the meaning specified in Section 2.05(1)(e)(J).

**“IFRS”** means international financial reporting standards and interpretations issued by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants or any successor to either such Board, or the SEC, as the case may be), as in effect from time to time.

**“Immaterial Subsidiary”** means any Restricted Subsidiary of the Borrower that is not a Material Subsidiary.

**“Immediate Family Members”** means with respect to any individual, such individual’s child, stepchild, grandchild or more remote descendant, parent, stepparent, grandparent, spouse, former spouse, qualified domestic partner, sibling, mother-in-law, father-in-law, son-in-law and daughter-in-law (including, in each case, adoptive relationships) and any trust, partnership or other bona fide estate-planning vehicle the only beneficiaries of which are any of the foregoing individuals or any private foundation or fund that is controlled by any of the foregoing individuals or any donor-advised fund of which any such individual is the donor.

**“Incremental Amendment”** has the meaning specified in Section 2.14(6).

**“Incremental Amounts”** has the meaning specified in clause (1) of the definition of Refinancing Indebtedness.

**“Incremental Commitments”** has the meaning specified in Section 2.14(1).

**“Incremental Facility Closing Date”** has the meaning specified in Section 2.14(4).

**“Incremental Lenders”** has the meaning specified in Section 2.14(3).

**“Incremental Loan”** has the meaning specified in Section 2.14(2).

**“Incremental Loan Request”** has the meaning specified in Section 2.14(1).

**“Incremental Revolving Commitments”** has the meaning specified in Section 2.14(1).

**“Incremental Revolving Facility”** has the meaning specified in Section 2.14(1).

**“Incremental Revolving Lender”** has the meaning specified in Section 2.14(3).

“**Incremental Revolving Loan**” has the meaning specified in Section 2.14(2).

“**Incremental Term Commitments**” has the meaning specified in Section 2.14(1).

“**Incremental Term Lender**” has the meaning specified in Section 2.14(3).

“**Incremental Term Loan**” has the meaning specified in Section 2.14(2).

“**Indebtedness**” means, with respect to any Person, without duplication:

- (1) any indebtedness (including principal and premium) of such Person, whether or not contingent:
  - (a) in respect of borrowed money;
  - (b) evidenced by bonds, notes, debentures or similar instruments or letters of credit or bankers’ acceptances (or, without duplication, reimbursement agreements in respect thereof);
  - (c) representing the deferred and unpaid balance of the purchase price of any property (including Capitalized Lease Obligations) due more than twelve months after such property is acquired, except (i) any such balance that constitutes an obligation in respect of a commercial letter of credit, a trade payable or similar obligation to a trade creditor, in each case accrued in the ordinary course of business or consistent with industry practice, (ii) any earn-out obligations until such obligation is reflected as a liability on the balance sheet (excluding any footnotes thereto) of such Person in accordance with GAAP and is not paid within 60 days after becoming due and payable and (iii) accruals for payroll and other liabilities accrued in the ordinary course of business; or
  - (d) representing the net obligations under any Hedging Obligations;

if and to the extent that any of the foregoing Indebtedness (other than obligations in respect of letters of credit and Hedging Obligations) would appear as a liability upon a balance sheet (excluding the footnotes thereto) of such Person prepared in accordance with GAAP;

(2) to the extent not otherwise included, any obligation by such Person to be liable for, or to pay, as obligor, guarantor or otherwise, on the obligations of the type referred to in clause (1) of this definition of a third Person (whether or not such items would appear upon the balance sheet of such obligor or guarantor), other than by endorsement of negotiable instruments for collection in the ordinary course of business or consistent with industry practice; and

(3) to the extent not otherwise included, the obligations of the type referred to in clause (1) of this definition of a third Person secured by a Lien on any asset owned by such first Person, whether or not such Indebtedness is assumed by such first Person; provided that the amount of such Indebtedness will be the lesser of (i) the fair market value of such asset at such date of determination and (ii) the amount of such Indebtedness of such other Person; *provided* that notwithstanding the foregoing, Indebtedness will be deemed not to include:

- (i) Contingent Obligations incurred in the ordinary course of business or consistent with industry practice,
- (ii) reimbursement obligations under commercial letters of credit (provided that unreimbursed amounts under commercial letters of credit will be counted as Indebtedness three (3) Business Days after such amount is drawn),
- (iii) obligations under or in respect of Qualified Securitization Facilities,



- (iv) accrued expenses,
- (v) deferred or prepaid revenues, and
- (vi) asset retirement obligations and obligations in respect of reclamation and workers compensation (including pensions and retiree medical care);

*provided further* that Indebtedness will be calculated without giving effect to the effects of Accounting Standards Codification Topic No. 815, *Derivatives and Hedging*, and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness.

“**Indemnified Liabilities**” has the meaning specified in Section 10.05.

“**Indemnitees**” has the meaning specified in Section 10.05.

“**Independent Financial Advisor**” means an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that, in the good faith judgment of the Borrower, is qualified to perform the task for which it has been engaged.

“**Information**” has the meaning specified in Section 10.09.

“**Intellectual Property Security Agreements**” has the meaning specified in the Security Agreement.

“**Intercompany Note**” means the Intercompany Note, dated as of the Effective Date, substantially in the form of Exhibit Q executed by the Borrower and each Restricted Subsidiary of the Borrower party thereto.

“**Intercreditor Agreement**” means any Equal Priority Intercreditor Agreement(s), Junior Lien Intercreditor Agreement(s) or Junior Lien Equal Priority Intercreditor Agreement that may be executed from time to time.

“**Interest Coverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for such Test Period to (b) Consolidated Interest Expense of the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a *pro forma* basis with such *pro forma* adjustments as are appropriate and consistent with Section 1.07.

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

“**Interest Period**” means, as to each LIBO Rate Loan, the period commencing on the date such LIBO Rate Loan is disbursed or converted to or continued as a LIBO Rate Loan and ending on the date one, two (other than with respect to the Revolving Facility), three or six months thereafter, or to the extent consented to by each applicable Lender, twelve months, as selected by the Borrower in its Committed Loan Notice; *provided* that:

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

(2) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(3) no Interest Period shall extend beyond the applicable Maturity Date for the Class of Loans of which such LIBO Rate Loan is a part.

**“Investment Agreement”** means, collectively, (i) the Investment Agreement between TPG Growth III Sidewall, L.P. and the Borrower dated as of the Effective Date and (ii) the Certificate of Designations as defined and referred to therein, in each case, as amended, restated or otherwise modified from time to time in a manner not materially adverse to the Administrative Agent and the Lenders.

**“Investment Grade Rating”** means a rating equal to or higher than Baa3 (or the equivalent) by Moody’s or BBB- (or the equivalent) by S&P, or an equivalent rating by any other Rating Agency selected by the Borrower.

**“Investment Grade Securities”** means:

(1) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents);

(2) debt securities or debt instruments with an Investment Grade Rating, but excluding any debt securities or debt instruments constituting loans or advances among the Borrower and its Subsidiaries;

(3) investments in any fund that invests substantially all of its assets in investments of the type described in clauses (1) and (2) of this definition which fund may also hold immaterial amounts of cash pending investment or distribution; and

(4) corresponding instruments in countries other than the United States customarily utilized for high quality investments.

**“Investments”** means, with respect to any Person, all investments by such Person in other Persons (including Affiliates) in the form of loans (including guarantees), advances or capital contributions (excluding accounts receivable, credit card and debit card receivables, trade credit, advances to customers, commission, travel and similar advances to employees, directors, officers, members of management, consultants and independent contractors, in each case made in the ordinary course of business or consistent with industry practice), purchases or other acquisitions for consideration of Indebtedness, Equity Interests or other securities issued by any other Person. For purposes of the definitions of “Permitted Investments” and “Unrestricted Subsidiary” and Section 7.05,

(1) “Investments” will include the portion (proportionate to the Borrower’s Equity Interest in such Subsidiary) of the fair market value of the net assets of a Subsidiary of the Borrower at the time that such Subsidiary is designated an Unrestricted Subsidiary and for so long as such Subsidiary constitutes an Unrestricted Subsidiary; and

(2) any property transferred to or from an Unrestricted Subsidiary will be valued at its fair market value at the time of such transfer.

The amount of any Investment outstanding at any time will be the original cost of such Investment, reduced by any dividend, distribution, interest payment, return of capital, repayment or other amount received in cash by the Borrower or a Restricted Subsidiary in respect of such Investment.

**“Investor”** means TPG Capital, L.P. and any of its Affiliates and/or any funds or partnership managed or advised by any of TPG Capital, L.P. or any of its Affiliates but not including, however, any portfolio company of any of the foregoing.

“**IP Rights**” has the meaning specified in Section 5.15.

“**IRS**” means Internal Revenue Service of the United States.

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

“**ISP**” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“**Issuing Bank**” means Citibank N.A., JPMorgan Chase Bank, N.A., Royal Bank of Canada ~~and~~ Deutsche Bank AG, New York Branch and BMO Harris Bank, N.A., in each case, in its capacity as an issuer of Letters of Credit hereunder and ~~solely with respect to its L/C Commitment~~, together with its permitted successors and assigns and any other Revolving Lender that becomes an Issuing Bank in accordance with Section 2.03(12); ~~provided that each such Issuing Bank shall have a commitment with respect to the L/C Commitment that is proportionate with its pro rata share of the L/C Sublimit and shall issue standby letters of credit based on its pro rata share of the L/C Commitment in an aggregate amount at any time outstanding up to its pro rata share of the L/C Commitment; provided that~~ no Issuing Bank shall be required to issue any Letters of Credit other than standby Letters of Credit.

“**Issuing Bank Document**” means with respect to any Letter of Credit, the L/C Application, and any other document, agreement and instrument entered into by any Issuing Bank and the Borrower (or any of its Subsidiaries) or in favor of such Issuing Bank and relating to such Letter of Credit.

“**Junior Lien Debt**” has the meaning specified in clause (39) of the definition of Permitted Liens.

“**Junior Lien Equal Priority Intercreditor Agreement**” means, to the extent executed in connection with the incurrence of Indebtedness secured by Liens on the Collateral which are intended to rank junior in priority to the Liens on the Collateral securing the First Lien Obligations under this Agreement and junior or equal in priority to Liens on the Collateral securing Junior Lien Debt, at the option of the Borrower and the Administrative Agent acting together in good faith, a customary intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and the Borrower, which agreement shall provide that the Liens on the Collateral securing such Indebtedness shall rank equal in priority or junior to the Liens on the Collateral securing Junior Lien Debt permitted under this Agreement and shall rank junior in priority to the Liens on the Collateral securing First Lien Obligations under this Agreement, in each case with such modifications thereto as the Administrative Agent and the Borrower may agree.

“**Junior Lien Intercreditor Agreement**” means, to the extent executed in connection with the incurrence of Indebtedness secured by Liens on the Collateral which are intended to rank junior in priority to the Liens on the Collateral securing the First Lien Obligations under this Agreement, at the option of the Borrower and the Administrative Agent acting together in good faith, either (a) an intercreditor agreement substantially in the form of Exhibit G-2 or (b) a customary intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and the Borrower, which agreement shall provide that the Liens on the Collateral securing such Indebtedness shall rank junior to the Lien on the Collateral securing the First Lien Obligations under this Agreement, in each case with such modifications thereto as the Administrative Agent and the Borrower may agree.

“**Junior Secured Condition**” means, as of any date of determination, that the Secured Net Leverage Ratio for the Test Period most recently ended, on a pro forma basis, does not exceed the sum of (i) the Closing Date Secured Net Leverage Ratio plus (ii) 0.75.

“**L/C Advance**” means, with respect to each Revolving Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

“**L/C Application**” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the relevant Issuing Bank.

“**L/C Borrowing**” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed prior to the Honor Date or refinanced as a Revolving Borrowing.

“**L/C Commitment**” means, with respect to any Person, the amount set forth opposite the name of such Person on Schedule 2.01 of the Fifth Amendment ~~No. 2 to the Credit Agreement~~.

“**L/C Credit Extension**” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

“**L/C Expiration Date**” means, as to any Class of Revolving Commitments, the day that is five (5) Business Days prior to the scheduled Maturity Date then in effect for ~~the applicable~~ such Class of Revolving Facility Commitments (or, if such day is not a Business Day, the next preceding Business Day).

“**L/C Fee Letter**” means the Letter of Credit Fee Letter, dated as of the Effective Date, among the Tender Issuing Bank and the Borrower.

“**L/C Obligations**” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit *plus* the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be the stated amount thereof in effect at such time. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“**L/C Sublimit**” means an amount equal to the lesser of (a) ~~\$50.0~~ 37.5 million and (b) the aggregate amount of the Revolving Commitments. The L/C Sublimit is part of, and not in addition to, the Revolving Facility.

“**Latest Maturity Date**” means, at any date of determination, the latest maturity or expiration date applicable to any Loan or Commitment hereunder at such time, including the latest maturity or expiration date of any Incremental Loan, any Incremental Revolving Commitment, any Other Loan, any Other Revolving Commitments, any Replacement Loan, any Extended Term Loan or any Extended Revolving Commitment, in each case as extended in accordance with this Agreement from time to time.

“**Laws**” means, collectively, all international, foreign, federal, state and local laws (including common law), statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“**Legal Holiday**” means Saturday, Sunday or a day on which commercial banking institutions are not required to be open in the State of New York or at the place of payment.

“**Lender**” has the meaning specified in the introductory paragraph to this Agreement and, as context requires (including for purposes of the definition of “Secured Parties”), includes any Issuing Bank and its successors and assigns as permitted hereunder, each of which is referred to herein as a “Lender.” For the avoidance of doubt, each Additional Lender is a Lender to the extent any such Person has executed and delivered a Refinancing Amendment, an Incremental Amendment or an amendment in respect of Replacement Loans, as the case may be, and to the extent such Refinancing Amendment, Incremental Amendment or amendment in respect of Replacement Loans shall have become effective in accordance with the terms hereof and thereof, and each Extending Lender shall continue to be a Lender. As of the Effective Date, Schedule 2.01 sets forth the name of each Lender. As of the Amendment No. 2 Effective Date, Schedule 2 of the Amendment No. 2 to the Credit Agreement sets forth the name of each

Revolving Lender. Notwithstanding the foregoing, no Disqualified Institution that purports to become a Lender hereunder (notwithstanding the provisions of this Agreement that prohibit Disqualified Institutions from becoming Lenders) without the Borrower's written consent shall be entitled to any of the rights or privileges enjoyed by the other Lenders with respect to voting, information and lender meetings; *provided* that the Loans of any such Disqualified Institution shall not be excluded for purposes of making a determination of Required Lenders if the action in question affects such Disqualified Institution in a disproportionately adverse manner than its effect on the other Lenders; *provided, further*, that if any assignment or participation is made to any Disqualified Institution without the Borrower's prior written consent in violation of clause (v) of Section 10.07(b) the Borrower may, at its sole expense and effort, upon notice to the applicable Disqualified Institution and the Administrative Agent, (A) terminate any Revolving Commitment of such Disqualified Institution and repay all obligations of the Borrower owing to such Disqualified Institution in connection with such Revolving Commitment, (B) in the case of outstanding Term Loans held by Disqualified Institutions, purchase or prepay such Term Loan by paying the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such Term Loans, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder and/or (C) require such Disqualified Institution to assign, without recourse (in accordance with and subject to the restrictions contained in Section 10.07), all of its interest, rights and obligations under this Agreement to one or more Eligible Assignees at the lesser of (x) the principal amount thereof and (y) the amount that such Disqualified Institution paid to acquire such interests, rights and obligations, in each case plus accrued interest, accrued fees and all other amounts (other than principal amounts) payable to it hereunder.

**"Lender-Related Distress Event"** means, with respect to any Lender or any direct or indirect parent company of such Lender (each, a **"Distressed Person"**), (a) that such Distressed Person is or becomes subject to a voluntary or involuntary case under any Debtor Relief Law, (b) a custodian, conservator, receiver, or similar official is appointed for such Distressed Person or any substantial part of such Distressed Person's assets, (c) such Distressed Person is subject to a forced liquidation, makes a general assignment for the benefit of creditors or is otherwise adjudicated as, or determined by any Governmental Authority having regulatory authority over such Distressed Person or its assets to be, insolvent or bankrupt or (d) that such Distressed Person becomes the subject of a Bail-in Action; *provided* that a Lender-Related Distress Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interests in any Lender or any direct or indirect parent company of a Lender by a Governmental Authority or an instrumentality thereof 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 or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

**"Lending Office"** means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent.

**"Letter of Credit"** means any letter of credit issued hereunder including, for the avoidance of doubt, the Existing Letters of Credit deemed to be issued pursuant to this Agreement. A Letter of Credit may be a commercial letter of credit or a standby letter of credit; *provided, however*, that any commercial letter of credit issued hereunder shall provide solely for cash payment upon presentation of a sight draft.

**"LIBO Rate"** shall mean, for any Credit Extensions denominated in Dollars or Euros:

(a) for any Interest Period, 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) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, for U.S. Dollar or Euro deposits, as applicable (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 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; or

provided, in each case, 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, (i) the LIBO Rate with respect to Term Loans shall not at any time be less than 0% per annum and (ii) the LIBO Rate with respect to Revolving Loans shall not at any time be less than 0% per annum.

“**LIBOR**” has the meaning specified in the definition of “LIBO Rate.”

“**Lien**” means, with respect to any asset, any mortgage, lien (statutory or otherwise), pledge, hypothecation, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law, including any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest in and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction; *provided* that in no event will an operating lease be deemed to constitute a Lien.

“**Limited Condition Transactions**” means any (1) Permitted Acquisition or other investment permitted hereunder by the Borrower or one or more of its Restricted Subsidiaries whose consummation is not conditioned on the availability of, or on obtaining, third-party financing and (2) any redemption, repurchase, defeasance, satisfaction and discharge or repayment of Indebtedness requiring irrevocable notice in advance of such redemption, repurchase, defeasance, satisfaction and discharge or repayment.

“**Loan**” means an extension of credit under Article II by a Lender (x) to the Borrower in the form of a Term Loan or (y) to the Borrower in the form of a Revolving Loan.

“**Loan Documents**” means, collectively, (a) this Agreement, (b) the Notes, (c) any Refinancing Amendment, Incremental Amendment, Extension Amendment or amendment in respect of Replacement Loans, (d) the Guaranty, (e) the Collateral Documents, (f) the Intercreditor Agreements and (g) each L/C Application.

“**Loan Increase**” means a Term Loan Increase or Revolving Commitment Increase.

“**Loan Parties**” means, collectively, (a) the Borrower and (b) each Guarantor.

“**Margin Stock**” has the meaning set forth in Regulation U of the Board of Governors of the United States Federal Reserve System, or any successor thereto.

“**Market Capitalization**” means an amount equal to (i) the total number of issued and outstanding shares of common Equity Interests of the Borrower on the date of the declaration of a Restricted Payment permitted pursuant to Section 7.05(b)(8) *multiplied by* (ii) the arithmetic mean of the closing prices per share of such common Equity Interests on the principal securities exchange on which such common Equity Interests are traded for the 30 consecutive trading days immediately preceding the date of declaration of such Restricted Payment.

“**Material Adverse Effect**” means any event, circumstance or condition that has had a materially adverse effect on (a) the business, operations, assets or financial condition of the Borrower and its Subsidiaries, taken as a whole, (b) the ability of the Loan Parties (taken as a whole) to perform their payment obligations under the Loan Documents or (c) the rights and remedies of the Lenders, the Collateral Agent or the Administrative Agent under the Loan Documents.

“**Material Domestic Subsidiary**” means any Domestic Subsidiary that is a Material Subsidiary.

“**Material Foreign Subsidiary**” means any Foreign Subsidiary that is a Material Subsidiary.

“**Material Real Property**” means any fee-owned real property located in the United States and owned by any Loan Party with a fair market value in excess of \$10.0 million, on the Effective Date (if owned by a



Loan Party on the Effective Date) or at the time of acquisition (if acquired by a Loan Party after the Effective Date); *provided* that for the avoidance of doubt, Material Real Property will not include any Excluded Assets (excluding for this purpose clause (i) of the definition of “Excluded Assets”).

“**Material Subsidiary**” means, as of the Effective Date and thereafter at any date of determination, each Restricted Subsidiary of the Borrower (a) whose Total Assets at the last day of the most recent Test Period (when taken together with the Total Assets of the Restricted Subsidiaries of such Subsidiary at the last day of the most recent Test Period) were equal to or greater than 5.0% of Total Assets of the Borrower and the Restricted Subsidiaries at such date or (b) whose gross revenues for such Test Period (when taken together with the gross revenues of the Restricted Subsidiaries of such Subsidiary for such Test Period) were equal to or greater than 5.0% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, in each case determined in accordance with GAAP; *provided* that if at any time and from time to time after the date which is 30 days after the Effective Date (or such longer period as the Administrative Agent may agree in its reasonable discretion), Domestic Subsidiaries that are not Guarantors solely because they do not meet the thresholds set forth in the preceding clause (a) or (b) when combined with Foreign Subsidiaries and CFC Holdcos the equity interests of which are Excluded Assets solely because they do not meet the thresholds set forth in the preceding clause (a) or (b) comprise in the aggregate more than (when taken together with the Total Assets of the Restricted Subsidiaries of such Subsidiaries at the last day of the most recent Test Period) 7.5% of Total Assets of the Borrower and the Restricted Subsidiaries as of the last day of the most recent Test Period or more than (when taken together with the gross revenues of the Restricted Subsidiaries of such Subsidiaries for such Test Period) 7.5% of the consolidated gross revenues of the Borrower and the Restricted Subsidiaries for such Test Period, then the Borrower shall, not later than sixty (60) days after the date by which financial statements for such Test Period were required to be delivered pursuant to this Agreement (or such longer period as the Administrative Agent may agree in its reasonable discretion), (i) designate in writing to the Administrative Agent one or more Restricted Subsidiaries as “Material Subsidiaries” to the extent required such that the foregoing condition ceases to be true and (ii) comply with the provisions of Section 6.11 with respect to any such Subsidiaries (to the extent applicable). At all times prior to the delivery of the aforementioned financial statements, such determinations shall be made by the Borrower in good faith based on the financial statements most recently delivered to the Administrative Agent in accordance with Section 4.01(2) and Section 6.01(1).

“**Maturity Date**” means (i) with respect to the Closing Date Term Loans that have not been extended pursuant to Section 2.16, the seventh anniversary of the Closing Date (the “**Original Term Loan Maturity Date**”), (ii) with respect to the Closing Date Revolving Facility, to the extent not extended pursuant to Section 2.16, the fifth anniversary of the Closing Date (the “**Original Revolving Facility Maturity Date**”), (iii) with respect to the 2021 Revolving Facility, to the extent not extended pursuant to Section 2.16, October 31, 2023 (the “2021 Revolving Facility Maturity Date”), (iv) with respect to any Class of Extended Term Loans or Extended Revolving Commitments, the final maturity date as specified in the applicable Extension Amendment, (v) with respect to any Other Term Loans or Other Revolving Commitments, the final maturity date as specified in the applicable Refinancing Amendment, (vi) with respect to any Class of Replacement Loans, the final maturity date as specified in the applicable amendment to this Agreement in respect of such Replacement Loans and (vii) with respect to any Incremental Loans or Incremental Revolving Commitments, the final maturity date as specified in the applicable Incremental Amendment; *provided*, in each case, that if such day is not a Business Day, the applicable Maturity Date shall be the Business Day immediately succeeding such day.

“**Maximum Rate**” has the meaning specified in Section 10.11.

“**Mexican Pesos**” means the lawful currency of the United Mexican States.

“**Moody’s**” means Moody’s Investors Service, Inc. and any successor to its rating agency business.

“**Mortgage Policies**” has the meaning specified in Section 6.11(2)(b)(ii).

“**Mortgaged Properties**” has the meaning specified in paragraph (5) of the definition of “Collateral and Guarantee Requirement.”

“**Mortgages**” means collectively, the deeds of trust, trust deeds, hypothecs, deeds to secure debt and mortgages made by the Loan Parties in favor or for the benefit of the Collateral Agent for the benefit of the Secured Parties in form and substance reasonably satisfactory to the Collateral Agent, including such modifications as may be required by local laws, pursuant to Section 6.13(2) and any other deeds of trust, trust deeds, hypothecs, deeds to secure debt or mortgages executed and delivered pursuant to Section 6.11.

“**Multiemployer Plan**” means any multiemployer plan as defined in Section 4001(a)(3) of ERISA and subject to Title IV of ERISA, to which any Loan Party or any of their respective ERISA Affiliates makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“**Net Income**” means, with respect to any Person, the net income (loss) of such Person, determined in accordance with GAAP and before any reduction in respect of Preferred Stock dividends.

“**Net Proceeds**” means:

(1) with respect to any Asset Sale or any Casualty Event, the aggregate cash and Cash Equivalents received by the Borrower or any Restricted Subsidiary in respect of any Asset Sale or Casualty Event, including any cash and Cash Equivalents received upon the sale or other disposition of any Designated Non-Cash Consideration received in any Asset Sale, net of the costs relating to such Asset Sale or Casualty Event and the sale or disposition of such Designated Non-Cash Consideration, including legal, accounting and investment banking fees, payments made in order to obtain a necessary consent or required by applicable Law, brokerage and sales commissions, title insurance premiums, related search and recording charges, survey costs and mortgage recording tax paid in connection therewith, all dividends, distributions or other payments required to be made to minority interest holders in Restricted Subsidiaries as a result of any such Asset Sale or Casualty Event by a Restricted Subsidiary, the amount of any purchase price or similar adjustment claimed by any Person to be owed by the Borrower or any Restricted Subsidiary, until such time as such claim will have been settled or otherwise finally resolved, or paid or payable by the Borrower or any Restricted Subsidiary, in either case in respect of such Asset Sale or Casualty Event, any relocation expenses incurred as a result thereof, costs and expenses in connection with unwinding any Hedging Obligation in connection therewith, other fees and expenses, including title and recordation expenses, taxes paid or payable as a result thereof or any transactions occurring or deemed to occur to effectuate a payment under this Agreement, amounts required to be applied to the repayment of principal, premium, if any, and interest on Indebtedness (other than the First Lien Obligations and Indebtedness secured by Liens that are expressly subordinated to the Liens securing the Obligations) secured by a Lien on such assets and required to be paid as a result of such transaction and any deduction of appropriate amounts to be provided by the Borrower or any Restricted Subsidiary as a reserve in accordance with GAAP against any liabilities associated with the asset disposed of in such transaction and retained by the Borrower or any Restricted Subsidiary after such sale or other disposition thereof, including pension and other post-employment benefit liabilities and liabilities related to environmental matters or against any indemnification obligations associated with such transaction; *provided* that (a) no net cash proceeds calculated in accordance with the foregoing realized in a single transaction or series of related transactions shall constitute Net Proceeds unless such net cash proceeds shall exceed \$5.0 million and (b) no such net cash proceeds shall constitute Net Proceeds under this clause (1) in any fiscal year until the aggregate amount of all such net cash proceeds in such fiscal year shall exceed \$20.0 million (and thereafter only net cash proceeds in excess of such amount shall constitute Net Proceeds under this clause (1)); and

(2) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any Restricted Subsidiary, any Permitted Equity Issuance by the Borrower or any contribution to the common equity capital of the Borrower, the excess, if any, of (i) the sum of the cash and Cash Equivalents received in connection with such incurrence or issuance over (ii) all taxes paid or reasonably estimated to be payable, and all fees (including investment banking fees, attorneys’ fees, accountants’ fees, underwriting fees and discounts), commissions, costs and other out-of-pocket expenses and other customary expenses incurred, in each case by the Borrower or such Restricted Subsidiary in connection with such incurrence or issuance.

“**Non-Consenting Lender**” has the meaning specified in Section 3.07.



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

“**Non-Excluded Taxes**” means all Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document.

“**Non-Extension Notice Date**” has the meaning specified in Section 2.03(2)(c).

“**Non-Recourse Indebtedness**” means Indebtedness that is non-recourse to the Borrower and the Restricted Subsidiaries.

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

“**Notice of Intent to Cure**” has the meaning specified in Section 8.04.

“**Obligations**” means all

(1) advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document (including Erroneous Payment Subrogation Rights) or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest, fees and other amounts that accrue after the commencement by or against any Loan Party of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest, fees and other amounts are allowed claims in such proceeding,

(2) obligations (other than Excluded Swap Obligations) of any Loan Party or Restricted Subsidiary arising under any Secured Hedge Agreement and

(3) Cash Management Obligations under each Secured Cash Management Agreement. Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents (and any of their Subsidiaries to the extent they have obligations under the Loan Documents) include the obligation (including guarantee obligations) to pay principal, interest, reimbursement obligations, charges, expenses, fees (including Letter of Credit fees), Attorney Costs, indemnities and other amounts payable by any Loan Party under any Loan Document.

Notwithstanding the foregoing, (a) unless otherwise agreed to by the Borrower and any applicable Hedge Bank or Cash Management Bank, the obligations of the Borrower or any Subsidiary under any Secured Hedge Agreement and under any Secured Cash Management Agreement shall be secured and guaranteed pursuant to the Collateral Documents and the Guaranty only to the extent that, and for so long as, the other Obligations are so secured and guaranteed and (b) any release of Collateral or Guarantors effected in the manner permitted by this Agreement and any other Loan Document shall not require the consent of the holders of Hedging Obligations under Secured Hedge Agreements or of the holders of Cash Management Obligations under Secured Cash Management Agreements.

“**OFAC**” has the meaning specified in Section 5.17.

“**Offer**” has the meaning specified in the Preliminary Statement of this Agreement.

“**Offered Amount**” has the meaning specified in Section 2.05(1)(e)(H).

“**Offered Discount**” has the meaning specified in Section 2.05(1)(e)(H).

“**Officer’s Certificate**” means a certificate signed on behalf of a Person by a Responsible Officer of such Person.

“**OID**” means original issue discount.

“**Opinion of Counsel**” means a written opinion from legal counsel who is reasonably acceptable to the Administrative Agent. Counsel may be an employee of or counsel to the Borrower or the Administrative Agent.

“**ordinary course of business**” means activity conducted in the ordinary course of business of the Borrower and any Restricted Subsidiary.

“**Organizational Documents**” means

(1) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction);

(2) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; and

(3) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“**Original Revolving Facility Maturity Date**” has the meaning specified in the definition of “Maturity Date.”;

“**Original Term Loan Maturity Date**” has the meaning specified in the definition of “Maturity Date.”

“**Other Applicable ECF**” means Excess Cash Flow or a comparable measure as determined in accordance with the documentation governing Other Applicable Indebtedness.

“**Other Applicable Indebtedness**” means Permitted Incremental Equivalent Debt, Credit Agreement Refinancing Indebtedness or any other Indebtedness, in each case secured on a *pari passu* basis with the Obligations, together with Refinancing Indebtedness in respect of any of the foregoing that is secured on a *pari passu* basis with the Obligations.

“**Other Applicable Net Proceeds**” means Net Proceeds or a comparable measure as determined in accordance with the documentation governing Other Applicable Indebtedness.

“**Other Commitments**” means Other Revolving Commitments and/or Other Term Loan Commitments.

“**Other Loans**” means one or more Classes of Other Revolving Loans and/or Other Term Loans that result from a Refinancing Amendment.

“**Other Revolving Commitments**” means one or more Classes of Revolving Commitments hereunder that result from a Refinancing Amendment.

“**Other Revolving Loans**” means one or more Classes of Revolving Loans that result from a Refinancing Amendment.

“**Other Taxes**” means all present or future stamp or documentary Taxes, intangible, recording, filing, excise (that is not based on net income), property or similar Taxes arising from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document.

“**Other Term Loan Commitments**” means one or more Classes of Term Loan commitments hereunder that result from a Refinancing Amendment.

“**Other Term Loans**” means one or more Classes of Term Loans that result from a Refinancing Amendment.

“**Outstanding Amount**” means (a) with respect to the Term Loans and Revolving Loans on any date, the outstanding principal amount thereof (or the Dollar Equivalent thereof, if an Alternative Currency Loan) after giving effect to any borrowings and prepayments or repayments of Term Loans and Revolving Loans (including any refinancing of outstanding Unreimbursed Amounts under Letters of Credit or L/C Credit Extensions as a Revolving Borrowing), as the case may be, occurring on such date; and (b) with respect to any L/C Obligations on any date, the outstanding principal amount thereof on such date after giving effect to any related L/C Credit Extension occurring on such date and any other changes thereto as of such date, including as a result of any reimbursements of outstanding Unreimbursed Amounts under related Letters of Credit (including any refinancing of outstanding Unreimbursed Amounts under related Letters of Credit or related L/C Credit Extensions as a Revolving Borrowing) or any reductions in the maximum amount available for drawing under related Letters of Credit taking effect on such date.

“**Overnight Rate**” means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent or an Issuing Bank, as applicable, in accordance with banking industry rules on interbank compensation.

“**Pari Passu Lien Debt**” has the meaning specified in clause (39) of the definition of “Permitted Liens.”

“**Participant**” has the meaning specified in Section 10.07(d).

“**Participant Register**” has the meaning specified in Section 10.07(e).

“**Participating Dividends**” has the meaning specified in the Investment Agreement.

“**Participating Lender**” has the meaning specified in Section 2.05(1)(e)(F).

“**Participating Member State**” shall mean each state as described in any EMU Legislation.

**“Payment Recipient” has the meaning assigned to it in Section 9.10(1).**

“**PBGC**” means the Pension Benefit Guaranty Corporation.

“**Pension Plan**” means any “employee pension benefit plan” (as such term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Loan Party or any of their respective ERISA Affiliates or to which any Loan Party or any of their respective ERISA Affiliates contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time in the preceding five plan years.

“**Perfection Certificate**” has the meaning specified in the Security Agreement.

“**Permitted Acquisition**” has the meaning specified in clause (3) of the definition of “Permitted Investments.”

“**Permitted Asset Swap**” means the substantially concurrent purchase and sale or exchange of Related Business Assets or a combination of Related Business Assets and cash or Cash Equivalents between the Borrower or any Restricted Subsidiary and another Person; *provided* that any cash or Cash Equivalents received in connection with a Permitted Asset Swap that constitutes an Asset Sale must be applied in accordance with Section 2.05(2)(b)(i).

**“Permitted Equal Priority Refinancing Debt”** means any secured Indebtedness incurred by the Borrower and/or any Guarantor in the form of one or more series of senior secured notes, bonds or debentures or first lien secured loans (and, if applicable, any Registered Equivalent Notes issued in exchange therefor); *provided* that (i) such Indebtedness is secured by Liens on all or a portion of the Collateral on a basis that is equal in priority to the Liens on the Collateral securing the First Lien Obligations under this Agreement (but without regard to the control of remedies) and is not secured by any property or assets other than the Collateral, (ii) such Indebtedness satisfies the applicable requirements set forth in the provisos to the definition of “Credit Agreement Refinancing Indebtedness,” (iii) such Indebtedness is not at any time guaranteed by any Person other than the Guarantors and (iv) the applicable Loan Parties, the holders of such Indebtedness (or their Debt Representative) and the Administrative Agent and/or Collateral Agent shall be party to an Intercreditor Agreement providing that the Liens on the Collateral securing such obligations shall rank equal in priority to the Liens on the Collateral securing the First Lien Obligations under this Agreement (but without regard to the control of remedies).

**“Permitted Equity Issuance”** means any sale or issuance of any Qualified Equity Interests of the Borrower.

**“Permitted Holder”** means any of the Investors.

**“Permitted Incremental Equivalent Debt”** means Indebtedness issued, incurred or otherwise obtained by the Borrower and/or any Guarantor in respect of one or more series of senior unsecured notes, senior secured first lien or junior lien notes or subordinated notes (in each case issued in a public offering, Rule 144A or other private placement or bridge financing in lieu of the foregoing (and any Registered Equivalent Notes issued in exchange therefor)), first lien or junior lien loans, unsecured or subordinated loans or secured or unsecured mezzanine Indebtedness that, in each case, if secured, will be secured by Liens on the Collateral on an equal priority (but without regard to the control of remedies) or junior priority basis with the Liens on Collateral securing the First Lien Obligations under this Agreement, and that are issued or made in lieu of Incremental Commitments; *provided* that:

(i) the terms of any such Indebtedness (excluding, for the avoidance of doubt, interest rates (including through fixed interest rates), interest margins, rate floors, fees, funding discounts, original issue discounts and prepayment or redemption premiums and terms) shall either, at the option of the Borrower, (A) reflect market terms and conditions (taken as a whole) at the time of incurrence of such Indebtedness (as determined by the Borrower in good faith) or (B) if otherwise not consistent with the terms of the Closing Date Term Loans, not be materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms of the Closing Date Term Loans, except in the case of clauses (A) and (B) to the extent necessary to provide for (1) covenants and other terms applicable to any period after the Latest Maturity Date of the Closing Date Term Loans or (2) subject to the immediately succeeding proviso, a Previously Absent Financial Maintenance Covenant; *provided* that, notwithstanding anything to the contrary contained herein, if any such terms of such Indebtedness contain a Previously Absent Financial Maintenance Covenant that is in effect prior to the applicable Latest Maturity Date of the Term Facility or the Revolving Facility, as the case may be, such Previously Absent Financial Maintenance Covenant shall be included for the benefit of such Term Facility or Revolving Facility, as the case may be;

(ii) the aggregate principal amount of all Permitted Incremental Equivalent Debt shall not exceed the Available Incremental Amount at the time of incurrence (it being understood that for purposes of this clause (ii), references in Section 2.14(4)(c)(B) (other than the first proviso thereto) to Incremental Loans or Incremental Revolving Commitments shall be deemed to be references to Permitted Incremental Equivalent Debt);

(iii) such Permitted Incremental Equivalent Debt shall not be subject to any Guarantee by any Person other than a Loan Party;

(iv) in the case of Permitted Incremental Equivalent Debt that is secured, the obligations in respect thereof shall not be secured by any Lien on any asset of any Person other than any asset constituting Collateral;

(v) if such Permitted Incremental Equivalent Debt is secured, such Permitted Incremental Equivalent Debt shall be subject to the applicable Intercreditor Agreement(s);

(vi) such Permitted Incremental Equivalent Debt (a) shall not mature earlier than the Original Term Loan Maturity Date and (b) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Closing Date Term Loans on the date of incurrence of such Permitted Incremental Equivalent Debt; provided that the effects of any amortization or prepayments made on the Closing Date Term Loans prior to the date of such incurrence will be disregarded;

(vii) any mandatory prepayments of (I) any Permitted Incremental Equivalent Debt that comprises junior lien or unsecured notes or loans may not be made unless (except to the extent that prepayments of such debt are not prohibited hereunder and to the extent required hereunder or pursuant to the terms of any Permitted Incremental Equivalent Debt that is secured on a pari passu basis with the First Lien Obligations under this Agreement) first made or offered to the holders of the Term Loans constituting First Lien Obligations and any such Permitted Incremental Equivalent Debt that is secured on a pari passu basis with the First Lien Obligations under this Agreement, and (II) any Permitted Incremental Equivalent Debt that is secured on a pari passu basis with the First Lien Obligations under this Agreement in respect of events described in Section 2.05(2)(a), (b) and (d)(i) shall be made on a pro rata basis, less than a pro rata basis or greater than a pro rata basis (but not greater than a pro rata basis as compared to any Class of Term Loans constituting First Lien Obligations with an earlier maturity date) with the Term Loans constituting First Lien Obligations; and

(viii) in the case of Permitted Incremental Equivalent Debt consisting of term loans secured by a Lien on the Collateral ranking pari passu with the First Lien Obligations under this Agreement, the All-In Yield of the Closing Date Term Loans shall be subject to the adjustment in the manner set forth in the proviso to Section 2.14(5)(c), determined for purposes of this clause (viii) as if the Permitted Incremental Equivalent Debt were Incremental Term Loans (to the extent then applicable);

*provided, further*, that “Permitted Incremental Equivalent Debt” may be incurred in the form of a bridge or other interim credit facility intended to be refinanced or replaced with long term indebtedness (so long as such credit facility includes customary “rollover provisions” that satisfy the requirements of clause (vi) above following such rollover), in which case, on or prior to the first anniversary of the incurrence of such “bridge” or other credit facility, clause (vi) of the first proviso in this definition shall not prohibit the inclusion of customary terms for “bridge” facilities, including customary mandatory prepayment, repurchase or redemption provisions.

**“Permitted Indebtedness”** means Indebtedness permitted to be incurred in accordance with Section 7.02.

**“Permitted Investments”** means:

- (1) any Investment in the Borrower or any Restricted Subsidiary;
- (2) any Investment(s) in Cash Equivalents or Investment Grade Securities and Investments that were Cash Equivalents or Investment Grade Securities when made;
- (3) (a) any Investment by the Borrower or any Restricted Subsidiary in any Person that is engaged (directly or through entities that will be Restricted Subsidiaries) in a Similar Business, or in a business unit, line of business or division of such Person, if as a result of such Investment (i) such Person becomes a Restricted Subsidiary or (ii) such Person, in one transaction or a series of related transactions, is amalgamated, merged or consolidated with or into, or transfers or conveys substantially all of its assets or assets constituting a business unit, a line of business or a division of such Person, to, or is liquidated into, the Borrower or a Restricted Subsidiary (a “Permitted Acquisition”); provided that immediately after giving pro forma effect to any such Investment, no Event of Default will have occurred and be continuing; and

- (b) any Investment held by such Person described in the preceding clause (a); *provided* that such Investment was not acquired by such Person in contemplation of such acquisition, merger, amalgamation, consolidation, transfer or conveyance;
- (4) any Investment in securities or other assets not constituting Cash Equivalents or Investment Grade Securities and received in connection with an Asset Sale made in accordance with Section 7.04 or any other disposition of assets not constituting an Asset Sale;
- (5) any Investment existing on the Effective Date or made pursuant to binding commitments in effect on the Effective Date, in each of the foregoing cases with respect to any such Investment or binding commitment in effect on the Effective Date in excess of \$5.0 million, as set forth on Schedule 7.05, or an Investment consisting of any extension, modification, replacement, renewal or reinvestment of any Investment or binding commitment existing on the Effective Date; provided that the amount of any such Investment or binding commitment may be increased only (a) as required by the terms of such Investment or binding commitment as in existence on the Effective Date (including as a result of the accrual or accretion of interest or original issue discount or the issuance of pay-in-kind securities) or (b) as otherwise permitted hereunder;
- (6) any Investment acquired by the Borrower or any Restricted Subsidiary:
- (a) in exchange for any other Investment, accounts receivable or indorsements for collection or deposit held by the Borrower or any Restricted Subsidiary in connection with or as a result of a bankruptcy, workout, reorganization or recapitalization of, or settlement of delinquent accounts and disputes with or judgments against, the issuer of such other Investment or accounts receivable (including any trade creditor or customer);
- (b) in satisfaction of judgments against other Persons;
- (c) as a result of a foreclosure by the Borrower or any Restricted Subsidiary with respect to any secured Investment or other transfer of title with respect to any secured Investment in default; or
- (d) as a result of the settlement, compromise or resolution of (i) litigation, arbitration or other disputes or (ii) obligations of trade creditors or customers that were incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Restricted Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer;
- (7) Hedging Obligations permitted under Section 7.02(b)(10);
- (8) any Investment in a Similar Business taken together with all other Investments made pursuant to this clause (8) that are at that time outstanding not to exceed (as of the date such Investment is made) the greater of (a) \$75.0 million and (b) 37.5% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a pro forma basis);
- (9) Investments the payment for which consists of Equity Interests (other than Disqualified Stock) of the Borrower; provided that such Equity Interests will not increase the amount available for Restricted Payments under clause (3) of Section 7.05(a);
- (10) (a) guarantees of Indebtedness permitted under Section 7.02, performance guarantees and Contingent Obligations incurred in the ordinary course of business or consistent with industry practice, and (b) the creation of Liens on the assets of the Borrower or any Restricted Subsidiary in compliance with Section 7.01;

(11) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Section 7.07(b) (except transactions described in clauses (2), (5), (6), (7), (9), (14), (15), (22) or (25) of such Section);

(12) Investments consisting of purchases and acquisitions of inventory, supplies, material, services, equipment or similar assets or the licensing or contribution of intellectual property pursuant to joint marketing arrangements with other Persons;

(13) Investments, taken together with all other Investments made pursuant to this clause (13) that are at that time outstanding, not to exceed (as of the date such Investment is made) the greater of (i) \$50.0 million and (ii) 25% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a pro forma basis);

(14) Investments in or relating to a Securitization Subsidiary that, in the good faith determination of the Borrower, are necessary or advisable to effect any Qualified Securitization Facility (including distributions or payments of Securitization Fees) or any repurchase obligation in connection therewith (including the contribution or lending of Cash Equivalents to Subsidiaries to finance the purchase of such assets from the Borrower or any Restricted Subsidiary or to otherwise fund required reserves);

(15) loans and advances to, or guarantees of Indebtedness of, officers, directors, employees, consultants, independent contractors and members of management not in excess of \$10.0 million outstanding at any one time, in the aggregate;

(16) loans and advances to employees, directors, officers, members of management, independent contractors and consultants for business-related travel expenses, moving expenses, payroll advances and other similar expenses or payroll expenses, in each case incurred in the ordinary course of business or consistent with past practice or consistent with industry practice or to future, present and former employees, directors, officers, members of management, independent contractors and consultants (and their Controlled Investment Affiliates or Immediate Family Members) to fund such Person's purchase of Equity Interests of the Borrower;

(17) advances, loans or extensions of trade credit or prepayments to suppliers or loans or advances made to distributors, in each case, in the ordinary course of business or consistent with past practice or consistent with industry practice by the Borrower or any Restricted Subsidiary;

(18) any Investment in any Subsidiary or any joint venture in connection with intercompany cash management arrangements or related activities arising in the ordinary course of business or consistent with industry practice;

(19) Investments consisting of purchases and acquisitions of assets or services in the ordinary course of business or consistent with industry practice;

(20) Investments made in the ordinary course of business or consistent with industry practice in connection with obtaining, maintaining or renewing client contracts and loans or advances made to distributors;

(21) Investments in prepaid expenses, negotiable instruments held for collection and lease, utility and workers compensation, performance and similar deposits entered into as a result of the operations of the business in the ordinary course of business or consistent with industry practice;

(22) the purchase or other acquisition of any Indebtedness of the Borrower or any Restricted Subsidiary to the extent not otherwise prohibited hereunder;



(23) Investments in Unrestricted Subsidiaries or joint ventures, taken together with all other Investments made pursuant to this clause (23) that are at that time outstanding, without giving effect to the sale of an Unrestricted Subsidiary or joint venture to the extent the proceeds of such sale do not consist of, or have not been subsequently sold or transferred for, Cash Equivalents or marketable securities, not to exceed (as of the date such Investment is made) the greater of (i) \$40.0 million and (ii) 20% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries determined at the time of making of such Investment for the most recently ended Test Period (calculated on a pro forma basis);

(24) Investments in the ordinary course of business or consistent with industry practice consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Article 4 customary trade arrangements with customers;

(25) any Investment by any Captive Insurance Subsidiary in connection with its provision of insurance to the Borrower or any of its Subsidiaries, which Investment is made in the ordinary course of business or consistent with industry practice of such Captive Insurance Subsidiary, or by reason of applicable Law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable;

(26) Investments made as part of, to effect or resulting from the Transactions (including the Closing Date Acquisition);

(27) Investments of assets relating to non-qualified deferred payment plans in the ordinary course of business or consistent with industry practice;

(28) intercompany current liabilities owed to Unrestricted Subsidiaries or joint ventures incurred in the ordinary course of business or consistent with industry practice in connection with the cash management operations of the Borrower and its Subsidiaries;

(29) acquisitions of obligations of one or more directors, officers or other employees or consultants or independent contractors of the Borrower or any Subsidiary of the Borrower in connection with such director's, officer's, employee's consultant's or independent contractor's acquisition of Equity Interests of the Borrower or any direct or indirect parent of the Borrower, to the extent no cash is actually advanced by the Borrower or any Restricted Subsidiary to such directors, officers, employees, consultants or independent contractors in connection with the acquisition of any such obligations;

(30) Investments constituting promissory notes or other non-cash proceeds of dispositions of assets to the extent permitted under Section 7.04;

(31) Investments resulting from pledges and deposits permitted pursuant to the definition of "Permitted Liens";

(32) loans and advances to any direct or indirect parent of the Borrower in lieu of and not in excess of the amount of (after giving effect to any other loans, advances or Restricted Payments in respect thereof) Restricted Payments to the extent permitted to be made in cash to such parent in accordance with Section 7.05 at such time, such Investment being treated for purposes of the applicable clause of Section 7.05, including any limitations, as if a Restricted Payment were made pursuant to such applicable clause; and

(33) any other Investments if on a pro forma basis after giving effect to such Investment, the Total Net Leverage Ratio would be equal to or less than the Closing Date Total Net Leverage Ratio minus 0.75 to 1.00 as of the last day of the Test Period most recently ended.

**"Permitted Junior Priority Refinancing Debt"** means secured Indebtedness incurred by the Borrower and/or any Guarantor in the form of one or more series of junior lien secured notes, bonds or debentures or junior lien secured loans (and, if applicable, any Registered Equivalent Notes issued in exchange therefor); *provided* that (i) such Indebtedness is secured by a Lien on all or a portion of the Collateral on a junior priority basis to the



Liens on Collateral securing the First Lien Obligations under this Agreement and is not secured by any property or assets other than the Collateral, (ii) such Indebtedness satisfies the applicable requirements set forth in the provisos in the definition of “Credit Agreement Refinancing Indebtedness,” (iii) the holders of such Indebtedness (or their Debt Representative) and the Administrative Agent and/or the Collateral Agent shall be party to an Intercreditor Agreement providing that the Liens on Collateral securing such obligations shall rank junior to the Liens on Collateral securing the First Lien Obligations under this Agreement, and (iv) such Indebtedness is not at any time guaranteed by any Person other than the Guarantors.

“**Permitted Liens**” means, with respect to any Person:

- (1) Liens created pursuant to any Loan Document;
- (2) Liens, pledges or deposits made in connection with:
  - (a) workers’ compensation laws, unemployment insurance, health, disability or employee benefits or other social security laws or similar legislation or regulations,
  - (b) insurance-related obligations (including in respect of deductibles, self-insured retention amounts and premiums and adjustments thereto) or indemnification obligations of (including obligations in respect of letters of credit, bank guarantees or similar documents or instruments for the benefit of) insurance carriers providing property, casualty or liability insurance or otherwise supporting the payment of items set forth in the foregoing clause (a) or
  - (c) bids, tenders, contracts, statutory obligations, surety, indemnity, warranty, release, appeal or similar bonds, or with regard to other regulatory requirements, completion guarantees, stay, customs and appeal bonds, performance bonds, bankers’ acceptance facilities, and other obligations of like nature (including those to secure health, safety and environmental obligations) (other than for the payment of Indebtedness) or leases to which such Person is a party, or deposits to secure public or statutory obligations of such Person or deposits of cash, Cash Equivalents or U.S. government bonds to secure surety or appeal bonds to which such Person is a party, or deposits as security for the payment of rent, contested taxes or import duties and obligations in respect of letters of credit, bank guarantees or similar instruments that have been posted to support the same, in each case incurred in the ordinary course of business or consistent with industry practice;
- (3) Liens imposed by law, such as landlords’, carriers’, warehousemen’s, materialmen’s, repairmen’s, construction, mechanics’ or other similar Liens, or landlord Liens specifically created by contract (a) for sums not yet overdue for a period of more than sixty (60) days or, if more than sixty (60) days overdue, are unfiled and no other action has been taken to enforce such Liens or (b) being contested in good faith by appropriate actions or other Liens arising out of or securing judgments or awards against such Person with respect to which such Person will then be proceeding with an appeal or other proceedings for review if such Liens are adequately bonded or adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;
- (4) Liens for taxes, assessments or other governmental charges not yet overdue for a period of more than thirty (30) days or not yet payable or not subject to penalties for nonpayment or which are being contested in good faith by appropriate actions if adequate reserves with respect thereto are maintained on the books of such Person in accordance with GAAP;
- (5) Liens in favor of issuers of performance, surety, bid, indemnity, warranty, release, appeal or similar bonds, instruments or obligations or with respect to regulatory requirements or letters of credit or bankers acceptance issued, and completion guarantees provided, in each case, pursuant to the request of and for the account of such Person in the ordinary course of its business or consistent with past practice or industry practice;

(6) survey exceptions, encumbrances, ground leases, easements, restrictions, protrusions, encroachments or reservations of, or rights of others for, licenses, rights-of-way, servitudes, sewers, electric lines, drains, telegraph, telephone and cable television lines and other similar purposes, or zoning, building codes or other restrictions (including minor defects or irregularities in title and similar encumbrances) as to the use of real properties or Liens incidental to the conduct of the business of such Person or to the ownership of its properties that were not incurred in connection with Indebtedness and that do not in the aggregate materially impair their use in the operation of the business of such Person and exceptions on Mortgage Policies insuring Liens granted on Mortgaged Properties;

(7) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to clause (4), (6), (13), (15), (23), (31) or (35) of Section 7.02(b) or, with respect to assumed Indebtedness not incurred in contemplation of the relevant acquisition, Disqualified Stock or Preferred Stock only, clause (14) of Section 7.02(b); *provided that*:

(a) Liens securing obligations relating to any Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to such clause (13) relate only to obligations relating to Refinancing Indebtedness that is secured by Liens on the same assets as the assets securing the Refinanced Debt (as defined in the definition of Refinancing Indebtedness), plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property, or serves to refund, refinance, extend, replace, renew or defease Indebtedness, Disqualified Stock or Preferred Stock incurred under clause (4) or (13) of Section 7.02(b);

(b) Liens securing obligations relating to Indebtedness or Disqualified Stock permitted to be incurred pursuant to such clause (23) or (31) extend only to the assets of Subsidiaries that are not Guarantors;

(c) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be incurred pursuant to such clause (4) extend only to the assets so purchased, replaced, leased or improved and proceeds and products thereof; provided further that individual financings of assets provided by a counterparty may be cross-collateralized to other financings of assets provided by such counterparty;

(d) [reserved]; and

(e) Liens securing obligations in respect of Indebtedness, Disqualified Stock or Preferred Stock permitted to be assumed pursuant to such clause (14) are solely on acquired property or the assets of the acquired entity (other than after acquired property that is (A) affixed or incorporated into the property covered by such Lien, (B) after acquired property subject to a Lien securing such Indebtedness, the terms of which Indebtedness require or include a pledge of after acquired property (it being understood that such requirement shall not be permitted to apply to any property to which such requirement would not have applied but for such acquisition) and (C) the proceeds and products thereof).

(8) Liens existing, or provided for under binding contracts existing, on the Effective Date on (x) any asset of the Borrower or any Restricted Subsidiary (other than the Target) (provided that any such Lien securing obligations in an aggregate amount on the Effective Date in excess of \$5.0 million shall be set forth on Schedule 7.01) and (y) on any asset of the Target, securing any obligations permitted under Section 7.02(b)(3)(y);

(9) Liens on property or shares of stock or other assets of a Person at the time such Person becomes a Subsidiary; provided that such Liens are not created or incurred in connection with, or in contemplation of, such other Person becoming such a Subsidiary;

(10) Liens on property or other assets at the time the Borrower or a Restricted Subsidiary acquired the property or such other assets, including any acquisition by means of a merger, amalgamation or

consolidation with or into the Borrower or any Restricted Subsidiary (provided that such Liens are not created or incurred in connection with, or in contemplation of, such acquisition, amalgamation, merger or consolidation) and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); provided that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(11) Liens securing obligations in respect of Indebtedness or other obligations of a Restricted Subsidiary owing to the Borrower or another Restricted Subsidiary permitted to be incurred in accordance with Section 7.02;

(12) Liens securing (x) Hedging Obligations (including any Hedging Obligations entered into by any Loan Party or Restricted Subsidiary that as of the Effective Date is secured pursuant to the Existing Credit Agreement) and (y) obligations in respect of Cash Management Services;

(13) Liens on specific items of inventory or other goods and proceeds of any Person securing such Person's accounts payable or similar 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;

(14) leases, subleases, licenses or sublicenses (or other agreement under which the Borrower or any Restricted Subsidiary has granted rights to end users to access and use the Borrower's or any Restricted Subsidiary's products, technologies or services) that do not either (a) materially interfere with the business of the Borrower and its Restricted Subsidiaries, taken as a whole, or (b) secure any Indebtedness;

(15) Liens arising from Uniform Commercial Code (or equivalent statutes) financing statement filings regarding operating leases, consignments or accounts entered into by the Borrower and its Restricted Subsidiaries in the ordinary course of business or consistent with industry practice or purported Liens evidenced by the filing of precautionary Uniform Commercial Code (or equivalent statutes) financing statements or similar public filings;

(16) Liens in favor of the Borrower or any Guarantor;

(17) Liens on equipment or vehicles of the Borrower or any Restricted Subsidiary granted in the ordinary course of business or consistent with industry practice;

(18) Liens on accounts receivable, Securitization Assets and related assets incurred in connection with a Qualified Securitization Facility and Liens on any receivables transferred in connection with a Receivables Financing Transaction, including Liens on such receivables resulting from precautionary UCC filings or from recharacterization or any such sale as a financing or a loan;

(19) Liens to secure any modification, refinancing, refunding, extension, renewal or replacement (or successive modification, refinancing, refunding, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness, Disqualified Stock or Preferred Stock secured by any Lien referred to in clauses (6), (7), (8), (9), (10) or this clause (19) of this definition; provided that: (a) such new Lien will be limited to all or part of the same property that was subject to the original Lien (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property) and (b) the Indebtedness, Disqualified Stock or Preferred Stock secured by such Lien at such time is not increased to any amount greater than the sum of (i) the outstanding principal amount or, if greater, committed amount of the Indebtedness, Disqualified Stock or Preferred Stock described under such clauses (6), (7), (8), (9), (10) or this clause (19) at the time the original Lien became a Permitted Lien hereunder, plus (ii) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased, plus (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or

Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock;

(20) deposits made or other security provided to secure liability to insurance brokers, carriers, underwriters or self-insurance arrangements, including Liens on insurance policies and the proceeds thereof securing the financing of the premiums with respect thereto;

(21) other Liens securing obligations in an aggregate outstanding amount not to exceed (as of the date any such Lien is incurred) the greater of (i) \$60.0 million and (ii) 30% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries determined at the time of incurrence of such Lien for the most recently ended Test Period (calculated on a pro forma basis), which, at the election of the Borrower, shall be subject to the applicable Intercreditor Agreement(s);

(22) 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;

(23) (a) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business or consistent with industry practice, (b) Liens arising out of conditional sale, title retention or similar arrangements for the sale of goods in the ordinary course of business or consistent with industry practice and (c) Liens arising by operation of law under Article 2 of the Uniform Commercial Code;

(24) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(7);

(25) Liens (a) of a collection bank arising under Section 4-208 or 4-210 of the Uniform Commercial Code on items in the course of collection, (b) attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business or consistent with industry practice and (c) in favor of banking or other institutions or other electronic payment service providers arising as a matter of law or under general terms and conditions encumbering deposits or margin deposits or other funds maintained with such institution (including the right of setoff) and that are within the general parameters customary in the banking industry;

(26) Liens deemed to exist in connection with Investments in repurchase agreements permitted under this Agreement; provided that such Liens do not extend to assets other than those that are subject to such repurchase agreements;

(27) Liens that are contractual rights of setoff (a) relating to the establishment of depository relations with banks or other deposit-taking financial institutions or other electronic payment service providers and not given in connection with the issuance of Indebtedness, (b) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or consistent with industry practice of the Borrower or any Restricted Subsidiary or (c) relating to purchase orders and other agreements entered into with customers of the Borrower or any Restricted Subsidiary in the ordinary course of business or consistent with industry practice;

(28) Liens on cash proceeds (as defined in Article 9 of the Uniform Commercial Code) of assets sold that were subject to a Lien permitted hereunder;

(29) any encumbrance or restriction (including put, call arrangements, tag, drag, right of first refusal and similar rights) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(30) Liens (a) on cash advances or cash earnest money deposits in favor of the seller of any property to be acquired in an Investment permitted under this Agreement to be applied against the purchase price for such Investment and (b) consisting of a letter of intent or an agreement to sell, transfer, lease or otherwise dispose of any property in a transaction permitted under Section 7.04;

(31) the interest or title of any lessor, sublessor, licensor or sublicensor, as applicable, underground leases, subleases, licenses or sublicenses under which the Borrower or any of its Subsidiaries are the lessee, sublessee, licensee or sublicensee, as applicable, in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(32) Liens on assets of any Restricted Subsidiary that is not a Loan Party in connection with any Sale-Leaseback Transaction(s), with an aggregate fair market value at any time not in excess of \$75.0 million;

(33) Liens on Capital Stock or other securities of an Unrestricted Subsidiary;

(34) any interest or title of a lessor, sublessor, licensor or sublicensor or secured by a lessor's, sublessor's, licensor's or sublicensor's interest under leases or licenses entered into by the Borrower or any of the Restricted Subsidiaries in the ordinary course of business or consistent with industry practice;

(35) deposits of cash with the owner or lessor of premises leased and operated by the Borrower or any of its Subsidiaries in the ordinary course of business or consistent with industry practice of the Borrower and such Subsidiary to secure the performance of the Borrower's or such Subsidiary's obligations under the terms of the lease for such premises;

(36) rights of set-off, banker's liens, netting arrangements and other Liens arising by operation of law or by the terms of documents of banks or other financial institutions in relation to the maintenance or administration of deposit accounts, securities accounts, cash management arrangements or in connection with the issuance of letters of credit, bank guarantees or other similar instruments;

(37) Liens on cash and Cash Equivalents used to satisfy or discharge Indebtedness; provided that such satisfaction or discharge is permitted under this Agreement;

(38) receipt of progress payments and advances from customers in the ordinary course of business or consistent with industry practice to the extent the same creates a Lien on the related inventory and proceeds thereof and Liens on property or assets under construction arising from progress or partial payments by a third party relating to such property or assets;

(39) Liens on all or any portion of the Collateral (but no other assets) to secure obligations in respect of (a) Indebtedness permitted to be incurred pursuant to Section 7.02; provided that after giving pro forma effect to the incurrence of the then proposed Indebtedness (and without netting any cash received from the incurrence of such proposed Indebtedness) (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving pro forma effect to the incurrence of the entire committed amount of the Indebtedness thereunder (but without netting any cash proceeds thereof), in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this proviso), (i) if such Indebtedness is secured on a (x) pari passu basis with the Liens that secure the First Lien Obligations under this Agreement ("Pari Passu Lien Debt"), the First Lien Net Leverage Ratio would be no greater than the Closing Date First Lien Net Leverage Ratio minus 0.25 to 1.00 or (y) junior basis to the Liens that secure the First Lien Obligations ("Junior Lien Debt"), the Junior Secured Condition is satisfied, (ii) such Liens are in each case subject the applicable Intercreditor Agreement(s) and (iii) if such Liens secure term loans that are secured on a pari passu basis with the First Lien Obligations under this Agreement, then the Borrower shall comply with the "most favored nation" pricing provisions of Section 2.14(5)(c) as if such Indebtedness were Incremental Term Loans incurred

pursuant to Section 2.14 (to the extent then applicable) and (b) any Refinancing Indebtedness in respect of Pari Passu Lien Debt or Junior Lien Debt (but subject to the foregoing clause (iii));

(40) agreements to subordinate any interest of the Borrower or any Restricted Subsidiary in any accounts receivable or other proceeds arising from inventory consigned by the Borrower or any Restricted Subsidiary pursuant to an agreement entered into in the ordinary course of business or consistent with industry practice;

(41) Liens arising pursuant to Section 107(l) of the Comprehensive Environmental Response, Compensation and Liability Act or similar provision of any Environmental Law;

(42) Liens disclosed by the title insurance reports or policies delivered on or prior to the Effective Date and any replacement, extension or renewal of any such Lien (to the extent the Indebtedness and other obligations secured by such replacement, extension or renewal Liens are permitted by this Agreement); provided that such replacement, extension or renewal Liens do not cover any property other than the property that was subject to such Liens prior to such replacement, extension or renewal;

(43) rights reserved or vested in any Person by the terms of any lease, license, franchise, grant or permit held by the Borrower or any of its Restricted Subsidiaries or by a statutory provision, to terminate any such lease, license, franchise, grant or permit, or to require annual or periodic payments as a condition to the continuance thereof;

(44) restrictive covenants affecting the use to which real property may be put; provided that the covenants are complied with;

(45) security given to a public utility or any municipality or governmental authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of business or consistent with industry practice;

(46) zoning, building and other similar land use restrictions, including site plan agreements, development agreements and contract zoning agreements;

(47) Liens granted in favor of the lenders under the Existing Credit Agreement securing obligations thereunder, until the occurrence of the Closing Date Refinancing;

(48) Liens on all or any portion of the Collateral (but no other assets) securing (i) Permitted Incremental Equivalent Debt, (ii) Permitted Equal Priority Refinancing Debt or (iii) Permitted Junior Priority Refinancing Debt, and, in each case, Liens securing any Refinancing Indebtedness in respect thereof;

(49) Liens on the assets of Restricted Subsidiaries that are not Loan Parties securing Indebtedness or other obligations of such Restricted Subsidiaries or any other Restricted Subsidiaries that are not Loan Parties that is permitted by Section 7.02 or otherwise not prohibited by this Agreement;

(50) Liens on assets of Restricted Subsidiaries that are Foreign Subsidiaries (i) securing Indebtedness and other obligations of such Foreign Subsidiaries or (ii) to the extent arising mandatorily under applicable Law;

(51) Liens on Escrowed Proceeds for the benefit of the related holders of debt securities or other Indebtedness (or the underwriters, trustee, escrow agent or arrangers thereof) or on cash set aside at the time of the incurrence of any Indebtedness or government securities purchased with such cash, in either case to the extent such cash or government securities prefund the payment of interest on such Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose;

(52) Liens securing any Hedge Obligations of any Loan Party or Restricted Subsidiary that are permitted hereunder; and



(53) Liens in the Borrower's right, title and interest in, to and under (i) this Agreement, (ii) the Bridge Loan Agreement, (iii) the Investment Agreement and (iv) all proceeds (as defined in the Uniform Commercial Code as in effect in the State of New York) of the foregoing securing obligations under the Agreement for Standby Letter of Credit and the L/C Fee Letter.

If any Liens securing obligations are incurred to refinance liens securing obligations initially incurred in reliance on a Basket measured by reference to a percentage of Consolidated EBITDA, and such refinancing would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the Consolidated EBITDA on the date of such refinancing, such percentage of Consolidated EBITDA will not be deemed to be exceeded to the extent the principal amount of such obligations secured by such newly incurred Lien does not exceed the principal amount of such obligations secured by such Liens being refinanced, *plus* any accrued and unpaid interest on the Indebtedness (and with respect to Indebtedness under Designated Revolving Commitments, including an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such Refinancing Indebtedness), any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased, *plus* the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock.

For purposes of this definition, the term "Indebtedness" will be deemed to include interest and other obligations payable on or with respect to such Indebtedness.

**"Permitted Ratio Debt"** has the meaning specified in Section 7.02(a).

**"Permitted Unsecured Refinancing Debt"** means unsecured Indebtedness incurred by the Borrower and/or the Guarantors in the form of one or more series of senior unsecured notes, bonds or debentures or unsecured loans (and, if applicable, any Registered Equivalent Notes issued in exchange therefor); *provided* that (i) such Indebtedness satisfies the applicable requirements set forth in the provisos in the definition of "Credit Agreement Refinancing Indebtedness" and (ii) such Indebtedness is not at any time guaranteed by any Person other than the Guarantors.

**"Person"** means any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or any other entity.

**"Plan"** means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA), other than a Foreign Plan, established or maintained by any Loan Party or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any of their respective ERISA Affiliates.

**"Planned Expenditures"** has the meaning specified in the definition of Excess Cash Flow.

**"Platform"** has the meaning specified in Section 6.02.

**"Pledged Collateral"** has the meaning specified in the Security Agreement.

**"Polish Zloty"** means the lawful currency of Poland.

**"Preferred Dividends"** has the meaning specified in the Investment Agreement.

**"Preferred Stock"** means any Equity Interest with preferential rights of payment of dividends or upon liquidation, dissolution or winding up.

**“Previously Absent Financial Maintenance Covenant”** means, at any time (x) any financial maintenance covenant that is not included in this Agreement at such time and (y) any financial maintenance covenant that is included in this Agreement at such time but with covenant levels and component definitions (to the extent relating to such financial maintenance covenant) in this Agreement that are less restrictive on the Borrower and the Restricted Subsidiaries than those in the applicable Incremental Amendment, Refinancing Amendment, Extension Amendment or amendment in respect of Replacement Loans or any documents relating to Credit Agreement Refinancing Indebtedness, Permitted Incremental Equivalent Debt or Refinancing Indebtedness.

**“Private-Side Information”** means any information with respect to the Borrower and its Subsidiaries that is not Public-Side Information.

**“Pro Rata Share”** means, 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 Commitments (or, if the Revolving Commitments have terminated in full, Revolving Exposure) and, if applicable and without duplication, Term Loans of such Lender at such time and the denominator of which is the amount of the Aggregate Commitments (or, if the Revolving Commitments have terminated in full, Revolving Exposure) and, if applicable and without duplication, Term Loans at such time; *provided* that when used with respect to (i) Commitments, Loans, interest and fees under the Revolving Facility, “Pro Rata Share;” shall mean with respect to any Lender such Lender’s Applicable Percentage ~~and~~, (ii) Closing Date Revolving Commitments, “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 Closing Date Revolving Commitments of such Lender at such time and the denominator of which is the aggregate Closing Date Revolving Commitments at such time, (iii) 2021 Revolving Commitments, “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 2021 Revolving Commitments of such Lender at such time and the denominator of which is the aggregate 2021 Revolving Commitments at such time and (iv) Commitments, Loans and interest under any Term Facility, “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 Term Commitments and Term Loans of such Lender under such Term Facility at such time and the denominator of which is the amount of the aggregate Term Commitments and Term Loans under such Term Facility at such time.

**“Public Company Costs”** means the initial costs relating to establishing compliance with the Sarbanes-Oxley Act of 2002, as amended, and other expenses arising out of or incidental to the Borrower’s or its Restricted Subsidiaries’ initial establishment of compliance with the obligations of a reporting company, including costs, fees and expenses (including legal, accounting and other professional fees) relating to compliance with provisions of the Securities Act and the Exchange Act.

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

**“Public-Side Information”** means information that does not constitute material non-public information (within the meaning of United States federal and state securities laws) with respect to the Borrower or any of its Subsidiaries or any of their respective securities.

**“Purchase Money Obligations”** means any Indebtedness incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets (other than Capital Stock), and whether acquired through the direct acquisition of such property or assets, or otherwise.

**“Qualified ECP Guarantor”** means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10.0 million at the time the relevant guarantee 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.

**“Qualified Equity Interests”** means any Equity Interests that are not Disqualified Stock.



“**Qualified Proceeds**” means the fair market value of assets that are used or useful in, or Capital Stock of any Person engaged in, a Similar Business.

“**Qualified Securitization Facility**” means any Securitization Facility (1) constituting a securitization financing facility that meets the following conditions: (a) the Board of Directors will have determined in good faith that such Securitization Facility (including financing terms, covenants, termination events and other provisions) is in the aggregate economically fair and reasonable to the Borrower and the applicable Restricted Subsidiary or Securitization Subsidiary and (b) all sales or contributions of Securitization Assets and related assets to the applicable Person or Securitization Subsidiary are made at fair market value (as determined in good faith by the Borrower) or (2) constituting a Receivables Financing Transaction.

“**Qualifying Lender**” has the meaning specified in Section 2.05(1)(e)(J).

“**Rating Agencies**” means Moody’s and S&P, or if Moody’s or S&P (or both) does not make a rating on the relevant obligations publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Borrower that will be substituted for Moody’s or S&P (or both), as the case may be.

“**Receivables Financing Transaction**” means any transaction or series of transactions entered into by the Borrower or any Restricted Subsidiary pursuant to which such party consummates a “true sale” of its receivables to a non-related third party on market terms as determined in good faith by the Borrower; *provided* that such Receivables Financing Transaction is (i) non-recourse to the Borrower and the Restricted Subsidiaries and their assets, other than any recourse solely attributable to a breach by the Borrower or any Restricted Subsidiary of representations and warranties that are customarily made by a seller in connection with a “true sale” of receivables on a non-recourse basis and (ii) consummated pursuant to customary contracts, arrangements or agreements entered into with respect to the “true sale” of receivables on market terms for similar transactions.

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

“**Refinance**” has the meaning assigned in the definition of “Refinancing Indebtedness” and “**Refinancing**” and “**Refinanced**” have meanings correlative to the foregoing.

“**Refinanced Debt**” has the meaning assigned to such term in the definition of “Refinancing Indebtedness.”

“**Refinancing Amendment**” means an amendment to this Agreement in form and substance reasonably satisfactory to the Administrative Agent and the Borrower executed by each of (a) the Borrower, (b) the Administrative Agent and (c) each Additional Lender and Lender that agrees to provide any portion of the Other Loans or Other Commitments being incurred or provided pursuant thereto, in accordance with Section 2.15.

“**Refinancing Indebtedness**” means (x) Indebtedness incurred by the Borrower or any Restricted Subsidiary, (y) Disqualified Stock issued by the Borrower or any Restricted Subsidiary or (z) Preferred Stock issued by any Restricted Subsidiary which, in each case, serves to extend, replace, refund, refinance, renew or defease (“**Refinance**”) any Indebtedness, Disqualified Stock or Preferred Stock, including any Refinancing Indebtedness, so long as:

- (1) the principal amount (or accreted value, if applicable) of such new Indebtedness, the amount of such new Preferred Stock or the liquidation preference of such new Disqualified Stock does not exceed (a) the principal amount of (or accreted value, if applicable) Indebtedness, the amount of Preferred Stock or the liquidation preference of Disqualified Stock being so extended, replaced, refunded, refinanced, renewed or defeased (such Indebtedness, Disqualified Stock or Preferred Stock, the “**Refinanced Debt**”), plus (b) any accrued and unpaid interest on, or any accrued and unpaid dividends on, such Refinanced Debt, plus (c) the amount of any tender premium or penalty or premium required to be paid under the terms of the

instrument or documents governing such Refinanced Debt and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or to Refinance such Refinanced Debt (such amounts in clause (b) and (c) the “Incremental Amounts”);

(2) such Refinancing Indebtedness has a:

(a) Weighted Average Life to Maturity at the time such Refinancing 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 of the Loans);

(3) to the extent such Refinancing Indebtedness Refinances (a) Subordinated Indebtedness (other than Subordinated Indebtedness assumed or acquired in an acquisition and not created in contemplation thereof), unless such Refinancing constitutes a Restricted Payment permitted by Section 7.05, such Refinancing Indebtedness is subordinated to the Loans or the Guaranty thereof at least to the same extent as the applicable Refinanced Debt, (b) Junior Lien Debt, such Refinancing Indebtedness is (i) unsecured or (ii) secured by Liens that are subordinated to the Liens that secure the Loans or the Guaranty thereof, in each case at least to the same extent as the applicable Refinanced Debt or pursuant to a Junior Lien Intercreditor Agreement, or (c) Disqualified Stock or Preferred Stock, such Refinancing Indebtedness must be Disqualified Stock or Preferred Stock, respectively;

(4) such Refinancing Indebtedness shall not be guaranteed or borrowed by any Person other than a Person that is so obligated in respect of the Refinanced Debt being Refinanced; and

(5) such Refinancing Indebtedness shall not be secured by any assets or property that does not secure the Refinanced Debt being Refinanced (plus improvements, accessions, proceeds or dividends or distributions in respect thereof and after-acquired property);

*provided* that Refinancing Indebtedness will not include:

(a) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refinances Indebtedness or Disqualified Stock of the Borrower or a Guarantor;

(b) Indebtedness, Disqualified Stock or Preferred Stock of a Subsidiary of the Borrower that is not a Guarantor that refinances Indebtedness, Disqualified Stock or Preferred Stock of a Guarantor; or

(c) Indebtedness or Disqualified Stock of the Borrower or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary that refinances Indebtedness, Disqualified Stock or Preferred Stock of an Unrestricted Subsidiary;

*provided further* that (x) clause (2) of this definition will not apply to any Refinancing of any Indebtedness other than Indebtedness incurred under clauses (2) and (30) of Section 7.02(b) (including any successive Refinancings thereof incurred under clause (13) of Section 7.02(b)) and any Subordinated Indebtedness (other than Subordinated Indebtedness assumed or acquired in an Investment or acquisition and not created in contemplation thereof), Disqualified Stock and Preferred Stock and (y) Refinancing Indebtedness may be incurred in the form of a bridge or other interim credit facility intended to be Refinanced with long-term indebtedness (and such bridge or other interim credit facility shall be deemed to satisfy clause (2) of this definition so long as (x) such credit facility includes customary “rollover” provisions and (y) assuming such credit facility were to be extended pursuant to such “rollover” provisions, such extended credit facility would comply with clause (2) of this definition).

“**Refunding Capital Stock**” has the meaning specified in Section 7.05(b)(2).

“**Register**” has the meaning specified in Section 10.07(c).

“**Registered Equivalent Notes**” means, with respect to any notes originally issued in a Rule 144A or other private placement transaction under the Securities Act, substantially identical notes (having the same Guarantees) issued in a dollar-for-dollar exchange therefor pursuant to an exchange offer registered with the SEC.

“**Rejection Notice**” has the meaning specified in Section 2.05(2)(g).

“**Related Business Assets**” means assets (other than cash and Cash Equivalents) used or useful in a Similar Business; *provided* that any assets received by the Borrower or a Restricted Subsidiary in exchange for assets transferred by the Borrower or a Restricted Subsidiary will not be deemed to be Related Business Assets if they consist of securities of a Person, unless upon receipt of the securities of such Person, such Person is or would become a Restricted Subsidiary.

“**Related Indemnified Person**” of an Indemnitee means (1) any controlling Person or controlled Affiliate of such Indemnitee, (2) the respective directors, officers, partners, employees, advisors or successors of such Indemnitee or any of its controlling Persons or controlled Affiliates and (3) the respective agents, trustees and other representatives of such Indemnitee or any of its controlling Persons or controlled Affiliates, in the case of this clause (3), acting at the instructions of such Indemnitee, controlling Person or such controlled Affiliate; *provided* that each reference to a controlled Affiliate or controlling Person in this definition pertains to a controlled Affiliate or controlling Person involved in the negotiation of this Agreement or the syndication of the Facilities. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise.

“**Related Person**” means, with respect to any Person, (a) any Affiliate of such Person, (b) the respective directors, officers, partners, employees, advisors, agents, trustees and other representatives of such Person or any of its Affiliates and (c) the successors and permitted assigns of such Person or any of its Affiliates.

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

**“Relevant Governmental Body” means (i) with respect to a Benchmark Replacement in respect of Loans denominated in dollars, the Federal Reserve Board and/or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto or (ii) with respect to a Benchmark Replacement in respect of Loans denominated in Euros, the European Central Bank, or a committee officially endorsed or convened by the European Central Bank or, in each case, any successor thereto.**

“**Replaced Loans**” has the meaning specified in Section 10.01.

“**Replacement Loans**” has the meaning specified in Section 10.01.

“**Reportable Event**” means, with respect to any Pension Plan, any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, other than events for which the thirty (30) day notice period has been waived.

“**Repricing Transaction**” means (i) the prepayment, refinancing, substitution, replacement or conversion of all or a portion of the Closing Date Term Loans with the incurrence by the Borrower or any other Subsidiary of any senior secured first lien term loans under any credit facilities the primary purpose of which is to reduce the All-In Yield of such Indebtedness relative to the Closing Date Term Loans so repaid, refinanced, substituted, replaced or converted (as determined in good faith by the Borrower) and (ii) any amendment, amendment or restatement or other modification to this Agreement the primary purpose of which is to reduce the All-In Yield applicable to the Closing Date Term Loans (as determined in good faith by the Borrower), excluding, in each case,

for avoidance of doubt, any such reductions in connection with (a) a Change of Control or (b) an Enterprise Transformative Event.

“**Request for Credit Extension**” means (a) with respect to a Borrowing, conversion or continuation of Term Loans or Revolving Loans, a Committed Loan Notice and (b) with respect to an L/C Credit Extension, a L/C Application.

“**Required Facility Lenders**” means, as of any date of determination, with respect to one or more Facilities, Lenders having more than 50% of the sum of (a) the Total Outstandings under such Facility or Facilities (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations under such Facility or Facilities being deemed “held” by such Lender for purposes of this definition) and (b) the aggregate unused Commitments under such Facility or Facilities; *provided* that the unused Commitments of, and the portion of the Total Outstandings under such Facility or Facilities held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of the Required Facility Lenders; *provided, further*, that, to the same extent specified in Section 10.07(i) with respect to determination of Required Lenders, the Loans of any Affiliated Lender shall in each case be excluded for purposes of making a determination of Required Facility Lenders unless the action in question affects such Affiliated Lender in a disproportionately adverse manner than its effect on the other Lenders; *provided further*, for purposes of this definition, the outstanding principal amount of Alternative Currency Loans at any time shall be determined using the Dollar Equivalent thereof at the most recent Revaluation Date.

“**Required Lenders**” means, as of any date of determination, Lenders having more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Lender’s risk participation and funded participation in L/C Obligations being deemed “held” by such Lender for purposes of this definition), (b) aggregate unused Term Commitments and (c) aggregate unused Revolving Commitments; *provided* that the unused Term Commitment and unused Revolving Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; *provided, further*, that the Loans of any Affiliated Lender shall in each case be excluded for purposes of making a determination of Required Lenders unless the action in question affects such Affiliated Lender in a disproportionately adverse manner than its effect on the other Lenders; *provided further*, for purposes of this definition, the outstanding principal amount of Alternative Currency Loans at any time shall be determined using the Dollar Equivalent thereof at the most recent Revaluation Date.

“**Responsible Officer**” means, with respect to a Person, the chief executive officer, chief operating officer, president, executive vice president, chief financial officer, treasurer or assistant treasurer or other similar officer or Person performing similar functions, of such Person and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. With respect to any document delivered by a Loan Party on the Effective Date, Responsible Officer includes any secretary or assistant secretary of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. Unless otherwise specified, all references herein to a “Responsible Officer” shall refer to a Responsible Officer of the Borrower.

“**Restricted Investment**” means any Investment other than any Permitted Investment(s).

“**Restricted Payment**” has the meaning specified in Section 7.05.

“**Restricted Subsidiary**” means, at any time, any direct or indirect Subsidiary of the Borrower (including any Foreign Subsidiary) that is not then an Unrestricted Subsidiary; *provided* that notwithstanding the foregoing, in no event will any Securitization Subsidiary be considered a Restricted Subsidiary for purposes of Section 8.01(5), (6) or (7); *provided further* that upon the occurrence of an Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary will be included in the definition of “Restricted Subsidiary.” Wherever the term “Restricted Subsidiary” is used herein with respect to any Subsidiary of a referenced Person that is not the Borrower, then it will be construed to mean a Person that would be a Restricted Subsidiary of the Borrower on a *pro*

*forma* basis following consummation of one or a series of related transactions involving such referenced Person and the Borrower (unless such transaction would include a designation of a Subsidiary of such Person as an Unrestricted Subsidiary on a *pro forma* basis in accordance with this Agreement).

“**Revaluation Date**” shall mean with respect to any Alternative Currency Loan, each of the following: (i) each date of Borrowing of a Loan denominated in an Alternative Currency, (ii) each date of a continuation of a Borrowing denominated in an Alternative Currency pursuant to Section 2.02, and (iii) such additional dates as the Administrative Agent shall determine or the Required Revolving Lenders shall require.

“**Revolving Borrowing**” means a borrowing consisting of simultaneous Revolving Loans of the same Type and, in the case of LIBO Rate Loans, having the same Interest Period, made by each of the Revolving Lenders pursuant to Section 2.01(2).

“**Revolving Commitment**” means, ~~as to each Revolving Lender, its obligation to (1) make Revolving Loans to the Borrower pursuant to Section 2.01(2) and (2) purchase participations in L/C Obligations in respect of Letters of Credit in an aggregate principal amount at any one time outstanding not to exceed the amount specified opposite such Lender’s name on Schedule 2 of the Amendment No. 2 to the Credit Agreement or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate~~collectively, the Closing Date Revolving Commitments ~~of all Revolving Lenders as of the Amendment No. 2 Effective Date is \$160.0 million, as such amount may be adjusted from time to time in accordance with the terms of this Agreement~~and the 2021 Revolving Commitments.

“**Revolving Commitment Increase**” has the meaning specified in Section 2.14(1).

“**Revolving Exposure**” means, as to each Revolving Lender, the sum of the amount of the Outstanding Amount of such Revolving Lender’s Revolving Loans and its Applicable Percentage of the amount of the L/C Obligations at such time.

“**Revolving Extension Request**” has the meaning provided in Section 2.16(2).

“**Revolving Extension Series**” has the meaning provided in Section 2.16(2).

“**Revolving Facility**” means, at any time, the aggregate amount of the Revolving Commitments at such time.

“**Revolving Lender**” means, at any time, any Lender that has a Revolving Commitment at such time or, if Revolving Commitments have terminated, Revolving Exposure.

“**Revolving Loan**” has the meaning specified in Section 2.01(2) and includes Revolving Loans under the Closing Date Revolving Facility, Revolving Loans under the 2021 Revolving Facility, Incremental Revolving Loans, Other Revolving Loans and Loans made pursuant to Extended Revolving Commitments.

“**Revolving Note**” means a promissory note of the Borrower payable to any Revolving Lender or its registered assigns, in substantially the form of Exhibit B-2 hereto, evidencing the aggregate Indebtedness of the Borrower to such Revolving Lender resulting from the Revolving Loans made by such Revolving Lender.

“**S&P**” means S&P Global Ratings, a division of S&P Global Inc., and any successor to its rating agency business.

“**Sale-Leaseback Transaction**” means any arrangement providing for the leasing by the Borrower or any Restricted Subsidiary of any real or tangible personal property, which property has been or is to be sold or transferred by the Borrower or such Restricted Subsidiary to a third Person in contemplation of such leasing.

“**Same Day Funds**” means disbursements and payments in immediately available funds.

“**Sanctions**” has the meaning specified in Section 5.17.

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

“**Secured Cash Management Agreement**” means any Cash Management Agreement that is entered into by and between the Borrower or any Restricted Subsidiary and a Cash Management Bank; and designated in writing by the Borrower to the Administrative Agent as a “Secured Cash Management Agreement.”

“**Secured Hedge Agreement**” means any Hedge Agreement (A) with respect to Hedging Obligations permitted under Section 7.02 that is (a) entered into by and between any Loan Party or Restricted Subsidiary and any Hedge Bank and (b) designated in writing by the Borrower to the Administrative Agent as a “Secured Hedge Agreement” and (B) entered into by any Loan Party or Restricted Subsidiary that as of the Effective Date is secured pursuant to the Existing Credit Agreement.

“**Secured Indebtedness**” means any Indebtedness of the Borrower or any Restricted Subsidiary secured by a Lien.

“**Secured Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Secured Debt outstanding as of the last day of such Test Period, *minus*, the aggregate amount of cash and Cash Equivalents of the Borrower and the Restricted Subsidiaries on such date (other than cash in the Controlled Account) that (x) would not appear as “restricted” on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries or (y) are restricted in favor of the Facilities (which may also secure other Indebtedness secured by a *pari passu* or junior Lien on the Collateral along with the Facilities) to (b) Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a *pro forma* basis with such *pro forma* adjustments as are appropriate and consistent with Section 1.07.

“**Secured Parties**” means, collectively, the Administrative Agent, the Collateral Agent, the Lenders, each Issuing Bank, each Hedge Bank, each Cash Management Bank, each Supplemental Administrative Agent and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.01(2) or 9.07.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“**Securitization Assets**” means (a) the accounts receivable, royalty or other revenue streams and other rights to payment and other assets related thereto subject to a Qualified Securitization Facility and the proceeds thereof and (b) contract rights, lockbox accounts and records with respect to such accounts receivable and any other assets customarily transferred together with accounts receivable in a securitization financing.

“**Securitization Facility**” means any transaction or series of securitization financings that may be entered into by the Borrower or any Restricted Subsidiary pursuant to which the Borrower or any such Restricted Subsidiary may sell, convey or otherwise transfer, or may grant a security interest in, Securitization Assets to either (a) a Person that is not the Borrower or a Restricted Subsidiary or (b) a Securitization Subsidiary that in turn sells such Securitization Assets to a Person that is not the Borrower or a Restricted Subsidiary, or may grant a security interest in, any Securitization Assets of the Borrower or any of its Subsidiaries.

“**Securitization Fees**” means distributions or payments made directly or by means of discounts with respect to any participation interest issued or sold in connection with, and other fees and expenses (including reasonable fees and expenses of legal counsel) paid to a Person that is not a Securitization Subsidiary in connection with, any Qualified Securitization Facility.

“**Securitization Subsidiary**” means any Subsidiary formed for the purpose of, and that solely engages only in one or more Qualified Securitization Facilities and other activities reasonably related thereto.



“**Security Agreement**” means, collectively, the Pledge and Security Agreement executed by the Loan Parties and the Collateral Agent, substantially in the form of Exhibit F, together with supplements or joinders thereto executed and delivered pursuant to Section 6.11.

“**Senior Notes**” means any senior unsecured notes, any demand securities issued in lieu of the Bridge Loans or to refinance the Bridge Loans, or any other debt securities issued pursuant to any offering by the Borrower or any of its direct or indirect Restricted Subsidiaries in a principal amount up to €240 million (plus an amount sufficient to fund any OID on such Senior Notes, any accrued but unpaid interest on the Bridge Loans and any other fees and expenses incurred in connection therewith) in a Rule 144A or other private placement issued pursuant to the Senior Notes Indenture.

“**Senior Notes Indenture**” means any indenture pursuant to which the Senior Notes are issued.

“**Significant Holder**” means Ralf Schmid, the indirect owner, as of the Effective Date, of approximately 61% of the outstanding shares of stock of the Target.

“**Significant Subsidiary**” means any Restricted Subsidiary that would be a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X of the SEC, as such regulation is in effect on the Effective Date.

“**Similar Business**” means (1) any business conducted or proposed to be conducted by the Borrower or any Restricted Subsidiary on the Effective Date or (2) any business or other activities that are reasonably similar, ancillary, incidental, complementary or related to (including non-core incidental businesses acquired in connection with any Permitted Investment), or a reasonable extension, development or expansion of, the businesses that the Borrower and its Restricted Subsidiaries conduct or propose to conduct on the Effective Date.

“**SOFR**” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website.

“**SOFR Administrator**” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“**SOFR Administrator’s Website**” means the NYFRB’s website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“**Solicited Discount Proration**” has the meaning specified in Section 2.05(1)(e)(J).

“**Solicited Discounted Prepayment Amount**” has the meaning specified in Section 2.05(1)(e)(H).

“**Solicited Discounted Prepayment Notice**” means a written notice of the Borrower of Solicited Discounted Prepayment Offers made pursuant to Section 2.05(1)(e)(H) substantially in the form of Exhibit L.

“**Solicited Discounted Prepayment Offer**” means the written offer by each Lender, substantially in the form of Exhibit O, submitted following the Administrative Agent’s receipt of a Solicited Discounted Prepayment Notice.

“**Solicited Discounted Prepayment Response Date**” has the meaning specified in Section 2.05(1)(e)(H).

“**Solvent**” and “**Solvency**” mean, with respect to any Person on any date of determination, that on such date:

- (1) the fair value of the assets of such Person exceeds its debts and liabilities, subordinated, contingent or otherwise,

(2) the present fair saleable value of the property of such Person is greater than the amount that will be required to pay the probable liability of its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured,

(3) such Person is able to pay its debts and liabilities, subordinated, contingent or otherwise, as such liabilities become absolute and matured and

(4) such Person is not engaged in, and is not about to engage in, business for which it has unreasonably small capital.

The amount of any contingent liability at any time shall be computed as the amount that would reasonably be expected to become an actual and matured liability.

“**SPC**” has the meaning specified in Section 10.07(g).

“**Specified Discount**” has the meaning specified in Section 2.05(1)(e)(B).

“**Specified Discount Prepayment Amount**” has the meaning specified in Section 2.05(1)(e)(B).

“**Specified Discount Prepayment Notice**” means a written notice of the Borrower’s Offer of Specified Discount Prepayment made pursuant to Section 2.05(1)(e)(B) substantially in the form of Exhibit N.

“**Specified Discount Prepayment Response**” means the written response by each Lender, substantially in the form of Exhibit P, to a Specified Discount Prepayment Notice.

“**Specified Discount Prepayment Response Date**” has the meaning specified in Section 2.05(1)(e)(B).

“**Specified Discount Proration**” has the meaning specified in Section 2.05(1)(e)(D).

“**Specified Representations**” means those representations and warranties made in Sections 5.01(1) (with respect to the organizational existence of the Loan Parties only), 5.01(2)(b), 5.02(1), 5.02(2)(a), 5.04, 5.13, 5.16, the last sentence of 5.17 (as related only to the use of proceeds of the Facilities on the Closing Date not violating the USA PATRIOT Act or Sanctions) and 5.18.

“**Specified Transaction**” means:

(1) solely for the purposes of determining the applicable cash balance, any contribution of capital, including as a result of an Equity Offering, to the Borrower, in each case, in connection with an acquisition or Investment,

(2) any designation of operations or assets of the Borrower or a Restricted Subsidiary as discontinued operations (as defined under GAAP),

(3) any Investment that results in a Person becoming a Restricted Subsidiary,

(4) any designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary in compliance with this Agreement,

(5) any purchase or other acquisition of a business of any Person, of assets constituting a business unit, line of business or division of any Person,

(6) any Asset Sale (without regard to any de minimis thresholds set forth therein) (a) that results in a Restricted Subsidiary ceasing to be a Subsidiary of the Borrower or (b) of a business, business



unit, line of business or division of the Borrower or a Restricted Subsidiary, in each case whether by merger, amalgamation, consolidation or otherwise,

(7) any operational changes identified by the Borrower that have been made by the Borrower or any Restricted Subsidiary during the Test Period,

(8) any borrowing of Incremental Loans or Permitted Incremental Equivalent Debt (or establishment of Incremental Commitments), or

(9) any Restricted Payment or other transaction that by the terms of this Agreement requires a financial ratio to be calculated on a *pro forma* basis.

“**Sponsor Subordinated Debt**” has the meaning specified in the definition of “Equity Contribution”.

“**Sponsor Subordinated Debt Issuance**” has the meaning specified in the definition of “Equity Contribution”.

“**Sterling**” means the lawful currency of the United Kingdom.

“**Submitted Amount**” has the meaning specified in Section 2.05(1)(e)(E).

“**Submitted Discount**” has the meaning specified in Section 2.05(1)(e)(E).

“**Subordinated Indebtedness**” means the Sponsor Subordinated Debt (if any) and any other Indebtedness of any Loan Party that by its terms is subordinated in right of payment to the Obligations of such Loan Party arising under the Loans or the Guaranty.

“**Subsidiary**” means, with respect to any Person:

(1) any corporation, association or other business entity (other than a partnership, joint venture, limited liability company or similar entity) of which more than 50.0% of the total voting power of shares of Capital Stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, members of management or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof; and

(2) any partnership, joint venture, limited liability company or similar entity of which:

(a) more than 50.0% of the capital accounts, distribution rights, total equity and voting interests or general or limited partnership interests, as applicable, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof whether in the form of membership, general, special or limited partnership or otherwise; and

(b) such Person or any Restricted Subsidiary of such Person is a controlling general partner or otherwise controls such entity.

Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“**Successor Borrower**” has the meaning specified in Section 7.03(4).

“**Supplemental Administrative Agent**” and “**Supplemental Administrative Agents**” have the meanings specified in Section 9.15(1).

“**Swap Obligation**” has the meaning specified in the definition of “Excluded Swap Obligation.”

“**Target**” has the meaning specified in the Preliminary Statement of this Agreement.

“**Target Credit Agreement**” means the €95.0 million Senior Facilities Agreement, dated September 3, 2014, as amended on November 27, 2015 and amended and restated on July 8, 2016, among the Target, Bank Zachodni WBK S.A., as Agent, MBANK S.A., as Security Agent, and the other parties thereto from time to time (as such agreement is in effect on the date hereof and amended, modified or supplemented from time to time).

“**TARGET Day**” shall mean any day on which the Trans-European Automated Real-time Gross Settlement Express Transfer (TARGET2) payment system which utilizes a single shared platform and which was launched on 19 November 2007 (or, if such payment system ceases to be operative, such other payment system (if any) reasonably determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

“**Target Term Loan Reserve Account**” means a deposit account of the Borrower to be maintained with the Administrative Agent into which shall be deposited on the Closing Date the Target Term Loan Reserve Amount.

“**Target Term Loan Reserve Amount**” means an amount equal to the Dollar Equivalent on the Closing Date of €36.25 million.

“**Tax**” means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding (including backup withholding) of any nature and whatever called, imposed by any Governmental Authority, including any interest, additions to tax and penalties applicable thereto.

“**Tax Indemnitee**” as defined in Section 3.01(5).

“**Tender Documents**” means all of the documents, schedules and exhibits related to the Offer as are required to effect the Offer as in effect on the Effective Date, as each may be amended, modified, supplemented or waived from time to time in accordance with Section 6.16.

“**Tender Effectiveness**” means the Borrower having received acceptance from holders representing at least seventy-five percent (75%) of the shares in the Target in respect of the Borrower’s Offer made in accordance with the terms of the Tender Documents, as confirmed by Dom Maklerski Banku Handlowego S.A. as tender agent for the Offer following expiration of the Offer’s subscription period.

“**Tender Issuing Bank**” means Citibank, N.A.

“**Tender Letter of Credit**” means that certain letter of credit issued for the account of AcquisitionCo, at or before the commencement of the Offer, to be issued by the Tender Issuing Bank in favor of Dom Maklerski Banku Handlowego S.A. pursuant to the Agreement for Standby Letter of Credit and the L/C Fee Letter.

“**Term Borrowing**” means a Borrowing of any Term Loans.

“**Term Commitment**” means, as to each Term Lender, its obligation to make a Term Loan to the Borrower hereunder, expressed as an amount representing the maximum principal amount of the Term Loan to be made by such Term Lender under this Agreement, as such commitment may be (a) reduced from time to time pursuant to this Agreement and (b) reduced or increased from time to time pursuant to (i) assignments by or to such Term Lender pursuant to an Assignment and Assumption, (ii) an Incremental Amendment, (iii) a Refinancing Amendment, (iv) an Extension Amendment or (v) an amendment in respect of Replacement Loans. The initial amount of each Term Lender’s Term Commitment is specified on Schedule 2.01 under the caption “Closing Date Term Loan Commitment” or, otherwise, in the Assignment and Assumption (or Affiliated Lender Assignment and Assumption), Incremental Amendment, Refinancing Amendment, Extension Amendment or amendment in respect of Replacement Loans pursuant to which such Lender shall have assumed its Commitment, as the case may be.

“**Term Facility**” means any Facility consisting of Term Loans of a single Class and/or Term Commitments with respect to such Class of Term Loans.

“**Term Lender**” means, at any time, any Lender that has a Term Commitment or a Term Loan at such time.

“**Term Loan**” means any Closing Date Term Loan, Incremental Term Loan, Other Term Loan, Extended Term Loan or Replacement Loan, as the context may require.

“**Term Loan Extension Request**” has the meaning provided in Section 2.16(1).

“**Term Loan Extension Series**” has the meaning provided in Section 2.16(1).

“**Term Loan Increase**” has the meaning specified in Section 2.14(1).

“**Term Note**” means a promissory note of the Borrower payable to any Term Lender or its registered assigns, in substantially the form of Exhibit B-1 hereto, evidencing the aggregate Indebtedness of the Borrower to such Term Lender resulting from the Term Loans made by such Term Lender.

“**Termination Conditions**” means (1) the termination of the Loan Documents in accordance with Section 2.01(3) or (2) (a) the payment in full in cash of the Obligations (other than (i) contingent indemnification obligations not then due and (ii) Obligations under Secured Hedge Agreements and Secured Cash Management Agreements) and (b) the termination of the Commitments and the termination or expiration of all Letters of Credit under this Agreement (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized on terms reasonably acceptable to the applicable Issuing Bank, backstopped by a letter of credit reasonably satisfactory to the applicable Issuing Bank or deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank).

“**Term SOFR**” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“**Term SOFR Notice**” means a notification by the Administrative Agent to the Revolving Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

“**Term SOFR Transition Event**” means the determination by the Administrative Agent (subject to the last sentence of Section 3.03(2)(c)) that (a) Term SOFR has been selected or recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in a Benchmark Replacement in accordance with Section 3.03(2) that is not Term SOFR.

“**Test Period**” in effect at any time means the most recent period of four consecutive fiscal quarters of the Borrower ended on or prior to such time (taken as one accounting period) in respect of which, subject to Section 1.07(1), financial statements for each quarter or fiscal year in such period have been or are required to be delivered pursuant to Section 6.01(1) or (2), as applicable; *provided* that, prior to the first date that financial statements have been or are required to be delivered pursuant to Section 6.01(1) or (2), the Test Period in effect shall be the period of four consecutive full fiscal quarters of the Borrower ended prior to the Closing Date for which financial statements would have been required to be delivered hereunder had the Closing Date occurred prior to the end of such period.

“**Threshold Amount**” means \$40.0 million.

“**Total Assets**” means, at any time, the total assets of the Borrower and the Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP, as shown on the then most recent balance sheet of the Borrower or such other Person as may be available (as determined in good faith by the Borrower) (and, in the case of

any determination relating to any Specified Transaction, on a *pro forma* basis including any property or assets being acquired in connection therewith).

“**Total Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Total Debt outstanding as of the last day of such Test Period (*plus*, solely for the purposes of testing the Total Net Leverage Ratio under Sections 2.14(4)(c)(B)(z)(I), 7.02(a)(C)(II) (including any incurrence of Indebtedness pursuant to other Sections of this Agreement that reference the test contained in such Section) and 7.02(b)(14)(z), the aggregate liquidation preference of (i) all Disqualified Stock of the Borrower and the Restricted Subsidiaries determined on a consolidated basis in accordance with GAAP and (ii) all Preferred Stock of Restricted Subsidiaries (except to the extent held by the Borrower or a Restricted Subsidiary), in each case, outstanding on the last day of such Test Period), *minus*, the aggregate amount of cash and Cash Equivalents of the Borrower and the Restricted Subsidiaries on such date (other than cash in the Controlled Account) that (x) would not appear as “restricted” on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries or (y) restricted in favor of the Facilities (which may also secure other Indebtedness secured by a *pari passu* or junior Lien on the Collateral along with the Facilities) to (b) Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a *pro forma* basis with such *pro forma* adjustments as are appropriate and consistent with Section 1.07.

“**Total Senior Net Leverage Ratio**” means, with respect to any Test Period, the ratio of (a) Consolidated Senior Debt outstanding as of the last day of such Test Period, *minus*, the aggregate amount of cash and Cash Equivalents of the Borrower and the Restricted Subsidiaries on such date (other than cash in the Controlled Account) that (x) would not appear as “restricted” on a consolidated balance sheet of the Borrower or the Restricted Subsidiaries or (y) restricted in favor of the Facilities (which may also secure other Indebtedness secured by a *pari passu* or junior Lien on the Collateral along with the Facilities) to (b) Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for such Test Period, in each case on a *pro forma* basis with such *pro forma* adjustments as are appropriate and consistent with Section 1.07.

“**Total Outstandings**” means the aggregate Outstanding Amount of all Loans and L/C Obligations.

“**Transaction Consideration**” means an amount equal to the total funds required to consummate the Offer as contemplated by the Undertaking Agreement and the Tender Documents.

“**Transaction Expenses**” means any fees, expenses, costs or charges incurred or paid by the Investors, the Borrower or any Restricted Subsidiary in connection with the Transactions, including any expenses in connection with hedging transactions, payments to officers, employees and directors as change of control payments, severance payments, special or retention bonuses and charges for repurchase or rollover of, or modifications to, stock options or restricted stock.

“**Transactions**” means, collectively, the transactions contemplated by the Undertaking Agreement and the Tender Documents (as amended through the Effective Date) and transactions related or incidental to, or in connection with, such transactions, the funding of the Closing Date Loans and the Bridge Loans, the consummation of the Equity Contribution and Closing Date Refinancing and the payment of the Transaction Expenses.

“**Treasury Capital Stock**” has the meaning assigned to such term in Section 7.05(b)(2)(a).

“**Type**” means, with respect to a Loan, its character as a Base Rate Loan or a LIBO Rate Loan.

“**UCP**” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“ICC”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

**“Unadjusted Benchmark Replacement” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.**

“**Undertaking Agreement**” means the Agreement Regarding Irrevocable Undertakings among Uniwheels Holding (Malta) Ltd., the Significant Holder and AcquisitionCo, dated on or about the Effective Date, as amended, modified or supplemented from time to time in accordance with the terms hereof.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code or any successor provision thereof as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code or any successor provision thereof (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to the perfection or priority of any Lien on or otherwise with regard to any item or items of Collateral.

“**United States**” and “**U.S.**” mean the United States of America.

“**United States Tax Compliance Certificate**” has the meaning specified in Section 3.01(3)(b)(iii).

“**Unreimbursed Amount**” has the meaning specified in Section 2.03(3)(a).

“**Unrestricted Subsidiary**” means:

(1) any Subsidiary of the Borrower which at the time of determination is an Unrestricted Subsidiary (as designated by the Borrower, as provided below); and

(2) any Subsidiary of an Unrestricted Subsidiary.

The Borrower may designate:

(a) any Subsidiary of the Borrower (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Equity Interests or Indebtedness of, or owns or holds any Lien on, any property of, the Borrower or any Subsidiary (other than solely any Subsidiary of the Subsidiary to be so designated); *provided* that:

(i) such designation shall be deemed an Investment;

(ii) each of (i) the Subsidiary to be so designated and (ii) its Subsidiaries has not, at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of the Borrower or any Restricted Subsidiary (other than Equity Interests in an Unrestricted Subsidiary);

(iii) immediately after giving effect to such designation, no Event of Default will have occurred and be continuing; and

(iv) the Borrower (A) could incur at least \$1.00 of additional Permitted Ratio Debt pursuant to clause (C)(I) of the definition thereof or (B) the Interest Coverage Ratio after giving effect to any such designation would be no less than the Interest Coverage Ratio immediately prior to giving effect to such designation; and

(b) any Unrestricted Subsidiary to be a Restricted Subsidiary; *provided* that:

(i) immediately after giving effect to such designation, no Event of Default will have occurred and be continuing; and

(ii) the Borrower (A) could incur at least \$1.00 of additional Permitted Ratio Debt pursuant to clause (C)(I) of the definition thereof or (B) the Interest Coverage Ratio after giving effect to any such designation would be no less than the Interest Coverage Ratio immediately prior to giving effect to such designation;

Any such designation by the Borrower will be notified by the Borrower to the Administrative Agent by promptly filing with the Administrative Agent an Officer's Certificate certifying that such designation complied with the foregoing provisions. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness and Liens of such Subsidiary existing at such time.

**"U.S. Lender"** means any Lender that is not a Foreign Lender.

**"USA PATRIOT Act"** means The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Public Law No. 107-56 (signed into law October 26, 2001)), as amended or modified from time to time.

**"Weighted Average Life to Maturity"** means, when applied to any Indebtedness, Disqualified Stock or Preferred Stock, as the case may be, at any date, the quotient obtained by dividing:

- (1) the sum of the products of the number of years (calculated to the nearest one-twenty-fifth) from the date of determination to the date of each successive scheduled principal payment of such Indebtedness or redemption or similar payment with respect to such Disqualified Stock or Preferred Stock, multiplied by the amount of such payment, by
- (2) the sum of all such payments;

*provided* that for purposes of determining the Weighted Average Life to Maturity of any Indebtedness that is being Refinanced (the **"Applicable Indebtedness"**), the effects of any amortization or prepayments made on such Applicable Indebtedness prior to the date of the applicable Refinancing will be disregarded.

**"wholly owned"** means, with respect to any Subsidiary of any Person, a Subsidiary of such Person one hundred percent (100%) of the outstanding Equity Interests of which (other than (x) directors' qualifying shares and (y) shares of Capital Stock of Foreign Subsidiaries issued to foreign nationals as required by applicable Law) is at the time owned by such Person or by one or more wholly owned Subsidiaries of such Person.

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

**"Withholding U.S. Branch"** means a U.S. branch of a non-U.S. bank treated as a U.S. person for purposes of Treasury Regulations Section 1.1441-1 and described in Treasury Regulations Section 1.1441-1T(b)(2)(iv) that agrees, on IRS Form W-8IMY or such other form prescribed by the Treasury or the IRS, to accept responsibility for all U.S. federal income tax withholding and information reporting with respect to payments made to the Administrative Agent for the account of Lenders by or on behalf of any Loan Party under the Loan Documents.

**"Write-Down and Conversion Powers"** means, 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.

**"Yen"** means the lawful currency of Japan.

SECTION 1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

- (i) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(ii) The words “herein,” “hereto,” “hereof” and “hereunder” and words of similar import when used in any Loan Document shall refer to such Loan Document as a whole and not to any particular provision thereof.

(iii) References in this Agreement to the Preliminary Statements, the introductory paragraph, an Exhibit, a Schedule, an Article, a Section, an Annex, a clause or a subclause refer (a) to the Preliminary Statements, the introductory paragraph, or appropriate Exhibit or Schedule to, or Article, Section, clause or subclause in this Agreement, as the case may be, or (b) to the extent such references are not present in this Agreement, to the Loan Document in which such reference appears, in each case as such Exhibit, Schedule, Article, Section, Annex, clause or subclause may be amended or supplemented from time to time.

(iv) The term “including” is by way of example and not limitation.

(v) The term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form.

(vi) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including”; the words “to” and “until” each mean “to but excluding”; and the word “through” means “to and including.”

(vii) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(viii) The word “or” is not intended to be exclusive unless expressly indicated otherwise.

(ix) [Reserved.]

(x) For purposes of determining compliance with any Section of Article VII, in the event that any Lien, Investment, Indebtedness, Asset Sale, Restricted Payment, Affiliate Transaction, Contractual Obligation or prepayment of Indebtedness meets the criteria of one or more of the categories of transactions permitted pursuant to any clause of such Sections, such transaction (or portion thereof) at any time, shall be permitted under one or more of such clauses as determined by the Borrower in its sole discretion at such time. For purposes of determining compliance with the incurrence of any Credit Agreement Refinancing Indebtedness or Refinancing Indebtedness that restricts the amount of such Indebtedness relative to the amount of Credit Agreement Refinanced Debt or Refinanced Debt, respectively, the Borrower and Restricted Subsidiaries may incur an incremental principal amount of Credit Agreement Refinancing Indebtedness or Refinancing Indebtedness in such refinancing to the extent that the excess portion of the Credit Agreement Refinancing Indebtedness or Refinancing Indebtedness would otherwise be permitted to be incurred in accordance with this Agreement. For purposes of determining compliance with the incurrence of any Indebtedness under Designated Revolving Commitments in reliance on compliance with any ratio, if on the date such Designated Revolving Commitments are established, the applicable ratio is satisfied after giving *pro forma* effect to the incurrence of the entire committed amount of then proposed Indebtedness thereunder, then such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with any ratio.

(xi) For purposes hereof, unless otherwise specifically indicated, the term “consolidated” with respect to any Person refers to such Person consolidated with its Restricted Subsidiaries and excludes from such consolidation any Unrestricted Subsidiary as if such Unrestricted Subsidiary were not an Affiliate of such Person.

SECTION 1.03 Accounting Terms. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP, except as otherwise specifically prescribed herein. Unless the context indicates otherwise, any reference to a “fiscal year” or a “fiscal



quarter” shall refer to a fiscal year ending December 31 or fiscal quarter ending March 31, June 30, September 30 or December 31 of the Borrower. 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 any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any of its Subsidiaries at “fair value,” as defined therein.

SECTION 1.04 Rounding. Any financial ratios required to be satisfied in order for a specific action to be permitted 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-up if there is no nearest number).

SECTION 1.05 References to Agreements, Laws, etc. Unless otherwise expressly provided herein, (1) references to Organizational Documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (2) references to any Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Law.

SECTION 1.06 Times of Day and Timing of Payment and Performance. Unless otherwise specified, (1) all references herein to times of day shall be references to New York time (daylight or standard, as applicable) and (2) when the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment (other than as described in the definition of “Interest Period”) or performance shall extend to the immediately succeeding Business Day.

SECTION 1.07 Pro Forma and Other Calculations.

(1) Notwithstanding anything to the contrary herein, financial ratios and tests, including the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio and the Interest Coverage Ratio shall be calculated in the manner prescribed by this Section 1.07; *provided* that notwithstanding anything to the contrary in clauses (2), (3), (4) or (5) of this Section 1.07 when calculating the First Lien Net Leverage Ratio, Total Senior Net Leverage Ratio or Total Net Leverage Ratio, as applicable, for purposes of (a) the definition of “Applicable Rate,” (b) Section 2.05(2)(a) and (c) the Financial Covenant (other than for the purpose of determining *pro forma* compliance with the Financial Covenant), the events described in this Section 1.07 that occurred subsequent to the end of the applicable Test Period shall not be given *pro forma* effect; *provided however* that voluntary prepayments made pursuant to Section 2.05(1) during any fiscal year (without duplication of any prepayments in such fiscal year that reduced the amount of Excess Cash Flow required to be repaid pursuant to Section 2.05(2)(a) for any prior fiscal year) shall be given *pro forma* effect after such fiscal year-end and prior to the time any mandatory prepayment pursuant to Section 2.05(2)(a) is due for purposes of calculating the First Lien Net Leverage Ratio for purposes of determining the ECF Percentage for such mandatory prepayment, if any. In addition, whenever a financial ratio or test is to be calculated on a *pro forma* basis, the reference to “Test Period” for purposes of calculating such financial ratio or test shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower) (it being understood that for purposes of (x) determining *pro forma* compliance with the Financial Covenant, if no Test Period with an applicable level cited in the Financial Covenant has passed, the applicable level shall be the level for the first Test Period cited in the Financial Covenant with an indicated level and (y) determining actual compliance (and not *pro forma* compliance) with the Financial Covenant, the reference to “Test Period” shall be deemed to be a reference to, and shall be based on, the most recently ended Test Period for which financial statements have been or are required to be delivered pursuant to Section 6.01(1) or (2)).

(2) For purposes of calculating any financial ratio or test (or Consolidated EBITDA or Total Assets), Specified Transactions (and, subject to clause (4) below, the incurrence or repayment of any Indebtedness in connection therewith) that have been made (a) during the applicable Test Period or (b) subsequent to such Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made shall be calculated on a *pro forma* basis assuming that all such Specified Transactions (and any increase or decrease in Consolidated EBITDA and the component financial definitions used therein attributable to any Specified Transaction) had occurred on the first day of the applicable Test Period (or, in the case of Total Assets, on the last day of the applicable Test Period). If since the beginning of any applicable Test Period any Person that subsequently became a Restricted Subsidiary or was merged, amalgamated or consolidated with or into the Borrower or any Restricted Subsidiary since the beginning of such Test Period shall have made any Specified Transaction that would have required adjustment



pursuant to this Section 1.07, then such financial ratio or test (or Consolidated EBITDA or Total Assets) shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.07.

(3) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a Financial Officer of the Borrower and may include, for the avoidance of doubt, the amount of “run-rate” cost savings, operating expense reductions and synergies projected by the Borrower in good faith to result from or relating to any Specified Transaction (including the Transactions and, for the avoidance of doubt, acquisitions occurring prior to the Closing Date) which is being given *pro forma* effect that have been realized or are expected to be realized and for which the actions necessary to realize such cost savings, operating expense reductions and synergies are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (in the good faith determination of the Borrower) (calculated on a *pro forma* basis as though such cost savings, operating expense reductions and synergies had been realized on the first day of such period and as if such cost savings, operating expense reductions and synergies were realized during the entirety of such period and “run-rate” means the full recurring benefit for a period that is associated with any action taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken (including any savings expected to result from the elimination of a public target’s compliance costs with public company requirements), whether prior to or following the Effective Date, net of the amount of actual benefits realized during such period from such actions, and any such adjustments shall be included in the initial *pro forma* calculations of such financial ratios or tests and during any subsequent Test Period in which the effects thereof are expected to be realized) relating to such Specified Transaction; *provided* that (a) such amounts are reasonably identifiable and factually supportable in the good faith judgment of the Borrower, (b) such actions are taken, committed to be taken or with respect to which substantial steps have been taken or are expected to be taken no later than twenty-four (24) months after the date of such Specified Transaction (or actions undertaken or implemented prior to the consummation of such Specified Transaction); *provided further* that, with respect to the Transactions, such period shall be thirty-six (36) months, (c) no amounts shall be added to the extent duplicative of any amounts that are otherwise added back in computing Consolidated EBITDA (or any other components thereof), whether through a *pro forma* adjustment or otherwise, with respect to such period and (d) the aggregate amount of cost savings, operating expense reductions and synergies included pursuant to this Section 1.07(3), taken together with the aggregate amount included pursuant to clause (l) of the definition of Consolidated EBITDA, shall not exceed 25% of Consolidated EBITDA (prior to giving effect to clause (l) of the definition of Consolidated EBITDA or this Section 1.07(3)).

(4) In the event that (a) the Borrower or any Restricted Subsidiary incurs (including by assumption or guarantees), issues or repays (including by redemption, repurchase, repayment, retirement, discharge, defeasance or extinguishment) any Indebtedness (other than Indebtedness incurred or repaid under any revolving credit facility or line of credit unless such Indebtedness has been permanently repaid and not replaced), (b) the Borrower or any Restricted Subsidiary issues, repurchases or redeems Disqualified Stock, (c) any Restricted Subsidiary issues, repurchases or redeems Preferred Stock or (d) the Borrower or any Restricted Subsidiary establishes or eliminates any Designated Revolving Commitments, in each case included in the calculations of any financial ratio or test, (i) during the applicable Test Period or (ii) subsequent to the end of the applicable Test Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving *pro forma* effect to such incurrence, issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case to the extent required, as if the same had occurred on the last day of the applicable Test Period (except in the case of the Interest Coverage Ratio (or similar ratio), in which case such incurrence, issuance, repayment or redemption of Indebtedness, issuance, repurchase or redemption of Disqualified Stock or Preferred Stock, or establishment or elimination of any Designated Revolving Commitments, in each case will be given effect, as if the same had occurred on the first day of the applicable Test Period) and, in the case of Indebtedness for all purposes as if such Indebtedness in the full amount of any undrawn Designated Revolving Commitments had been incurred thereunder throughout such period; *provided, however*, that at the election of the Borrower, the *pro forma* calculation will not give effect to any Indebtedness incurred on such determination date pursuant to the provisions described in Section 7.02(c).

(5) 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 of the event for which the calculation of the Interest Coverage Ratio is made had been the applicable rate for the entire period (taking into account any interest hedging arrangements applicable to such Indebtedness). Interest on a Capitalized Lease Obligation shall be

deemed to accrue at an interest rate reasonably determined by a Financial Officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. 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 determined to have been based upon the rate actually chosen, or if none, then based upon such optional rate chosen as the Borrower or applicable Restricted Subsidiary may designate.

(6) Notwithstanding anything to the contrary in this Section 1.07 or in any classification under GAAP of any Person, business, assets or operations in respect of which a definitive agreement for the disposition thereof has been entered into, no *pro forma* effect shall be given to any discontinued operations (and the Consolidated EBITDA attributable to any such Person, business, assets or operations shall not be excluded for any purposes hereunder) until such disposition shall have been consummated.

(7) Any determination of Total Assets shall be made by reference to the last day of the Test Period most recently ended for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower) on or prior to the relevant date of determination.

(8) Notwithstanding anything in this Agreement or any Loan Document to the contrary, when (a) calculating any applicable ratio, Consolidated Net Income or Consolidated EBITDA in connection with the incurrence of Indebtedness, the issuance of Disqualified Stock or Preferred Stock, the creation of Liens, the making of any Asset Sale, the making of an Investment, the making of a Restricted Payment, the designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary or the repayment of Indebtedness, Disqualified Stock or Preferred Stock, (b) determining compliance with any provision of this Agreement which requires that no Default or Event of Default has occurred, is continuing or would result therefrom, (c) determining compliance with any provision of this Agreement which requires compliance with any representations and warranties set forth herein or (d) determining the satisfaction of all other conditions precedent to the incurrence of Indebtedness, the issuance of Disqualified Stock or Preferred Stock, the creation of Liens, the making of any Asset Sale, the making of an Investment, the making of a Restricted Payment, the designation of a Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary or the repayment of Indebtedness, Disqualified Stock or Preferred Stock, in each case in connection with a Limited Condition Transaction, the date of determination of such ratio or other provisions, determination of whether any Default or Event of Default has occurred, is continuing or would result therefrom, determination of compliance with any representations or warranties (in the case of Specified Representations, subject to Section 2.14) or the satisfaction of any other conditions shall, at the option of the Borrower (the Borrower's election to exercise such option in connection with any Limited Condition Transaction, an "**LCT Election**," which LCT Election may be in respect of one or more of clauses (a), (b), (c) and (d) above), be deemed to be the date the definitive agreements (or other relevant definitive documentation) for such Limited Condition Transaction are entered into (the "**LCT Test Date**"). If on a *pro forma* basis after giving effect to such Limited Condition Transaction and the other transactions to be entered into in connection therewith (including any incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock, and the use of proceeds thereof), with such ratios and other provisions calculated as if such Limited Condition Transaction or other transactions had occurred at the beginning of the most recent Test Period ending prior to the LCT Test Date for which internal financial statements are available, the Borrower could have taken such action on the relevant LCT Test Date in compliance with the applicable ratios or other provisions, such provisions shall be deemed to have been complied with, unless an Event of Default pursuant to Section 8.01(1), or, solely with respect to the Borrower, Section 8.01(6) shall be continuing on the date such Limited Condition Transaction is consummated. For the avoidance of doubt, (i) if, following the LCT Test Date, any of such ratios or other provisions are exceeded or breached as a result of fluctuations in such ratio (including due to fluctuations in Consolidated EBITDA or other components of such ratio) or other provisions at or prior to the consummation of the relevant Limited Condition Transactions, such ratios and other provisions will not be deemed to have been exceeded or failed to have been satisfied as a result of such fluctuations solely for purposes of determining whether the Limited Condition Transaction is permitted hereunder and (ii) such ratios and compliance with such conditions shall not be tested at the time of consummation of such Limited Condition Transaction or related Specified Transactions, unless, other than if an Event of Default pursuant to Section 8.01(1), or, solely with respect to the Borrower, Section 8.01(6), shall be continuing on such date, the Borrower elects, in its sole discretion, to test such ratios and compliance with such conditions on the date such Limited Condition Transaction or related Specified Transactions is consummated. If the Borrower has made an LCT Election for any Limited Condition Transaction, then in connection with any subsequent calculation of any ratio, Basket availability or compliance with any other provision hereunder (other than actual compliance with the Financial Covenant) on or following the relevant LCT

Test Date and prior to the earliest of the date on which such Limited Condition Transaction is consummated, the date that the definitive agreement for such Limited Condition Transaction is terminated or expires without consummation of such Limited Condition Transaction or the date the Borrower makes an election pursuant to clause (y) of the immediately preceding sentence, any such ratio, Basket or compliance with any other provision hereunder shall be calculated on a *pro forma basis* assuming such Limited Condition Transaction and other transactions in connection therewith (including any incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock, and the use of proceeds thereof) had been consummated on the LCT Test Date; *provided* that for purposes of any such calculation of the Interest Coverage Ratio, Consolidated Interest Expense will be calculated using an assumed interest rate for the Indebtedness to be incurred in connection with such Limited Condition Transaction based on the indicative interest margin contained in any financing commitment documentation with respect to such Indebtedness or, if no such indicative interest margin exists, as reasonably determined by the Borrower in good faith. Notwithstanding anything in this Agreement or any Loan Document to the contrary, if the Borrower or its Restricted Subsidiaries (x) incurs Indebtedness, issues Disqualified Stock or Preferred Stock, creates Liens, makes Asset Sales, makes Investments, makes Restricted Payments, designates any Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary or repays any Indebtedness, Disqualified Stock or Preferred Stock in connection with any Limited Condition Transaction under a ratio-based Basket and (y) incurs Indebtedness, issues Disqualified Stock or Preferred Stock, creates Liens, makes Asset Sales, Investments or Restricted Payments, designates any as a Restricted Subsidiary or an Unrestricted Subsidiary or repays any Indebtedness, Disqualified Stock or Preferred Stock in connection with such Limited Condition Transaction under a non-ratio-based Basket (which shall occur within five Business Days of the events in clause (x) above), then the applicable ratio will be calculated with respect to any such action under the applicable ratio-based Basket without regard to any such action under such non-ratio-based Basket made in connection with such Limited Condition Transaction.

SECTION 1.08 Available Amount Transaction. If more than one action occurs on any given date the permissibility of the taking of which is determined hereunder by reference to the amount specified in clause (3) of Section 7.05(a) immediately prior to the taking of such action, the permissibility of the taking of each such action shall be determined independently and in no event may any two or more such actions be treated as occurring simultaneously, i.e., each transaction must be permitted under clause (3) of Section 7.05(a) as so calculated.

SECTION 1.09 Guaranties of Hedging Obligations. Notwithstanding anything else to the contrary in any Loan Document, no non-Qualified ECP Guarantor shall be required to guarantee or provide security for Excluded Swap Obligations, and any reference in any Loan Document with respect to such non-Qualified ECP Guarantor guaranteeing or providing security for the Obligations shall be deemed to be all Obligations other than the Excluded Swap Obligations.

SECTION 1.10 Currency Equivalents Generally.

(1) If any basket under Article VII or VIII with respect to any amount expressed in a currency other than Dollars is exceeded solely as a result of fluctuations in applicable currency exchange rates after the last time such basket was utilized, such basket will not be deemed to have been exceeded solely as a result of such fluctuations in currency exchange rates.

(2) Any determinations as to the Dollar Equivalent of Revolving Loans denominated in Euros shall be made by the Administrative Agent as of the most recent Revaluation Date and such determination shall be conclusive absent manifest error.

(3) For purposes of determining the First Lien Net Leverage Ratio, Secured Net Leverage Ratio and the Total Net Leverage Ratio, amounts denominated in a currency other than U.S. Dollars will be converted to U.S. Dollars for the purposes of (A) testing the Financial Covenant, at the Exchange Rate as of the last day of the fiscal quarter for which such measurement is being made, and (B) calculating any First Lien Net Leverage Ratio (other than for the purposes of determining compliance with the Financial Covenant), Secured Net Leverage Ratio and the Total Net Leverage Ratio, at the Exchange Rate as of the date of calculation, and will, in the case of Indebtedness, reflect the currency translation effects, determined in accordance with GAAP, of Hedging Obligations permitted hereunder for currency exchange risks with respect to the applicable currency in effect on the date of determination of the U.S. Dollar equivalent of such Indebtedness.

(4) The Administrative Agent shall use the Exchange Rate as of each Revaluation Date for the purpose of calculating Dollar Equivalent amounts of the Revolving Loans denominated in Euros, as the case may be. Such Exchange Rates shall become effective as of such Revaluation Date and shall be the Exchange Rates employed

in converting any amounts between the applicable currencies for such purposes until the next Revaluation Date to occur.

SECTION 1.11 Letters of Credit. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the amount of the stated amount of such Letter of Credit in effect at such time after giving effect to any automatic reductions to such stated amount pursuant to the terms of the applicable Letter of Credit after the occurrence of any applicable condition (including the expiration of any applicable period); *provided, however*, that with respect to any Letter of Credit that, by its terms or the terms of any Issuing Bank Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the amount of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

## Article II

### The Commitments and Borrowings

SECTION 2.01 The Loans.

(1) Term Borrowings. Subject only to the terms and conditions set forth in Section 4.02 hereof, each Term Lender severally agrees to make to the Borrower on the Closing Date the Closing Date Term Loans denominated in Dollars in an aggregate principal amount equal to such Term Lender's Closing Date Term Loan Commitment on the Closing Date. Amounts borrowed under this Section 2.01(1) and repaid or prepaid may not be reborrowed. The Closing Date Term Loans may be Base Rate Loans or LIBO Rate Loans, as further provided herein.

(2) Revolving Borrowings. Subject to the terms and conditions set forth herein, each Revolving Lender severally agrees to make loans denominated in Dollars or any Alternative Currency from its applicable Lending Office (each such loan, a "**Revolving Loan**") to the Borrower from time to time, on any Business Day ~~during the period from the Closing Date~~ until the Maturity Date applicable thereto, in an aggregate principal amount not to exceed at any time outstanding the amount of such Lender's Revolving Commitment; *provided* that after giving effect to any Revolving Borrowing, the aggregate Outstanding Amount of the Revolving Loans of any Lender plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations shall not exceed such Lender's Revolving Commitment. Within the limits of each Lender's Revolving Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01(2), prepay under Section 2.05 and reborrow under this Section 2.01(2). Revolving Loans may be Base Rate Loans or LIBO Rate Loans, as further provided herein; *provided*, that, notwithstanding anything to the contrary herein, each Borrowing of Alternative Currency Loans shall be limited to LIBO Rate Loans and in no event shall any such Borrowing be converted into Base Rate Loans.

(3) Termination. Notwithstanding anything to the contrary herein or in any other Loan Document, in the event that the Closing Date does not occur on or before the termination of the Tender Letter of Credit in accordance with its terms, then this Credit Agreement and the commitments and undertakings of each Agent, Lender and Issuing Bank hereunder and under the other Loan Documents (including the Commitment and the obligation to provide any Credit Extension) shall automatically terminate.

SECTION 2.02 Borrowings, Conversions and Continuations of Loans.

(1) Each Term Borrowing, each Revolving Borrowing, each conversion of Term Loans or Revolving Loans from one Type to the other, and each continuation of LIBO Rate Loans shall be made upon the Borrower's irrevocable notice, on behalf of the Borrower, to the Administrative Agent (*provided* that the notice in respect of any Permitted Acquisition or other transaction permitted under this Agreement, may be conditioned on such Permitted Acquisition or other transaction, as applicable), which may be given by: (A) telephone or (B) a Committed Loan Notice; *provided* that any telephonic notice by the Borrower must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice. Each such notice must be received by the Administrative Agent not later than (a) 1:00 p.m., New York time, three (3) Business Days prior to the requested date of any Borrowing or continuation of LIBO Rate Loans or any conversion of Base Rate Loans to LIBO Rate Loans, (b) 1:00 p.m., New York time, on the requested date of any Borrowing of Base Rate Loans or any conversion of LIBO Rate Loans to Base Rate Loans and (c) 1:00 p.m., New York time, four (4) Business Days prior to the requested date of any Borrowing or continuation of any Alternative Currency Loans; *provided* that the notice referred to in subclause (a) above shall be delivered not later than 1:00 p.m., New York time, one (1) Business Day prior to the Closing Date in the case of the

Closing Date Loans (provided that upon the satisfaction of the conditions set forth in Section 4.02, the Borrower shall be deemed to have delivered such borrowing notice with respect to the Closing Date Loans (provided further that such deemed borrowing notice shall be without derogation of the Borrower's obligation to provide a borrowing notice in respect of such Borrowing in accordance with the terms of this Section 2.02)). Each telephonic notice by the Borrower pursuant to this Section 2.02(1) must be confirmed promptly by delivery to the Administrative Agent of a written Committed Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Except as provided in Sections 2.14, 2.15 and 2.16, each Borrowing of, conversion to or continuation of LIBO Rate Loans shall be in a principal amount of \$1.0 million (or the Dollar Equivalent thereof) or a whole multiple amount of \$200,000 (or the Dollar Equivalent thereof) in excess thereof. Except as provided in Sections 2.03(3), 2.14, 2.15 and 2.16, each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple amount of \$100,000 in excess thereof. Each Committed Loan Notice (whether telephonic or written) shall specify

- (i) whether the Borrower is requesting a Term Borrowing, a Revolving Borrowing, a conversion of Term Loans or Revolving Loans from one Type to the other or a continuation of LIBO Rate Loans,
- (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day),
- (iii) the principal amount of Loans to be borrowed, converted or continued,
- (iv) the Class and Type of Loans to be borrowed or to which existing Term Loans or Revolving Loans are to be converted,
- (v) if applicable, the duration of the Interest Period with respect thereto,
- (vi) the applicable currency, which shall be either U.S. Dollars or an Alternative Currency, and
- (vii) wire instructions of the account(s) to which funds are to be disbursed.

If the Borrower fails to specify a Type of Loan to be made in a Committed Loan Notice, then the applicable Loans shall be made as LIBO Rate Loans with an Interest Period of one (1) month. If the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made or continued as the same Type of Loan, which if a LIBO Rate Loan, shall have a one-month Interest Period. Any such automatic continuation of LIBO Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable LIBO Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of LIBO Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(2) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Pro Rata Share or other applicable share provided for under this Agreement of the applicable Class of Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic continuation of LIBO Rate Loans or continuation of Loans described in Section 2.02(1). In the case of each Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than, in the case of Borrowing on the Closing Date, 10:00 a.m., New York time, and otherwise 3:00 p.m., New York time, on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4 for any Borrowing, the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (a) crediting the account(s) of the Borrower on the books of the Administrative Agent with the amount of such funds or (b) wire transfer of such funds, in each case in accordance with instructions provided by the Borrower to (and reasonably acceptable to) the Administrative Agent; *provided* that if on the date the Committed Loan Notice with respect to a Borrowing under a Revolving Facility is given by the Borrower ~~(other than with respect to the Closing Date Revolving Borrowing)~~, there are L/C Borrowings outstanding, then the proceeds of such Borrowing shall be applied, first, to the payment in full of any such L/C Borrowing and second, to the Borrower as provided above.



(3) Except as otherwise provided herein, a LIBO Rate Loan may be continued or converted only on the last day of an Interest Period for such LIBO Rate Loan, unless the Borrower pays the amount due, if any, under Section 3.05 in connection therewith. Upon the occurrence and during the continuation of an Event of Default, the Administrative Agent at the direction of the Required Facility Lenders under the applicable Facility may require by notice to the Borrower that no Loans under such Facility may be converted to or continued as LIBO Rate Loans.

(4) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for LIBO Rate Loans upon determination of such interest rate. The determination of the LIBO Rate by the Administrative Agent shall be conclusive in the absence of manifest error. At any time when Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Administrative Agent's prime rate used in determining the Base Rate promptly following the announcement of such change.

(5) After giving effect to all Term Borrowings, all Revolving Borrowings, all conversions of Term Loans or Revolving Loans from one Type to the other, and all continuations of Term Loans or Revolving Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect unless otherwise agreed between the Borrower and the Administrative Agent.

(6) The failure of any Lender to make the Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Loan to be made by such other Lender on the date of any Borrowing.

(7) Unless the Administrative Agent shall have received notice from a Lender prior to the date of any Borrowing, or, in the case of any Borrowing of Base Rate Loans, prior to 1:30 p.m., New York time, on the date of such Borrowing, that such Lender will not make available to the Administrative Agent such Lender's Pro Rata Share or other applicable share provided for under this Agreement of such Borrowing, the Administrative Agent may assume that such Lender has made such Pro Rata Share and such other applicable share available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (2) above, and the Administrative Agent may, in reliance upon such assumption, make available to the 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, each of such Lender and the Borrower severally agrees 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 the Borrower until the date such amount is repaid to the Administrative Agent at (a) in the case of the Borrower, the interest rate applicable at the time to the Loans comprising such Borrowing and (b) in the case of such Lender, the Overnight Rate *plus* any administrative, processing or similar fees customarily charged by the Administrative Agent in accordance with the foregoing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Section 2.02(7) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall both pay all or any portion of the principal amount in respect of such Borrowing or interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such Borrowing or interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(1) [From and after the Fifth Amendment Effective Date, all Borrowings under the Revolving Commitments shall be made on a pro rata basis as between the Closing Date Revolving Commitments and the 2021 Revolving Commitments.](#)

SECTION 2.03 Letters of Credit.

(1) [The Letter of Credit Commitments.](#)

(a) Subject to the terms and conditions set forth herein, (i) each Issuing Bank agrees, in reliance upon the agreements of the other Revolving Lenders set forth in this Section 2.03, (A) from time to time on any Business Day during the period from the Closing Date until the L/C Expiration Date, to issue Letters of

Credit denominated in Dollars for the account of the Borrower or a Restricted Subsidiary (*provided* that any such Letter of Credit may be for the benefit of any Subsidiary of the Borrower) and to amend or renew Letters of Credit previously issued by it, in accordance with Section 2.03(2), and (B) to honor drawings under the Letters of Credit and (ii) the Revolving Lenders severally agree to participate in Letters of Credit issued pursuant to this Section 2.03; *provided* that no Issuing Bank shall be obligated to make any L/C Credit Extension with respect to any Letter of Credit, and no Lender shall be obligated to participate in any Letter of Credit if as of the date of such L/C Credit Extension, (x) the Revolving Exposure of any Revolving Lender would exceed such Lender's Revolving Commitment, (y) the Outstanding Amount of the L/C Obligations would exceed the L/C Sublimit or (z) the Outstanding Amount of the L/C Obligations issued by such Issuing Bank would exceed its L/C Commitment (it being understood and agreed that any Issuing Bank may, in its sole discretion (so long as the Outstanding Amount of the L/C Obligations would not exceed the L/C Sublimit), make an L/C Credit Extension with respect to any Letter of Credit notwithstanding that the Outstanding Amount of the L/C Obligations issued by such Issuing Bank would exceed its L/C Commitment). Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(b) An 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 such Issuing Bank from issuing such Letter of Credit, or any Law applicable to such Issuing Bank or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or direct that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Effective Date (for which such Issuing Bank is not otherwise compensated hereunder);

(ii) subject to Section 2.03(2)(c), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last renewal, unless (A) each Appropriate Lender has approved of such expiration date or (B) the Outstanding Amount of L/C Obligations in respect of such requested Letter of Credit has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to the applicable Issuing Bank;

(iii) the expiry date of such requested Letter of Credit would occur after the L/C Expiration Date, unless (A) each Appropriate Lender has approved of such expiration date or (B) the Outstanding Amount of L/C Obligations in respect of such requested Letter of Credit has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to the applicable Issuing Bank;

(iv) the issuance of such Letter of Credit would violate any policies of such Issuing Bank applicable to letters of credit generally; or

(v) any Revolving Lender is at that time a Defaulting Lender, unless such Issuing Bank has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such Issuing Bank (in its sole discretion) with the Borrower or such Lender to eliminate such Issuing Bank's actual or potential Fronting Exposure (after giving effect to Section 2.17(1)(d)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which such Issuing Bank has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(c) An Issuing Bank shall be under no obligation to amend any Letter of Credit if (i) such 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.

(d) The Existing Letters of Credit shall be deemed to be “Letters of Credit” issued on the Amendment No. 1 Effective Date for all purposes of the Loan Documents.

(2) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(a) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to an Issuing Bank (with a copy to the Administrative Agent) in the form of a L/C Application, appropriately completed and signed by a Responsible Officer of the Borrower. Such L/C Application must be received by the relevant Issuing Bank and the Administrative Agent not later than 1:00 p.m., New York time, at least two (2) Business Days prior to the proposed issuance date or date of amendment, as the case may be, or, in each case, such later date and time as the relevant Issuing Bank may agree in a particular instance in its sole discretion. In the case of a request for an initial issuance of a Letter of Credit, such L/C Application shall specify in form and detail reasonably satisfactory to the relevant Issuing Bank:

- (i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day);
- (ii) the amount 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 relevant Issuing Bank may reasonably request.

In the case of a request for an amendment of any outstanding Letter of Credit, such L/C Application shall specify in form and detail reasonably satisfactory to the relevant Issuing Bank:

- (A) the Letter of Credit to be amended;
- (B) the proposed date of amendment thereof (which shall be a Business Day);
- (C) the nature of the proposed amendment; and
- (D) such other matters as the relevant Issuing Bank may reasonably request.

(b) Promptly after receipt of any L/C Application, the relevant Issuing Bank will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such L/C Application from the Borrower and, if not, such Issuing Bank will provide the Administrative Agent with a copy thereof. Upon receipt by the relevant Issuing Bank of confirmation from the Administrative Agent that the requested issuance or amendment is permitted in accordance with the terms hereof, then, subject to the terms and conditions hereof, such Issuing Bank shall, on the requested date, issue a Letter of Credit for the account of the Borrower (or, if applicable, for the benefit of any Subsidiary of the Borrower) or enter into the applicable amendment, as the case may be. Immediately upon the issuance of each Letter

of Credit, each Revolving Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the relevant Issuing Bank a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage of the amount of such Letter of Credit.

(c) If the Borrower so requests in any applicable L/C Application, the relevant Issuing Bank shall agree to issue a Letter of Credit that has automatic extension provisions (each, an "**Auto-Extension Letter of Credit**"); *provided* that any such Auto-Extension Letter of Credit must permit the relevant Issuing Bank to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "**Non-Extension Notice Date**") in each such twelve-month period to be agreed upon by the relevant Issuing Bank and the Borrower at the time such Letter of Credit is issued. Unless otherwise agreed in such Letter of Credit, the Borrower shall not be required to make a specific request to the relevant Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, the applicable Lenders shall be deemed to have authorized (but may not require) the relevant Issuing Bank to permit the extension of such Letter of Credit at any time to an expiry date not later than the applicable L/C Expiration Date, unless the Outstanding Amount of L/C Obligations in respect of such requested Letter of Credit has been Cash Collateralized or back-stopped by a letter of credit reasonably satisfactory to the applicable Issuing Bank; *provided* that the relevant Issuing Bank shall not permit any such extension if (i) the relevant Issuing Bank has determined that it would have no obligation at such time to issue such Letter of Credit in its extended form under the terms hereof (by reason of the provisions of Section 2.03(1)(b) or otherwise) or (ii) it has received notice (which may be by telephone or in writing) on or before the day that is seven (7) Business Days before the Non-Extension Notice Date from the Administrative Agent, any Revolving Lender or the Borrower that one or more of the applicable conditions specified in Section 4.03 will not be satisfied on the applicable date of the Credit Extension.

(d) Promptly after issuance of any Letter of Credit or any amendment to a Letter of Credit, the relevant Issuing Bank will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(3) Drawings and Reimbursements; Funding of Participations.

(a) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the relevant Issuing Bank shall promptly notify the Borrower and the Administrative Agent thereof (including the date on which such payment is to be made). Not later than 12:00 p.m. on the first Business Day immediately following any payment by an Issuing Bank under a Letter of Credit with notice to the Borrower (each such date, an "**Honor Date**"), the Borrower shall reimburse, or cause to be reimbursed, such Issuing Bank, in each case, through the Administrative Agent in an amount equal to the amount of such drawing; *provided* that, if such reimbursement is not made on the date of drawing, the Borrower shall pay interest to the relevant Issuing Bank on such amount at the rate applicable to Base Rate Loans (without duplication of interest payable on L/C Borrowings). The relevant Issuing Bank shall notify the Borrower of the amount of the drawing promptly following the determination thereof. If the Borrower fails to so reimburse, or cause to be reimbursed, such Issuing Bank by such time, the Administrative Agent shall promptly notify each Appropriate Lender of the Honor Date, the amount of the unreimbursed drawing (the "**Unreimbursed Amount**"), and the amount of such Appropriate Lender's Applicable Percentage thereof. In such event, in the case of an Unreimbursed Amount under a Letter of Credit, the Borrower shall be deemed to have requested a Revolving Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans but subject to the requirements for the amount of the unutilized portion of the Revolving Commitments under the applicable Revolving Facility of the Appropriate Lenders and the conditions set forth in Section 4.03 (other than the delivery of a Committed Loan Notice). Any notice given by an Issuing Bank or the Administrative Agent pursuant to this Section 2.03(3)(a) may be given by telephone if immediately confirmed in writing; *provided* that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(b) Each Appropriate Lender (including any Lender acting as an Issuing Bank) shall upon any notice pursuant to Section 2.03(3)(a) make funds available to the Administrative Agent for the account of the

relevant Issuing Bank in Dollars at the Administrative Agent's Office for payments in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(3)(c), each Appropriate Lender that so makes funds available shall be deemed to have made a Revolving Loan that is a Base Rate Loan to the Borrower in such amount and, for the avoidance of doubt, the making of such Base Rate Loans in an aggregate amount equal to such Unreimbursed Amount shall satisfy the Borrower's reimbursement obligations with respect thereof. The Administrative Agent shall remit the funds so received to the relevant Issuing Bank.

(c) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Borrowing of Base Rate Loans because the conditions set forth in Section 4.03 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the relevant Issuing Bank an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Appropriate Lender's payment to the Administrative Agent for the account of the relevant Issuing Bank pursuant to Section 2.03(3)(b) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(d) Until each Appropriate Lender funds its Revolving Loan or L/C Advance pursuant to this Section 2.03(3) to reimburse the relevant Issuing Bank for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of the relevant Issuing Bank.

(e) Each Revolving Lender's obligation to make Revolving Loans or L/C Advances to reimburse an Issuing Bank for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(3), shall be absolute and unconditional and shall not be affected by any circumstance, including

- (i) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the relevant Issuing Bank, the Borrower or any other Person for any reason whatsoever;
- (ii) the occurrence or continuance of a Default; or
- (iii) any other occurrence, event or condition, whether or not similar to any of the foregoing;

*provided* that each Revolving Lender's obligation to make Revolving Loans pursuant to this Section 2.03(3) is subject to the conditions set forth in Section 4.03 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the relevant Issuing Bank for the amount of any payment made by such Issuing Bank under any Letter of Credit, together with interest as provided herein.

(f) If any Revolving Lender fails to make available to the Administrative Agent for the account of the relevant Issuing Bank any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(3) by the time specified in Section 2.03(3)(b), such Issuing Bank shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Bank at a rate per annum equal to the Overnight Rate from time to time in effect. A certificate of the relevant Issuing Bank submitted to any Revolving Lender (through the Administrative Agent) with respect to any amounts owing under this Section 2.03(3)(f) shall be conclusive absent manifest error.

(4) Repayment of Participations.

(a) If, at any time after an Issuing Bank has made a payment under any Letter of Credit and has received from any Revolving Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(3), the Administrative Agent receives for the account of such Issuing Bank any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's L/C Advance was outstanding) in the amount received by the Administrative Agent.

(b) If any payment received by the Administrative Agent for the account of an Issuing Bank pursuant to Section 2.03(3)(a) or Section 2.03(3)(b) is required to be returned under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by such Issuing Bank in its discretion), each Appropriate Lender shall pay to the Administrative Agent for the account of such Issuing Bank its Applicable Percentage thereof on demand of the Administrative Agent, *plus* interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Overnight Rate from time to time in effect. The Obligations of the Revolving Lenders under this Section 2.03(4)(b) shall survive the payment in full of the Obligations and the termination of this Agreement.

(5) Obligations Absolute. The obligation of the Borrower to reimburse the relevant Issuing Bank for each drawing under each Letter of Credit issued by it and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(a) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;

(b) the existence of any claim, counterclaim, setoff, defense or other right that any Loan Party may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the relevant Issuing Bank or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(c) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(d) any payment by the relevant Issuing Bank under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the relevant Issuing Bank under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(e) any exchange, release or non-perfection of any Collateral, or any release or amendment or waiver of or consent to departure from the Guaranty or any other guarantee, for all or any of the Obligations of any Loan Party in respect of such Letter of Credit; or

(f) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Loan Party;

*provided* that the foregoing shall not excuse any Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are waived by the Borrower to the extent permitted by applicable Law) suffered by the Borrower that are caused by acts or omissions

by such Issuing Bank constituting gross negligence, bad faith or willful misconduct on the part of such Issuing Bank as determined in a final and non-appealable judgment by a court of competent jurisdiction.

(6) Role of Issuing Banks. Each Issuing Bank shall be entitled to rely upon, and shall be fully protected in relying upon, any note, writing, resolution, notice, statement, certificate or facsimile message, order or other document or telephone message signed, sent or made by any Person that such Issuing Bank reasonably believed to be genuine and correct and to have been signed, sent or made by the proper Person, and, with respect to all legal matters pertaining to this Agreement and any other Loan Document and its duties hereunder and thereunder, upon advice of counsel selected by such Issuing Bank (which may include, at the Issuing Bank's option, counsel of the Administrative Agent or the Borrower). Each Lender and the Borrower agrees that, in paying any drawing under a Letter of Credit, the relevant Issuing Bank shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the Issuing Banks, any Related Person of such Issuing Banks, nor any of the respective correspondents, participants or assignees of any Issuing Bank shall be liable to any Lender for

(a) any action taken or omitted in connection herewith at the request or with the approval of the Lenders, the Required Lenders or the Required Facility Lenders in respect of the Revolving Commitments, as applicable;

(b) any action taken or omitted in the absence of gross negligence, bad faith or willful misconduct as determined in a final and non-appealable judgment by a court of competent jurisdiction; or

(c) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or L/C Application.

The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; *provided* that this assumption is not intended to, and shall not, preclude the Borrower from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the Issuing Banks, any Related Persons of such Issuing Banks, nor any of the respective correspondents, participants or assignees of any Issuing Bank, shall be liable or responsible for any of the matters described in clauses (a) through (f) of Section 2.03(5); *provided* that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against an Issuing Bank, and such Issuing Bank may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential, damages suffered by the Borrower which the Borrower proves were caused by such Issuing Bank's willful misconduct, bad faith or gross negligence or such Issuing Bank's willful or grossly negligent, or bad faith, failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit in each case as determined in a final and non-appealable judgment by a court of competent jurisdiction. In furtherance and not in limitation of the foregoing, each Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and no Issuing Bank shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

Each Revolving Lender shall, ratably in accordance with its Applicable Percentage, indemnify each Issuing Bank, its Related Persons and their respective directors, officers, agents and employees (to the extent not reimbursed by the Borrower) against any cost, expense (including reasonable counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from such indemnitees' willful misconduct, bad faith or gross negligence or such Issuing Bank's willful or grossly negligent, or bad faith, failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit in each case as determined in a final and non-appealable judgment by a court of competent jurisdiction) that such indemnitees may suffer or incur in connection with this Section 2.03 or any action taken or omitted to be taken by such indemnitees hereunder.

(7) Cash Collateral. Subject to Section 2.17(1)(d), if,

(a) as of any L/C Expiration Date, any applicable Letter of Credit may for any reason remain outstanding and partially or wholly undrawn,

(b) any Event of Default occurs and is continuing and the Administrative Agent, upon the direction of the Required Facility Lenders in respect of the Revolving Facility, requires the Borrower to Cash Collateralize the L/C Obligations pursuant to Section 8.02-~~03~~,   

(c) an Event of Default set forth under Section 8.01(6) occurs and is continuing, or

(d) the Revolving Commitments are terminated pursuant to Section 2.06(1),

the Borrower will Cash Collateralize, or cause to be Cash Collateralized, the then Outstanding Amount of all relevant L/C Obligations (in an amount equal to such Outstanding Amount determined as of the date of such Event of Default or the applicable date of termination of Revolving Commitments or L/C Expiration Date, as the case may be), and shall do so not later than 2:00 p.m. on (i) in the case of the immediately preceding clauses (a) or (b), (x) the Business Day that the Borrower receives notice thereof, if such notice is received on such day prior to 12:00 p.m. or (y) if clause (x) above does not apply, the Business Day immediately following the day that the Borrower receives such notice and (ii) in the case of the immediately preceding clause (c), the Business Day on which an Event of Default set forth under Section 8.01(6) occurs or, if such day is not a Business Day, the Business Day immediately succeeding such day. At any time that there shall exist a Defaulting Lender, immediately upon the request of the Administrative Agent or the applicable Issuing Bank, the Borrower will Cash Collateralize all Fronting Exposure (after giving effect to Section 2.17(1)(d) and any Cash Collateral provided by the Defaulting Lender). The Borrower hereby grants to the Administrative Agent, for the benefit of the Issuing Banks and the Revolving Lenders, a security interest in all such Cash Collateral. Cash Collateral shall be maintained in blocked accounts at the Administrative Agent and may be invested in readily available Cash Equivalents selected by the Administrative Agent in its sole discretion. If at any time the Administrative Agent determines that any funds held as Cash Collateral are expressly subject to any right or claim of any Person other than the Loan Parties or the Administrative Agent (in its capacity as the depository bank and on behalf of the Secured Parties) or that the total amount of such funds is less than the aggregate Outstanding Amount of all relevant L/C Obligations, the Borrower will, forthwith upon demand by the Administrative Agent, pay, or cause to be paid, to the Administrative Agent, as additional funds to be deposited and held in the deposit accounts at the Administrative Agent as aforesaid, an amount equal to the excess of (A) such aggregate Outstanding Amount over (B) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent reasonably determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Law, to reimburse the relevant Issuing Bank. To the extent the amount of any Cash Collateral exceeds the then Outstanding Amount of such relevant L/C Obligations and so long as no Event of Default has occurred and is continuing, the excess shall promptly be refunded to the Borrower. To the extent any Event of Default giving rise to the requirement to Cash Collateralize any Letter of Credit pursuant to this Section 2.03(7) is cured or otherwise waived, then so long as no other Event of Default has occurred and is continuing, the amount of any Cash Collateral pledged to Cash Collateralize such Letter of Credit shall promptly be refunded to the Borrower.

(8) [Reserved]

(9) Letter of Credit Fees. The Borrower shall pay to the Administrative Agent, for the account of each Revolving Lender for the applicable Revolving Facility in accordance with its Applicable Percentage, a Letter of Credit fee for each Letter of Credit issued pursuant to this Agreement equal to the Applicable Rate set forth in the “LIBO Rate and Letter of Credit Fees” column of the chart in the definition of “Applicable Rate” times the daily maximum amount then available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount decreases or increases periodically pursuant to the terms of such Letter of Credit); *provided, however*, that any Letter of Credit fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the applicable Issuing Bank pursuant to this Section 2.03 shall be payable, to the maximum extent permitted by applicable Law, to the other Lenders in accordance with the upward adjustments in their respective Applicable Percentages allocable to such Letter of Credit pursuant to Section 2.17(1)(d), with the balance of such fee, if any, payable to the applicable Issuing Bank for its own account. Such Letter of Credit fees shall be computed on a quarterly basis in arrears on the basis of a 360-day year and actual days elapsed. Such Letter of Credit fees shall be



due and payable on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the L/C Expiration Date and thereafter on demand. If there is any change in the Applicable Rate set forth in the “LIBO Rate and Letter of Credit Fees” column of the chart in the definition of “Applicable Rate” during any quarter, the daily maximum amount of each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(10) Fronting Fee and Documentary and Processing Charges Payable to Issuing Banks. The Borrower shall pay directly to each Issuing Bank for its own account a fronting fee with respect to each Letter of Credit issued by such Issuing Bank equal to 0.125% per annum (or such other lower amount as may be mutually agreed by the Borrower and the applicable Issuing Bank) of the maximum amount then available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit if such maximum amount increases or decreases periodically pursuant to the terms of such Letter of Credit) or such lesser fee as may be agreed with such Issuing Bank. Such fronting fees shall be computed on a quarterly basis in arrears on the basis of a 360-day year and actual days elapsed. Such fronting fees shall be due and payable on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the L/C Expiration Date and thereafter on demand. In addition, the Borrower shall pay, or cause to be paid, directly to each Issuing Bank for its own account with respect to each Letter of Credit issued by such Issuing Bank the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of such Issuing Bank relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable within ten (10) Business Days of demand and are nonrefundable.

(11) Conflict with L/C Application. Notwithstanding anything else to the contrary in this Agreement or any L/C Application, in the event of any conflict between the terms hereof and the terms of any L/C Application, the terms hereof shall control.

(12) Addition of an Issuing Bank. There may be one or more Issuing Banks under this Agreement from time to time. After the Effective Date, a Revolving Lender reasonably acceptable to the Borrower and the Administrative Agent may become an additional Issuing Bank hereunder pursuant to a written agreement among the Borrower, the Administrative Agent and such Revolving Lender. The Administrative Agent shall notify the Revolving Lenders of any such additional Issuing Bank.

(13) Provisions Related to Extended Revolving Commitments. If the L/C Expiration Date in respect of any Class of Revolving Commitments occurs prior to the expiry date of any Letter of Credit, then (a) if consented to by the Issuing Bank which issued such Letter of Credit, if one or more other Classes of Revolving Commitments in respect of which the L/C Expiration Date shall not have so occurred are then in effect, such Letters of Credit for which consent has been obtained shall automatically be deemed to have been issued (including for purposes of the obligations of the Revolving Lenders to purchase participations therein and to make Revolving Loans and payments in respect thereof pursuant to Sections 2.03(3) and (4)) under (and ratably participated in by Revolving Lenders pursuant to) the Revolving Commitments in respect of such non-terminating Classes up to an aggregate amount not to exceed the aggregate principal amount of the unutilized Revolving Commitments thereunder at such time (it being understood that no partial face amount of any Letter of Credit may be so reallocated) and (b) to the extent not reallocated pursuant to immediately preceding clause (a) and unless provisions reasonably satisfactory to the applicable Issuing Bank for the treatment of such Letter of Credit as a letter of credit under a successor credit facility have been agreed upon, the Borrower shall, on or prior to the applicable Maturity Date, cause all such Letters of Credit to be replaced and returned to the applicable Issuing Bank undrawn and marked “cancelled” or to the extent that the Borrower is unable to so replace and return any Letter(s) of Credit, such Letter(s) of Credit shall be backstopped by a “back to back” letter of credit reasonably satisfactory to the applicable Issuing Bank or the Borrower shall Cash Collateralize any such Letter of Credit in accordance with Section 2.03(7).

(14) Letter of Credit Reports. For so long as any Letter of Credit issued by an Issuing Bank that is not the Administrative Agent is outstanding, such Issuing Bank shall deliver to the Administrative Agent on the last Business Day of each calendar month, and on each date that an L/C Credit Extension occurs with respect to any such Letter of Credit, a report in the form of Exhibit R, appropriately completed with the information for every outstanding Letter of Credit issued by such Issuing Bank.



(15) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of a Subsidiary of the Borrower, the Borrower shall be obligated to reimburse, or cause to be reimbursed, the applicable Issuing Bank hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of any Subsidiary inures to the benefit of the Borrower, and that the Borrower's businesses derives substantial benefits from the businesses of each Subsidiary.

(16) Applicability of ISP and UCP. Unless otherwise expressly agreed by the relevant Issuing Bank and the Borrower when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit.

SECTION 2.04 [Reserved].

SECTION 2.05 Prepayments.

(1) Optional.

(a) The Borrower may, upon notice to the Administrative Agent by the Borrower, at any time or from time to time voluntarily prepay any Class or Classes of Term Loans and any Class or Classes of Revolving Loans in whole or in part without premium (except as set forth in Section 2.18) or penalty; *provided that*

(i) such notice must be received by the Administrative Agent not later than (A) 1:00 p.m., New York time, three (3) Business Days prior to any date of prepayment of LIBO Rate Loans (or such later date as the Administrative Agent may agree to in its sole discretion) and (B) 12:00 p.m., New York time, on the date of prepayment of Base Rate Loans;

(ii) any prepayment of LIBO Rate Loans shall be in a principal amount of \$1.0 million (or the Dollar Equivalent thereof) or a whole multiple of \$200,000 (or the Dollar Equivalent thereof) in excess thereof or, if less, the entire principal amount thereof then outstanding; and

(iii) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, if less, the entire principal amount thereof then outstanding.

Each such notice shall specify the date and amount of such prepayment and the Class(es) and Type(s) of Loans to be prepaid. The Administrative Agent will promptly notify each Appropriate Lender of its receipt of each such notice, and of the amount of such Lender's Pro Rata Share of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a LIBO Rate Loan shall be accompanied by all accrued interest thereon, together with any additional amounts required pursuant to Section 3.05. In the case of each prepayment of the Loans pursuant to this Section 2.05(1), the Borrower may in its sole discretion select the Borrowing or Borrowings (and the order of maturity of principal payments) to be repaid, and such payment shall be paid to the Appropriate Lenders in accordance with their respective Pro Rata Shares.

(b) ~~Reserved~~ From and after the Fifth Amendment Effective Date, any voluntary prepayment of the Revolving Loans shall be made on a pro rata basis among the Revolving Loans under the Closing Date Revolving Facility and the Revolving Loans under the 2021 Revolving Facility.

(c) Notwithstanding anything to the contrary contained in this Agreement, the Borrower may rescind (or delay the date of prepayment identified in) any notice of prepayment under Section 2.05(1)(a) by written notice to the Administrative Agent not later than 12:00 p.m., New York time, on such prepayment date if such prepayment would have resulted from a refinancing of all or a portion of the applicable Facility or other conditional event, which refinancing or other conditional event shall not be consummated or shall otherwise be delayed.

(d) Voluntary prepayments of any Class of Term Loans permitted hereunder shall be applied to the remaining scheduled installments of principal thereof in a manner determined at the discretion of the Borrower and specified in the notice of prepayment (and absent such direction, in direct order of maturity). Each prepayment in respect of any Term Loans pursuant to this Section 2.05 may be applied to any Class of Term Loans as directed by the Borrower. For the avoidance of doubt, the Borrower may (i) prepay Term Loans of an Existing Term Loan Class pursuant to this Section 2.05 without any requirement to prepay Extended Term Loans that were converted or exchanged from such Existing Term Loan Class and (ii) prepay Extended Term Loans pursuant to this Section 2.05 without any requirement to prepay Term Loans of an Existing Term Loan Class that were converted or exchanged for such Extended Term Loans. In the event that the Borrower does not specify the order in which to apply prepayments to reduce scheduled installments of principal or as between Classes of Term Loans, the Borrower shall be deemed to have elected that such proceeds be applied to reduce the scheduled installments of principal in direct order of maturity on a pro rata basis among Term Loan Classes.

(e) Notwithstanding anything in any Loan Document to the contrary, so long as (x) no Event of Default has occurred and is continuing and (y) no proceeds of Revolving Loans are used for this purpose, any Borrower Party may (i) purchase outstanding Term Loans on a non-pro rata basis through open market purchases or (ii) prepay the outstanding Term Loans (which Term Loans shall, for the avoidance of doubt, be automatically and permanently canceled immediately upon such purchase or prepayment), which in the case of clause (ii) only shall be prepaid without premium or penalty on the following basis:

(A) Any Borrower Party shall have the right to make a voluntary prepayment of Loans at a discount to par pursuant to a Borrower Offer of Specified Discount Prepayment, Borrower Solicitation of Discount Range Prepayment Offers or Borrower Solicitation of Discounted Prepayment Offers (any such prepayment, the “**Discounted Term Loan Prepayment**”), in each case made in accordance with this Section 2.05(1)(e) and without premium or penalty.

(B) Any Borrower Party may from time to time offer to make a Discounted Term Loan Prepayment by providing the Auction Agent with five (5) Business Days’ notice (or such shorter period as agreed by the Auction Agent) in the form of a Specified Discount Prepayment Notice; *provided* that (I) any such offer shall be made available, at the sole discretion of the applicable Borrower Party, to (x) each Term Lender or (y) each Term Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such offer shall specify the aggregate principal amount offered to be prepaid (the “**Specified Discount Prepayment Amount**”) with respect to each applicable Class, the Class or Classes of Term Loans subject to such offer and the specific percentage discount to par (the “**Specified Discount**”) of such Term Loans to be prepaid (it being understood that different Specified Discounts or Specified Discount Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(B)), (III) the Specified Discount Prepayment Amount shall be in an aggregate amount not less than \$5.0 million and whole increments of \$1.0 million in excess thereof and (IV) each such offer shall remain outstanding through the Specified Discount Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Specified Discount Prepayment Notice and a form of the Specified Discount Prepayment Response to be completed and returned by each such Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Lenders (the “**Specified Discount Prepayment Response Date**”).

(C) Each Term Lender receiving such offer shall notify the Auction Agent (or its delegate) by the Specified Discount Prepayment Response Date whether or not it agrees to accept a prepayment of any of its applicable then outstanding Term Loans at the Specified Discount and, if so (such accepting Lender, a “**Discount Prepayment Accepting Lender**”), the amount and the Classes of such Lender’s Term Loans to be prepaid at such offered discount. Each acceptance of a Discounted Term Loan Prepayment by a Discount Prepayment Accepting Lender shall be irrevocable. Any Term Lender whose Specified Discount Prepayment Response is not received by the Auction Agent by the Specified Discount Prepayment Response Date shall be deemed to have declined to accept the applicable Borrower Offer of Specified Discount Prepayment.

(D) If there is at least one Discount Prepayment Accepting Lender, the relevant Borrower Party will make a prepayment of outstanding Term Loans pursuant to paragraph (B) to each Discount Prepayment Accepting Lender in accordance with the respective outstanding amount and Classes of Term Loans specified in such Lender's Specified Discount Prepayment Response given pursuant to subsection (C) above; *provided* that if the aggregate principal amount of Term Loans accepted for prepayment by all Discount Prepayment Accepting Lenders exceeds the Specified Discount Prepayment Amount, such prepayment shall be made pro rata among the Discount Prepayment Accepting Lenders in accordance with the respective principal amounts accepted to be prepaid by each such Discount Prepayment Accepting Lender and the Auction Agent (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its reasonable discretion) will calculate such proration (the "**Specified Discount Proration**"). The Auction Agent shall promptly, and in any case within three (3) Business Days following the Specified Discount Prepayment Response Date, notify (I) the relevant Borrower Party of the respective Term Lenders' responses to such offer, the Discounted Prepayment Effective Date and the aggregate principal amount of the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, and the aggregate principal amount and the Classes of Term Loans to be prepaid at the Specified Discount on such date and (III) each Discount Prepayment Accepting Lender of the Specified Discount Proration, if any, and confirmation of the principal amount, Class and Type of Term Loans of such Lender to be prepaid at the Specified Discount on such date. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the applicable Borrower Party and such Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the applicable Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (L) below (subject to subsection (P) below).

(E) Any Borrower Party may from time to time solicit Discount Range Prepayment Offers by providing the Auction Agent with five (5) Business Days' notice (or such shorter period as agreed by the Auction Agent) in the form of a Discount Range Prepayment Notice; *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Borrower Party, to (x) each Term Lender or (y) each Term Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate principal amount of the relevant Term Loans (the "**Discount Range Prepayment Amount**"), the Class or Classes of Term Loans subject to such offer and the maximum and minimum percentage discounts to par (the "**Discount Range**") of the principal amount of such Term Loans with respect to each relevant Class of Term Loans willing to be prepaid by such Borrower Party (it being understood that different Discount Ranges or Discount Range Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(E)), (III) the Discount Range Prepayment Amount shall be in an aggregate amount not less than \$5.0 million and whole increments of \$1.0 million in excess thereof and (IV) unless rescinded, each such solicitation by the applicable Borrower Party shall remain outstanding through the Discount Range Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Discount Range Prepayment Notice and a form of the Discount Range Prepayment Offer to be submitted by a responding Term Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Lenders (the "**Discount Range Prepayment Response Date**"). Each Term Lender's Discount Range Prepayment Offer shall be irrevocable and shall specify a discount to par within the Discount Range (the "**Submitted Discount**") at which such Lender is willing to allow prepayment of any or all of its then outstanding Term Loans of the applicable Class or Classes and the maximum aggregate principal amount and Classes of such Lender's Term Loans (the "**Submitted Amount**") such Term Lender is willing to have prepaid at the Submitted Discount. Any Term Lender whose Discount Range Prepayment Offer is not received by the Auction Agent by the Discount Range Prepayment Response Date shall be deemed to have declined to accept a Discounted Term Loan Prepayment of any of its Term Loans at any discount to their par value within the Discount Range.

(F) The Auction Agent shall review all Discount Range Prepayment Offers received on or before the applicable Discount Range Prepayment Response Date and shall determine (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the Applicable Discount and Term Loans to be prepaid at such Applicable Discount in accordance with subsection (E). The relevant Borrower Party agrees to accept on the Discount Range Prepayment

Response Date all Discount Range Prepayment Offers received by the Auction Agent by the Discount Range Prepayment Response Date, in the order from the Submitted Discount that is the largest discount to par to the Submitted Discount that is the smallest discount to par, up to and including the Submitted Discount that is the smallest discount to par within the Discount Range (such Submitted Discount that is the smallest discount to par within the Discount Range being referred to as the “**Applicable Discount**”) which yields a Discounted Term Loan Prepayment in an aggregate principal amount equal to the lower of (I) the Discount Range Prepayment Amount and (II) the sum of all Submitted Amounts. Each Term Lender that has submitted a Discount Range Prepayment Offer to accept prepayment at a discount to par that is larger than or equal to the Applicable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Submitted Amount (subject to any required proration pursuant to subsection (G)) at the Applicable Discount (each such Term Lender, a “**Participating Lender**”).

(G) If there is at least one Participating Lender, the relevant Borrower Party will prepay the respective outstanding Term Loans of each Participating Lender in the aggregate principal amount and of the Classes specified in such Lender’s Discount Range Prepayment Offer at the Applicable Discount; *provided* that if the Submitted Amount by all Participating Lenders offered at a discount to par greater than the Applicable Discount exceeds the Discount Range Prepayment Amount, prepayment of the principal amount of the relevant Term Loans for those Participating Lenders whose Submitted Discount is a discount to par greater than or equal to the Applicable Discount (the “**Identified Participating Lenders**”) shall be made pro rata among the Identified Participating Lenders in accordance with the Submitted Amount of each such Identified Participating Lender and the Auction Agent (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “**Discount Range Proration**”). The Auction Agent shall promptly, and in any case within five (5) Business Days following the Discount Range Prepayment Response Date, notify (I) the relevant Borrower Party of the respective Term Lenders’ responses to such solicitation, the Discounted Prepayment Effective Date, the Applicable Discount, the aggregate principal amount of the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Applicable Discount and the aggregate principal amount and Classes of Term Loans to be prepaid at the Applicable Discount on such date, (III) each Participating Lender of the aggregate principal amount and Classes of such Term Lender to be prepaid at the Applicable Discount on such date and (IV) if applicable, each Identified Participating Lender of the Discount Range Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to the relevant Borrower Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to the applicable Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (F) below (subject to subsection (J) below).

(H) Any Borrower Party may from time to time solicit Solicited Discounted Prepayment Offers by providing the Auction Agent with five (5) Business Days’ notice in the form of a Solicited Discounted Prepayment Notice (or such later notice specified therein); *provided* that (I) any such solicitation shall be extended, at the sole discretion of such Borrower Party, to (x) each Term Lender or (y) each Lender with respect to any Class of Term Loans on an individual Class basis, (II) any such notice shall specify the maximum aggregate amount of the Term Loans (the “**Solicited Discounted Prepayment Amount**”) and the Class or Classes of Term Loans the applicable Borrower Party is willing to prepay at a discount (it being understood that different Solicited Discounted Prepayment Amounts may be offered with respect to different Classes of Term Loans and, in such event, each such offer will be treated as a separate offer pursuant to the terms of this Section 2.05(1)(e)(H)), (III) the Solicited Discounted Prepayment Amount shall be in an aggregate amount not less than \$5.0 million and whole increments of \$1.0 million in excess thereof and (IV) unless rescinded, each such solicitation by the applicable Borrower Party shall remain outstanding through the Solicited Discounted Prepayment Response Date. The Auction Agent will promptly provide each Appropriate Lender with a copy of such Solicited Discounted Prepayment Notice and a form of the Solicited Discounted Prepayment Offer to be submitted by a responding Lender to the Auction Agent (or its delegate) by no later than 5:00 p.m., New York time, on the third Business Day after the date of delivery of such notice to such Term Lenders (the “**Solicited Discounted Prepayment Response Date**”). Each Term Lender’s Solicited Discounted Prepayment Offer shall (x) be irrevocable, (y) remain outstanding until the Acceptance Date and (z) specify both a discount to par (the “**Offered Discount**”) at which such Term Lender is willing to allow prepayment of its then outstanding Term Loan and the maximum aggregate principal amount and

Classes of such Term Loans (the “**Offered Amount**”) such Term Lender is willing to have prepaid at the Offered Discount. Any Term Lender whose Solicited Discounted Prepayment Offer is not received by the Auction Agent by the Solicited Discounted Prepayment Response Date shall be deemed to have declined prepayment of any of its Term Loans at any discount.

(I) The Auction Agent shall promptly provide the relevant Borrower Party with a copy of all Solicited Discounted Prepayment Offers received on or before the Solicited Discounted Prepayment Response Date. Such Borrower Party shall review all such Solicited Discounted Prepayment Offers and select the smallest of the Offered Discounts specified by the relevant responding Term Lenders in the Solicited Discounted Prepayment Offers that is acceptable to the applicable Borrower Party (the “**Acceptable Discount**”), if any. If the applicable Borrower Party elects to accept any Offered Discount as the Acceptable Discount, then as soon as practicable after the determination of the Acceptable Discount, but in no event later than by the third Business Day after the date of receipt by such Borrower Party from the Auction Agent of a copy of all Solicited Discounted Prepayment Offers pursuant to the first sentence of this subsection (2) (the “**Acceptance Date**”), the applicable Borrower Party shall submit an Acceptance and Prepayment Notice to the Auction Agent setting forth the Acceptable Discount. If the Auction Agent shall fail to receive an Acceptance and Prepayment Notice from the applicable Borrower Party by the Acceptance Date, such Borrower Party shall be deemed to have rejected all Solicited Discounted Prepayment Offers.

(J) Based upon the Acceptable Discount and the Solicited Discounted Prepayment Offers received by the Auction Agent by the Solicited Discounted Prepayment Response Date, within three (3) Business Days after receipt of an Acceptance and Prepayment Notice (the “**Discounted Prepayment Determination Date**”), the Auction Agent will determine (with the consent of such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) the aggregate principal amount and the Classes of Term Loans (the “**Acceptable Prepayment Amount**”) to be prepaid by the relevant Borrower Party at the Acceptable Discount in accordance with this Section 2.05(1)(e)(J). If the applicable Borrower Party elects to accept any Acceptable Discount, then such Borrower Party agrees to accept all Solicited Discounted Prepayment Offers received by the Auction Agent by the Solicited Discounted Prepayment Response Date, in the order from largest Offered Discount to smallest Offered Discount, up to and including the Acceptable Discount. Each Term Lender that has submitted a Solicited Discounted Prepayment Offer with an Offered Discount that is greater than or equal to the Acceptable Discount shall be deemed to have irrevocably consented to prepayment of Term Loans equal to its Offered Amount (subject to any required pro-rata reduction pursuant to the following sentence) at the Acceptable Discount (each such Lender, a “**Qualifying Lender**”). The applicable Borrower Party will prepay outstanding Term Loans pursuant to this subsection (J) to each Qualifying Lender in the aggregate principal amount and of the Classes specified in such Lender’s Solicited Discounted Prepayment Offer at the Acceptable Discount; *provided* that if the aggregate Offered Amount by all Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount exceeds the Solicited Discounted Prepayment Amount, prepayment of the principal amount of the Term Loans for those Qualifying Lenders whose Offered Discount is greater than or equal to the Acceptable Discount (the “**Identified Qualifying Lenders**”) shall be made pro rata among the Identified Qualifying Lenders in accordance with the Offered Amount of each such Identified Qualifying Lender and the Auction Agent (in consultation with such Borrower Party and subject to rounding requirements of the Auction Agent made in its sole reasonable discretion) will calculate such proration (the “**Solicited Discount Proration**”). On or prior to the Discounted Prepayment Determination Date, the Auction Agent shall promptly notify (I) the relevant Borrower Party of the Discounted Prepayment Effective Date and Acceptable Prepayment Amount comprising the Discounted Term Loan Prepayment and the Classes to be prepaid, (II) each Term Lender of the Discounted Prepayment Effective Date, the Acceptable Discount, and the Acceptable Prepayment Amount of all Term Loans and the Classes to be prepaid to be prepaid at the Applicable Discount on such date, (III) each Qualifying Lender of the aggregate principal amount and the Classes of such Term Lender to be prepaid at the Acceptable Discount on such date, and (IV) if applicable, each Identified Qualifying Lender of the Solicited Discount Proration. Each determination by the Auction Agent of the amounts stated in the foregoing notices to such Borrower Party and Term Lenders shall be conclusive and binding for all purposes absent manifest error. The payment amount specified in such notice to such Borrower Party shall be due and payable by such Borrower Party on the Discounted Prepayment Effective Date in accordance with subsection (L) below (subject to subsection (P) below).



(K) In connection with any Discounted Term Loan Prepayment, the Borrower Parties and the Term Lenders acknowledge and agree that the Auction Agent may require, as a condition to the applicable Discounted Term Loan Prepayment, the payment of customary fees and expenses from a Borrower Party to such Auction Agent for its own account in connection therewith.

(L) If any Term Loan is prepaid in accordance with subsections (B) through (H) above, a Borrower Party shall prepay such Term Loans on the Discounted Prepayment Effective Date. The relevant Borrower Party shall make such prepayment to the Administrative Agent, for the account of the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, at the Administrative Agent's Office in immediately available funds not later than 12:00 p.m., New York time, on the Discounted Prepayment Effective Date and all such prepayments shall be applied to the relevant Class(es) of Term Loans and Lenders as specified by the applicable Borrower Party in the applicable offer. The Term Loans so prepaid shall be accompanied by all accrued and unpaid interest on the par principal amount so prepaid up to, but not including, the Discounted Prepayment Effective Date. Each prepayment of the outstanding Term Loans pursuant to this Section 2.05(1)(e) shall be paid to the Discount Prepayment Accepting Lenders, Participating Lenders, or Qualifying Lenders, as applicable, and shall be applied to the relevant Term Loans of such Lenders in accordance with their respective applicable share as calculated by the Auction Agent in accordance with this Section 2.05(1)(e) and, if the Administrative Agent is not the Auction Agent, the Administrative Agent shall be fully protected in relying on such calculations of the Auction Agent. The aggregate principal amount of the Classes and installments of the relevant Term Loans outstanding shall be deemed reduced by the full par value of the aggregate principal amount of the Classes of Term Loans prepaid on the Discounted Prepayment Effective Date in any Discounted Term Loan Prepayment. In connection with each prepayment pursuant to this Section 2.05(1)(e), the relevant Borrower Party shall make a customary representation to the assigning or assignee Term Lenders, as applicable, that it does not possess material non-public information with respect to the Borrower and its Subsidiaries that either (1) has not been disclosed to the Term Lenders generally (other than Term Lenders that have elected not to receive such information) or (2) if not disclosed to the Term Lenders, would reasonably be expected to have a material effect on, or otherwise be material to (A) a Term Lender's decision to participate in any such Discounted Term Loan Prepayment or (B) the market price of such Term Loans, or shall make a statement that such representation cannot be made.

(M) To the extent not expressly provided for herein, each Discounted Term Loan Prepayment shall be consummated pursuant to procedures consistent with the provisions in this Section 2.05(1)(e), established by the Auction Agent acting in its reasonable discretion and as reasonably agreed by the applicable Borrower Party.

(N) Notwithstanding anything in any Loan Document to the contrary, for purposes of this Section 2.05(1)(e), each notice or other communication required to be delivered or otherwise provided to the Auction Agent (or its delegate) shall be deemed to have been given upon Auction Agent's (or its delegate's) actual receipt during normal business hours of such notice or communication; *provided* that any notice or communication actually received outside of normal business hours shall be deemed to have been given as of the opening of business on the next succeeding Business Day.

(O) Each of the Borrower Parties and the Term Lenders acknowledge and agree that the Auction Agent may perform any and all of its duties under this Section 2.05(1)(e) by itself or through any Affiliate of the Auction Agent and expressly consents to any such delegation of duties by the Auction Agent to such Affiliate and the performance of such delegated duties by such Affiliate. The exculpatory provisions pursuant to this Agreement shall apply to each Affiliate of the Auction Agent and its respective activities in connection with any Discounted Term Loan Prepayment provided for in this Section 2.05(1)(e) as well as activities of the Auction Agent.

(P) Each Borrower Party shall have the right, by written notice to the Auction Agent, to revoke in full (but not in part) its offer to make a Discounted Term Loan Prepayment and rescind the applicable Specified Discount Prepayment Notice, Discount Range Prepayment Notice or Solicited Discounted Prepayment Notice therefor at its discretion at any time on or prior to the applicable Specified Discount Prepayment Response Date, Discount Range Prepayment Response Date or Solicited Discounted Prepayment

Response Date (and if such offer is revoked pursuant to the preceding clauses, any failure by such Borrower Party to make any prepayment to a Lender, as applicable, pursuant to this Section 2.05(1)(e) shall not constitute a Default or Event of Default under Section 8.01 or otherwise).

(2) Mandatory.

(a) Within five (5) Business Days after financial statements have been delivered pursuant to Section 6.01(1) and the related Compliance Certificate has been delivered pursuant to Section 6.02(1), commencing with the delivery of financial statements for the fiscal year ended December 31, 2018, the Borrower shall, subject to clauses (g) and (h) of this Section 2.05(2), prepay, or cause to be prepaid, an aggregate principal amount of Term Loans (the “**ECF Payment Amount**”) equal to 50% (such percentage as it may be reduced as described below, the “**ECF Percentage**”) of Excess Cash Flow, if any, for the fiscal year covered by such financial statements *minus* the sum of (x) all voluntary prepayments of

(i) Term Loans made pursuant to Sections 2.05(1)(a) and 2.05(1)(e) (in an amount, in the case of prepayments pursuant to Section 2.05(1)(e), equal to the discounted amount actually paid in respect of the principal amount of such Term Loans and only to the extent that such Loans have been cancelled),

(ii) Credit Agreement Refinancing Indebtedness and Permitted Incremental Equivalent Debt, in each case to the extent secured in whole or in part on a *pari passu* basis with the First Lien Obligations under this Agreement (but without regard to the control of remedies), and

(iii) Revolving Loans and loans under any other revolving facility that is secured, in whole or in part, on a *pari passu* basis with the First Lien Obligations under this Agreement (but without regard to the control of remedies) (in each case of this clause (iii) (and with respect to any revolving facility under clause (ii) above), to the extent accompanied by a permanent reduction in the corresponding Revolving Commitments or other revolving commitments), *plus*

(y) the aggregate amount of acquisitions of intellectual property;

in the case of each of the immediately preceding clauses (i), (ii), (iii) and (iv), made during such fiscal year (without duplication of any prepayments in such fiscal year that reduced the amount of Excess Cash Flow required to be repaid pursuant to this Section 2.05(2)(a) for any prior fiscal year) or after the fiscal year-end but prior to the date a prepayment pursuant to this Section 2.05(2)(a) is required to be made in respect of such fiscal year and in each case to the extent such payments or prepayments are not funded with the proceeds of Funded Debt (other than any Indebtedness under a Revolving Facility or any other revolving credit facilities); *provided* that (w) a prepayment of Term Loans pursuant to this 2.05(2)(a) in respect of any fiscal year shall only be required in the amount (if any) by which the ECF Payment Amount for such fiscal year exceeds \$5.0 million, (x) the ECF Percentage shall be 25% if the First Lien Net Leverage Ratio as of the end of the fiscal year covered by such financial statements was less than or equal to the Closing Date First Lien Net Leverage Ratio minus 0.75 to 1.00 and greater than the Closing Date First Lien Net Leverage Ratio minus 1.25 to 1.00 and (y) the ECF Percentage shall be 0% if the First Lien Net Leverage Ratio as of the end of the fiscal year covered by such financial statements was less than or equal to the Closing Date First Lien Net Leverage Ratio minus 1.25 to 1.00; *provided further* that:

(A) if at the time that any such prepayment would be required, the Borrower (or any Restricted Subsidiary) is required to Discharge Other Applicable Indebtedness with Other Applicable ECF pursuant to the terms of the documentation governing such Indebtedness, then the Borrower (or any Restricted Subsidiary) may apply such portion of Excess Cash Flow otherwise required to repay the Term Loans pursuant to this Section 2.05(2)(a) on a *pro rata* basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness requiring such Discharge at such time) to the prepayment of the Term Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.05(2)(a) shall be reduced accordingly (*provided* that the portion of such Excess Cash Flow allocated to the Other Applicable Indebtedness shall not exceed the amount of such Other Applicable ECF required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof



and the remaining amount, if any, of such portion of Excess Cash Flow shall be allocated to the Term Loans to the extent required in accordance with the terms of this Section 2.05(2)(a); and

(B) to the extent the lenders or holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased or prepaid with such portion of Excess Cash Flow, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans to the extent required in accordance with the terms of this Section 2.05(2)(a).

(b) (i) If (x) the Borrower or any Restricted Subsidiary makes an Asset Sale or (y) any Casualty Event occurs, which results in the realization or receipt by the Borrower or such Restricted Subsidiary of Net Proceeds, the Borrower shall prepay, or cause to be prepaid, on or prior to the date which is ten (10) Business Days after the date of the realization or receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds, subject to clause (ii) of this Section 2.05(2)(b) and clauses (2)(g) and (h) of this Section 2.05, an aggregate principal amount of Term Loans equal to 100% of all Net Proceeds realized or received; *provided* that no prepayment shall be required pursuant to this Section 2.05(2)(b)(i) with respect to such portion of such Net Proceeds that the Borrower shall have, on or prior to such date, given written notice to the Administrative Agent of its intent to reinvest (or entered into a binding commitment to reinvest) in accordance with Section 2.05(2)(b)(ii); *provided further* that

(A) if at the time that any such prepayment would be required, the Borrower (or any Restricted Subsidiary) is required to Discharge any Other Applicable Indebtedness with Other Applicable Net Proceeds pursuant to the terms of the documentation governing such Indebtedness, then the Borrower (or any Restricted Subsidiary) may apply such Net Proceeds otherwise required to repay the Term Loans pursuant to this Section 2.05(2)(b)(i) on a *pro rata* basis (determined on the basis of the aggregate outstanding principal amount of the Term Loans and Other Applicable Indebtedness requiring such Discharge at such time), to the prepayment of the Term Loans and to the repurchase or prepayment of Other Applicable Indebtedness, and the amount of prepayment of the Term Loans that would have otherwise been required pursuant to this Section 2.05(2)(b)(i) shall be reduced accordingly (*provided* that the portion of such Net Proceeds allocated to the Other Applicable Indebtedness shall not exceed the amount of such Other Applicable Net Proceeds required to be allocated to the Other Applicable Indebtedness pursuant to the terms thereof and the remaining amount, if any, of such portion of Net Proceeds shall be allocated to the Term Loans to the extent required in accordance with the terms of this Section 2.05(2)(b)(i));

(B) to the extent the holders of Other Applicable Indebtedness decline to have such Indebtedness repurchased or prepaid with such portion of such Net Proceeds, the declined amount shall promptly (and in any event within ten (10) Business Days after the date of such rejection) be applied to prepay the Term Loans to the extent required in accordance with the terms of this Section 2.05(2)(b)(i).

(ii) With respect to any Net Proceeds realized or received with respect to any Asset Sale or any Casualty Event, the Borrower or any Restricted Subsidiary, at its option, may reinvest all or any portion of such Net Proceeds in assets useful for their business within (x) twelve (12) months following receipt of such Net Proceeds or (y) if the Borrower or any Restricted Subsidiary enters into a legally binding commitment to reinvest such Net Proceeds within twelve (12) months following receipt thereof, within the later of (A) twelve (12) months following receipt thereof and (B) one hundred eighty (180) days of the date of such legally binding commitment; *provided* that if any Net Proceeds are no longer intended to be or cannot be so reinvested at any time after such reinvestment election, and subject to clauses (g) and (h) of this Section 2.05(2), an amount equal to any such Net Proceeds shall be applied within five (5) Business Days after the Borrower reasonably determines that such Net Proceeds are no longer intended to be or cannot be so reinvested to the prepayment of the Term Loans as set forth in this Section 2.05.

(c) [Reserved].

(d) If the Borrower or any Restricted Subsidiary incurs or issues any Indebtedness (i) not expressly permitted to be incurred or issued pursuant to Section 7.02 or (ii) that constitutes Other Loans or Credit Agreement Refinancing Indebtedness, in each case, incurred or issued to refinance any Class (or

Classes) of Term Loans resulting in Net Proceeds (as opposed to such Credit Agreement Refinancing Indebtedness or Other Loans arising out of an exchange of existing Term Loans for such Credit Agreement Refinancing Indebtedness or Other Loans), the Borrower shall prepay, or cause to be prepaid, an aggregate principal amount of Term Loans of any Class or Classes (in each case, as directed by the Borrower) equal to 100% of all Net Proceeds received therefrom on or prior to the date which is five (5) Business Days after the receipt by the Borrower or such Restricted Subsidiary of such Net Proceeds.

(e) Except as otherwise set forth in any Refinancing Amendment, Extension Amendment or Incremental Amendment, each prepayment of Term Loans required by Sections 2.05(2)(a), (b) and (d)(i) shall be allocated to any Class of Term Loans outstanding as directed by the Borrower, shall be applied pro rata to Term Lenders within such Class of Term Loans, based upon the outstanding principal amounts owing to each such Term Lender under such Class of Term Loans and shall be applied to reduce such remaining scheduled installments of principal within such Class of Term Loans in direct order of maturity; *provided that*

(x) such prepayments may not be directed to a later maturing Class of Term Loans without at least a pro rata repayment of any earlier maturing Classes of Term Loans (except that any Class of Incremental Term Loans, Other Term Loans, Extended Term Loans or Replacement Loans may specify that one or more other Classes of later maturing Term Loans may be prepaid prior to such Class of earlier maturing Term Loans), and

(y) in the event that there are two or more outstanding Classes of Term Loans with the same Maturity Date, such prepayments may not be directed to any such Class of Term Loans without at least a pro rata repayment of any Classes of Term Loans maturing on the same date (except that any Class of Incremental Term Loans, Other Term Loans, Extended Term Loans or Replacement Loans may specify that one or more other Classes of Term Loans with the same Maturity Date may be prepaid prior to such Class of Term Loans maturing on the same date), and

(z) each prepayment of Term Loans required by Section 2.05(2)(d)(ii) shall be allocated to any Class or Classes of Term Loans being refinanced as directed by the Borrower and shall be applied pro rata to Term Lenders within each such Class, based upon the outstanding principal amounts owing to each such Term Lender under each such Class of Term Loans.

(f) If for any reason the aggregate Outstanding Amount of Revolving Loans and L/C Obligations at any time exceeds the aggregate Revolving Commitments then in effect, the Borrower shall promptly prepay Revolving Loans (on a pro rata basis as between the Closing Date Revolving Facility and the 2021 Revolving Facility) or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; *provided that* the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(2)(f) unless after the prepayment in full of the Revolving Loans such aggregate Outstanding Amount of L/C Obligations exceeds the aggregate Revolving Commitments then in effect.

(g) The Borrower shall notify the Administrative Agent in writing of any mandatory prepayment of Term Loans required to be made pursuant to clauses (a) through (d) of this Section 2.05(2) at least three (3) Business Days prior to the date of such prepayment (*provided that*, in the case of clause (b) or (d) of this Section 2.05(2), the Borrower may rescind (or delay the date of prepayment identified in) such notice if such prepayment would have resulted from a refinancing of all or any portion of the applicable Facility or other conditional event, which refinancing or other conditional event shall not be consummated or shall otherwise be delayed). Each such notice shall specify the date of such prepayment and provide a reasonably detailed calculation of the aggregate amount of such prepayment to be made by the Borrower. The Administrative Agent will promptly notify each Appropriate Lender of the contents of the Borrower's prepayment notice and of such Appropriate Lender's Pro Rata Share of the prepayment. Each Term Lender may reject all or a portion of its Pro Rata Share of any mandatory prepayment (such declined amounts, the "**Declined Proceeds**") of Term Loans required to be made pursuant to clauses (a), (b) and (d)(i) of this Section 2.05(2) by providing written notice (each, a "**Rejection Notice**") to the Administrative Agent and the Borrower no later than 5:00 p.m., New York time, one (1) Business Day after the date of such Lender's receipt of notice from the Administrative Agent regarding such prepayment. 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 Term Lender fails to deliver a 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 prepayment of Term Loans. Any Declined Proceeds remaining shall be retained by the Borrower (or the applicable Restricted Subsidiary) and may be applied by the Borrower or such Restricted Subsidiary in any manner not prohibited by this Agreement.

(h) Notwithstanding any other provisions of this Section 2.05(2), (A) to the extent that any or all of the Net Proceeds of any Asset Sale by a Foreign Subsidiary giving rise to a prepayment event pursuant to Section 2.05(2)(b) (a “**Foreign Asset Sale**”), the Net Proceeds of any Casualty Event from a Foreign Subsidiary (a “**Foreign Casualty Event**”) or all or a portion of Excess Cash Flow are prohibited or delayed by applicable local law from being repatriated to the United States, an amount equal to the portion of such Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.05(2) so long, but only so long, as the applicable local law will not permit repatriation to the United States (the Borrower hereby agreeing to cause the applicable Foreign Subsidiary to promptly take all actions reasonably required by the applicable local law to permit such repatriation), and once such repatriation of any of such affected Net Proceeds or Excess Cash Flow is permitted under the applicable local law, an amount equal to such Net Proceeds or Excess Cash Flow permitted to be repatriated will be promptly (and in any event not later than two (2) Business Days after any such repatriation) applied (net of additional taxes that are or would be payable or reserved against as a result thereof) to the repayment of the Term Loans pursuant to this Section 2.05(2) to the extent otherwise provided herein and (B) to the extent that the Borrower has determined in good faith that repatriation of any of or all the Net Proceeds of any Foreign Asset Sale or Foreign Casualty Event or Excess Cash Flow would have a material adverse tax consequence (taking into account any foreign tax credit or benefit actually realized in connection with such repatriation) with respect to such Net Proceeds or Excess Cash Flow, an amount equal to the Net Proceeds or Excess Cash Flow so affected will not be required to be applied to repay Term Loans at the times provided in this Section 2.05(2).

(i) All prepayments under this Section 2.05 (other than prepayments of Base Rate Revolving Loans that are not made in connection with the termination or permanent reduction of Revolving Commitments) shall be accompanied by all accrued interest thereon, together with, in the case of any such prepayment of a LIBO Rate Loan on a date prior to the last day of an Interest Period therefor, any amounts owing in respect of such LIBO Rate Loan pursuant to Section 3.05.

(j) If as a result of changes in currency exchange rates, on any Revaluation Date, the aggregate amount of Revolving Exposure exceeds the aggregate Revolving Commitment by more than \$100,000, the Borrower shall, in each case within five Business Days after being notified thereof by the Administrative Agent, repay Revolving Loans in an aggregate amount such that the aggregate Revolving Exposure does no longer exceed the aggregate Revolving Commitments.

(k) The Borrower shall prepay the Term Loans with 100% of the Excess Closing Date Cash that remains in the Controlled Account no later than the first anniversary of the Closing Date (or such later date as the Administrative Agent may agree in its sole discretion).

Notwithstanding any of the other provisions of this Section 2.05, so long as no Event of Default shall have occurred and be continuing, if any prepayment of LIBO Rate Loans is required to be made under this Section 2.05 prior to the last day of the Interest Period therefor, in lieu of making any payment pursuant to this Section 2.05 in respect of any such LIBO Rate Loan prior to the last day of the Interest Period therefor, the Borrower may, in its discretion, deposit an amount sufficient to make any such prepayment otherwise required to be made thereunder together with accrued interest to the last day of such Interest Period into a Cash Collateral Account until the last day of such Interest Period, at which time the Administrative Agent shall be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of such Loans in accordance with this Section 2.05. Upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall also be authorized (without any further action by or notice to or from the Borrower or any other Loan Party) to apply such amount to the prepayment of the outstanding Loans in accordance with the relevant

provisions of this Section 2.05. Such deposit shall be deemed to be a prepayment of such Loans by the Borrower for all purposes under this Agreement.

SECTION 2.06 Termination or Reduction of Commitments.

(1) Optional. The Borrower may, upon written notice by the Borrower to the Administrative Agent, terminate the unused Commitments of any Class, or from time to time permanently reduce the unused Commitments of any Class, in each case without premium or penalty; *provided that*

(a) any such notice shall be received by the Administrative Agent three (3) Business Days prior to the date of termination or reduction,

(b) any such partial reduction shall be in an aggregate amount of \$5.0 million or any whole multiple of \$1.0 million in excess thereof or, if less, the entire amount thereof and

(c) if, after giving effect to any reduction of the Commitments, the L/C Sublimit exceeds the amount of the Revolving Facility, the L/C Sublimit shall be automatically reduced by the amount of such excess.

Except as provided above, the amount of any such Revolving Commitment reduction shall not be applied to the L/C Sublimit unless otherwise specified by the Borrower. Notwithstanding the foregoing, the Borrower may rescind or postpone any notice of termination of any Commitments if such termination would have resulted from a refinancing of all of the applicable Facility or other conditional event, which refinancing or other conditional event shall not be consummated or shall otherwise be delayed.

(2) Mandatory. The Closing Date Term Loan Commitment of each Term Lender on the Closing Date shall be automatically and permanently reduced to \$0 upon the making of such Lender's Closing Date Term Loans to the Borrower pursuant to Section 2.01(1). The Revolving Commitment of each Revolving Lender shall automatically and permanently terminate on the Maturity Date for the applicable Revolving Facility.

(3) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Appropriate Lenders of any termination or reduction of unused portions of the L/C Sublimit or the unused Commitments of any Class under this Section 2.06. Upon any reduction of unused Commitments of any Class, the Commitment of each Lender of such Class shall be reduced on a pro rata basis (determined on the basis of the aggregate Commitments under such Class) (other than the termination of the Commitment of any Lender as provided in Section 3.07). Any commitment fees accrued until the effective date of any termination of the Revolving Commitments shall be paid on the effective date of such termination.

SECTION 2.07 Repayment of Loans.

(1) Term Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders (a) on the last Business Day of each March, June, September and December, commencing with the last Business Day of the first full fiscal quarter ended after the Closing Date, an aggregate principal amount equal to 0.25% of the aggregate principal amount of all Closing Date Term Loans outstanding on the Closing Date (which payments shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05) and (b) on the Maturity Date for the Closing Date Term Loans, the aggregate principal amount of all Closing Date Term Loans outstanding on such date. In connection with any Incremental Term Loans that constitute part of the same Class as the Closing Date Term Loans, the Borrower and the Administrative Agent shall be permitted to adjust the rate of prepayment in respect of such Class such that the Term Lenders holding Closing Date Term Loans comprising part of such Class continue to receive a payment that is not less than the same Dollar amount that such Term Lenders would have received absent the incurrence of such Incremental Term Loans.

(2) Revolving Loans. The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders on the Maturity Date for the applicable Revolving Facility the aggregate principal amount of all Revolving Loans under such Facility outstanding on such date.

SECTION 2.08 Interest.

(1) Subject to the provisions of Section 2.08(2), (a) each LIBO Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the LIBO Rate for such Interest Period, *plus* the Applicable Rate and (b) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable Borrowing date at a rate per annum equal to the Base Rate, *plus* the Applicable Rate.

(2) During the continuance of a Default under Section 8.01(1), the Borrower shall pay interest on past due amounts hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws; *provided* that no interest at the Default Rate shall accrue or be payable to a Defaulting Lender so long as such Lender shall be a Defaulting Lender. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(3) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

SECTION 2.09 Fees.

(1) Commitment Fee. The Borrower agrees to pay to the Administrative Agent (x) for the account of each Revolving Lender under ~~each~~ the Closing Date Revolving Facility in accordance with its ~~Applicable Percentage~~ Pro Rata Share of the Closing Date Revolving Commitments, a commitment fee equal to the applicable Commitment Fee Rate times the actual daily amount by which the aggregate Closing Date Revolving Commitments exceed the ~~sum of (a) the Outstanding Amount of Revolving Loans and (b) the Outstanding Amount of L/C Obligations~~ aggregate Revolving Exposure of all Revolving Lenders under the Closing Date Revolving Facility and (y) for the account of each Revolving Lender under the 2021 Revolving Facility in accordance with its Pro Rata Share of the 2021 Revolving Commitments, a commitment fee equal to the applicable Commitment Fee Rate times the actual daily amount by which the aggregate 2021 Revolving Commitments exceed the aggregate Revolving Exposure of all Revolving Lenders under the 2021 Revolving Facility; *provided* that any commitment fee accrued with respect to any of the Commitments of a Defaulting Lender under such Revolving Facility during the period prior to the time such Lender became a Defaulting Lender and unpaid at such time shall not be payable by the Borrower so long as such Lender shall be a Defaulting Lender except to the extent that such commitment fee shall otherwise have been due and payable by the Borrower prior to such time; and *provided further* that no commitment fee shall accrue on any of the Commitments under any Revolving Facility of a Defaulting Lender so long as such Lender shall be a Defaulting Lender. The commitment fee on each Revolving Commitment shall accrue at all times from the Closing Date (or date of initial effectiveness, as applicable) (and for the avoidance of doubt, (x) the commitment fee on the ~~Revolving Commitment under the~~ Closing Date Revolving ~~Facility~~ Commitment shall accrue from the Closing Date and (y) the commitment fee on the 2021 Revolving Commitment shall accrue from the Fifth Amendment Effective Date) until the Maturity Date for the applicable Revolving Commitment, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each of March, June, September and December, commencing with the last Business Day of June ~~30~~, 2017 (or, in the case of the 2021 Revolving Commitments, June 2021), and on the Maturity Date for such Revolving Facility. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the applicable Commitment Fee Rate during any quarter, the actual daily amount shall be computed and multiplied by the applicable Commitment Fee Rate separately for each period during such quarter that such applicable Commitment Fee Rate was in effect.

(2) Other Fees. The Borrower shall pay to the Agents such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever (except as expressly agreed between the Borrower and the applicable Agent).

SECTION 2.10 Computation of Interest and Fees. All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 days or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on



which the Loan or such portion is paid; *provided* that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(1), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

SECTION 2.11 Evidence of Indebtedness.

(1) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and evidenced by one or more entries in the Register maintained by the Administrative Agent, acting solely for purposes of Treasury Regulation Section 5f.103-1(c), as agent for the Borrower, in each case in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be prima facie evidence absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrower and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent, as set forth in the Register, in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note payable to such Lender, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.

(2) In addition to the accounts and records referred to in Section 2.11(1), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records and, in the case of the Administrative Agent, entries in the Register, evidencing the purchases and sales by such Lender of participations in Letters of Credit. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(3) Entries made in good faith by the Administrative Agent in the Register pursuant to Sections 2.11(1) and (2), and by each Lender in its account or accounts pursuant to Sections 2.11(1) and (2), shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from the Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement and the other Loan Documents, absent manifest error; *provided* that the failure of the Administrative Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of the Borrower under this Agreement and the other Loan Documents.

SECTION 2.12 Payments Generally.

(1) All payments to be made by the Borrower hereunder shall be made in Dollars without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office for payment and in Same Day Funds not later than 2:00 p.m., New York time, on the date specified herein. The Administrative Agent will promptly distribute to each Appropriate Lender its Pro Rata Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. Any payments under this Agreement that are made later than 2:00 p.m., New York time, shall be deemed to have been made on the next succeeding Business Day (but the Administrative Agent may extend such deadline for purposes of computing interest and fees (but not beyond the end of such day) in its sole discretion whether or not such payments are in process).

(2) Except as otherwise expressly provided herein, if any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(3) Unless the Borrower or any Lender has notified the Administrative Agent, prior to the date, or in the case of any Borrowing of Base Rate Loans, prior to 1:00 p.m., New York time, on the date of such Borrowing, any payment is required to be made by it to the Administrative Agent hereunder (in the case of the Borrower, for the account of any Lender or an Issuing Bank hereunder or, in the case of the Lenders, for the account of any Issuing Bank or the Borrower hereunder), that the Borrower or such Lender, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender, as the case may be, has timely made such

payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in Same Day Funds, then:

(a) if the Borrower failed to make such payment, each Lender or Issuing Bank shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender or Issuing Bank in Same Day Funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender or Issuing Bank to the date such amount is repaid to the Administrative Agent in Same Day Funds at the Overnight Rate from time to time in effect; and

(b) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in Same Day Funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the “**Compensation Period**”) at a rate per annum equal to the Overnight Rate from time to time in effect. When such Lender makes payment to the Administrative Agent (together with all accrued interest thereon), then such payment amount (excluding the amount of any interest which may have accrued and been paid in respect of such late payment) shall constitute such Lender’s Loan included in the applicable Borrowing. If such Lender does not pay such amount forthwith upon the Administrative Agent’s demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount, or cause such amount to be paid, to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Section 2.12(3) shall be conclusive, absent manifest error.

(c) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in this Article II, and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Section 4.03 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) The obligations of the Lenders hereunder to make Loans and to fund participations in Letters of Credit are several and not joint. The failure of any Lender to make any Loan or fund any participation on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or purchase its participation.

(e) Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Administrative Agent and the Lenders under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Administrative Agent and the Lenders in the order of priority set forth in Section 8.03 (or otherwise expressly set forth herein). If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the manner in which such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lenders in accordance with such Lender’s Pro Rata Share of the sum of (i) the Outstanding Amount of all Loans outstanding at such time and (ii) the Outstanding Amount of all L/C Obligations outstanding at such time, in repayment or prepayment of such of the outstanding Loans or other Obligations then owing to such Lender.



**SECTION 2.13**      **Sharing of Payments.** Other than as expressly provided elsewhere herein, if any Lender of any Class shall obtain payment in respect of any principal of or interest on account of the Loans of such Class made by it or the participations in L/C Obligations held by it (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) in excess of its ratable share (or other share contemplated hereunder) thereof, such Lender shall immediately (1) notify the Administrative Agent of such fact, and (2) purchase from the other Lenders such participations in the Loans of such Class made by them or such subparticipations in the participations in L/C Obligations held by them, as the case may be, as shall be necessary to cause such purchasing Lender to share the excess payment in respect of any principal of or interest on such Loans of such Class or such participations, as the case may be, pro rata with each of them; provided that if all or any portion of such excess payment is thereafter recovered from the purchasing Lender under any of the circumstances described in Section 10.06 (including pursuant to any settlement entered into by the purchasing Lender in its discretion), such purchase shall to that extent be rescinded and each other Lender shall repay to the purchasing Lender the purchase price paid therefor, together with an amount equal to such paying Lender's ratable share (according to the proportion of (a) the amount of such paying Lender's required repayment to (b) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered, without further interest thereon. For the avoidance of doubt, the provisions of this Section 2.13 shall not be construed to apply to (i) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement as in effect from time to time (including the application of funds arising from the existence of a Defaulting Lender) or (ii) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant permitted hereunder. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.13 may, to the fullest extent permitted by applicable Law, exercise all its rights of payment (including the right of setoff, but subject to Section 10.10) with respect to such participation as fully as if such Lender were the direct creditor of the Borrower in the amount of such participation. The Administrative Agent will keep records (which shall be conclusive and binding in the absence of manifest error) of participations purchased under this Section 2.13 and will in each case notify the Lenders following any such purchases or repayments. Each Lender that purchases a participation pursuant to this Section 2.13 shall from and after such purchase have the right to give all notices, requests, demands, directions and other communications under this Agreement with respect to the portion of the Obligations purchased to the same extent as though the purchasing Lender were the original owner of the Obligations purchased. For purposes of clause (3) of the definition of Excluded Taxes, any participation acquired by a Lender pursuant to this Section 2.13 shall be treated as having been acquired on the earlier date(s) on which the applicable interest(s) in the Commitment(s) or Loan(s) to which such participation relates were acquired by such Lender.

**SECTION 2.14**      **Incremental Facilities.**

(1)      **Incremental Loan Request.** The Borrower may at any time and from time to time after the Closing Date, by notice to the Administrative Agent (an "**Incremental Loan Request**"), request (A) one or more new commitments which may be of the same Class as any outstanding Term Loans (a "**Term Loan Increase**") or a new Class of term loans (collectively with any Term Loan Increase, the "**Incremental Term Commitments**") and/or (B) one or more increases in the amount of the Revolving Commitments (a "**Revolving Commitment Increase**") or the establishment of one or more new revolving credit commitments (each an "**Incremental Revolving Facility**"; and, collectively with any Revolving Commitment Increases, the "**Incremental Revolving Commitments**" and any Incremental Revolving Commitments, collectively with any Incremental Term Commitments, the "**Incremental Commitments**"), whereupon the Administrative Agent shall promptly deliver a copy to each of the Lenders. Each Incremental Loan Request from the Borrower pursuant to this Section 2.14 shall set forth the requested amount and proposed terms of the relevant Incremental Term Commitments or Incremental Revolving Commitments.

(2)      **Incremental Loans.** Any Incremental Term Loans or Incremental Revolving Commitments effected through the establishment of one or more new term loans or new revolving credit commitments, as applicable, made on an Incremental Facility Closing Date (other than a Loan Increase) shall be designated a separate Class of Incremental Term Loans or Incremental Revolving Commitments, as applicable, for all purposes of this Agreement. On any Incremental Facility Closing Date on which any Incremental Term Commitments of any Class are effected (including through any Term Loan Increase), subject to the satisfaction of the terms and conditions in this Section 2.14, (i) each Incremental Term Lender of such Class shall make a Loan to the Borrower (an "**Incremental Term Loan**") in an amount equal to its Incremental Term Commitment of such Class and (ii) each Incremental Term Lender of such

Class shall become a Lender hereunder with respect to the Incremental Term Commitment of such Class and the Incremental Term Loans of such Class made pursuant thereto. On any Incremental Facility Closing Date on which any Incremental Revolving Commitments of any Class are effected through the establishment of one or more new revolving credit commitments (including through any Revolving Commitment Increase), subject to the satisfaction of the terms and conditions in this Section 2.14, (i) each Incremental Revolving Lender of such Class shall make its Commitment available to the Borrower (when borrowed, an “**Incremental Revolving Loan**” and collectively with any Incremental Term Loan, an “**Incremental Loan**”) in an amount equal to its Incremental Revolving Commitment of such Class and (ii) each Incremental Revolving Lender of such Class shall become a Lender hereunder with respect to the Incremental Revolving Commitment of such Class and the Incremental Revolving Loans of such Class made pursuant thereto.

(3) Incremental Lenders. Incremental Term Loans may be made, and Incremental Revolving Commitments may be provided, by any existing Lender (but no existing Lender will have an obligation to make any Incremental Commitment (or Incremental Loan), nor will the Borrower have any obligation to approach any existing Lenders to provide any Incremental Commitment (or Incremental Loan)) or by any Additional Lender (each such existing Lender or Additional Lender providing such Loan or Commitment, an “**Incremental Term Lender**” or “**Incremental Revolving Lender**,” as applicable, and, collectively, the “**Incremental Lenders**”); *provided* that (i) the Administrative Agent or, in the case of any Incremental Revolving Commitments only, each Issuing Bank, shall have consented (in each case, not to be unreasonably withheld or delayed) to such Additional Lender’s making such Incremental Term Loans or providing such Incremental Revolving Commitments to the extent such consent, if any, would be required under Section 10.07(b) for an assignment of Loans or Revolving Commitments, as applicable, to such Additional Lender, (ii) with respect to Incremental Term Commitments, any Affiliated Lender providing an Incremental Term Commitment shall be subject to the same restrictions set forth in Section 10.07(h) as they would otherwise be subject to with respect to any purchase by or assignment to such Affiliated Lender of Term Loans and (iii) Affiliated Lenders may not provide Incremental Revolving Commitments.

(4) Effectiveness of Incremental Amendment. The effectiveness of any Incremental Amendment and the availability of any initial credit extensions thereunder shall be subject to the satisfaction on the date thereof (the “**Incremental Facility Closing Date**”) of each of the following conditions:

(a) (x) no Event of Default shall exist after giving effect to such Incremental Commitments; *provided* that, with respect to any Incremental Amendment the primary purpose of which is to finance an acquisition or other Investment permitted by this Agreement that is not conditioned upon obtaining third-party financing, the requirement pursuant to this clause (4)(a)(x) shall be that no Event of Default under Section 8.01(1) or Section 8.01(6) shall exist after giving effect to such Incremental Commitments, and (y) the representations and warranties of the Borrower contained in Article V or any other Loan Document shall be true and correct in all material respects on and as of the date of such Incremental Amendment (*provided* that, to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided, further*, that, any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates); *provided* that, in connection with an acquisition or other Investment permitted hereunder that is not conditioned upon obtaining third-party financing, the conditions in the proviso to clause (x) and in clause (y) shall only be required to the extent requested by the Persons holding more than 50% of the applicable Incremental Term Loans and Incremental Term Commitments or Incremental Revolving Loans and Incremental Revolving Commitments, as the case may be (*provided, further*, that, in the case of any such acquisition or other Investment with a purchase price in excess of \$20.0 million, the conditions contained in the proviso to clause (x) with respect to no Event of Default under Section 8.01(1) or Section 8.01(6) and in clause (y) with respect to Specified Representations, in each case, shall be required whether or not requested by such Persons, unless waived in accordance with Section 10.01);

(b) each Incremental Term Commitment shall be in an aggregate principal amount that is not less than \$5.0 million (*provided* that such amount may be less than \$5.0 million if such amount represents all remaining availability under the limit set forth in clause (c) of this Section 2.14(4)) and each Incremental Revolving Commitment shall be in an aggregate principal amount that is not less than \$5.0 million (*provided*

that such amount may be less than \$5.0 million if such amount represents all remaining availability under the limit set forth in clause (c) of Section 2.14(4));

(c) the aggregate principal amount of Incremental Term Loans and Incremental Revolving Commitments shall not, together with the aggregate principal amount of Permitted Incremental Equivalent Debt, exceed the sum of:

(A) (1) \$150.0 million plus (2) the aggregate amount of (x) voluntary prepayments of Term Loans (including Incremental Term Loans) and Permitted Incremental Equivalent Debt (other than Permitted Incremental Equivalent Debt consisting of revolving credit facilities) (including purchases of the Loans or Permitted Incremental Equivalent Debt by the Borrower or any of its Subsidiaries at or below par, in which case the amount of voluntary prepayments of such Loans or Permitted Incremental Equivalent Debt shall be deemed not to exceed the actual purchase price of such Loans or Permitted Incremental Equivalent Debt below par), in the case of prepayments of Incremental Term Loans or Permitted Incremental Equivalent Debt, only to the extent such Incremental Term Loans or Permitted Incremental Equivalent Debt was secured on a pari passu basis with the First Lien Obligations under this Agreement and incurred in reliance on clause (A)(1) above and (y) voluntary permanent commitment reductions in respect of Incremental Revolving Commitments or Permitted Incremental Equivalent Debt consisting of revolving credit commitments, in each case, to the extent such Incremental Revolving Commitments or Permitted Incremental Equivalent Debt was secured on a pari passu basis with the First Lien Obligations under this Agreement and incurred in reliance on clause (A)(1) above, other than, in each case under clauses (x) and (y), from proceeds of long-term Indebtedness (other than revolving Indebtedness), *plus*

(B) an unlimited amount, so long as in the case of this clause (B) only,

(x) in the case of Incremental Loans or Incremental Revolving Commitments secured by Liens on all or a portion of the Collateral on a basis that is equal in priority to the Liens on the Collateral securing the First Lien Obligations under this Agreement (but without regard to the control of remedies), the First Lien Net Leverage Ratio for the Test Period most recently ended calculated on a pro forma basis after giving effect to any such incurrence, does not exceed the Closing Date First Lien Net Leverage Ratio minus 0.25 to 1.00 (in the case of an incurrence of Incremental Revolving Commitments, assuming such Incremental Revolving Commitments are fully drawn and calculating the First Lien Net Leverage Ratio without netting the cash proceeds from such Incremental Loans then proposed to be incurred),

(y) in the case of Incremental Loans or Incremental Revolving Commitments secured by Liens on all or a portion of the Collateral on a basis that is junior in priority to the Liens on the Collateral securing the First Lien Obligations under this Agreement, the Junior Secured Condition is satisfied (in the case of an incurrence of Incremental Revolving Commitments, assuming such Incremental Revolving Commitments are fully drawn and calculating the Secured Net Leverage Ratio without netting the cash proceeds from such Incremental Loans then proposed to be incurred), and

(z) in the case of Incremental Loans or Incremental Revolving Commitments that are unsecured, either (i) the Total Net Leverage Ratio for the Test Period most recently ended calculated on a pro forma basis after giving effect to any such incurrence, does not exceed the Closing Date Total Net Leverage Ratio or (ii) to the extent such Incremental Loans or Incremental Revolving Commitments are incurred in connection with an acquisition or other Investment permitted under this Agreement, the Total Net Leverage Ratio for the Test Period most recently ended calculated on a pro forma basis after giving effect to any such incurrence would be no greater than the Total Net Leverage Ratio immediately prior to giving effect to such incurrence of Incremental Loans or establishment of Incremental Revolving Commitments or (x) after giving pro forma effect to such incurrence, at least \$1.00 of additional Indebtedness would be permitted to be incurred pursuant to the Interest Coverage Ratio test set forth in clause (C)(I) of Section 7.02(a) or the Total Net Leverage Test set forth in clause (C)(II) of Section 7.02(a) or (y) to the extent such Incremental Loans or Incremental Revolving Commitments are incurred in connection with an acquisition or other

Investment permitted under this Agreement, the Interest Coverage Ratio after giving effect to any such incurrence would be no less than the Interest Coverage Ratio immediately prior to giving effect to such incurrence of Incremental Loans or establishment of Incremental Revolving Commitments;

*provided* that any calculation of the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Interest Coverage Ratio or the Total Net Leverage Ratio shall be calculated in accordance with Section 1.07 (assuming in the case of any Incremental Revolving Commitments, a full drawing of such Revolving Commitments) and including a *pro forma* application of the net proceeds therefrom, as if the additional Indebtedness incurred pursuant to clause (B) had been incurred and the application of the proceeds therefrom has occurred at the beginning of such Test Period, but without netting the cash proceeds from such additional Indebtedness; *provided, however*, that if amounts incurred under clause (B) are incurred concurrently with, or in a single transaction or series of related transactions with, the incurrence of Incremental Loans or Incremental Commitments and/or Permitted Incremental Equivalent Debt (in each case, including any unused commitments obtained) in reliance on clause (A) above, the First Lien Net Leverage Ratio, the Secured Net Leverage Ratio, the Total Net Leverage Ratio or the Interest Coverage Ratio shall be calculated without giving effect to such amounts incurred (or commitments obtained) in reliance on the foregoing clause (A); *provided further*, for the avoidance of doubt, to the extent the proceeds of any Incremental Loans are being utilized to repay Indebtedness (including any repayment, repurchase or refinancing of Indebtedness for which an irrevocable notice of repayment (or similar notice of repayment) has been delivered), such calculations shall give *pro forma* effect to such repayments (the amount available under clauses (A) and (B), the “**Available Incremental Amount**”). The Borrower may elect to use clause (B) of the Available Incremental Amount regardless of whether the Borrower has capacity under clause (A) of the Available Incremental Amount. Further, the Borrower may elect to use clause (B) of the Available Incremental Amount prior to using clause (A) of the Available Incremental Amount, and if both clause (B) and clause (A) of the Available Incremental Amount are available and the Borrower does not make an election, then the Borrower will be deemed to have elected to use clause (B) of the Available Incremental Amount. In addition, any Indebtedness originally designated as incurred pursuant to clause (A) of the Available Incremental Amount shall be reclassified, as the Borrower may elect from time to time, as incurred under clause (B) of the Available Incremental Amount if the Borrower would meet the applicable leverage or coverage-based incurrence test at such time on a *pro forma* basis.

(5) Required Terms. The terms, provisions and documentation of the Incremental Term Loans and Incremental Term Commitments or the Incremental Revolving Loans and Incremental Revolving Commitments, as the case may be, of any Class and any Loan Increase shall be as agreed between the Borrower and the applicable Incremental Lenders providing such Incremental Commitments, and except as otherwise set forth herein, to the extent not identical to the Closing Date Term Loans ~~or~~; Closing Date Revolving Facility or 2021 Revolving Facility, as applicable, existing on the Incremental Facility Closing Date, shall either, at the option of the Borrower, (A) reflect market terms and conditions (taken as a whole) at the time of incurrence of such Indebtedness (as determined by the Borrower in good faith), (B) be not materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms of the Closing Date Term Loans ~~or~~; Closing Date Revolving Facility or 2021 Revolving Facility, as applicable, except in the case of clauses (A) and (B) to the extent necessary to provide for (x) covenants and other terms applicable to any period after the Latest Maturity Date in effect immediately prior to the incurrence of the Incremental Term Loans and Incremental Term Commitments or the Incremental Revolving Loans and Incremental Revolving Commitments, as the case may be, or (y) subject to the immediately succeeding proviso, a Previously Absent Financial Maintenance Covenant; *provided* that, notwithstanding anything to the contrary contained herein, (i) if any such terms of any Incremental Revolving Loans and Incremental Revolving Commitments contain a Previously Absent Financial Maintenance Covenant that is in effect prior to the applicable Latest Maturity Date of the Revolving Facility, such Previously Absent Financial Maintenance Covenant shall be included for the benefit of the Revolving Facility and (ii) if any such terms of any Incremental Term Loans and Incremental Term Commitments contain a Previously Absent Financial Maintenance Covenant that is in effect prior to the applicable Latest Maturity Date of the Term Loan Facility, such Previously Absent Financial Maintenance Covenant shall be included for the benefit of the Term Loan Facility or (C) if neither clause (A) or (B) are satisfied, such terms, provisions and documentation shall be reasonably satisfactory to the Administrative Agent; *provided, further*, that in the case of a Term Loan Increase or a Revolving Commitment Increase, the terms, provisions and documentation of such Term Loan Increase or a Revolving Commitment Increase shall be identical (other than with respect to upfront fees, OID or similar fees, it being understood that, if required to consummate such Loan Increase transaction, the interest rate margins and rate floors may be increased, any call protection provision may be made more favorable to the applicable existing Lenders and additional upfront or similar fees may be payable to the lenders

providing the Loan Increase) to the applicable Term Loans or Revolving Commitments being increased, in each case, as existing on the Incremental Facility Closing Date. In any event:

(a) the Incremental Term Loans:

(i) shall rank equal in priority in right of payment with the First Lien Obligations under this Agreement and (y) shall either (1) rank equal (but without regard to the control of remedies) or junior in priority of right of security with the First Lien Obligations under this Agreement (subject to an Intercreditor Agreement(s) reasonably acceptable to the Administrative Agent and the Borrower) or (2) be unsecured, in each case as applicable pursuant to clause (4)(c) above; *provided* that any such Incremental Term Loans that rank junior in priority of right of security with the First Lien Obligations under this Agreement or that are unsecured shall be incurred as Permitted Incremental Equivalent Debt,

(ii) shall not mature earlier than the Original Term Loan Maturity Date,

(iii) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Closing Date Term Loans on the date of incurrence of such Incremental Term Loans; *provided* that the effects of any amortization or prepayments made on the Closing Date Term Loans prior to the date of such incurrence will be disregarded,

(iv) subject to clause (5)(a)(iii) above and clause (5)(c) below, respectively, shall have amortization and an Applicable Rate determined by the Borrower and the applicable Incremental Term Lenders,

(v) may participate on a pro rata basis, less than a pro rata basis or greater than a pro rata basis in any mandatory prepayments of Term Loans hereunder (except that, unless otherwise permitted under this Agreement, such Incremental Term Loans may not participate on a greater than a pro rata basis as compared to any earlier maturing Class of Term Loans constituting First Lien Obligations in any mandatory prepayments under Section 2.05(2)(a), (b) and (d)(i)), as specified in the applicable Incremental Amendment,

(vi) shall be denominated in a currency as determined by the Borrower and the applicable Incremental Term Lenders, subject to the consent of the Administrative Agent (not to be unreasonably withheld, delayed or conditioned), and

(vii) shall not at any time be guaranteed by any Subsidiary of the Borrower other than Subsidiaries that are Guarantors.

(b) the Incremental Revolving Commitments and Incremental Revolving Loans:

(i) shall rank equal in priority in right of payment with the First Lien Obligations under this Agreement and (y) shall either (1) rank equal (but without regard to the control of remedies) or junior in priority of right of security with the First Lien Obligations under this Agreement or (2) be unsecured, in each case as applicable pursuant to clause (4)(c) above *provided* that any such Incremental Revolving Commitments and Incremental Revolving Loans that rank junior in priority of right of security with the First Lien Obligations under this Agreement or that are unsecured shall be incurred as Permitted Incremental Equivalent Debt,

(ii) shall not mature earlier than the ~~Original~~Closing Date Revolving Facility Maturity Date or the 2021 Revolving Facility Maturity Date, and shall not be subject to amortization,

(iii) shall provide that the borrowing and repayment (except for (1) payments of interest and fees at different rates on Incremental Revolving Commitments (and related outstanding



Incremental Revolving Loans), (2) repayments required upon the Maturity Date of any Revolving Commitments, (3) repayments made in connection with any refinancing of Revolving Commitments and (4) repayment made in connection with a permanent repayment and termination of Commitments (subject to clause (v) below)) of Revolving Loans with respect to Incremental Revolving Commitments after the associated Incremental Facility Closing Date shall be made on a pro rata basis with all other outstanding Revolving Commitments existing on such Incremental Facility Closing Date,

(iv) subject to the provisions of Section 2.03(13) in connection with Letters of Credit which mature or expire after a Maturity Date at any time Incremental Revolving Commitments with a later Maturity Date are outstanding, shall provide that all Letters of Credit shall be participated on a pro rata basis by each Lender with a Revolving Commitment in accordance with its percentage of the Revolving Commitments existing on the Incremental Facility Closing Date (and except as provided in Section 2.03(13), without giving effect to changes thereto on an earlier Maturity Date with respect to Letters of Credit theretofore incurred or issued),

(v) shall provide that the permanent repayment of Revolving Loans with respect to, and termination of, Incremental Revolving Commitments after the associated Incremental Facility Closing Date may be made on a pro rata basis or less than a pro rata basis (but not a greater than pro rata basis) with all other Revolving Commitments existing on such Incremental Facility Closing Date, except that the Borrower shall be permitted to permanently repay and terminate Commitments in respect of any such Class of Revolving Loans on a greater than pro rata basis as compared to any other Class of Revolving Loans with a later Maturity Date than such Class or in connection with any refinancing thereof,

(vi) shall provide that assignments and participations of Incremental Revolving Commitments and Incremental Revolving Loans shall be governed by the same assignment and participation provisions applicable to Revolving Commitments and Revolving Loans existing on the Incremental Facility Closing Date,

(vii) shall provide that any Incremental Revolving Commitments may constitute a separate Class or Classes, as the case may be, of Commitments from the Classes constituting the applicable Revolving Commitments prior to the Incremental Facility Closing Date; *provided* at no time shall there be Revolving Commitments hereunder (including Incremental Revolving Commitments and any original Revolving Commitments) which have more than four (4) different Maturity Dates unless otherwise agreed to by the Administrative Agent,

(viii) shall have an Applicable Rate determined by the Borrower and the applicable Incremental Revolving Lenders,

(ix) shall be denominated in a currency as determined by the Borrower and the applicable Incremental Revolving Lenders, subject to the consent of the Administrative Agent (not to be unreasonably withheld, delayed or conditioned), and

(x) shall not at any time be guaranteed by any Subsidiary of the Borrower other than Subsidiaries that are Guarantors.

(c) the amortization schedule applicable to any Incremental Term Loans and the All-In Yield applicable to the Incremental Term Loans of each Class shall be determined by the Borrower and the applicable Incremental Term Lenders and shall be set forth in each applicable Incremental Amendment; *provided, however*, that with respect to any Incremental Term Loans made under Incremental Term Commitments incurred pursuant to clause (B) of the Available Incremental Amount that rank equal in priority of right of security with the First Lien Obligations under this Agreement (but without regard to the control of remedies), the All-In Yield applicable to such Incremental Term Loans shall not be greater than the applicable All-In Yield payable pursuant to the terms of this Agreement as amended through the date of such calculation with respect to Closing Date Term Loans, *plus* 50 basis points per annum unless the Applicable

Rate (together with, as provided in the proviso below, the LIBO Rate or Base Rate floor) with respect to the Closing Date Term Loans is increased so as to cause the then applicable All-In Yield under this Agreement on the Closing Date Term Loans to equal the All-In Yield then applicable to the Incremental Term Loans, *minus* 50 basis points per annum; *provided* that any increase in All-In Yield on the Closing Date Term Loans due to the application of a LIBO Rate or Base Rate floor on any Incremental Term Loan shall be effected solely through an increase in (or implementation of, as applicable) the LIBO Rate or Base Rate floor applicable to such Closing Date Term Loans.

(6) Incremental Amendment. Commitments in respect of Incremental Term Loans and Incremental Revolving Commitments shall become Commitments (or in the case of an Incremental Revolving Commitment to be provided by an existing Revolving Lender, an increase in such Lender's applicable Revolving Commitment), under this Agreement pursuant to an amendment (an "**Incremental Amendment**") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, each Incremental Lender providing such Incremental Commitments and the Administrative Agent. The Incremental Amendment may, without the consent of any other Loan Party, Agent or Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.14. In connection with any Incremental Amendment, the Borrower shall, if reasonably requested by the Administrative Agent, deliver customary reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Incremental Loans are provided with the benefit of the applicable Loan Documents. The Borrower will use the proceeds (if any) of the Incremental Loans for any purpose not prohibited by this Agreement. No Lender shall be obligated to provide any Incremental Commitments or Incremental Loans unless it so agrees.

(7) Reallocation of Revolving Exposure. Upon any Incremental Facility Closing Date on which Incremental Revolving Commitments are effected through an increase in the Revolving Commitments with respect to any existing Revolving Facility pursuant to this Section 2.14, (a) each of the Revolving Lenders under such Facility shall assign to each of the Incremental Revolving Lenders, and each of the Incremental Revolving Lenders shall purchase from each of the Revolving Lenders, at the principal amount thereof, such interests in the Revolving Loans outstanding on such Incremental Facility Closing Date as shall be necessary in order that, after giving effect to all such assignments and purchases, such Revolving Loans will be held by existing Revolving Lenders and Incremental Revolving Lenders ratably in accordance with their Revolving Commitments after giving effect to the addition of such Incremental Revolving Commitments to the Revolving Commitments, (b) each Incremental Revolving Commitment shall be deemed for all purposes a Revolving Commitment and each Loan made thereunder shall be deemed, for all purposes, a Revolving Loan and (c) each Incremental Revolving Lender shall become a Lender with respect to the Incremental Revolving Commitments and all matters relating thereto. The Administrative Agent and the Lenders hereby agree that the minimum borrowing and prepayment requirements in Section 2.02 and 2.05(1) of this Agreement shall not apply to the transactions effected pursuant to the immediately preceding sentence

(8) This Section 2.14 shall supersede any provisions in Section 2.12, 2.13 or 10.01 to the contrary.

#### SECTION 2.15 Refinancing Amendments.

(1) At any time after the Closing Date, the Borrower may obtain, from any Lender or any Additional Lender (it being understood that (i) no Lender shall be required to provide any Other Loan without its consent, (ii) Affiliated Lenders may not provide Other Revolving Commitments and (iii) Other Term Loans provided by Affiliated Lenders shall be subject to the limitations set forth in Section 10.07(h)), Other Loans to refinance all or any portion of the applicable Class or Classes of Loans then outstanding under this Agreement which will be made pursuant to Other Term Loan Commitments, in the case of Other Term Loans, and pursuant to Other Revolving Commitments, in the case of Other Revolving Loans, in each case pursuant to a Refinancing Amendment; *provided* that such Other Loans and Other Revolving Commitments (i) shall rank equal in priority in right of payment with the other Loans and Commitments hereunder, (ii) shall be unsecured or rank *pari passu* (without regard to the control of remedies) or junior in right of security with any First Lien Obligations under this Agreement and, if secured on a junior basis, shall be subject to an applicable Intercreditor Agreement(s), (iii) if secured, shall not be secured by any property or assets of the Borrower or any Restricted Subsidiary other than the Collateral, (iv) shall not at any time be guaranteed by any Subsidiary of the Borrower other than Subsidiaries that are Guarantors, (v)(A) shall have interest rates (including through fixed interest rates), interest margins, rate floors, upfront fees, funding discounts, original



issue discounts and prepayment terms and premiums as may be agreed by the Borrower and the Lenders thereof and/or (B) may provide for additional fees and/or premiums payable to the Lenders providing such Other Loans in addition to any of the items contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Refinancing Amendment, (vi) may have optional prepayment terms (including call protection and prepayment terms and premiums) as may be agreed between the Borrower and the Lenders thereof, (vii) will have a final maturity date no earlier than, and, in the case of Other Term Loans, will have a Weighted Average Life to Maturity equal to or greater than, the Term Loans or Revolving Commitments being refinanced and (viii) will have such other terms and conditions (other than as provided in foregoing clauses (ii) through (vii)) that either, at the option of the Borrower, (1) reflect market terms and conditions (taken as a whole) at the time of incurrence of such Other Loans or Other Revolving Commitments (as determined by the Borrower in good faith) or (2) if otherwise not consistent with the terms of such Class of Loans or Commitments being refinanced, not be materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms of such Class of Loans or Commitments being refinanced, except in the case of clauses (1) and (2) to the extent necessary to provide for (x) covenants and other terms applicable to any period after the Latest Maturity Date of the Loans in effect immediately prior to such refinancing or (y) subject to the immediately succeeding proviso, a Previously Absent Financial Maintenance Covenant; *provided* that, notwithstanding anything to the contrary contained herein, (I) if any such terms of the Other Term Loans contain a Previously Absent Financial Maintenance Covenant that is in effect prior to the applicable Latest Maturity Date, such Previously Absent Financial Maintenance Covenant shall be included for the benefit of each Facility and (II) if any such terms of the Other Revolving Commitments contain a Previously Absent Financial Maintenance Covenant, such Previously Absent Financial Maintenance Covenant shall be included for the benefit of each Class of Revolving Commitments. Any Other Term Loans may participate on a pro rata basis, less than a pro rata basis or greater than a pro rata basis in any mandatory prepayments of Term Loans hereunder (except that, unless otherwise permitted under this Agreement or unless the Class of Term Loans being refinanced was so entitled to participate on a greater than a pro rata basis in such mandatory prepayments, such Other Term Loans may not participate on a greater than a pro rata basis as compared to any earlier maturing Class of Term Loans constituting First Lien Obligations in any mandatory prepayments under Section 2.05(2)(a), (b) and (d)(i)), as specified in the applicable Refinancing Amendment. All Other Revolving Commitments shall provide that all borrowings under the applicable Revolving Commitments and repayments thereunder shall be made on a pro rata basis (except for (1) payments of interest and fees at different rates on Other Revolving Commitments (and related outstanding Other Revolving Loans), (2) repayments required upon the Maturity Date of the Revolving Commitments, (3) repayments made in connection with any refinancing of Revolving Commitments and (4) repayment made in connection with a permanent repayment and termination of Commitments). In connection with any Refinancing Amendment, the Borrower shall, if reasonably requested by the Administrative Agent, deliver customary reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Other Loans or Other Revolving Commitments are provided with the benefit of the applicable Loan Documents.

(2) Each Class of Other Commitments and Other Loans incurred under this Section 2.15 shall be in an aggregate principal amount that is not less than \$5.0 million. The Administrative Agent shall promptly notify each Lender as to the effectiveness of each Refinancing Amendment. Each of the parties hereto hereby agrees that, upon the effectiveness of any Refinancing Amendment, this Agreement shall be deemed amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Other Commitments and Other Loans incurred pursuant thereto (including any amendments necessary to treat the Other Loans and/or Other Commitments as Loans and Commitments). Any Refinancing Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.15.

(3) This Section 2.15 shall supersede any provisions in Section 2.12, 2.13 or 10.01 to the contrary.

#### SECTION 2.16 Extensions of Loans.

(1) Extension of Term Loans. The Borrower may at any time and from time to time request that all or a portion of the Term Loans of any Class (each, an “**Existing Term Loan Class**”) be converted or exchanged to extend the scheduled Maturity Date(s) of any payment of principal with respect to all or a portion of any principal amount of such Term Loans (any such Term Loans which have been so extended, “**Extended Term Loans**”) and to provide for other terms consistent with this Section 2.16. Prior to entering into any Extension Amendment with respect

to any Extended Term Loans, the Borrower shall provide written notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Term Loan Class, with such request offered equally to all such Lenders of such Existing Term Loan Class) (each, a “**Term Loan Extension Request**”) setting forth the proposed terms of the Extended Term Loans to be established, which terms shall be identical in all material respects to the Term Loans of the Existing Term Loan Class from which they are to be extended except that (i) the scheduled final maturity date shall be extended and all or any of the scheduled amortization payments, if any, of all or a portion of any principal amount of such Extended Term Loans may be delayed to later dates than the scheduled amortization, if any, of principal of the Term Loans of such Existing Term Loan Class (with any such delay resulting in a corresponding adjustment to the scheduled amortization payments reflected in the Extension Amendment, the Incremental Amendment, the Refinancing Amendment or any other amendment, as the case may be, with respect to the Existing Term Loan Class from which such Extended Term Loans were extended), (ii)(A) the interest rates (including through fixed interest rates), interest margins, rate floors, upfront fees, funding discounts, original issue discounts and voluntary prepayment terms and premiums with respect to the Extended Term Loans may be different than those for the Term Loans of such Existing Term Loan Class and/or (B) additional fees and/or premiums may be payable to the Lenders providing such Extended Term Loans in addition to any of the items contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Extension Amendment, (iii) the Extended Term Loans may have optional prepayment terms (including call protection and prepayment terms and premiums) as may be agreed between the Borrower and the Lenders thereof, (iv) any Extended Term Loans may participate on a pro rata basis, less than a pro rata basis or greater than a pro rata basis in any mandatory prepayments of Term Loans hereunder (except that, unless otherwise permitted under this Agreement, such Extended Term Loans may not participate on a greater than pro rata basis as compared to any earlier maturing Class of Term Loans in any mandatory prepayments under Section 2.05(2)(a), (b) and (d)(i)), in each case as specified in the respective Term Loan Extension Request and (v) the Extension Amendment may provide for (x) other covenants and terms that apply to any period after the Latest Maturity Date in respect of Term Loans that is in effect immediately prior to the establishment of such Extended Term Loans and (y) subject to the immediately succeeding proviso, a Previously Absent Financial Maintenance Covenant; *provided* that, notwithstanding anything to the contrary contained herein, if any such terms of such Extended Term Loans contain a Previously Absent Financial Maintenance Covenant that is in effect prior to the applicable Latest Maturity Date, such Previously Absent Financial Maintenance Covenant shall be included for the benefit of each Facility. No Lender shall have any obligation to agree to have any of its Term Loans of any Existing Term Loan Class converted into Extended Term Loans pursuant to any Term Loan Extension Request. Any Extended Term Loans extended pursuant to any Term Loan Extension Request shall be designated a series (each, a “**Term Loan Extension Series**”) of Extended Term Loans for all purposes of this Agreement and shall constitute a separate Class of Loans from the Existing Term Loan Class from which they were extended; *provided* that any Extended Term Loans amended from an Existing Term Loan Class may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Term Loan Extension Series with respect to such Existing Term Loan Class.

(2) Extension of Revolving Commitments. The Borrower may at any time and from time to time request that all or a portion of the Revolving Commitments of any Class (each, an “**Existing Revolving Class**”) be converted or exchanged to extend the scheduled Maturity Date(s) of any payment of principal with respect to all or a portion of any principal amount of such Revolving Commitments (any such Revolving Commitments which have been so extended, “**Extended Revolving Commitments**”) and to provide for other terms consistent with this Section 2.16. Prior to entering into any Extension Amendment with respect to any Extended Revolving Commitments, the Borrower shall provide written notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders under the applicable Existing Revolving Class, with such request offered equally to all such Lenders of such Existing Revolving Class) (each, a “**Revolving Extension Request**”) setting forth the proposed terms of the Extended Revolving Commitments to be established, which terms shall be identical in all material respects to the Revolving Commitments of the Existing Revolving Class from which they are to be extended except that (i) the scheduled final maturity date shall be extended to a later date than the scheduled final maturity date of the Revolving Commitments of such Existing Revolving Class; *provided, however*, that at no time shall there be Classes of Revolving Commitments hereunder (including Extended Revolving Commitments) which have more than four (4) different Maturity Dates (unless otherwise consented to by the Administrative Agent), (ii)(A) the interest rates (including through fixed interest rates), interest margins, rate floors, upfront fees, funding discounts, original issue discounts and voluntary prepayment terms and premiums with respect to the Extended Revolving Commitments may be different than those for the Revolving Commitments of such Existing Revolving Class and/or (B) additional fees and/or premiums may be payable to the Lenders providing such Extended Revolving Commitments in addition to any of the

items contemplated by the preceding clause (A), in each case, to the extent provided in the applicable Extension Amendment, (iii) all borrowings under the applicable Revolving Commitments (i.e., the Existing Revolving Class and the Extended Revolving Commitments of the applicable Revolving Extension Series) and repayments thereunder shall be made on a pro rata basis (except for (I) payments of interest and fees at different rates on Extended Revolving Commitments (and related outstanding Extended Revolving Loans), (II) repayments required upon the Maturity Date of the non-extending Revolving Commitments, (III) repayments made in connection with any refinancing of Revolving Commitments and (IV) repayments made in connection with a permanent repayment and termination of Commitments), and (iv) the Extension Amendment may provide for (x) other covenants and terms that apply to any period after the Latest Maturity Date in respect of Revolving Commitments that is in effect immediately prior to the establishment of such Extended Revolving Commitments and (y) subject to the immediately succeeding proviso, a Previously Absent Financial Maintenance Covenant; *provided* that, notwithstanding anything to the contrary contained herein, if any such terms of such Extended Revolving Commitments contain a Previously Absent Financial Maintenance Covenant that is in effect prior to the applicable Latest Maturity Date, such Previously Absent Financial Maintenance Covenant shall be included for the benefit of each Class of Revolving Commitments. No Lender shall have any obligation to agree to have any of its Revolving Commitments of any Existing Revolving Class converted into Extended Revolving Commitments pursuant to any Revolving Extension Request. Any Extended Revolving Commitments extended pursuant to any Revolving Extension Request shall be designated a series (each, a “**Revolving Extension Series**”) of Extended Revolving Commitments for all purposes of this Agreement and shall constitute a separate Class of Revolving Commitments from the Existing Revolving Class from which they were extended; *provided* that any Extended Revolving Commitments amended from an Existing Revolving Class may, to the extent provided in the applicable Extension Amendment, be designated as an increase in any previously established Revolving Extension Series with respect to such Existing Revolving Class.

(3) Extension Request. The Borrower shall provide the applicable Extension Request to the Administrative Agent at least five (5) Business Days (or such shorter period as the Administrative Agent may determine in its sole discretion) prior to the date on which Lenders under the applicable Existing Term Loan Class or Existing Revolving Class, as applicable, are requested to respond. Any Lender holding a Term Loan under an Existing Term Loan Class (each, an “**Extending Term Lender**”) wishing to have all or a portion of its Term Loans of an Existing Term Loan Class or Existing Term Loan Classes, as applicable, subject to such Extension Request converted or exchanged into Extended Term Loans, and any Revolving Lender with a Revolving Commitment under an Existing Revolving Class (each, an “**Extending Revolving Lender**”) wishing to have all or a portion of its Revolving Commitments of an Existing Revolving Class or Existing Revolving Classes, as applicable, subject to such Extension Request converted or exchanged into Extended Revolving Commitments, as applicable, 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 or Revolving Commitments, as applicable, which it has elected to convert or exchange into Extended Term Loans or Extended Revolving Commitments, as applicable. In the event that the aggregate principal amount of Term Loans and/or Revolving Commitments, as applicable, subject to Extension Elections exceeds the amount of Extended Term Loans and/or Extended Revolving Commitments, respectively, requested pursuant to the Extension Request, Term Loans and/or Revolving Commitments, as applicable, subject to Extension Elections shall be converted or exchanged into Extended Term Loans and/or Revolving Commitments, respectively, on a pro rata basis (subject to such rounding requirements as may be established by the Administrative Agent) based on the aggregate principal amount of Term Loans or Revolving Commitments, as applicable, included in each such Extension Election or as may be otherwise agreed to in the applicable Extension Amendment.

(4) Extension Amendment. Extended Term Loans and Extended Revolving Commitments shall be established pursuant to an amendment (each, an “**Extension Amendment**”) to this Agreement (which, notwithstanding anything to the contrary set forth in Section 10.01, shall not require the consent of any Lender other than the Extending Lenders with respect to the Extended Term Loans and/or Extended Revolving Commitments established thereby, as the case may be) executed by the Borrower, the Administrative Agent and the Extending Lenders, it being understood that such Extension Amendment shall not require the consent of any Lender other than (A) the Extending Lenders with respect to the Extended Term Loans or Extended Revolving Commitments, as applicable, established thereby and (B) with respect to any extension of the Revolving Commitments that results in an extension of Issuing Bank’s obligations with respect to Letters of Credit, the consent of such Issuing Bank. Each request for an Extension Series of Extended Term Loans or Extended Revolving Commitments proposed to be incurred under this Section 2.16 shall be in an aggregate principal amount that is not less than \$5.0 million (it being understood that the actual principal amount thereof provided by the applicable Lenders may be lower than such

minimum amount), and the Borrower may condition the effectiveness of any Extension Amendment on an Extension Minimum Condition, which may be waived by the Borrower in its sole discretion. In addition to any terms and changes required or permitted by Sections 2.16(1) and (2), each of the parties hereto agrees that this Agreement and the other Loan Documents may be amended pursuant to an Extension Amendment, without the consent of any other Lenders, to the extent necessary to (i) in respect of each Extension Amendment in respect of Extended Term Loans, amend the scheduled amortization payments pursuant to Section 2.07 or the applicable Incremental Amendment, Extension Amendment, Refinancing Amendment or other amendment, as the case may be, with respect to the Existing Term Loan Class from which the Extended Term Loans were exchanged to reduce each scheduled repayment amount for the Existing Term Loan Class in the same proportion as the amount of Term Loans of the Existing Term Loan Class is to be reduced pursuant to such Extension Amendment (it being understood that the amount of any repayment amount payable with respect to any individual Term Loan of such Existing Term Loan Class that is not an Extended Term Loan shall not be reduced as a result thereof); (ii) reflect the existence and terms of the Extended Term Loans or Extended Revolving Commitments, as applicable, incurred pursuant thereto; (iii) modify the prepayments set forth in Section 2.05 to reflect the existence of the Extended Term Loans and the application of prepayments with respect thereto and (iv) effect such other amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower, to effect the provisions of this Section 2.16, and the Lenders hereby expressly authorize the Administrative Agent to enter into any such Extension Amendment. In connection with any Extension Amendment, the Borrower shall, if reasonably requested by the Administrative Agent, deliver customary reaffirmation agreements and/or such amendments to the Collateral Documents as may be reasonably requested by the Administrative Agent in order to ensure that such Extended Term Loans and/or Extended Revolving Commitments are provided with the benefit of the applicable Loan Documents.

(5) Notwithstanding anything to the contrary contained in this Agreement, on any date on which any Existing Term Loan Class and/or Existing Revolving Class is converted or exchanged to extend the related scheduled maturity date(s) in accordance with paragraphs (1) and (2) of this Section 2.16, in the case of the existing Term Loans or Revolving Commitments, as applicable, of each Extending Lender, the aggregate principal amount of such existing Loans shall be deemed reduced by an amount equal to the aggregate principal amount of Extended Term Loans and/or Extended Revolving Commitments, respectively, so converted or exchanged by such Lender on such date, and the Extended Term Loans and/or Extended Revolving Commitments shall be established as a separate Class of Loans, except as otherwise provided under Sections 2.16(1) and (2). Subject to the provisions of Section 2.03(13) in connection with Letters of Credit which mature or expire after a Maturity Date at any time Extended Revolving Commitments with a later Maturity Date are outstanding, all Letters of Credit shall be participated on a pro rata basis by each Lender with a Revolving Commitment in accordance with its percentage of the Revolving Commitments existing on the date of the Extension of such Extended Revolving Commitments (and except as provided in Section 2.03(13)), without giving effect to changes thereto on an earlier Maturity Date with respect to Letters of Credit theretofore incurred or issued).

(6) In the event that the Administrative Agent determines in its sole discretion that the allocation of Extended Term Loans and/or Extended Revolving Commitments of a given Extension Series to a given Lender was incorrectly determined as a result of manifest administrative error in the receipt and processing of an Extension Election timely submitted by such Lender in accordance with the procedures set forth in the applicable Extension Amendment, then the Administrative Agent, the Borrower and such affected Lender may (and hereby are authorized to), in their sole discretion and without the consent of any other Lender, enter into an amendment to this Agreement and the other Loan Documents (each, a “**Corrective Extension Amendment**”) within 15 days following the effective date of such Extension Amendment, as the case may be, which Corrective Extension Amendment shall (i) provide for the conversion or exchange and extension of Term Loans under the Existing Term Loan Class, or of Revolving Commitments under the Existing Revolving Class, in either case, in such amount as is required to cause such Lender to hold Extended Term Loans or Extended Revolving Commitments, as applicable, of the applicable Extension Series into which such other Term Loans or Revolving Commitments were initially converted or exchanged, as the case may be, in the amount such Lender would have held had such administrative error not occurred and had such Lender received the minimum allocation of the applicable Loans or Commitments to which it was entitled under the terms of such Extension Amendment, in the absence of such error, (ii) be subject to the satisfaction of such conditions as the Administrative Agent, the Borrower and such Extending Term Lender or Extending Revolving Lender, as applicable, may agree, and (iii) effect such other amendments of the type (with appropriate reference and nomenclature changes) described in the penultimate sentence of Section 2.16(4).

(7) No conversion or exchange of Loans or Commitments pursuant to any Extension Amendment in accordance with this Section 2.16 shall constitute a voluntary or mandatory payment or prepayment for purposes of this Agreement

(8) This Section 2.16 shall supersede any provisions in Section 2.12, 2.13 or 10.01 to the contrary.

SECTION 2.17 Defaulting Lenders.

(1) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(a) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove of any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 10.01.

(b) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise), shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the relevant Issuing Banks hereunder; third, if so determined by the Administrative Agent or requested by the relevant Issuing Banks, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Letter of Credit; fourth, as the Borrower may request (so long as no Default has occurred and is continuing), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; sixth, to the payment of any amounts owing to the Lenders or the relevant Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the relevant Issuing Banks against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default has occurred and is continuing, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and eighth, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; *provided* that if (i) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (ii) such Loans or L/C Borrowings were made at a time when the conditions set forth in Section 4.03 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.17(1)(b) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(c) Certain Fees. That Defaulting Lender (i) shall not be entitled to receive any commitment fee pursuant to Section 2.09(1) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (ii) shall be limited in its right to receive Letter of Credit fees as provided in Section 2.03(9).

(d) Reallocation of Applicable Percentages to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 2.03, the "Applicable Percentage" of each Non-Defaulting Lender's Revolving Loans and L/C Obligations shall be computed without giving effect to the Commitment of that Defaulting Lender; *provided* that (i) each such



reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Default has occurred and is continuing; and (ii) the aggregate obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit shall not exceed the positive difference, if any, of (1) the Revolving Commitment of that Non-Defaulting Lender *minus* (2) the aggregate Outstanding Amount of the Revolving Loans of that Non-Defaulting Lender.

(2) **Defaulting Lender Cure.** If the Borrower, the Administrative Agent and the Issuing Banks agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded participations in Letters of Credit to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.17(1)(d)), whereupon that Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; *provided further* that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

SECTION 2.18 **Loan Repricing Protection.** In the event that, on or prior to the six month anniversary of the Fourth Amendment Effective Date, the Borrower (a) makes any prepayment of Closing Date Term Loans in connection with any Repricing Transaction or (b) effects any amendment of this Agreement resulting in a Repricing Transaction, the Borrower shall pay to the Administrative Agent, for the ratable account of each applicable Lender, (i) in the case of clause (a), a prepayment premium of 1.00% of the aggregate principal amount of the Closing Date Term Loans being prepaid and (ii) in the case of clause (b), a payment equal to 1.00% of the aggregate principal amount of the applicable Closing Date Term Loans outstanding immediately prior to such amendment that is subject to such Repricing Transaction.

### Article III

#### **Taxes, Increased Costs Protection and Illegality**

SECTION 3.01 **Taxes.**

(1) Except as required by applicable Law, all payments by or on account of any Loan Party to or for the account of any Agent or any Lender under any Loan Document shall be made free and clear of and without deduction or withholding for any Taxes.

(2) If any Loan Party or any other applicable withholding agent is required by applicable Law to make any deduction or withholding on account of any Taxes from any sum paid or payable by or on account of any Loan Party to or for the account of any Lender or Agent under any of the Loan Documents:

(a) the applicable Loan Party shall notify the Administrative Agent of any such requirement or any change in any such requirement as soon as such Loan Party becomes aware of it;

(b) the applicable Loan Party or other applicable withholding agent shall make such deduction or withholding and pay to the relevant Governmental Authority any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Loan Party) for such Loan Party's account or (if that liability is imposed on the Lender or Agent) on behalf of and in the name of the Lender or Agent (as applicable);

(c) if the Tax in question is a Non-Excluded Tax or Other Tax, the sum payable to such Lender or Agent (as applicable) shall be increased by such Loan Party to the extent necessary to ensure that, after the making of any required deduction or withholding for Non-Excluded Taxes or Other Taxes (including any deductions or withholdings for Non-Excluded Taxes or Other Taxes attributable to any payments required to be made under this Section 3.01), such Lender (or, in the case of any payment made to the Administrative

Agent for its own account, the Administrative Agent) receives on the due date a net sum equal to what it would have received had no such deduction or withholding been required or made; and

(d) within thirty days after paying any sum from which it is required by Law to make any deduction or withholding, and within thirty days after the due date of payment of any Tax which it is required by clause (b) above to pay (or, in each case, as soon as reasonably practicable thereafter), the Borrower shall deliver to the Administrative Agent evidence reasonably satisfactory to the other affected parties of such deduction or withholding and of the remittance thereof to the relevant Governmental Authority.

(3) Status of Lender. Each Lender shall, at such times as are reasonably requested by the Borrower or the Administrative Agent, provide the Borrower and the Administrative Agent with any documentation prescribed by Laws or reasonably requested by the Borrower or the Administrative Agent certifying as to any entitlement of such Lender to an exemption from, or reduction in, withholding Tax with respect to any payments to be made to such Lender under any Loan Document. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Each such Lender shall, whenever a lapse in time or change in circumstances renders any such documentation (including any specific documentation required below in this Section 3.01(3)) obsolete, expired or inaccurate in any material respect, deliver promptly to the Borrower and the Administrative Agent updated or other appropriate documentation (including any new documentation reasonably requested by the Borrower or the Administrative Agent) or promptly notify the Borrower and Administrative Agent of its legal ineligibility to do so.

Without limiting the foregoing:

(a) Each U.S. Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement two properly completed and duly signed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding.

(b) Each Foreign Lender shall deliver to the Borrower and the Administrative Agent on or before the date on which it becomes a party to this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent) whichever of the following is applicable:

(i) two properly completed and duly signed copies of IRS Form W-8BEN or W-8BEN-E (or any successor forms) claiming eligibility for the benefits of an income tax treaty to which the United States is a party, and such other documentation as required under the Code,

(ii) two properly completed and duly signed copies of IRS Form W-8ECI (or any successor forms),

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 871(h) or Section 881(c) of the Code, (A) two properly completed and duly signed certificates substantially in the form of Exhibit H (any such certificate, a “**United States Tax Compliance Certificate**”) and (B) two properly completed and duly signed copies of IRS Form W-8BEN or W-8BEN-E (or any successor forms),

(iv) to the extent a Foreign Lender is not the beneficial owner (for example, where such Foreign Lender is a partnership or a participating Lender), IRS Form W-8IMY (or any successor forms) of such Foreign Lender, accompanied by an IRS Form W-8ECI, Form W-8BEN or W-8BEN-E, United States Tax Compliance Certificate, Form W-9, Form W-8IMY and any other required information (or any successor forms) from each beneficial owner that would be required under this Section 3.01(3) if such beneficial owner were a Lender, as applicable (*provided* that, if a Lender is a partnership (and not a participating Lender) and if one or more beneficial owners are claiming the portfolio interest exemption, the United States Tax Compliance Certificate may be provided by such Foreign Lender on behalf of such beneficial owner(s)), or



(v) two properly completed and duly signed copies of any other documentation prescribed by applicable U.S. federal income tax laws (including the Treasury Regulations) as a basis for claiming a complete exemption from, or a reduction in, U.S. federal withholding tax on any payments to such Lender under the Loan Documents.

(c) If a payment made to a Lender under any Loan Document would be subject to 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 Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this paragraph (c), the term "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

For the avoidance of doubt, if a Lender is an entity disregarded from its owner for U.S. federal income tax purposes, references to the foregoing documentation are intended to refer to documentation with respect to such Lender's owner and, as applicable, such Lender.

Notwithstanding any other provision of this Section 3.01(3), a Lender shall not be required to deliver any documentation that such Lender is not legally eligible to deliver. Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 3.01(3).

(4) Without duplication of other amounts payable by the Borrower pursuant to Section 3.01(2), the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(5) The Loan Parties shall, jointly and severally, indemnify a Lender or the Administrative Agent (each a "**Tax Indemnitee**"), within 10 days after written demand therefor, for the full amount of any Non-Excluded Taxes paid or payable by such Tax Indemnitee on or attributable to any payment under or with respect to any Loan Document, and any Other Taxes payable by such Tax Indemnitee (including Non-Excluded Taxes or Other Taxes imposed on or attributable to amounts payable under this Section 3.01) (other than any penalties determined by a final and non-appealable judgment of a court of competent jurisdiction to have resulted from the gross negligence, bad faith or willful misconduct of such Tax Indemnitee), whether or not such Taxes were correctly or legally imposed or asserted by the Governmental Authority; *provided* that if the Borrower reasonably believes that such Taxes were not correctly or legally asserted, such Tax Indemnitee will use reasonable efforts to cooperate with the Borrower to obtain a refund of such Taxes (which shall be repaid to the Borrower in accordance with Section 3.01(6)) so long as such efforts would not, in the sole determination of such Tax Indemnitee, result in any additional out-of-pocket costs or expenses not reimbursed by such Loan Party or be otherwise materially disadvantageous to such Tax Indemnitee. A certificate as to the amount of such payment or liability prepared in good faith and delivered by the Tax Indemnitee or by the Administrative Agent on behalf of another Tax Indemnitee, shall be conclusive absent manifest error.

(6) If and to the extent that a Tax Indemnitee, in its sole discretion (exercised in good faith), determines that it has received a refund (whether received in cash or applied as a credit against any other cash Taxes payable) of any Non-Excluded Taxes or Other Taxes in respect of which it has received indemnification payments or additional amounts under this Section 3.01, then such Tax Indemnitee shall pay to the relevant Loan Party the amount of such refund, net of all out-of-pocket expenses of the Tax Indemnitee (including any Taxes imposed with respect to such refund), and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), *provided* that the Loan Party, upon the request of the Tax Indemnitee, agrees to repay the amount paid over by the Tax Indemnitee (*plus* any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Tax Indemnitee to the extent the Tax Indemnitee is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 3.01(6), in no event will the Tax Indemnitee be required to pay any amount to a Loan Party pursuant to this Section 3.01(6) the payment of which would place the Tax Indemnitee in a less favorable net after-Tax position than the Tax Indemnitee would have been

in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require a Tax Indemnitee to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party or any other Person.

(7) On or before the date the Administrative Agent becomes a party to this Agreement, the Administrative Agent shall deliver to the Borrower whichever of the following is applicable: (i) if the Administrative Agent is a “United States person” within the meaning of Section 7701(a)(30) of the Code, two executed original copies of IRS Form W-9 certifying that such Administrative Agent is exempt from U.S. federal backup withholding or (ii) if the Administrative Agent is not a “United States person” within the meaning of Section 7701(a)(30) of the Code, (A) with respect to payments received for its own account, two executed original copies of IRS Form W-8ECI and (ii) with respect to payments received on account of any Lender, two executed original copies of IRS Form W-8IMY (together with all required accompanying documentation) certifying that the Administrative Agent is a Withholding U.S. branch. At any time thereafter, the Administrative Agent shall provide updated documentation previously provided (or a successor form thereto) when any documentation previously delivered has expired or become obsolete or invalid or otherwise upon the reasonable request of the Borrower. Notwithstanding anything to the contrary in this Section 3.01(7), the Administrative Agent shall not be required to provide any documentation that the Administrative Agent is not legally eligible to deliver as a result of a Change in Law after the Closing Date.

(8) The agreements in this Section 3.01 shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

(9) For the avoidance of doubt, for purposes of this Section 3.01, the term “Lender” includes any Issuing Bank.

**SECTION 3.02** Illegality. If any Lender reasonably determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the LIBO Rate, or to determine or charge interest rates based upon the LIBO Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on written notice thereof by such Lender to the Borrower through the Administrative Agent, (1) any obligation of such Lender to make or continue LIBO Rate Loans or to convert Base Rate Loans to LIBO Rate Loans shall be suspended, and (2) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the LIBO Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be reasonably determined by the Administrative Agent without reference to the LIBO Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (a) the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of LIBO Rate Loans and shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all LIBO Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBO Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBO Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBO Rate Loans and (b) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the LIBO Rate component of the Base Rate with respect to any Base Rate Loans, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the LIBO Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the LIBO Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

**SECTION 3.03** Inability to Determine Rates. **¶**

(i) Subject to Section 3.03(2) below, if the Administrative Agent (in the case of clause (1a) or (2b) below) or the Required Lenders (in the case of clause (3c) below) reasonably determine that for any reason in connection with any request for a LIBO Rate Loan or a conversion to or continuation thereof that

~~(1)-(a)~~ 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,

~~(2)-(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 in connection with an existing or proposed Base Rate Loan, or

~~(3)-(c)~~ 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 Borrower and each Lender. Thereafter, (i) the obligation of the Lenders to make or maintain LIBO Rate Loans shall be suspended, and (ii) 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 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 Base Rate Loans in the amount specified therein.

(ii) (a) The interest rate on a Loan denominated in dollars or an Alternative Currency may be derived from an interest rate benchmark that is, or may in the future become, the subject of regulatory reform. Regulators have signaled the need to use alternative benchmark reference rates for some of these interest rate benchmarks and, as a result, such interest rate benchmarks may cease to comply with applicable laws and regulations, may be permanently discontinued, and/or the basis on which they are calculated may change. The LIBOR is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. On March 5, 2021, the U.K. Financial Conduct Authority (“FCA”) publicly announced that: immediately after December 31, 2021, publication of all seven euro LIBOR settings, all seven Swiss Franc LIBOR settings, the spot next, 1-week, 2-month and 12-month Japanese Yen LIBOR settings, the overnight, 1-week, 2-month and 12-month British Pound Sterling LIBOR settings, and the 1-week and 2-month U.S. Dollar LIBOR settings will permanently cease; immediately after June 30, 2023, publication of the overnight and 12-month U.S. Dollar LIBOR settings will permanently cease; immediately after December 31, 2021, the 1-month, 3-month and 6-month Japanese Yen LIBOR settings and the 1-month, 3-month and 6-month British Pound Sterling LIBOR settings will cease to be provided or, subject to consultation by the FCA, be provided on a changed methodology (or “synthetic”) basis and no longer be representative of the underlying market and economic reality they are intended to measure and that representativeness will not be restored; and immediately after June 30, 2023, the 1-month, 3-month and 6-month U.S. Dollar LIBOR settings will cease to be provided or, subject to the FCA’s consideration of the case, be provided on a synthetic basis and no longer be representative of the underlying market and economic reality they are intended to measure and that representativeness will not be restored. There is no assurance that dates announced by the FCA will not change or that the administrator of LIBOR and/or regulators will not take further action that could impact the availability, composition, or characteristics of LIBOR or the currencies and/or tenors for which LIBOR is published. Each party to this agreement should consult its own advisors to stay informed of any such developments. Public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of LIBOR. Upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, Section 3.03(2)(b) and (c) provide a mechanism for determining an alternative rate of interest with respect to the Revolving Facility. The Administrative Agent will promptly notify the Borrower, pursuant to Section 3.03(2)(e), of any change to the reference rate upon which the interest rate on Eurocurrency Revolving Loans is based. However, the Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to LIBOR or other rates in the definition of “LIBO Rate” or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 3.03(2)(b) or (c), whether upon the occurrence of a Benchmark Transition Event, a Term SOFR T

ransition Event or an Early Opt-in Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 3.03(2)(d)), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the LIBO Rate or have the same volume or liquidity as did the London interbank offered rate (or the euro interbank offered rate, as applicable) prior to its discontinuance or unavailability.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark with respect to Revolving Loans, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" with respect to Dollars for such Benchmark Replacement Date, such Benchmark Replacement will, solely with respect to the Revolving Facility, replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" with respect to any Agreed Currency for such Benchmark Replacement Date, such Benchmark Replacement will, solely with respect to the Revolving Facility, replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Revolving Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Revolving Lenders comprising the Required Facility Lenders under the Revolving Facility.

(c) Notwithstanding anything to the contrary herein or in any other Loan Document and subject to the proviso below in this paragraph, with respect to a Revolving Loan denominated in Dollars, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark with respect to the Revolving Facility, then the applicable Benchmark Replacement will, solely with respect to the Revolving Facility, replace the then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; *provided* that, this clause (c) shall not be effective unless the Administrative Agent has delivered to the Revolving Lenders and the Borrower a Term SOFR Notice. For the avoidance of doubt, the Administrative Agent shall not be required to deliver a Term SOFR Notice after the occurrence of a Term SOFR Transition Event and may do so in its sole discretion.

(d) In connection with the implementation of a Benchmark Replacement with respect to the Revolving Facility, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time with respect to the Revolving Facility and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes with respect to the Revolving Facility will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(e) The Administrative Agent will promptly notify the Borrower and the Revolving Lenders of (i) any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date, (ii) the implementation of any Benchmark Replacement with respect to the Revolving Facility, (iii) the effectiveness of any Benchmark Replacement Conforming Changes with respect to the Revolving Facility, (iv) the removal or reinstatement of any tenor of a Benchmark with respect to the Revolving Facility pursuant to clause (f) below and (v) the commencement or conclusion of any Benchmark Unavailability Period with respect to the Revolving Facility. Any determination, decision or election

that may be made by the Administrative Agent or, if applicable, any Revolving Lender (or group of Revolving Lenders) pursuant to this Section 3.03(2), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 3.03(2).

(f) Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark with respect to the Revolving Loan is a term rate (including Term SOFR or LIBO Rate) and either (x) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (y) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Administrative Agent may, solely with respect to the Revolving Facility, modify the definition of "Interest Period" for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (x) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (y) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may, solely with respect to the Revolving Facility, modify the definition of "Interest Period" for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(g) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a Eurocurrency Borrowing of, conversion to or continuation of Eurocurrency Revolving Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, either (x) the Borrower will be deemed to have converted any request for a Eurocurrency Borrowing of Eurocurrency Revolving Loans denominated in Dollars into a request for a Borrowing of or conversion to Base Rate Loans or (y) any Eurocurrency Borrowing of Revolving Loans denominated in an Alternative Currency shall be ineffective. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate with respect to the Revolving Facility. Furthermore, if any Eurocurrency Revolving Loan in any Agreed Currency is outstanding on the date of the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a LIBO Rate applicable to such Eurocurrency Revolving Loan, then until such time as a Benchmark Replacement for such Agreed Currency is implemented pursuant to this Section 3.03(2), (i) if such Eurocurrency Revolving Loan is denominated in Dollars, then on the last day of the Interest Period applicable to such Revolving Loan (or the next succeeding Business Day if such day is not a Business Day), such Revolving Loan shall be converted by the Administrative Agent to, and shall constitute, a Base Rate Revolving Loan denominated in Dollars on such day or (ii) if such Eurocurrency Revolving Loan is denominated in any Agreed Currency other than dollars, then such Revolving Loan shall, on the last day of the Interest Period applicable to such Revolving Loan (or the next succeeding Business Day if such day is not a Business Day), at the Borrower's election prior to such day: (A) be prepaid by the Borrower on such day or (B) solely for the purpose of calculating the interest rate applicable to such Eurocurrency Loan, such Eurocurrency Loan denominated in any Agreed Currency other than dollars shall be deemed to be a Eurocurrency Loan denominated in dollars and shall accrue interest at the same interest rate applicable to Eurocurrency Loans denominated in dollars at such time.

(h) Notwithstanding anything herein to the contrary, the provisions of this Section 3.03(2) shall apply solely with respect to the Revolving Facility.



SECTION 3.04 Increased Cost and Reduced Return; Capital Adequacy; Reserves on LIBO Rate Loans.

- (1) Increased Costs Generally. If any Change in Law shall:
- (a) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender;
  - (b) subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or any LIBO Rate Loan made by it, or change the basis of taxation of payments to such Lender in respect thereof (except for Non-Excluded Taxes or Other Taxes covered by Section 3.01 and any Excluded Taxes); or
  - (c) impose on any Lender or the London interbank market any other condition, cost or expense affecting this Agreement or LIBO Rate Loans made by such Lender that is not otherwise accounted for in the definition of "LIBO Rate" or this clause (1);

and the result of any of the foregoing shall be to increase the cost to such Lender or Issuing Bank of making or maintaining any Loan or issuing or maintaining any Letter of Credit the interest on which is determined by reference to the LIBO Rate (or of maintaining its obligation to make any such Loan or Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or Issuing Bank (whether of principal, interest or any other amount) then, from time to time within fifteen (15) days after demand by such Lender or Issuing Bank setting forth in reasonable detail such increased costs (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender or Issuing Bank such additional amount or amounts as will compensate such Lender or Issuing Bank for such additional costs incurred or reduction suffered; *provided* that such amounts shall only be payable by the Borrower to the applicable Lender or Issuing Bank under this Section 3.04(1) so long as it is such Lender's or such Issuing Bank's general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(2) Capital Requirements. If any Lender reasonably determines that any Change in Law affecting such Lender or any Lending Office of such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by it, or participations in or issuance of Letters of Credit by such Lender, to a level below that which such Lender or such Lender's holding company, as the case may be, could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy and liquidity requirements), then from time to time upon demand of such Lender setting forth in reasonable detail the charge and the calculation of such reduced rate of return (with a copy of such demand to the Administrative Agent), the Borrower will pay to such Lender additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered; *provided* that such amounts shall only be payable by the Borrower to the applicable Lender under this Section 3.04(2) so long as it is such Lender's general policy or practice to demand compensation in similar circumstances under comparable provisions of other financing agreements.

(3) Certificates for Reimbursement. A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (1) or (2) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender, as the case may be, the amount shown as due on any such certificate within fifteen (15) days after receipt thereof.

SECTION 3.05 Funding Losses. Upon written demand of any Lender (with a copy to the Administrative Agent) from time to time, which demand shall set forth in reasonable detail the basis for requesting such amount, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense (excluding loss of anticipated profits or margin) actually incurred by it as a result of:

- (1) any continuation, conversion, payment or prepayment of any LIBO Rate Loan on a day prior to the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(2) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any LIBO Rate Loan on the date or in the amount notified by the Borrower; or

(3) any assignment of a LIBO Rate Loan on a day prior to the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 3.07; including any loss or expense (excluding loss of anticipated profits or margin) actually incurred by reason of the liquidation or reemployment of funds obtained by it to maintain such LIBO Rate Loan or from fees payable to terminate the deposits from which such funds were obtained.

Notwithstanding the foregoing, no Lender may make any demand under this Section 3.05 with respect to the “floor” specified in the proviso to the definition of “LIBO Rate.”

#### SECTION 3.06 Matters Applicable to All Requests for Compensation.

(1) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the good faith judgment of such Lender such designation or assignment (a) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (b) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect.

(2) Suspension of Lender Obligations. If any Lender requests compensation by the Borrower under Section 3.04, the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or continue LIBO Rate Loans from one Interest Period to another Interest Period, or to convert Base Rate Loans into LIBO Rate Loans until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 3.06(3) shall be applicable); *provided* that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(3) Conversion of LIBO Rate Loans. If any Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances specified in Section 3.02, 3.03 or 3.04 hereof that gave rise to the conversion of such Lender’s LIBO Rate Loans no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when LIBO Rate Loans made by other Lenders, as applicable, are outstanding, such Lender’s Base Rate Loans shall be automatically converted, on the first day(s) of the next succeeding Interest Period(s) for such outstanding LIBO Rate Loans to the extent necessary so that, after giving effect thereto, all Loans of a given Class held by the Lenders of such Class holding LIBO Rate Loans and by such Lender are held pro rata (as to principal amounts, interest rate basis, and Interest Periods) in accordance with their respective Pro Rata Shares.

(4) Delay in Requests. Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of Sections 3.01 or 3.04 shall not constitute a waiver of such Lender’s right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of Section 3.01 or 3.04 for any increased costs incurred or reductions suffered more than one hundred and eighty (180) days prior to the date that such Lender notifies the Borrower of the event giving rise to such claim and of such Lender’s intention to claim compensation therefor (except that, if the circumstance giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 3.07 Replacement of Lenders under Certain Circumstances. If (1) any Lender requests compensation under Section 3.04 or ceases to make LIBO Rate Loans as a result of any condition described in Section 3.02 or Section 3.04, (2) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01 or 3.04, (3) any Lender is a Non-Consenting Lender, (4) any Lender becomes a Defaulting Lender or (5) any other circumstance exists hereunder that gives the Borrower the right



to replace a Lender as a party hereto, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent,

(a) require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.07), all of its interests, rights and obligations under this Agreement (or, with respect to clause (3) above, all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver, or amendment, as applicable) and the related Loan Documents to one or more Eligible Assignees that shall assume such obligations (any of which assignee may be another Lender, if a Lender accepts such assignment), *provided that*:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.07(b)(iv);

(ii) such Lender shall have received payment of an amount equal to the applicable outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05 and, in the case of a Repricing Transaction, any "prepayment premium" pursuant to Section 2.18 that would otherwise be owed in connection therewith) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) such Lender being replaced pursuant to this Section 3.07 shall (i) execute and deliver an Assignment and Assumption with respect to all, or a portion, as applicable, of such Lender's Commitment and outstanding Loans and participations in L/C Obligations and (ii) deliver any Notes evidencing such Loans to the Borrower or Administrative Agent (or a lost or destroyed note indemnity in lieu thereof); *provided that* the failure of any such Lender to execute an Assignment and Assumption or deliver such Notes shall not render such sale and purchase (and the corresponding assignment) invalid and such assignment shall be recorded in the Register and the Notes shall be deemed to be canceled upon such failure;

(iv) the Eligible Assignee shall become a Lender hereunder and the assigning Lender shall cease to constitute a Lender hereunder with respect to such assigned Loans, Commitments and participations, except with respect to indemnification and confidentiality provisions under this Agreement, which shall survive as to such assigning Lender;

(v) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(vi) such assignment does not conflict with applicable Laws;

(vii) any Lender that acts as an Issuing Bank may not be replaced hereunder at any time when it has any Letter of Credit outstanding hereunder unless arrangements reasonably satisfactory to such Issuing Bank (including the furnishing of a back-up standby letter of credit in form and substance, and issued by an issuer, reasonably satisfactory to such Issuing Bank or the depositing of Cash Collateral into a Cash Collateral Account in amounts and pursuant to arrangements reasonably satisfactory to such Issuing Bank) have been made with respect to each such outstanding Letter of Credit; and

(viii) the Lender that acts as Administrative Agent cannot be replaced in its capacity as Administrative Agent other than in accordance with Section 9.11, or

(b) terminate the Commitment of such Lender or Issuing Bank, as the case may be, and (A) in the case of a Lender (other than an Issuing Bank), repay all Obligations of the Borrower owing to such Lender relating to the Loans and participations held by such Lender as of such termination date (including in the case

of a Repricing Transaction, any “prepayment premium” pursuant to Section 2.18 that would otherwise be owed in connection therewith) and (B) in the case of an Issuing Bank, repay all Obligations of the Borrower owing to such Issuing Bank relating to the Loans and participations held by such Issuing Bank as of such termination date and Cash Collateralize, cancel or backstop, or provide for the deemed reissuance under another facility, on terms satisfactory to such Issuing Bank any Letters of Credit issued by it; *provided* that in the case of any such termination of the Commitment of a Non-Consenting Lender such termination shall be sufficient (together with all other consenting Lenders) to cause the adoption of the applicable consent, waiver or amendment of the Loan Documents and such termination shall, with respect to clause (3) above, be in respect of all of its interests, rights and obligations with respect to the Class of Loans or Commitments that is the subject of the related consent, waiver and amendment.

In the event that (i) the Borrower or the Administrative Agent has requested that the Lenders consent to a departure or waiver of any provisions of the Loan Documents or agree to any amendment thereto, (ii) the consent, waiver or amendment in question requires the agreement of each Lender, all affected Lenders or all the Lenders or all affected Lenders with respect to a certain Class or Classes of the Loans/Commitments and (iii) the Required Lenders or Required Facility Lenders, as applicable, have agreed to such consent, waiver or amendment, then any Lender who does not agree to such consent, waiver or amendment shall be deemed a “**Non-Consenting Lender.**”

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

SECTION 3.08 Survival. All of the Borrower’s obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder and resignation of the Administrative Agent.

#### **Article IV**

#### **Conditions Precedent**

SECTION 4.01 Conditions Precedent to Effectiveness. This Agreement will be effective and enforceable in accordance with its terms upon the satisfaction of each of the following conditions:

(1) The Administrative Agent’s receipt of the following, each of which shall be originals, facsimiles or copies in .pdf format (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party (other than in the case of clause (1)(c)(ii) and (1)(e) below):

- (a) [reserved];
- (b) executed counterparts of this Agreement and the Guaranty by each intended party hereto and thereto;
- (c) each Collateral Document set forth on Schedule 4.01(1)(c) required to be executed on the Effective Date as indicated on such schedule, duly executed by each Loan Party that is party thereto, together with:
  - (i) subject to Section 6.13(2), certificates, if any, representing the Pledged Collateral that is certificated equity of the Loan Parties’ Material Domestic Subsidiaries accompanied by undated stock powers executed in blank; and
  - (ii) all UCC-1 financing statements in the appropriate jurisdiction or jurisdictions for each Loan Party that the Administrative Agent and the Collateral Agent may deem reasonably necessary to satisfy the Collateral and Guarantee Requirement shall have been provided for, and arrangements for the filing thereof in a manner reasonably satisfactory to the Administrative Agent shall have been made (it being understood that such UCC-1 financing statements will be filed on the Effective Date);

(d) certificates of good standing from the secretary of state of the state of organization of each Loan Party (to the extent such concept exists in such jurisdiction), customary certificates of resolutions or other action, incumbency certificates or other certificates of Responsible Officers of each Loan Party certifying true and complete copies of the Organizational Documents attached thereto and evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party on the Effective Date;

(e) a customary legal opinion from Winston & Strawn LLP, counsel to the Loan Parties;

(f) a certificate of a Responsible Officer certifying that the conditions set forth in Section 4.01(4) has been satisfied; and

(g) a solvency certificate from a Financial Officer of the Borrower (after giving effect to the Transactions) substantially in the form attached hereto as Exhibit I;

*provided, however*, that with respect to the requirements set forth in clause (1)(c)(i) above, each certificate required to be delivered pursuant to clause (1)(c)(i), above, on the Effective Date by any Loan Party will not constitute conditions precedent to the effectiveness of this Agreement on the Effective Date or the obligation of each Lender to make a Credit Extension hereunder on the Closing Date and that the only action with respect to the perfection of the Collateral that shall constitute conditions precedent to the effectiveness of this Agreement on the Effective Date shall be the delivery of the UCC-1 financing statements required pursuant to clause (1)(c)(ii), above; *provided* that the Borrower will use commercially reasonable efforts to effect the delivery of each certificate required to be delivered pursuant to clause (1)(c)(i) above (and transfer powers with respect thereto) on or prior to the Closing Date without undue burden or expense; *provided further* that each of the Borrower and its wholly owned Material Domestic Subsidiaries (other than Excluded Subsidiaries) will execute and/or deliver any such document(s) that is not delivered and take any perfection action that is not taken on the Effective Date or on the Closing Date within 90 days after the Closing Date (or such later date as agreed to by the Administrative Agent).

(2) The Administrative Agent shall have received copies of (a) audited consolidated balance sheets and related audited consolidated statements of operations, members' equity (deficit) and cash flows of the Target and its subsidiaries for the fiscal years ended December 31, 2014 and December 31, 2015 and, to the extent the Target has made such financial statements available to the Borrower (or otherwise publicly available), each subsequent fiscal year ended at least 90 days prior to the Effective Date, (b) unaudited consolidated balance sheets and the related unaudited consolidated statements of income, cash flows and members' equity (deficit) of the Target and its subsidiaries for each subsequent fiscal quarter (other than the fourth fiscal quarter of the Target's fiscal year) ended at least 45 days prior to the Effective Date, (c) audited consolidated balance sheets and related audited consolidated statements of income, changes in members' deficit and cash flows of the Borrower and its Subsidiaries for the fiscal years ended December 31, 2014 and December 31, 2015 and each subsequent fiscal year ended at least 90 days prior to the Effective Date and (d) unaudited consolidated balance sheets and the related unaudited consolidated statements of income and cash flows of the Borrower and its Subsidiaries for each subsequent fiscal quarter (other than the fourth fiscal quarter of the Borrower's fiscal year) ended at least 45 days prior to the Effective Date. For the avoidance of doubt, it is agreed that all Target financial statements required to be delivered pursuant to this clause (2) shall be prepared in accordance with IFRS.

(3) The Administrative Agent shall have received at least three (3) Business Days prior to the Effective Date all documentation and other information in respect of the Borrower and the Guarantors required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act, that has been reasonably requested in writing by it at least five (5) Business Days prior to the Effective Date.

(4) The Specified Representations shall be true and correct in all material respects on and as of the Effective Date; *provided* that to the extent such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date.

(5) The Bridge Loan Agreement shall have been executed and delivered by the parties thereto.

(6) The Undertaking Agreement and the agreement regarding guarantee and indemnification undertakings, in each case, including all schedules and exhibits thereto, the Tender Documents and all other related documentation shall be reasonably satisfactory to the Arrangers and shall (if necessary) have been executed and delivered by the parties thereto.

(7) The Investment Agreement (including the conditions precedent set forth therein) and all of the definitive documentation related thereto shall be reasonably satisfactory to the Arrangers and shall have been executed and delivered by the parties thereto.

(8) The amendment to the Existing Credit Agreement, permitting the Transactions in a manner reasonably satisfactory to the Administrative Agent shall have been executed and delivered by the parties thereto.

(9) The Tender Documents shall have been, or, substantially concurrently with the execution of this Agreement, the Bridge Loan Agreement and the Investment Agreement, shall be submitted to the Polish Financial Supervision Authority.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

SECTION 4.02 Conditions to Credit Extensions on the Closing Date. The obligation of each Lender to make a Credit Extension hereunder on the Closing Date is subject solely to satisfaction (or waiver) of the following conditions precedent:

Prior to or substantially concurrently with the initial Borrowing on the Closing Date,

- (a) all conditions under Section 4.01 shall have been satisfied; and
- (b) the Tender Effectiveness shall have occurred or shall occur substantially contemporaneously with the initial Borrowing.

SECTION 4.03 Conditions to Credit Extensions after the Closing Date. The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, a continuation of LIBO Rate Loans or a Borrowing pursuant to any Incremental Amendment) after the Closing Date is subject to the following conditions precedent:

(1) The representations and warranties of the Borrower contained in Article V or any other Loan Document shall be true and correct in all material respects on and as of the date of such Credit Extension; *provided* that to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; *provided further* that, any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(2) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds therefrom.

(3) The Administrative Agent or the relevant Issuing Bank (as applicable) shall have received a Request for Credit Extension in accordance with the requirements hereof.

**(4) In connection with any Credit Extension consisting of a Borrowing of Revolving Loans, solely to the extent the aggregate principal amount of Revolving Loans outstanding (giving pro forma effect to such proposed Credit Extension) exceeds \$40.0 million, either (i) the proceeds of such Credit Extension shall be used, within ten (10) Business Days of such Credit Extension solely for the**

purposes described in Section 6.14(b) or (ii) the Borrower shall, not later than two (2) Business Days following the expiration of such ten (10) Business Day period described in the foregoing clause (i), prepay the Revolving Loans in accordance with Section 2.05(1) in an amount such that the aggregate principal amount of Revolving Loans outstanding after giving effect to such prepayment shall not exceed \$40.0 million.

(5) ~~(4)~~ Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, a continuation of LIBO Rate Loans or a Borrowing pursuant to an Incremental Amendment) submitted by the Borrower after the Closing Date shall be deemed to be a representation and warranty that the conditions specified in Sections 4.03(1) and 4.03(2) have been satisfied on and as of the date of the applicable Credit Extension and that the requirements of Section 4.03(4) shall be complied with (as applicable).

In addition, solely to the extent the Borrower has delivered to the Administrative Agent a Notice of Intent to Cure pursuant to Section 8.04, no request for a Credit Extension shall be honored after delivery of such notice until the applicable Cure Amount specified in such notice is actually received by the Borrower. For the avoidance of doubt, the preceding sentence shall have no effect on the continuation or conversion of any Loans outstanding.

## Article V

### Representations and Warranties

The Borrower represents and warrants to the Administrative Agent and the Lenders on the Effective Date and at the time of each Credit Extension (in the case of a Credit Extension made pursuant to Section 2.14, solely to the extent required to be true and correct for such Credit Extension pursuant to Section 2.14):

SECTION 5.01 Existence, Qualification and Power; Compliance with Laws. Each Loan Party and each of its respective Restricted Subsidiaries that is a Material Subsidiary:

(1) is a Person duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization (to the extent such concept exists in such jurisdiction),

(2) has all corporate or other organizational power and authority to (a) own or lease its assets and carry on its business as currently conducted and (b) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party,

(3) is duly qualified and in good standing (to the extent such concept exists) under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business as currently conducted requires such qualification,

(4) is in compliance with all applicable Laws orders, writs, injunctions and orders; and

(5) has all requisite governmental licenses, authorizations, consents and approvals to operate its business as currently conducted;

except in each case referred to in the preceding clauses (2)(a), (3), (4) or (5), to the extent that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.02 Authorization; No Contravention.

(1) The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party have been duly authorized by all necessary corporate or other organizational action.

(2) None of the execution, delivery and performance by each Loan Party of each Loan Document to which such Person is a party will:

(a) contravene the terms of any of such Person's Organizational Documents;

(b) result in any breach or contravention of, or the creation of any Lien upon any of the property or assets of such Person or any of the Restricted Subsidiaries (other than as permitted by Section 7.01) under (i) any Contractual Obligation to which such Loan Party is a party or affecting such Loan Party or the properties of such Loan Party or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Loan Party or its property is subject; or

(c) violate any applicable Law;

except with respect to any breach, contravention or violation (but not creation of Liens) referred to in the preceding clauses (b) and (c), to the extent that such breach, contravention or violation would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.03 Governmental Authorization. No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for:

(1) filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties,

(2) the approvals, consents, exemptions, authorizations, actions, notices and filings that have been duly obtained, taken, given or made and are in full force and effect (except to the extent not required to be obtained, taken, given or made or in full force and effect pursuant to the Collateral and Guarantee Requirement); and

(3) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.04 Binding Effect. This Agreement and each other Loan Document has been duly executed and delivered by each Loan Party that is party hereto or thereto, as applicable. Each Loan Document constitutes a legal, valid and binding obligation of each Loan Party that is party thereto, enforceable against each such Loan Party in accordance with its terms, except as such enforceability may be limited by Debtor Relief Laws, by general principles of equity and principles of good faith and fair dealing generally applicable to entities such as the Loan Parties.

SECTION 5.05 Financial Statements; No Material Adverse Effect.

(1) The Borrower Annual Financial Statements and the Borrower Quarterly Financial Statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries as of the date(s) thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the periods covered thereby, (i) except as otherwise expressly noted therein and (ii) subject, in the case of the Borrower Quarterly Financial Statements, to changes resulting from normal year-end adjustments and the absence of footnotes.

(2) Since the date of effectiveness of this Agreement, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to have a Material Adverse Effect.

(3) The forecasts of consolidated balance sheets and statements of income of the Borrower and its Subsidiaries for each fiscal year ending after the Closing Date until the fifth anniversary of the Closing Date, copies of which have been furnished to the Administrative Agent prior to the Closing Date, when taken as a whole, have been prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable at the time made and at the time the forecasts are delivered, it being understood that:

(a) no forecasts are to be viewed as facts,

(b) all forecasts are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties or the Investors,



- (c) no assurance can be given that any particular forecasts will be realized and
- (d) actual results may differ and such differences may be material.

SECTION 5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Borrower, overtly threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against the Borrower or any of the Restricted Subsidiaries that would reasonably be expected to have a Material Adverse Effect.

SECTION 5.07 Labor Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (1) there are no strikes or other labor disputes against the Borrower or the Restricted Subsidiaries pending or, to the knowledge of the Borrower, threatened in writing and (2) hours worked by and payment made based on hours worked to employees of each of the Borrower or the Restricted Subsidiaries have not been in violation of the Fair Labor Standards Act of 1938 or any other applicable Laws dealing with wage and hour matters.

SECTION 5.08 Ownership of Property; Liens. Each Loan Party and each of its respective Restricted Subsidiaries has good and valid record title in fee simple to, or valid leasehold interests in, or easements or other limited property interests in, all real property necessary in the ordinary conduct of its business, free and clear of all Liens except for Liens permitted by Section 7.01 (and, prior to the Closing Date, liens under the Existing Credit Agreement) and except where the failure to have such title or other interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 5.09 Environmental Matters. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) each Loan Party and each of its Restricted Subsidiaries and their respective operations and properties is in compliance with all applicable Environmental Laws; (b) each Loan Party and each of its Restricted Subsidiaries has obtained and maintained all Environmental Permits required to conduct their operations; (c) none of the Loan Parties or any of their respective Restricted Subsidiaries is subject to any pending or, to the knowledge of the Borrower, threatened Environmental Claim in writing or Environmental Liability; (d) none of the Loan Parties or any of their respective Restricted Subsidiaries or predecessors has treated, stored, transported or Released Hazardous Materials at or from any currently or formerly owned, leased or operated real estate or facility except for such actions that were in compliance with Environmental Law; and (e) to the knowledge of any Loan Party or any Restricted Subsidiary, there are no occurrences, facts, circumstances or conditions which could reasonably be expected to give rise to an Environmental Claim.

SECTION 5.10 Taxes. Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Loan Party and each of its Restricted Subsidiaries has timely filed all Tax returns and reports required to be filed, and have timely paid all Taxes (including satisfying its withholding tax obligations) levied or imposed on their properties, income or assets (whether or not shown in a Tax return), except those which are being contested in good faith by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP.

There is no proposed Tax assessment, deficiency or other claim against any Loan Party or any of its Restricted Subsidiaries except (i) those being actively contested by a Loan Party or such Restricted Subsidiary in good faith and by appropriate actions diligently taken and for which adequate reserves have been provided in accordance with GAAP or (ii) those which would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect.

SECTION 5.11 ERISA Compliance.

(1) Except as would not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state Laws.

(2) (i) No ERISA Event has occurred or is reasonably expected to occur and (ii) none of the Loan Parties or any of their respective ERISA Affiliates has engaged in a transaction that could be subject to Sections 4069 or 4212(c) of ERISA, except, with respect to each of the foregoing clauses of this Section 5.11(2), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

(3) Except where noncompliance or the incurrence of an obligation would not reasonably be expected to result in a Material Adverse Effect, (a) each Foreign Plan has been maintained in compliance with its



terms and with the requirements of any and all applicable Laws, and (b) none of the Borrower or any Subsidiary has incurred any obligation in connection with the termination of or withdrawal from any Foreign Plan.

SECTION 5.12 Subsidiaries.

(1) Subject to the occurrence of the Closing Date Refinancing, all Equity Interests that constitute Collateral owned by the Borrower or any Guarantor in any of their respective Subsidiaries are owned free and clear of all Liens of any person except (a) those Liens created under the Collateral Documents and (b) any nonconsensual Lien that is permitted under Section 7.01.

(2) As of the Effective Date, Schedule 5.12 sets forth:

(a) the name and jurisdiction of organization of each Subsidiary, and

(b) the ownership interests of the Borrower and any Subsidiary of the Borrower in each Subsidiary, including the percentage of such ownership.

SECTION 5.13 Margin Regulations; Investment Company Act.

(a) As of the Effective Date, none of the Collateral is Margin Stock. No Loan Party is engaged nor will it engage, principally or as one of its important activities, in the business of purchasing or carrying Margin Stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System of the United States), or extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Borrowings will be used for any purpose that violates Regulation U.

(b) No Loan Party is required to be registered as an “investment company” under the Investment Company Act of 1940.

SECTION 5.14 Disclosure.

(a) As of the Effective Date, none of the written information and written data heretofore or contemporaneously furnished in writing by or on behalf of the Borrower or any Guarantor to any Agent or any Lender on or prior to the Effective Date in connection with the Transactions, when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make such written information and written data taken as a whole, in the light of the circumstances under which it was delivered, not materially misleading (after giving effect to all modifications and supplements to such written information and written data, in each case, furnished after the date on which such written information or such written data was originally delivered and prior to the Effective Date); it being understood that for purposes of this Section 5.14, such written information and written data shall not include any projections, *pro forma* financial information, financial estimates, forecasts and forward-looking information or information of a general economic or general industry nature; and

(b) As of the Fourth Amendment Effective Date, to the knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Fourth Amendment Effective Date to any Lender in connection with this Agreement is true and correct in all material respects.

SECTION 5.15 Intellectual Property; Licenses, etc. The Borrower and the Restricted Subsidiaries have good and marketable title to, or a valid license or right to use, all patents, patent rights, trademarks, servicemarks, trade names, copyrights, technology, software, know-how, database rights and other intellectual property rights (collectively, “**IP Rights**”) that to the knowledge of the Borrower are reasonably necessary for the operation of their respective businesses as currently conducted, except where the failure to have any such rights, either individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect. To the knowledge of the Borrower, the operation of the respective businesses of the Borrower or any Subsidiary of the Borrower as currently conducted does not infringe upon, dilute, misappropriate or violate any IP Rights held by any Person except for such infringements, dilutions, misappropriations or violations, individually or in the aggregate, that would not reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any IP Rights is pending or, to the

knowledge of the Borrower, threatened in writing against any Loan Party or Subsidiary, that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

SECTION 5.16 Solvency. On the Effective Date (or, with respect to the making of such representation on or after the Closing Date, the Closing Date), before and after giving effect to the Transactions on a *pro forma* basis, the Borrower and the Subsidiaries, on a consolidated basis, are Solvent.

SECTION 5.17 USA PATRIOT Act; Anti-Corruption Compliance; Sanctions. To the extent applicable, each of the Borrower and the Restricted Subsidiaries are in compliance, in all material respects, with (i) the USA PATRIOT Act, (ii) the United States Foreign Corrupt Practices Act of 1977 (the “FCPA”) and (iii) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 C.F.R. Subtitle B, Chapter V, as amended) and any other applicable enabling legislation or executive order relating thereto. Neither the Borrower nor any Restricted Subsidiary nor any director or officer, nor, to the knowledge of the Borrower, employee or agent of the Borrower or any of the Restricted Subsidiaries, is currently the subject of any U.S. sanctions administered by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”) or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state or Her Majesty’s Treasury of the United Kingdom (“Sanctions”). No proceeds of the Loans will be used by the Borrower or any Restricted Subsidiary directly or indirectly, in violation of Sanctions, the USA PATRIOT Act or the FCPA or for the purpose of financing activities of or with any Person, or in any country or territory, that, at the time of such financing, is the subject of any Sanctions, or in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 5.18 Collateral Documents. Except as otherwise contemplated hereby or under any other Loan Documents and subject to limitations set forth in the Collateral and Guarantee Requirement and the effectiveness of the Collateral Documents pursuant to their terms, the provisions of the Collateral Documents, together with such filings and other actions required to be taken hereby or by the applicable Collateral Documents (including the delivery to the Collateral Agent of any Pledged Collateral required to be delivered pursuant hereto or the applicable Collateral Documents), are effective to create in favor of the Collateral Agent for the benefit of the Secured Parties a legal, valid, perfected and enforceable first priority Lien (subject to Liens permitted by Section 7.01) on all right, title and interest of the respective Loan Parties in the Collateral described therein.

Notwithstanding anything herein (including this Section 5.18) or in any other Loan Document to the contrary, no Loan Party makes any representation or warranty as to (A) the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest in any Equity Interests of any Foreign Subsidiary, or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign Law, (B) the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security interest to the extent such pledge, security interest, perfection or priority is not required pursuant to the Collateral and Guarantee Requirement, (C) on the Closing Date and until required pursuant to Section 6.13 or 4.01, the pledge or creation of any security interest, or the effects of perfection or non-perfection, the priority or enforceability of any pledge or security interest to the extent not required on the Closing Date pursuant to Section 4.01 or (D) any Excluded Assets.

## Article VI

### Affirmative Covenants

Effective as of the Effective Date and for so long thereafter as the Termination Conditions have not been satisfied, the Borrower shall and (except in the case of the covenants set forth in Sections 6.01, 6.02 and 6.03) shall cause each of the Restricted Subsidiaries to:

SECTION 6.01 Financial Statements. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in Section 6.02) each of the following:

- (i) within ninety (90) days (or the last date on which the Borrower is required to file its 10-K for the applicable fiscal year (including any grace periods or extensions permitted by the SEC), if later) after the end of each fiscal year of the Borrower, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of income and cash flows for such fiscal year, together with related notes thereto and management’s discussion and analysis describing results of operations in the form customarily prepared by management of the Borrower, setting forth in each case in comparative form the figures for the previous fiscal year, in reasonable detail and all prepared in accordance

with GAAP, audited and accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing or another accounting 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 not be subject to any qualification as to the scope of such audit (but may contain a “going concern” or like qualification that is due to (i) the impending maturity of the Facilities, the Bridge Loans, the Senior Notes or any permitted refinancings thereof, (ii) any anticipated inability to satisfy the Financial Covenant or (iii) except in the case of the Revolving Facility, an actual Default of the Financial Covenant);

(ii) within forty-five (45) days (or the last date on which the Borrower is required to file its 10-Q for the applicable fiscal quarter (including any grace periods or extensions permitted by the SEC), if later) after the end of each of the first three (3) fiscal quarters of each fiscal year of the Borrower commencing with March 31, 2017, a consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such fiscal quarter, and the related (a) consolidated statement of income for such fiscal quarter and for the portion of the fiscal year then ended and (b) consolidated statement of cash flows for the portion of the fiscal year then ended, setting forth, in each case of the preceding clauses (a) and (b), in comparative form the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year (*provided* that no such comparative information will be required if such comparative data would be for a date or period prior to March 31, 2017), accompanied by an Officer’s Certificate stating that such financial statements fairly present in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with GAAP, subject to normal year-end adjustments and the absence of footnotes, together with management’s discussion and analysis describing results of operations in the form customarily prepared by management of the Borrower;

(iii) [reserved];

(iv) simultaneously with the delivery of each set of consolidated financial statements referred to in Sections 6.01(1) and 6.01(2), the related unaudited (it being understood that such information may be audited at the option of the Borrower) consolidating financial statements reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements; and

(v) annually, upon request of the Administrative Agent, at a time mutually agreed with the Administrative Agent that is promptly after the delivery of the information required pursuant to Section 6.01(1) above, commencing with the delivery of information with respect to the fiscal year ending December 31, 2017, to participate in a conference call for Lenders to discuss the financial position and results of operations of the Borrower and its Subsidiaries for the most recently ended fiscal year for which financial statements have been delivered; *provided* that if the Borrower holds conference calls on a quarterly basis for the benefit of any of its securityholders, the Lenders shall be permitted to participate in such quarterly conference calls; *provided, further*, that if the Borrower is holding a conference call open to the public to discuss the financial condition and results of operations of the Borrower and its Subsidiaries for the most recently ended fiscal period for which financial statements have been delivered pursuant to Sections 6.01(1) or 6.01(2) above, the Borrower will not be required to hold a second, separate call for the Lenders so long as the Lenders are provided access to such initial conference call and the ability to ask questions thereon.

Notwithstanding the foregoing, the obligations referred to in Sections 6.01(1) and 6.01(2) may be satisfied with respect to financial information of the Borrower and its Subsidiaries by furnishing the Borrower’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 6.01); *provided* that with respect to the preceding clause, to the extent such information is in lieu of information required to be provided under Section 6.01(1) (it being understood that such information may be audited at the option of the Borrower), such materials are accompanied by a report and opinion of an independent registered public accounting firm of nationally recognized standing or another accounting 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 not be subject to any qualification as to the scope of such audit (but may contain a “going concern” or like qualification that is due to (i) the impending maturity of the Facilities, the Bridge Loans, the

Senior Notes or any permitted refinancings thereof, (ii) any anticipated inability to satisfy the Financial Covenant or (iii) except in the case of the Revolving Facility, an actual Default of the Financial Covenant).

Any financial statements required to be delivered pursuant to Sections 6.01(1) or 6.01(2) shall not be required to contain all purchase accounting adjustments relating to the Transactions or any other transaction(s) permitted hereunder to the extent it is not practicable to include any such adjustments in such financial statements.

SECTION 6.02 Certificates; Other Information. Deliver to the Administrative Agent for prompt further distribution by the Administrative Agent to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in this Section 6.02):

(i) no later than five (5) days after the delivery of the financial statements referred to in Sections 6.01(1) and (2) (commencing with such delivery for the fiscal quarter in which the Closing Date occurs), a duly completed Compliance Certificate signed by a Financial Officer of the Borrower;

(ii) promptly after the same are publicly available, copies of all special reports and registration statements which the Borrower or any Restricted Subsidiary files with the SEC or with any Governmental Authority that may be substituted therefor or with any national securities exchange, as the case may be (other than amendments to any registration statement (to the extent such registration statement, in the form it became effective, is delivered to the Administrative Agent), exhibits to any registration statement and, if applicable, any registration statement on Form S-8), and in any case not otherwise required to be delivered to the Administrative Agent pursuant to any other clause of this Section 6.02;

(iii) promptly after the furnishing thereof, copies of any notices of default to any holder of any class or series of debt securities of any Loan Party having an aggregate outstanding principal amount greater than the Threshold Amount or pursuant to the terms of the Bridge Loan Agreement or any Senior Notes Indenture so long as the aggregate outstanding principal amount thereunder is greater than the Threshold Amount (in each case, other than in connection with any board observer rights) and not otherwise required to be furnished to the Administrative Agent pursuant to any other clause of this Section 6.02;

(iv) together with the delivery of the Compliance Certificate with respect to the financial statements referred to in Section 6.01(1), (a) a report setting forth the information required by Section 1(a) of the Perfection Certificate (or confirming that there has been no change in such information since the later of the Closing Date or the last report delivered pursuant to this clause (a)) and (b) a list of each Subsidiary of the Borrower that identifies each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such list or a confirmation that there is no change in such information since the later of the Closing Date and the last such list; and

(v) (a) promptly, but subject to the limitations set forth in Section 6.10 and Section 10.09, such additional information regarding the business and financial affairs of any Loan Party or any Material Subsidiary that is a Restricted Subsidiary, or compliance with the terms of the Loan Documents, as the Administrative Agent may from time to time on its own behalf or on behalf of any Lender reasonably request in writing from time to time and (b) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money laundering rules and regulations, including the Patriot Act and the Beneficial Ownership Regulation.

Documents required to be delivered pursuant to Section 6.01 or Section 6.02(2) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (a) on which the Borrower posts such documents, or provides a link thereto, on the Borrower’s website on the Internet at the website address listed on Schedule 10.02 hereto (or as such address may be updated from time to time in accordance with Section 10.02); or (b) on which such documents are posted on the Borrower’s behalf on IntraLinks/IntraAgency or another relevant 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) upon written request by the Administrative Agent, the Borrower will deliver paper copies of such documents to the Administrative Agent for further distribution by the Administrative Agent to each Lender (subject to the limitations on distribution of any such information to Public Lenders as described in this Section 6.02) until a written request to cease delivering paper copies is given by the

Administrative Agent and (ii) the Borrower shall notify (which may be by facsimile or electronic mail) the Administrative Agent of the posting of any such documents or link and, upon the Administrative Agent's request, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. Each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Administrative Agent and maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent will make available to the Lenders and the Issuing Banks materials or information provided by or on behalf of the Borrower hereunder (collectively, the "**Borrower Materials**") by posting the Borrower Materials on Intralinks, SyndTrak, ClearPar or another similar electronic system (the "**Platform**") and (b) certain of the Lenders may have personnel who do not wish to receive any information with respect to the Borrower, its Subsidiaries or their respective securities that is not Public-Side Information, and who may be engaged in investment and other market-related activities with respect to such Person's securities (each, a "**Public Lender**"). The Borrower hereby agrees that (i) at the Administrative Agent's request, all Borrower Materials that are to be made available to Public Lenders will be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" will appear prominently on the first page thereof; (ii) by marking Borrower Materials "PUBLIC," the Borrower will be deemed to have authorized the Administrative Agent, the Lenders and the Issuing Banks to treat such Borrower Materials as containing only Public-Side Information (*provided, however*, that to the extent such Borrower Materials constitute Information, they will be treated as set forth in Section 10.09); (iii) all Borrower Materials marked "PUBLIC" and, except to the extent the Borrower notifies the Administrative Agent to the contrary, any Borrower Materials provided pursuant to Section 6.01(1), 6.01(2) or 6.02(1) are permitted to be made available through a portion of the Platform designated as "Public Side Information"; and (iv) the Administrative Agent and the Arrangers shall be entitled to treat Borrower Materials that are not specifically identified as "PUBLIC" as being suitable only for posting on a portion of the Platform not designated as "Public Side Information." Notwithstanding the foregoing, the Borrower shall be under no obligation to mark the Borrower Materials "PUBLIC."

Anything to the contrary notwithstanding, nothing in this Agreement will require the Borrower or any Subsidiary to disclose, permit the inspection, examination or making copies or abstracts of, or discussion of, any document, information or other matter, or provide information (i) that constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure is prohibited by Law or binding agreement or (iii) that is subject to attorney-client or similar privilege or constitutes attorney work product; *provided* that in the event that the Borrower does not provide information that otherwise would be required to be provided hereunder in reliance on the exclusions in this paragraph relating to violation of any obligation of confidentiality, the Borrower shall use commercially reasonable efforts to provide notice to the Administrative Agent promptly upon obtaining knowledge that such information is being withheld (but solely if providing such notice would not violate such obligation of confidentiality).

SECTION 6.03 Notices. Promptly after a Responsible Officer obtains actual knowledge thereof, notify the Administrative Agent of:

- (i) the occurrence of any Default; and
- (ii) (a) any dispute, litigation, investigation or proceeding between any Loan Party and any arbitrator or Governmental Authority, (b) the filing or commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any of its Subsidiaries, including pursuant to any applicable Environmental Laws or in respect of IP Rights, the occurrence of any violation by any Loan Party or any of its Subsidiaries of, or liability under, any Environmental Law or Environmental Permit, or (c) the occurrence of any ERISA Event that, in any such case referred to in clauses (a), (b) or (c) of this Section 6.03(2), has resulted or would reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to this Section 6.03 shall be accompanied by a written statement of a Responsible Officer of the Borrower (a) that such notice is being delivered pursuant to Section 6.03(1) or (2) (as applicable) and (b) setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Promptly following receipt of a notice pursuant to Section 6.03(1), the Administrative Agent shall deliver a copy of such notice, together with any written statement referenced in the first sentence of this paragraph, to each Lender.



SECTION 6.04 Payment of Taxes. Timely pay, discharge or otherwise satisfy, as the same shall become due and payable, all of its obligations and liabilities in respect of Taxes imposed upon it or upon its income or profits or in respect of its property, except, in each case, to the extent (1) any such Tax is being contested in good faith and by appropriate actions for which appropriate reserves have been established in accordance with GAAP or (2) the failure to pay or discharge the same would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

SECTION 6.05 Preservation of Existence, etc.

(1) Preserve, renew and maintain in full force and effect its legal existence under the Laws of the jurisdiction of its organization; and

(2) take all reasonable action to obtain, preserve, renew and keep in full force and effect its rights, licenses, permits, privileges, franchises, and IP Rights material to the conduct of its business,

except in the case of clause (1) or (2) to the extent (other than with respect to the preservation of the existence of the Borrower) that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or pursuant to any merger, consolidation, liquidation, dissolution or disposition permitted by Article VII.

SECTION 6.06 Maintenance of Properties. Except if the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, maintain, preserve and protect all of its material properties and equipment used in the operation of its business in good working order, repair and condition, ordinary wear and tear excepted and casualty or condemnation excepted and any repairs and replacements that are the obligation of the owner or landlord of any property leased by the Borrower or any of the Restricted Subsidiaries excepted.

SECTION 6.07 Maintenance of Insurance.

(1) Maintain with insurance companies that the Borrower believes (in the good faith judgment of its management) are financially sound and reputable at the time the relevant coverage is placed or renewed or with a Captive Insurance Subsidiary, insurance with respect to the Borrower's and the Restricted Subsidiaries' properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as the Borrower and the Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons, and will furnish to the Lenders, upon written request from the Administrative Agent, information presented in reasonable detail as to the insurance so carried; *provided* that notwithstanding the foregoing, in no event will the Borrower or any Restricted Subsidiary be required to obtain or maintain insurance that is more restrictive than its normal course of practice. Subject to Section 6.13(2), each such policy of insurance will, as appropriate, (i) name the Collateral Agent, on behalf of the Secured Parties, as an additional insured thereunder as its interests may appear or (ii) in the case of each casualty insurance policy, contain an additional loss payable clause or endorsement that names the Collateral Agent, on behalf of the Secured Parties, as the additional loss payee thereunder.

(2) If any improved portion of any Mortgaged Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a special flood hazard area with respect to which flood insurance has been made available under the Flood Insurance Laws, then the Borrower will, or will cause each Loan Party to (a) maintain, or cause to be maintained, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (b) deliver to the Collateral Agent evidence of such compliance in form and substance reasonably acceptable to the Collateral Agent; *provided* that to the extent that the requirements of this Section 6.07 are not satisfied on the Effective Date, the Borrower may satisfy such requirements in accordance with the Collateral and Guarantee Requirement and Section 6.11(2)(b) but in no event later than ten (10) days prior to the recording of the Mortgages and the delivery of the other real estate items required to be delivered pursuant to the Collateral and Guarantee Requirement and Section 6.11(2)(b).

SECTION 6.08 Compliance with Laws. Comply in all respects with the requirements of all Laws and comply with the USA PATRIOT Act, Sanctions and all orders, writs, injunctions and decrees of any Governmental Authority

applicable to it or to its business or property, except if the failure to comply therewith would not reasonably be expected individually or in the aggregate to have a Material Adverse Effect.

SECTION 6.09 Books and Records. Maintain proper books of record and account, in which entries that are full, true and correct in all material respects shall be made of all material financial transactions and matters involving the assets and business of the Borrower or such Restricted Subsidiary, as the case may be (it being understood and agreed that certain Foreign Subsidiaries may maintain individual books and records in conformity with generally accepted accounting principles in their respective countries of organization and that such maintenance shall not constitute a breach of the representations, warranties or covenants hereunder).

SECTION 6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants (subject to such accountants' customary policies and procedures), all at the reasonable expense of the Borrower and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Borrower; *provided* that only the Administrative Agent on behalf of the Lenders may exercise rights of the Administrative Agent and the Lenders under this Section 6.10 and the Administrative Agent shall not exercise such rights more often than two (2) times during any calendar year absent the existence of an Event of Default and only one (1) such time shall be at the Borrower's expense; *provided further* that when an Event of Default exists, the Administrative Agent (or any of its representatives or independent contractors) may do any of the foregoing at the expense of the Borrower at any time during normal business hours and upon reasonable advance notice. The Administrative Agent shall give the Borrower the opportunity to participate in any discussions with the Borrower's independent public accountants. For the avoidance of doubt, this Section 6.10 is subject to the last paragraph of Section 6.02.

SECTION 6.11 Covenant to Guarantee Obligations and Give Security. At the Borrower's expense, subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitation in any Collateral Document, take all action necessary or reasonably requested by the Administrative Agent or the Collateral Agent to ensure that the Collateral and Guarantee Requirement continues to be satisfied, including:

(i) (x) upon (i) the formation or acquisition of any new direct or indirect wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) by any Loan Party, (ii) the designation of any existing direct or indirect wholly owned Material Domestic Subsidiary (other than any Excluded Subsidiary) as a Restricted Subsidiary, (iii) any Subsidiary (other than any Excluded Subsidiary) becoming a wholly owned Material Domestic Subsidiary or (iv) an Excluded Subsidiary that is a wholly owned Material Domestic Subsidiary ceasing to be an Excluded Subsidiary but continuing as a Restricted Subsidiary of the Borrower, (y) upon the acquisition of any material assets by the Borrower or any Guarantor or (z) with respect to any Subsidiary at the time it becomes a Loan Party, for any material assets held by such Subsidiary (in each case, other than assets constituting Collateral under a Collateral Document that becomes subject to the Lien created by such Collateral Document upon acquisition thereof (without limitation of the obligations to perfect such Lien)):

(a) within sixty (60) days (or such greater number of days specified below) after such formation, acquisition or designation or, in each case, such longer period as the Administrative Agent may agree in its reasonable discretion, cause each such Material Domestic Subsidiary that is required to become a Guarantor under the Collateral and Guarantee Requirement to execute the Guaranty (or a joinder thereto) and other documentation the Administrative Agent may reasonably request from time to time in order to carry out more effectively the purposes of the Guaranty and the Collateral Documents and

(A) within sixty (60) days (or within one hundred and twenty (120) days in the case of documents listed in Section 6.11(2)(b)) after such formation, acquisition or designation, cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to duly execute and deliver to the Collateral Agent, Mortgages and the other items listed in Section 6.11(2)(b), *mutatis mutandis*, with respect to any Material Real Property, supplements to the Security Agreement, a counterpart signature page to the Intercompany Note, Intellectual Property Security Agreements and other security agreements and documents (if applicable), as reasonably requested by and in form and substance reasonably satisfactory to the Collateral Agent (consistent with the Security Agreement, Intellectual Property Security Agreements



and other Collateral Documents in effect on the Closing Date as amended and in effect from time to time), in each case granting and perfecting Liens required by the Collateral and Guarantee Requirement;

(B) within sixty (60) days after such formation, acquisition or designation, cause each such Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement to deliver any and all certificates representing Equity Interests (to the extent certificated) that are required to be pledged pursuant to the Collateral and Guarantee Requirement, accompanied by undated stock powers or other appropriate instruments of transfer executed in blank and, if applicable, a joinder to the Intercompany Note substantially in the form of Annex I thereto with respect to the intercompany Indebtedness held by such Material Domestic Subsidiary and required to be pledged pursuant to the Collateral Documents;

(C) within sixty (60) days (or within one hundred and twenty (120) days in the case of documents listed in Section 6.11(2)(b)) after such formation, acquisition or designation, take and cause (i) the applicable Material Domestic Subsidiary that is required to become a Guarantor pursuant to the Collateral and Guarantee Requirement and (ii) to the extent applicable, each direct or indirect parent of such applicable Material Domestic Subsidiary, in each case, to take customary action(s) (including the recording of Mortgages, the filing of Uniform Commercial Code financing statements and delivery of stock and membership interest certificates to the extent certificated) as may be necessary in the reasonable opinion of the Administrative Agent to vest in the Collateral Agent (or in any representative of the Collateral Agent designated by it) valid and perfected (subject to Liens permitted by Section 7.01) Liens required by the Collateral and Guarantee Requirement, enforceable against all third parties in accordance with their terms, except as such enforceability may be limited by Debtor Relief Laws and by general principles of equity (regardless of whether enforcement is sought in equity or at law); and

(D) within sixty (60) days (or one hundred and twenty (120) days in the case of documents described in Section 6.11(2)(b)) after the reasonable request therefor by the Administrative Agent (or such longer period as the Administrative Agent may agree in its reasonable discretion), deliver to the Administrative Agent a signed copy of a customary Opinion of Counsel, addressed to the Administrative Agent and the Lenders, of counsel for the Loan Parties reasonably acceptable to the Administrative Agent as to such matters set forth in this Section 6.11(1) as the Administrative Agent may reasonably request;

*provided* that actions relating to Liens on real property are governed by Section 6.11(2) and not this Section 6.11(1).

(ii) Material Real Property.

(a) Notice.

(i) Within sixty (60) days (or such longer period as the Collateral Agent may agree in its reasonable discretion), after the formation, acquisition or designation of a Material Domestic Subsidiary that is required to become a Guarantor under the Collateral and Guarantee Requirement, the Borrower will, or will cause such Material Domestic Subsidiary to, furnish to the Collateral Agent a description of any Material Real Property (other than any Excluded Asset(s)) owned by such Material Domestic Subsidiary.

(ii) Within sixty (60) days (or such longer period as the Collateral Agent may agree in its reasonable discretion), after the acquisition of any Material Real Property (other than any Excluded Asset(s)) by a Loan Party, after the Closing Date, the Borrower will, or will cause such Loan Party to, furnish to the Collateral Agent a description of any such Material Real Property.

(b) Mortgages. The Borrower will, or will cause the applicable Loan Party to, provide the Collateral Agent with a Mortgage with respect to any Material Real Property that is the subject of a notice delivered pursuant to Section 6.11(2)(a), within one hundred and twenty (120) days of the acquisition, formation or designation of such Material Domestic Subsidiary or the acquisition of such Material Real Property (or such longer period as the Collateral Agent may agree in its sole discretion), together with:

(i) evidence that counterparts of the Mortgages have been duly executed, acknowledged and delivered and are in form suitable for filing or recording in all filing or recording offices that the Collateral Agent may deem reasonably necessary or desirable in order to create, except to the extent otherwise provided hereunder, including subject to Liens permitted by Section 7.01, a valid and subsisting perfected Lien on such Material Real Property in favor of the Collateral Agent for the benefit of the Secured Parties and that all filing and recording taxes and fees have been paid or otherwise provided for in a manner reasonably satisfactory to the Collateral Agent;

(ii) fully paid American Land Title Association Lender's Extended Coverage title insurance policies or the equivalent or other form available in each applicable jurisdiction (the "**Mortgage Policies**") in form and substance, with endorsements available in the applicable jurisdiction without surveys (it being agreed that zoning reports from a nationally recognized zoning company shall be acceptable in lieu of zoning endorsements to title policies in any jurisdiction where there is a material difference in the cost of zoning reports and zoning endorsements) and in amounts, reasonably acceptable to the Collateral Agent (not to exceed the fair market value of the real properties covered thereby), issued, coinsured and reinsured by title insurers reasonably acceptable to the Collateral Agent, insuring the Mortgages to be valid subsisting Liens on the property described therein, subject only to Liens permitted by Section 7.01 or such other Liens reasonably satisfactory to the Collateral Agent that do not have a material adverse impact on the use or value of the Mortgaged Properties, and providing for such other affirmative insurance and such coinsurance and direct access reinsurance as the Collateral Agent may reasonably request and is available in the applicable jurisdiction;

(iii) customary Opinions of Counsel for the applicable Loan Parties in states in which such Material Real Properties are located, with respect to the enforceability and perfection of the Mortgage(s) and any related fixture filings and the due authorization, execution and delivery of the Mortgages, in form and substance reasonably satisfactory to the Collateral Agent;

(iv) American Land Title/American Congress on Surveying and Mapping surveys (or, if reasonably acceptable to the Collateral Agent, zip or express maps) for each Material Real Property or existing surveys together with no change affidavits, in each case certified to the Collateral Agent if deemed necessary by the Collateral Agent in its reasonable discretion, sufficient for the title insurance company issuing a Mortgage Policy to remove the standard survey exception and issue standard survey related endorsements and otherwise reasonably satisfactory to the Collateral Agent;

(v) a completed "Life-of-Loan" Federal Emergency Management Agency standard flood hazard determination with respect to each Material Real Property containing improved land addressed to the Collateral Agent and otherwise in compliance with the Flood Insurance Laws, and if any such Material Real Property is located in an area determined by the Federal Emergency Management Agency (or any successor agency) to be a special flood hazard area, the Borrower's duly executed acknowledgement of receipt of written notification from the Collateral Agent about special flood hazard area status and flood disaster assistance and evidence that the Borrower or applicable Loan Party has obtained flood insurance reasonably satisfactory to the Collateral Agent that is in compliance with all applicable requirements of the Flood Insurance Laws; and

(vi) as promptly as practicable after the reasonable request therefor by the Collateral Agent, environmental assessment reports and reliance letters (if any) that have been prepared in connection with such acquisition, designation or formation of any Material Domestic Subsidiary or acquisition of any Material Real Property; *provided* that there shall be no obligation to deliver to the

Collateral Agent any environmental assessment report whose disclosure to the Collateral Agent would require the consent of a Person other than the Borrower or one of its Subsidiaries, where, despite the commercially reasonable efforts of the Borrower to obtain such consent, such consent cannot be obtained.

The Collateral Agent may grant extensions of time for the creation and perfection of Mortgage Liens in or the obtaining of title insurance, legal opinions or other deliverables with respect to particular Material Real Property where it determines that such action cannot be accomplished by the time periods set forth in this Agreement or the Collateral Documents.

Notwithstanding anything herein to the contrary, with respect to the requirements set forth in Section 4.01(1)(c)(i), each certificate required to be delivered pursuant to Section 4.01(1)(c)(i) on the Effective Date by any Loan Party will not constitute conditions precedent to the effectiveness of this Agreement on the Effective Date or the obligation of each Lender to make a Credit Extension hereunder on the Closing Date and that the only action with respect to the perfection of the Collateral that shall constitute conditions precedent to the effectiveness of this Agreement on the Effective Date shall be the delivery of the UCC-1 financing statements required pursuant to Section 4.01(1)(c)(ii); *provided* that the Borrower will use commercially reasonable efforts to effect the delivery of each certificate required to be delivered pursuant to Section 4.01(1)(c)(i) (and transfer powers with respect thereto) on or prior to the Closing Date without undue burden or expense; *provided further* that each of the Borrower and its wholly owned Material Domestic Subsidiaries (other than Excluded Subsidiaries) will execute and/or deliver any such document(s) that is not delivered and take any perfection action that is not taken on the Effective Date or on the Closing Date within 90 days after the Closing Date (or such later date as agreed to by the Administrative Agent).

**SECTION 6.12** Compliance with Environmental Laws. Except, in each case, to the extent that the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (1) comply, and take all reasonable actions to cause any lessees and other Persons operating or occupying its properties to comply, with all applicable Environmental Laws and Environmental Permits (including any cleanup, removal or remedial obligations) and (2) obtain and renew all Environmental Permits required to conduct its operations or in connection with its properties.

**SECTION 6.13** Further Assurances and Post-Closing Covenant.

(1) Subject to the provisions of the Collateral and Guarantee Requirement and any applicable limitations in any Collateral Document and in each case at the expense of the Borrower, promptly upon reasonable request from time to time by the Administrative Agent or the Collateral Agent or as may be required by applicable Laws (a) correct any material defect or error that may be discovered in the execution, acknowledgment, filing or recordation of any Collateral Document or other document or instrument relating to any Collateral, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent or Collateral Agent may reasonable request from time to time in order to carry out more effectively the purposes of the Collateral Documents and to satisfy the Collateral and Guarantee Requirement.

(2) As promptly as practicable, and in any event no later than ninety (90) days after the Closing Date or such later date as the Administrative Agent reasonably agrees to in writing, including to reasonably accommodate circumstances unforeseen on the Closing Date, (a) deliver the documents or take the actions required pursuant to sub clauses (i) through (vi) of Section 6.11(2)(b) hereof with respect to any Material Real Properties listed in Schedule 1.01(2) and (b) deliver the documents or take the actions specified in Schedule 6.13(2), in each case except to the extent otherwise agreed by the Administrative Agent pursuant to its authority as set forth in the definition of the term "Collateral and Guarantee Requirement."

**SECTION 6.14** Use of Proceeds. The proceeds of (a) the Closing Date Term Loans, together with the proceeds of the Equity Contribution, the Bridge Loans and any Revolving Loans drawn on the Closing Date (to the extent permitted under this Agreement) and cash on hand, will be used (i) to fund the Closing Date Refinancing, together with any premiums and accrued and unpaid interest thereon and any fees and expenses with respect thereto, (ii) to pay the Transaction Consideration, (iii) to repay all or a portion of the term loans outstanding under the Target Credit Agreement and (iv) to pay the Transaction Expenses, and (b) any Revolving Loans will be used (i) on the **Closing Date, solely (A) to fund working capital needs and (B) in an amount not to exceed \$30.0 million, to pay the Transaction Consideration and Transaction Expenses and to fund any OID with respect to the Closing Date**

~~Term Loans; provided that such cap shall not apply to any Transaction Expenses to replace, backstop or cash collateralize letters of credit, letters of guarantee or banker acceptances outstanding on the Closing Date~~Fifth Amendment Effective Date, (A) to finance the Fifth Amendment Effective Date Refinancing and (B) pay the Fifth Amendment Transaction Costs and (ii) on or after the Closing Fifth Amendment Effective Date, for working capital and general corporate purposes and for any other purpose not prohibited by the Loan Documents (but in any case, not for purposes of financing a bankruptcy, insolvency or similar proceeding). Notwithstanding the foregoing, (i) any Excess Closing Date Cash on the Closing Date shall be deposited into the Controlled Account and (ii) on the Closing Date, the Target Term Loan Reserve Amount shall be deposited in to the Target Term Loan Reserve Account.

SECTION 6.15 Maintenance of Ratings. Use commercially reasonable efforts to maintain (1) a public corporate credit rating (but not any specific rating) from S&P and a public corporate family rating (but not any specific rating) from Moody's, in each case in respect of the Borrower, and (2) a public rating (but not any specific rating) in respect of the Term Facility as of the Closing Date from each of S&P and Moody's.

SECTION 6.16 Tender Documents; Etc. The Tender Documents, the Undertaking Agreement and the Investment Agreement shall not be amended or waived, and no consents shall be given with respect thereto, by the Borrower or any Restricted Subsidiary in a manner materially adverse to the Lenders without the consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed) (it being understood that (a) any increase or decrease in the Transaction Consideration of less than 10% shall not be materially adverse to the Lenders (so long as any such increase is funded by an increase to the Equity Contribution (or is otherwise funded by an issuance of common Equity Interests of the Borrower) and any such decrease results in the pro rata reduction to the Equity Contribution, the Term Loans and the Bridge Loans (provided that any such decrease in respect of the Bridge Loans shall be allocated to instead reduce the Term Loans)), (b) any increase or decrease in the number of days in the Offer's subscription period that does not extend the subscription period beyond seventy (70) days and does not require the Borrower to settle a purchase of less than 75% of the shares in the Target shall not be materially adverse to the Lenders and (c) any decrease in the tender condition to less than 75% of the shares in the Target shall be materially adverse to the Lenders).

SECTION 6.17 Anti-Corruption Compliance. Comply in all material respects with the requirements of the FCPA and implement and maintain policies and procedures reasonably designed to ensure compliance with the FCPA.

SECTION 6.18 Controlled Account. Enter into a control agreement in respect of the Controlled Account in form and substance reasonably satisfactory to the Borrower and the Administrative Agent on or prior to the Closing Date (or such later date as the Administrative Agent may agree).

SECTION 6.19 Target Credit Agreement. Unless the Administrative Agent agrees otherwise, (i) on or before the expiration of the Clean-Up Period (as may be extended in accordance with the definition thereof), repay in full the term loans outstanding under the Target Credit Agreement and reduce the revolving facility commitment thereunder to an amount not to exceed €32.0 million (and make any corresponding repayment of revolving loans outstanding thereunder in order to effectuate such reduction) on terms and conditions reasonably satisfactory to the Administrative Agent, (ii) if, upon the expiration of the Clean-Up Period (as may be extended in accordance with the definition thereof), the obligations under clause (i) of this Section 6.19 have not been satisfied, promptly prepay in full any amount outstanding under the Target Credit Agreement and terminate any commitment thereunder, and (iii) until such time as the obligations under clause (i) and (ii) of this Section 6.19 have been satisfied, use any funds held in the Target Term Loan Reserve Account solely to repay the outstanding obligations under the Target Credit Agreement. For the avoidance of doubt, upon satisfaction of the obligations under clause (i) or (ii) of this Section 6.19, as applicable, any remaining funds held in the Target Term Loan Reserve Account shall be released to the Borrower.

## Article VII

### Negative Covenants

Effective as of the Effective Date and for so long thereafter as the Termination Conditions are not satisfied:

SECTION 7.01 Liens. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly, create, incur or assume any Lien (except any Permitted Lien(s)) that secures obligations under any Indebtedness or any related guarantee of Indebtedness on any asset or property of the Borrower or any Restricted Subsidiary, or any income or profits therefrom.

The expansion of Liens by virtue of accretion or amortization of original issue discount, the payment of dividends in the form of Indebtedness, and increases in the amount of Indebtedness outstanding solely as a result

of fluctuations in the exchange rate of currencies will not be deemed to be an incurrence of Liens for purposes of this Section 7.01.

For purposes of determining compliance with this Section 7.01, (A) a Lien need not be incurred solely by reference to one category of Permitted Liens described in the definition thereof, but is permitted to be incurred in part under any combination thereof and of any other available exemption and (B) in the event that a Lien (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens, the Borrower will, in its sole discretion, be entitled to divide, classify or reclassify, in whole or in part, any such Lien (or any portion thereof) among one or more of such categories or clauses in any manner.

SECTION 7.02 Indebtedness.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly:

(i) create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable, contingently or otherwise (collectively, “**incur**” and collectively, an “**incurrence**”) with respect to any Indebtedness (including Acquired Indebtedness), or

(ii) issue any shares of Disqualified Stock or permit any Restricted Subsidiary to issue any shares of Disqualified Stock or Preferred Stock;

*provided* that the Borrower may incur Indebtedness (including Acquired Indebtedness) or issue shares of Disqualified Stock, and any Restricted Subsidiary may incur Indebtedness (including Acquired Indebtedness), issue shares of Disqualified Stock and issue shares of Preferred Stock, in each case, if (any Indebtedness, Disqualified Stock or Preferred Stock incurred or issued pursuant to following clauses (A), (B) and (C), “**Permitted Ratio Debt**”):

(A) with respect to Indebtedness secured on a *pari passu* basis with the First Lien Obligations, the First Lien Net Leverage Ratio for the Test Period preceding the date on which such additional Indebtedness is incurred (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this proviso) (without netting any cash received from the incurrence of such Indebtedness proposed to be incurred) would be no greater than the Closing Date First Lien Net Leverage Ratio minus 0.25 to 1.00;

(B) with respect to Indebtedness secured by Liens on a basis that is junior in priority to the First Lien Obligations, the Junior Secured Condition is satisfied for the Test Period preceding the date on which such additional Indebtedness is incurred (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this proviso) (without netting any cash received from the incurrence of such Indebtedness proposed to be incurred); or

(C) with respect to unsecured Indebtedness, any other Indebtedness not included in clause (A) or (B) above, or any Disqualified Stock or Preferred Stock, either (I) the Interest Coverage Ratio for the Test Period preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this proviso) would be at least 2.00 to 1.00 or (II) the Total Net Leverage Ratio for the Test Period preceding the date on which such additional Indebtedness is incurred or such Disqualified Stock or Preferred Stock is issued (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established



after giving *pro forma* effect to the incurrence of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this proviso) (without netting any cash received from the incurrence of such Indebtedness proposed to be incurred) would be no greater than the Closing Date Total Net Leverage Ratio,

in each case, determined on a *pro forma* basis (including a *pro forma* application of the net proceeds therefrom), as if the additional Indebtedness had been incurred, or the Disqualified Stock or Preferred Stock had been issued, as the case may be, and the application of proceeds therefrom had occurred at the beginning of such Test Period;

*provided further* that (A) Restricted Subsidiaries of the Borrower that are not Guarantors may not incur Indebtedness or issue Disqualified Stock or Preferred Stock under this Section 7.02(a) if, after giving *pro forma* effect to such incurrence or issuance (including a *pro forma* application of the net proceeds therefrom), the aggregate principal amount of Indebtedness, liquidation preference of Disqualified Stock and amount of Preferred Stock of such Restricted Subsidiaries incurred or issued pursuant to this Section 7.02(a), together with any principal amounts incurred or issued by such Restricted Subsidiaries under Section 7.02(b)(14)(a), Section 7.02(b)(23) and Section 7.02(b)(31) and Refinancing Indebtedness in respect of any of the foregoing (excluding any Incremental Amounts), in each case then outstanding, would exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) the greater of (I) \$100.0 million and (II) 50% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis), (B) Permitted Ratio Debt (x) shall not mature earlier than the Original Term Loan Maturity Date and (y) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Closing Date Term Loans on the date of incurrence of such Permitted Ratio Debt and (C) if any such Indebtedness consists of term loans secured on a *pari passu* basis with the First Lien Obligations under this Agreement, then the Borrower shall comply with the “most favored nation” pricing provisions of Section 2.14(5)(c) as if such Indebtedness were Incremental Term Loans incurred pursuant to Section 2.14 (to the extent then applicable).

(b) The provisions of Section 7.02(a) will not apply to:

(1) Indebtedness under the Loan Documents (including Incremental Loans, Other Loans, Extended Term Loans, Loans made pursuant to Extended Revolving Commitments and Replacement Loans);

(2) the incurrence by the Borrower of the Bridge Loans, the Senior Notes, the Permanent Notes (as defined in the Bridge Loan Agreement) and/or the Senior Exchange Notes (as defined in the Bridge Loan Agreement) and the Guarantee thereof by any Guarantor;

(3) the incurrence of Indebtedness (x) by the Borrower and any Restricted Subsidiary (other than the Target) in existence on the Effective Date (excluding Indebtedness described in the preceding clauses (1) and (2)); *provided* that any such item of Indebtedness (other than any Indebtedness of the Target outstanding as on the Effective Date) with an aggregate outstanding principal amount on the Effective Date in excess of \$5.0 million shall be set forth on Schedule 7.02 and (y) by the Target (i) under the Target Credit Agreement and (ii), in addition to any Indebtedness outstanding under the Target Credit Agreement, in an aggregate principal amount at any one time outstanding not to exceed €20.0 million;

(4) the incurrence of Attributable Indebtedness and Indebtedness (including Capitalized Lease Obligations and Purchase Money Obligations) and Disqualified Stock incurred or issued by the Borrower or any Restricted Subsidiary and Preferred Stock issued by any Restricted Subsidiary, to finance the purchase, lease, expansion, construction, installation, replacement, repair or improvement of property (real or personal), equipment or other assets, including assets that are used or useful in a Similar Business, whether through the direct purchase of assets or the Capital Stock of any Person owning such assets in an aggregate principal amount, together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts) and all other Indebtedness, Disqualified Stock or Preferred Stock incurred or issued and outstanding under this clause (4), at such time not to exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) the greater of (I) \$60.0 million and (II) 30% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis);

(5) Indebtedness incurred by the Borrower or any Restricted Subsidiary (a) constituting reimbursement obligations with respect to letters of credit, bank guarantees, banker's acceptances, warehouse receipts, or similar instruments issued or entered into, or relating to obligations or liabilities incurred, in the ordinary course of business or consistent with industry practice, including in respect of workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance, unemployment insurance or other social security legislation or other Indebtedness with respect to reimbursement-type obligations regarding workers' compensation claims, performance, completion or surety bonds, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or (b) as an account party in respect of letters of credit, bank guarantees or similar instruments in favor of suppliers, trade creditors or other Persons issued or incurred in the ordinary course of business or consistent with industry practice;

(6) the incurrence of Indebtedness arising from agreements of the Borrower or any Restricted Subsidiary providing for indemnification, adjustment of purchase price, earnouts or similar obligations, in each case, incurred or assumed in connection with the acquisition or disposition of any business, assets or a Subsidiary, other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or a Subsidiary for the purpose of financing such acquisition;

(7) the incurrence of Indebtedness by the Borrower and owing to a Restricted Subsidiary or the issuance of Disqualified Stock of the Borrower to a Restricted Subsidiary; *provided* that any such Indebtedness for borrowed money owing to a Restricted Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Loans to the extent permitted by applicable law and it does not result in adverse tax consequences; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such Indebtedness or Disqualified Stock (except to the Borrower or another Restricted Subsidiary or any pledge of such Indebtedness or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) or issuance of such Disqualified Stock (to the extent such Disqualified Stock is then outstanding) not permitted by this clause (7);

(8) the incurrence of Indebtedness of a Restricted Subsidiary to the Borrower or another Restricted Subsidiary to the extent permitted by Section 7.05; *provided* that any such Indebtedness for borrowed money incurred by a Guarantor and owing to a Restricted Subsidiary that is not a Guarantor is expressly subordinated in right of payment to the Guaranty of the Loans of such Guarantor to the extent permitted by applicable law and it does not result in adverse tax consequences; *provided further* that any subsequent issuance or transfer of any Capital Stock or any other event which results in any such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any such subsequent transfer of any such Indebtedness (except to the Borrower or a Restricted Subsidiary or any pledge of such Indebtedness constituting a Permitted Lien) will be deemed, in each case, to be an incurrence of such Indebtedness (to the extent such Indebtedness is then outstanding) not permitted by this clause (8);

(9) the issuance of shares of Preferred Stock or Disqualified Stock of a Restricted Subsidiary to the Borrower or a Restricted Subsidiary; *provided* that any subsequent issuance or transfer of any Capital Stock or any other event that results in any such Restricted Subsidiary that holds such Preferred Stock or Disqualified Stock ceasing to be a Restricted Subsidiary or any other subsequent transfer of any such shares of Preferred Stock or Disqualified Stock (except to the Borrower or another Restricted Subsidiary or any pledge of such Preferred Stock or Disqualified Stock constituting a Permitted Lien) will be deemed, in each case, to be an issuance of such shares of Preferred Stock or Disqualified Stock (to the extent such Preferred Stock or Disqualified Stock is then outstanding) not permitted by this clause (9);

(10) the incurrence of Hedging Obligations (excluding Hedging Obligations entered into for speculative purposes) including, without limitation, Hedging Obligations entered into under the Existing Credit Agreement;

(11) the incurrence of obligations in respect of self-insurance and obligations in respect of performance, bid, appeal and surety bonds and performance, banker's acceptance facilities and completion



guarantees and similar obligations provided by the Borrower or any Restricted Subsidiary or obligations in respect of letters of credit, bank guarantees or similar instruments related thereto, in each case in the ordinary course of business or consistent with industry practice, including those incurred to secure health, safety and environmental obligations;

(12) the incurrence of:

(b) Indebtedness or issuance of Disqualified Stock of the Borrower and the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference up to 100.0% of the net cash proceeds received by the Borrower since the Closing Date from the issue or sale of Equity Interests of the Borrower or contributions to the capital of the Borrower, including through consolidation, amalgamation or merger (in each case, other than proceeds of Disqualified Stock or any exercise of the cure right set forth in Section 8.04 and other than proceeds received from the Borrower or a Restricted Subsidiary) as determined in accordance with clauses (3)(b) and (3)(c) of Section 7.05(a) to the extent such net cash proceeds or cash have not been applied pursuant to such clauses to make Restricted Payments pursuant to Section 7.05(a) or to make Permitted Investments (other than Permitted Investments specified in clause (1), (2) or (3) of the definition thereof); and

(c) Indebtedness or issuance of Disqualified Stock of the Borrower and the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock of any Restricted Subsidiary in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (12)(b), together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred or otherwise obtained) (i) the greater of (I) \$60.0 million and (II) 30% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma basis*) plus, without duplication, (ii) in the event of any extension, replacement, refinancing, renewal or defeasance of any such Indebtedness, Disqualified Stock or Preferred Stock, an amount equal to (x) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased plus (y) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such Indebtedness, Disqualified Stock or Preferred Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Disqualified Stock or Preferred Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such Indebtedness, Disqualified Stock or Preferred Stock;

(15) the incurrence or issuance by the Borrower of Refinancing Indebtedness or the incurrence or issuance by a Restricted Subsidiary of Refinancing Indebtedness that serves to Refinance any Indebtedness (including any Designated Revolving Commitments) permitted under Section 7.02(a) and clauses (b)(2), (3) and (12)(a) above, this clause (13) and clauses (14) and (30)(b), or any successive Refinancing Indebtedness with respect to any of the foregoing;

(16) the incurrence or issuance of:

(a) Indebtedness or Disqualified Stock of the Borrower or Indebtedness, Disqualified Stock or Preferred Stock of a Restricted Subsidiary, incurred or issued to finance an acquisition or investment (or other purchase of assets) or that is assumed by the Borrower or any Restricted Subsidiary in connection with such acquisition or investment (or other purchase of assets), or

(b) Indebtedness, Disqualified Stock or Preferred Stock of Persons that are acquired by the Borrower or any Restricted Subsidiary or merged into, amalgamated or consolidated with the Borrower or a Restricted Subsidiary in accordance with the terms of this Agreement,

in the case of the preceding clauses (a) and (b), in an aggregate principal amount or liquidation preference, together with any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), not to

exceed (A) the greater of \$60.0 million and 30% of Consolidated EBITDA *plus* (B) an unlimited amount so long as in the case of this clause (B) only, either:

(x) after giving *pro forma* effect to such acquisition, investment amalgamation, consolidation or merger and such incurrence, assumption or issuance of Indebtedness and the use of proceeds thereof, the Borrower would be permitted to incur at least \$1.00 of additional Indebtedness pursuant to the Interest Coverage Ratio test set forth in clause (C)(I) of Section 7.02(a) or the Total Net Leverage Ratio test set forth in clause (C)(II) of Section 7.02(a);

(y) after giving *pro forma* effect to such acquisition, investment, amalgamation, consolidation or merger and such incurrence, assumption or issuance of Indebtedness and the use of proceeds thereof, the Interest Coverage Ratio of the Borrower for the Test Period preceding the date on which such additional Indebtedness is incurred or assumed or such Disqualified Stock or Preferred Stock is issued (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence or assumption of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this proviso) is greater than or equal to the Interest Coverage Ratio immediately prior to giving effect to such incurrence or assumption of Indebtedness or issuance of Disqualified Stock or Preferred Stock; or

(z) after giving *pro forma* effect to such acquisition, investment, amalgamation, consolidation or merger and such incurrence, assumption or issuance of Indebtedness and the use of proceeds thereof, the Total Net Leverage Ratio of the Borrower for the Test Period preceding the date on which such additional Indebtedness is incurred or assumed or such Disqualified Stock or Preferred Stock is issued (or, in the case of Indebtedness under Designated Revolving Commitments, on the date such Designated Revolving Commitments are established after giving *pro forma* effect to the incurrence or assumption of the entire committed amount of Indebtedness thereunder, in which case such committed amount under such Designated Revolving Commitments may thereafter be borrowed and reborrowed, in whole or in part, from time to time, without further compliance with this proviso) (without netting any cash received from the incurrence or assumption of such Indebtedness proposed to be incurred or assumed) would be no greater than the Total Net Leverage Ratio immediately prior to giving effect to such incurrence or assumption of Indebtedness or issuance of Disqualified Stock or Preferred Stock;

*provided* that with respect to Indebtedness incurred or assumed pursuant to clause (14)(a), (A) Restricted Subsidiaries of the Borrower that are not Guarantors may not incur or assume Indebtedness or issue Disqualified Stock or Preferred Stock under clause (14)(a) if, after giving *pro forma* effect to such incurrence, assumption or issuance (including a *pro forma* application of the net proceeds therefrom), the aggregate principal amount of Indebtedness, liquidation preference of Disqualified Stock and amount of Preferred Stock of such Restricted Subsidiaries incurred, assumed or issued pursuant to clause (14)(a), together with any principal amounts incurred, assumed or issued by such Restricted Subsidiaries under Section 7.02(a), Section 7.02(b)(23) and Section 7.02(b)(31) and any Refinancing Indebtedness in respect of any of the foregoing (excluding any Incremental Amounts), in each case then outstanding, would exceed (as of the date such Indebtedness, Disqualified Stock or Preferred Stock is issued, incurred, assumed or otherwise obtained) the greater of (I) \$100.0 million and (II) 50% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis), (B) such Indebtedness (x) shall not mature earlier than the Original Term Loan Maturity Date and (y) shall have a Weighted Average Life to Maturity not shorter than the remaining Weighted Average Life to Maturity of the Closing Date Term Loans on the date of incurrence or assumption of such Indebtedness and (C) if Indebtedness consists of term loans secured on a *pari passu* basis with the First Lien Obligations under this Agreement, then the Borrower

shall comply with the “most favored nation” pricing provisions of Section 2.14(5)(c) as if such Indebtedness were Incremental Term Loans incurred pursuant to Section 2.14 (to the extent then applicable).

1. the incurrence of 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 or consistent with industry practice;
  - (1) the incurrence of Indebtedness of the Borrower or any Restricted Subsidiary supported by letters of credit or bank guarantees issued in connection herewith, any Credit Agreement Refinancing Indebtedness or Permitted Incremental Equivalent Debt, in each case, in a principal amount not in excess of the stated amount of such letters of credit or bank guarantees;
  - (2) (a) the incurrence of any guarantee by the Borrower or a Restricted Subsidiary of Indebtedness or other obligations of the Borrower or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations incurred by the Borrower or such Restricted Subsidiary is permitted by this Agreement, or (b) any co-issuance by the Borrower or any Restricted Subsidiary of any Indebtedness or other obligations of the Borrower or any Restricted Subsidiary so long as the incurrence of such Indebtedness or other obligations by the Borrower or such Restricted Subsidiary is permitted by this Agreement;
  - (3) the incurrence of Indebtedness issued by the Borrower or any Restricted Subsidiary to future, present or former employees, directors, officers, members of management, consultants and independent contractors thereof, their respective Controlled Investment Affiliates or Immediate Family Members and permitted transferees thereof, in each case to finance the purchase or redemption of Equity Interests of the Borrower to the extent described in Section 7.05(b)(4);
  - (4) customer deposits and advance payments received in the ordinary course of business or consistent with industry practice from customers for goods and services purchased in the ordinary course of business or consistent with industry practice;
  - (5) the incurrence of (a) Indebtedness owed to banks and other financial institutions incurred in the ordinary course of business or consistent with industry practice in connection with ordinary banking arrangements to manage cash balances of the Borrower and its Restricted Subsidiaries and (b) Indebtedness in respect of Cash Management Services, including Cash Management Obligations;
  - (6) Indebtedness incurred by a Restricted Subsidiary in connection with bankers’ acceptances, discounted bills of exchange or the discounting or factoring of receivables for credit management purposes, in each case incurred or undertaken in the ordinary course of business or consistent with industry practice on arm’s-length commercial terms;
  - (7) the incurrence of Indebtedness of the Borrower or any Restricted Subsidiary consisting of (a) the financing of insurance premiums or (b) take-or-pay obligations contained in supply arrangements in each case, incurred in the ordinary course of business or consistent with industry practice;
  - (8) the incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock by Restricted Subsidiaries of the Borrower that are not Guarantors; *provided* that the amount of such Indebtedness proposed to be incurred or Disqualified Stock or Preferred Stock proposed to be issued at such time shall be limited to an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (23) at any time when this proviso applies, together with any principal amounts incurred, assumed or issued by such Restricted Subsidiaries under Section 7.02(a), Section 7.02(b)(14)(a) and Section 7.02(b)(31) and any Refinancing Indebtedness in respect of any of the foregoing (excluding any Incremental Amounts), does not exceed the greater of (I) \$100.0 million and (II) 50% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis);

(9) the incurrence of Indebtedness by the Borrower or any Restricted Subsidiary undertaken in connection with cash management (including netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and related or similar services or activities) with respect to the Borrower, any Subsidiaries or any joint venture in the ordinary course of business or consistent with industry practice, including with respect to financial accommodations of the type described in the definition of Cash Management Services;

(10) Qualified Securitization Facilities and, to the extent constituting Indebtedness, Receivables Financing Transactions;

(11) guarantees incurred in the ordinary course of business or consistent with industry practice in respect of obligations to suppliers, customers, franchisees, lessors, licensees, sub-licensees and distribution partners and guarantees required by Governmental Authorities in the ordinary course of business;

(12) the incurrence of Indebtedness attributable to (but not incurred to finance) the exercise of appraisal rights or the settlement of any claims or actions (whether actual, contingent or potential) with respect to the Transactions or any other acquisition (by merger, consolidation or amalgamation or otherwise) in accordance with the terms hereof;

(13) the incurrence of Indebtedness representing deferred compensation to employees of the Borrower or any Restricted Subsidiary, including Indebtedness consisting of obligations under deferred compensation or any other similar arrangements incurred in connection with the Transactions, any investment or any acquisition (by merger, consolidation or amalgamation or otherwise) permitted under this Agreement;

(14) the incurrence of Indebtedness arising out of any Sale-Leaseback Transaction incurred in the ordinary course of business or consistent with industry practice;

(15) (a) Credit Agreement Refinancing Indebtedness and (b) Permitted Incremental Equivalent Debt;

(16) the incurrence of Indebtedness, Disqualified Stock or Preferred Stock by Restricted Subsidiaries of the Borrower that are not Guarantors to fund working capital requirements in an aggregate principal amount or liquidation preference that, when aggregated with the principal amount and liquidation preference of all other Indebtedness, Disqualified Stock and Preferred Stock then outstanding and incurred or issued, as applicable, pursuant to this clause (31), together with any principal amounts incurred, assumed or issued by such Restricted Subsidiaries under Section 7.02(a), Section 7.02(b)(14)(a) and Section 7.02(b)(23) and any Refinancing Indebtedness in respect thereof (excluding any Incremental Amounts), does not exceed (as of the date such Indebtedness is issued, incurred or otherwise obtained) the greater of (I) \$100.0 million and (II) 50.0% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis);

(17) any Preferred Stock issued pursuant to the Investment Agreement

(18) any Indebtedness in respect of the Tender Letter of Credit, including under the Agreement for Standby Letter of Credit and the L/C Fee Letter with respect thereto;

(19) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (1) through (33) above;

(20) Indebtedness under a bilateral Polish Zloty facility in an amount not to exceed €20.0 million; and

(21) Indebtedness under the Existing Credit Agreement, until the occurrence of the Closing Date Refinancing.

(c) For purposes of determining compliance with this Section 7.02:

(1) in the event that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) at any time, whether at the time of incurrence or upon the application of all or a portion of the proceeds thereof or subsequently, meets the criteria of more than one of the categories of permitted Indebtedness, Disqualified Stock or Preferred Stock described in clauses (1) through (36) above or is entitled to be incurred pursuant to Section 7.02(a), the Borrower, in its sole discretion, may divide and classify and may subsequently re-divide and reclassify, such item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) and will only be required to include the amount and type of such Indebtedness, Disqualified Stock or Preferred Stock (or a portion thereof) in such of the above clauses or under Section 7.02(a) as determined by the Borrower at such time; provided that all Indebtedness (x) incurred hereunder on the Closing Date and (y) represented by the Bridge Loans and related Guarantees on the Closing Date will, at all times, be treated as incurred on the Closing Date under Section 7.02(b)(1) and (2), respectively, and may not be reclassified;

(2) the Borrower is entitled to divide and classify an item of Indebtedness, Disqualified Stock or Preferred Stock in more than one of the types of Indebtedness, Disqualified Stock or Preferred Stock described in Section 7.02(a) and (b), subject to the proviso to the preceding clause (1) of this Section 7.02(c);

(3) the principal amount of Indebtedness outstanding under any clause of this Section 7.02 will be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness;

(4) in the event an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued pursuant to Section 7.02(b) (other than Section 7.02(b)(14) or Section 7.02(b)(30)(b) (but, in the case of Section 7.02(b)(30)(b), solely with respect to Permitted Incremental Equivalent Debt incurred in reliance upon a ratio test)) on the same date that an item of Indebtedness, Disqualified Stock or Preferred Stock (or any portion thereof) is incurred or issued under Section 7.02(a), 7.02(b)(14) or Section 7.02(b)(30)(b) (but, in the case of Section 7.02(b)(30)(b), solely with respect to Permitted Incremental Equivalent Debt incurred in reliance upon a ratio test), then the Interest Coverage Ratio, or applicable leverage ratio, will be calculated with respect to such incurrence or issuance under Section 7.02(a), 7.02(b)(14) or Section 7.02(b)(30)(b) (but, in the case of Section 7.02(b)(30)(b), solely with respect to Permitted Incremental Equivalent Debt incurred in reliance upon a ratio test) without regard to any incurrence or issuance under Section 7.02(b) (other than with respect to any incurrence under Section 7.02(b)(14) or Section 7.02(b)(30)(b) (but, in the case of Section 7.02(b)(30)(b), solely with respect to Permitted Incremental Equivalent Debt incurred in reliance upon a ratio test)); provided that unless the Borrower elects otherwise, the incurrence or issuance of Indebtedness, Disqualified Stock or Preferred Stock will be deemed incurred or issued first under Section 7.02(a), 7.02(b)(14) or Section 7.02(b)(30)(b) (but, in the case of Section 7.02(b)(30)(b), solely with respect to Permitted Incremental Equivalent Debt incurred in reliance upon a ratio test) to the extent permitted with the balance incurred under Section 7.02(b) (other than pursuant to Section 7.02(b)(14) or Section 7.02(b)(30)(b) (but, in the case of Section 7.02(b)(30)(b), solely with respect to Permitted Incremental Equivalent Debt incurred in reliance upon a ratio test)); and

(5) guarantees of, or obligations in respect of letters of credit relating to, Indebtedness that are otherwise included in the determination of a particular amount of Indebtedness will not be included in the determination of such amount of Indebtedness; provided that the incurrence of the Indebtedness represented by such guarantee or letter of credit, as the case may be, was incurred in compliance with this Section 7.02.

The accrual of interest or dividends, the accretion of accreted value, the accretion or amortization of original issue discount and the payment of interest or dividends in the form of additional Indebtedness, Disqualified Stock or Preferred Stock and increases in the amount of Indebtedness outstanding solely as a result of fluctuations in the exchange rate of currencies, in each case, will not be deemed to be an incurrence of Indebtedness, Disqualified Stock or Preferred Stock for purposes of this Section 7.02. Any Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, to refinance Indebtedness incurred, or Disqualified Stock or Preferred Stock issued, pursuant to clauses (2), (3), (4), (12), (13), (14), (23), (30), (31) and (32) of Section 7.02(b) will be permitted to include additional Indebtedness, Disqualified Stock or Preferred Stock incurred to pay (I) any accrued and unpaid interest on



the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased and (II) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and with respect to Indebtedness under Designated Revolving Commitments, including an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such Refinancing Indebtedness).

For purposes of determining compliance with any Dollar denominated restriction on the incurrence of Indebtedness or issuance of Disqualified Stock or Preferred Stock, the Dollar equivalent principal amount of Indebtedness or liquidation preference of Disqualified Stock or amount of Preferred Stock denominated in a foreign currency will be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness, Disqualified Stock or Preferred Stock was incurred or issued (or, in the case of revolving credit debt, the date such Indebtedness was first committed or first incurred (whichever yields the lower Dollar equivalent)); *provided* that if such Indebtedness, Disqualified Stock or Preferred Stock is issued to Refinance other Indebtedness, Disqualified Stock or Preferred Stock denominated in a foreign currency, and such refinancing would cause the applicable Dollar denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar denominated restriction will be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness, Disqualified Stock or Preferred Stock does not exceed (i) the principal amount of such Indebtedness, the liquidation preference of such Disqualified Stock or the amount of such Preferred Stock (as applicable) being refinanced, extended, replaced, refunded, renewed or defeased *plus* (ii) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased, *plus* (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and with respect to Indebtedness under Designated Revolving Commitments, including an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such Refinancing Indebtedness).

The principal amount of any Indebtedness incurred or Disqualified Stock or Preferred Stock issued to refinance other Indebtedness, Disqualified Stock or Preferred Stock, if incurred or issued in a different currency from the Indebtedness, Disqualified Stock or Preferred Stock, as applicable, being refinanced, will be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness or Disqualified Stock or Preferred Stock is denominated that is in effect on the date of such refinancing. The principal amount of any non-interest bearing Indebtedness or other discount security constituting Indebtedness at any date will be the principal amount thereof that would be shown on a balance sheet of the Borrower dated such date prepared in accordance with GAAP.

For purposes of determining compliance with this Section 7.02, if any Indebtedness is incurred, or Disqualified Stock or Preferred Stock is issued, in reliance on a Basket measured by reference to a percentage Consolidated EBITDA, and any refinancing thereof would cause the percentage of Consolidated EBITDA to be exceeded if calculated based on the Consolidated EBITDA on the date of such refinancing, such percentage of Consolidated EBITDA will not be deemed to be exceeded to the extent the principal amount of such newly incurred Indebtedness, the liquidation preference of such newly issued Disqualified Stock or the amount of such newly issued Preferred Stock does not exceed the sum of (i) the principal amount of such Indebtedness, the liquidation preference of such Disqualified Stock or the amount of such Preferred Stock being refinanced, extended, replaced, refunded, renewed or defeased, *plus* (ii) any accrued and unpaid interest on the Indebtedness, any accrued and unpaid dividends on the Preferred Stock, and any accrued and unpaid dividends on the Disqualified Stock being so refinanced, extended, replaced, refunded, renewed or defeased, *plus* (iii) the amount of any tender premium or penalty or premium required to be paid under the terms of the instrument or documents governing such refinanced Indebtedness, Preferred Stock

or Disqualified Stock and any defeasance costs and any fees and expenses (including original issue discount, upfront fees or similar fees) incurred in connection with the issuance of such new Indebtedness, Preferred Stock or Disqualified Stock or the extension, replacement, refunding, refinancing, renewal or defeasance of such refinanced Indebtedness, Preferred Stock or Disqualified Stock (and with respect to Indebtedness under Designated Revolving Commitments, including an amount equal to any unutilized Designated Revolving Commitments being refinanced, extended, replaced, refunded, renewed or defeased to the extent permanently terminated at the time of incurrence of such Refinancing Indebtedness).

1. Fundamental Changes. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, consolidate, amalgamate or merge with or into or wind up into another Person, or liquidate or dissolve or dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person (other than as part of the Transactions), except that:

(ii) any Restricted Subsidiary may merge or consolidate with the Borrower (including a merger, the purpose of which is to reorganize the Borrower into a new jurisdiction); *provided* that

(a) the Borrower shall be the continuing or surviving Person, and

(b) such merger or consolidation does not result in the Borrower ceasing to be organized under the Laws of the United States, any state thereof or the District of Columbia.

(iii) (a) any Restricted Subsidiary that is not a Loan Party may merge or consolidate with or into any other Restricted Subsidiary that is not a Loan Party; (b) any Restricted Subsidiary may merge or consolidate with or into any other Restricted Subsidiary that is a Loan Party; *provided* that a Loan Party shall be the continuing or surviving Person; (c) any merger the sole purpose of which is to reincorporate or reorganize a Loan Party in another jurisdiction in the United States will be permitted; and (d) any Restricted Subsidiary may liquidate or dissolve or change its legal form if the Borrower determines in good faith that such action is in the best interests of the Borrower and the Restricted Subsidiaries and is not materially disadvantageous to the Lenders;

*provided* that in the case of clause (d), the Person who receives the assets of such dissolving or liquidated Restricted Subsidiary that is a Guarantor shall be a Loan Party or such disposition shall otherwise be permitted under Section 7.05 or the definition of “Permitted Investments”;

(iv) any Restricted Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or another Restricted Subsidiary;

(v) so long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person; *provided* that (a) the Borrower shall be the continuing or surviving corporation or (b) if the Person formed by or surviving any such merger or consolidation is not the Borrower (or, in connection with a disposition of all or substantially all of the Borrower’s assets, is the transferee of such assets) (any such Person, a “**Successor Borrower**”):

(i) the Successor Borrower will:

(A) be an entity organized or existing under the laws of the United States, any state thereof or the District of Columbia,

(B) expressly assume all the obligations of the Borrower under this Agreement and the other Loan Documents to which the Borrower is a party pursuant to a supplement hereto or thereto in form reasonably satisfactory to the Administrative Agent and the Borrower and

(C) deliver to the Administrative Agent (I) an Officer’s Certificate stating that such merger or consolidation or other transaction and such supplement to this



Agreement or any Loan Document (as applicable) comply with this Agreement and (II) an Opinion of Counsel including customary organization, due execution, no conflicts and enforceability opinions to the extent reasonably requested by the Administrative Agent;

(ii) substantially contemporaneously with such transaction (or at a later date as agreed by the Administrative Agent),

(A) each Guarantor, unless it is the other party to such merger or consolidation, will by a supplement to the Guaranty (or in another form reasonably satisfactory to the Administrative Agent and the Borrower) reaffirm its Guaranty of the Obligations (including the Successor Borrower's obligations under this Agreement),

(B) each Loan Party, unless it is the other party to such merger or consolidation, will, by a supplement to the Security Agreement (or in another form reasonably satisfactory to the Administrative Agent), confirm its grant or pledge thereunder,

(C) if reasonably requested by the Administrative Agent, each mortgagor of a Mortgaged Property, unless it is the other party to such merger or consolidation, will, by an amendment to or restatement of the applicable Mortgage (or other instrument reasonably satisfactory to the Collateral Agent and the Borrower), confirm that its obligations thereunder shall apply to the Successor Borrower's obligations under this Agreement;

(iii) after giving pro forma effect to such incurrence, the Borrower would be permitted to incur at least \$1.00 of additional Permitted Ratio Debt pursuant to clause (C)(I) of the definition thereof; and

(iv) to the extent reasonably requested by the Administrative Agent, the Administrative Agent shall have received at least two (2) Business Days prior to the consummation of such transaction all documentation and other information in respect of the Successor Borrower required under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act;

provided further that if the foregoing are satisfied, the Successor Borrower will succeed to, and be substituted for, the Borrower under this Agreement;

(vi) [reserved];

(vii) any Restricted Subsidiary may merge or consolidate with (or dispose of all or substantially all of its assets to) any other Person in order to effect a Permitted Investment or other investment permitted pursuant to Section 7.05; provided that solely in the case of a merger or consolidation involving a Loan Party, no Event of Default exists or would result therefrom; provided further that the continuing or surviving Person will be (a) the Borrower or (b) a Restricted Subsidiary, in each case, which together with each of its Restricted Subsidiaries, will have complied with the applicable requirements of Section 6.11;

(viii) a merger, dissolution, liquidation, consolidation or disposition, the purpose of which is to effect a disposition permitted pursuant to Section 7.04 or a disposition that does not constitute any Asset Sale (other than a transaction described in clause (b) of the definition of Asset Sale);

(ix) the Borrower and any Restricted Subsidiary may (a) convert into a corporation, partnership, limited partnership, limited liability company or trust organized or existing under the laws of the jurisdiction of organization of the Borrower or the laws of a jurisdiction in the United States and (b) change its name; and

- (x) the Loan Parties and the Restricted Subsidiaries may consummate the Transactions.

SECTION 7.03 Asset Sales. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, consummate any Asset Sale unless:

(i) the Borrower or such Restricted Subsidiary, as the case may be, receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise in connection with such Asset Sale) at least equal to the fair market value (measured at the time of contractually agreeing to such Asset Sale) of the assets sold or otherwise disposed of and

(ii) except in the case of a Permitted Asset Swap, with respect to any Asset Sale pursuant to this Section 7.04 for a purchase price in excess of \$10.0 million, at least 75.0% of the consideration for such Asset Sale, together with all other Asset Sales since the Closing Date (on a cumulative basis), received by the Borrower or a Restricted Subsidiary, as the case may be, is in the form of cash or Cash Equivalents; *provided* that each of the following will be deemed to be cash or Cash Equivalents for purposes of this clause (2):

(a) any liabilities (as shown on the Borrower's or any Restricted Subsidiary's most recent balance sheet or in the footnotes thereto or if incurred or accrued subsequent to the date of such balance sheet, such liabilities that would have been reflected on the Borrower's or a Restricted Subsidiary's consolidated balance sheet or in the footnotes thereto if such incurrence or accrual had taken place on or prior to the date of such balance sheet, as determined in good faith by the Borrower) of the Borrower or any Restricted Subsidiary, other than liabilities that are by their terms subordinated in right of payment to the Obligations, that are (i) assumed by the transferee of any such assets (or a third party in connection with such transfer) or (ii) otherwise cancelled or terminated in connection with the transaction with such transferee (other than intercompany debt owed to the Borrower or a Restricted Subsidiary);

(b) any securities, notes or other obligations or assets received by the Borrower or any Restricted Subsidiary from such transferee or in connection with such Asset Sale (including earnouts and similar obligations) that are converted by the Borrower or a Restricted Subsidiary into cash or Cash Equivalents, or by their terms are required to be satisfied for cash or Cash Equivalents (to the extent of the cash or Cash Equivalents received) within 180 days following the closing of such Asset Sale;

(c) any Designated Non-Cash Consideration received by the Borrower or any Restricted Subsidiary in such Asset Sale having an aggregate fair market value, taken together with all other Designated Non-Cash Consideration received pursuant to this clause (c) that is at that time outstanding, not to exceed the greater of (i) \$20.0 million and (ii) 10% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis), with the fair market value of each item of Designated Non-Cash Consideration being measured, at the Borrower's option, either at the time of contractually agreeing to such Asset Sale or at the time received and, in either case, without giving effect to any subsequent change(s) in value; or

(d) Indebtedness of any Restricted Subsidiary that ceases to be a Restricted Subsidiary as a result of such Asset Sale (other than intercompany debt owed to the Borrower or a Restricted Subsidiary), to the extent that the Borrower and each other Restricted Subsidiary are released from any guarantee of payment of the principal amount of such Indebtedness in connection with such Asset Sale.

To the extent any Collateral is disposed of as expressly permitted by this Section 7.04 to any Person other than a Loan Party, such Collateral shall automatically be sold free and clear of the Liens created by the Loan Documents, and, if requested by the Administrative Agent, upon the certification by the Borrower that such disposition is permitted by this Agreement, the Administrative Agent and the Collateral Agent shall be authorized to take any actions deemed appropriate in order to effect the foregoing.

SECTION 7.04

Restricted Payments.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, directly or indirectly:

(A) declare or pay any dividend or make any payment or distribution on account of the Borrower's or any Restricted Subsidiary's Equity Interests (in each case, solely in such Person's capacity as holder of such Equity Interests), including any dividend or distribution payable in connection with any merger, amalgamation or consolidation, other than:

(i) dividends, payments or distributions payable solely in Equity Interests (other than Disqualified Stock) of the Borrower or in options, warrants or other rights to purchase such Equity Interests; or

(ii) dividends, payments or distributions by a Restricted Subsidiary so long as, in the case of any dividend, payment or distribution payable on or in respect of any class or series of securities issued by a Restricted Subsidiary other than a wholly owned Subsidiary, the Borrower or a Restricted Subsidiary receives at least its pro rata share of such dividend, payment or distribution in accordance with its Equity Interests in such class or series of securities or such other amount to which it is entitled pursuant to the terms of such Equity Interest;

(B) purchase, redeem, defease or otherwise acquire or retire for value any Equity Interests of the Borrower, including in connection with any merger, amalgamation or consolidation, in each case held by Persons other than the Borrower or a Restricted Subsidiary;

(C) make any principal payment on, or redeem, repurchase, defease or otherwise acquire or retire for value, in each case, prior to any scheduled repayment, sinking fund payment or final maturity, any Subordinated Indebtedness, other than:

(i) Indebtedness permitted under clauses (7), (8) and (9) of Section 7.02(b); or

(ii) the payment, redemption, repurchase, defeasance, acquisition or retirement for value of Subordinated Indebtedness purchased in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such payment, redemption, repurchase, defeasance, acquisition or retirement; or

(D) make any Restricted Investment;

(all such payments and other actions set forth in clauses (A) through (D) above being collectively referred to as "**Restricted Payments**"), unless, at the time of and immediately after giving effect to such Restricted Payment:

(i) in the case of a Restricted Payment described in clauses (A) and (B) above utilizing clause 3(a) or (g) below, no Event of Default will have occurred and be continuing or would occur as a consequence thereof;

(ii) in the case of a Restricted Payment described in clauses (A) and (B) above utilizing clause 3(a) below, for the most recently ended Test Period preceding the date of such Restricted Payment, after giving effect to such Restricted Payment on a *pro forma* basis, the Borrower would have had an Interest Coverage Ratio of at least 2.00 to 1.00;

(iii) such Restricted Payment, together with the aggregate amount of all other Restricted Payments (including the fair market value of any non-cash amount) made by the Borrower and its Restricted

Subsidiaries after the Closing Date (excluding Restricted Payments permitted by 7.05(b) other than clause (1) thereof), is less than the sum of (without duplication):

(a) 50.0% of the Consolidated Net Income of the Borrower and the Restricted Subsidiaries for the period (taken as one accounting period) commencing on the first day of the fiscal quarter in which the Closing Date occurs (which, prior to the consummation of the Transactions, shall be calculated on a *pro forma* basis giving effect to the Transactions as of the first day of the fiscal quarter in which the Closing Date occurs) to the end of the most recently ended fiscal quarter for which internal financial statements of the Borrower are available (as determined in good faith by the Borrower) preceding such Restricted Payment or, in the case such Consolidated Net Income for such period is a deficit, *minus* 100.0% of such deficit; *plus*

(b) 100.0% of the aggregate net cash proceeds and the fair market value of marketable securities or other property received by the Borrower and its Restricted Subsidiaries since the Closing Date (other than net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness or issue Disqualified Stock or Preferred Stock pursuant to Section 7.02(b)(12)(a)) from the issue or sale of:

(i) Equity Interests of the Borrower, including Treasury Capital Stock (as defined below), but excluding cash proceeds and the fair market value of marketable securities or other property received from the sale of:

(I) Equity Interests to any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or any permitted transferees thereof) of the Borrower or its Subsidiaries after the Closing Date to the extent such amounts have been applied to Restricted Payments made in accordance with Section 7.05(b)(4); and

(II) Designated Preferred Stock; or

(ii) Indebtedness of the Borrower or any Restricted Subsidiary, that has been converted into or exchanged for Equity Interests of the Borrower;

*provided* that this clause (b) will not include the proceeds from (v) any exercise of the cure right set forth in Section 8.04, (w) Refunding Capital Stock (as defined below) applied in accordance with Section 7.05(b)(2) below, (x) Equity Interests or convertible debt securities of the Borrower sold to a Restricted Subsidiary, (y) Disqualified Stock or debt securities that have been converted into Disqualified Stock or (z) Excluded Contributions; *plus*

(c) 100.0% of the aggregate amount of cash, Cash Equivalents and the fair market value of marketable securities or other property contributed to the capital of the Borrower following the Closing Date (including the fair market value of any Indebtedness contributed to the Borrower or its Subsidiaries for cancellation) or that becomes part of the capital of the Borrower through consolidation, amalgamation or merger following the Closing Date, in each case not involving cash consideration payable by the Borrower (other than (v) the Equity Contribution, (w) net cash proceeds of any exercise of the cure right set forth in Section 8.04, (x) net cash proceeds to the extent such net cash proceeds have been used to incur Indebtedness or issue Disqualified Stock or Preferred Stock pursuant to Section 7.02(b)(12)(a), (y) cash, Cash Equivalents and marketable securities or other property that are contributed by a Restricted Subsidiary or (z) Excluded Contributions); *plus*

(d) 100.0% of the aggregate amount received in cash and the fair market value of marketable securities or other property received by the Borrower or a Restricted Subsidiary by means of:

(i) the sale or other disposition (other than to the Borrower or a Restricted Subsidiary) of, or other returns on investments from, Restricted Investments made by the Borrower or its Restricted Subsidiaries (including cash distributions and cash interest received in respect of Restricted Investments) and repurchases and redemptions of such Restricted Investments from the Borrower or its Restricted Subsidiaries (other than by the Borrower or a Restricted Subsidiary) and repayments of loans or advances, and releases of guarantees, which constitute Restricted Investments made by the Borrower or its Restricted Subsidiaries, in each case after the Closing Date (excluding any Excluded Contributions made pursuant to clause (2) of the definition thereof);

(ii) the sale (other than to the Borrower or a Restricted Subsidiary) of Equity Interests of an Unrestricted Subsidiary or a distribution from an Unrestricted Subsidiary (other than, in each case, to the extent the Investment in such Unrestricted Subsidiary constituted a Permitted Investment, but including such cash or fair market value to the extent exceeding the amount of such Permitted Investment) or a dividend from an Unrestricted Subsidiary after the Closing Date (excluding any Excluded Contributions made pursuant to clause (2) of the definition thereof); or

(iii) any returns, profits, distributions and similar amounts received on account of any Permitted Investment subject to a dollar-denominated or ratio based basket (to the extent in excess of the original amount of the Investment); *plus*

(e) in the case of the redesignation of an Unrestricted Subsidiary as a Restricted Subsidiary or the merger, amalgamation or consolidation of an Unrestricted Subsidiary into the Borrower or a Restricted Subsidiary or the transfer of all or substantially all of the assets of an Unrestricted Subsidiary to the Borrower or a Restricted Subsidiary after the Closing Date, the fair market value of the Investment in such Unrestricted Subsidiary (or the assets transferred) at the time of the redesignation of such Unrestricted Subsidiary as a Restricted Subsidiary or at the time of such merger, amalgamation, consolidation or transfer of assets, other than to the extent the Investment in such Unrestricted Subsidiary constituted a Permitted Investment, but, to the extent exceeding the amount of such Permitted Investment, including such excess amounts of cash or fair market value; *plus*

(f) 100% of the aggregate amount of any Excluded Proceeds (except to the extent utilized to repurchase, redeem, defease, acquire, or retire for value any Subordinated Indebtedness pursuant to clause (b)(13) below); *plus*

(g) the greater of (i) \$60.0 million and (ii) 30% of the Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis).

(b) The provisions of Section 7.05(a) will not prohibit:

(i) the payment of any dividend or other distribution or the consummation of any irrevocable redemption within 60 days after the date of declaration of the dividend or other distribution or giving of the redemption notice, as the case may be, if at the date of declaration or notice, the dividend or other distribution or redemption payment would have complied with the provisions of this Section 7.05;

(ii) (a) the redemption, repurchase, defeasance, discharge, retirement or other acquisition of (i) any Equity Interests of the Borrower, any Restricted Subsidiary, including any accrued and unpaid dividends thereon (“**Treasury Capital Stock**”) or (ii) Subordinated Indebtedness, in each case, made (x) in exchange for, or out of the proceeds of, a sale or issuance (other than to a Restricted Subsidiary) of Equity Interests of the Borrower (in each case, other than Disqualified Stock) (“**Refunding Capital Stock**”) and (y) within 120 days of such sale or issuance, (b) the declaration and payment of dividends on Treasury Capital Stock out of the proceeds of a sale or issuance (other than to a Restricted Subsidiary of the Borrower or to an employee stock ownership plan or any trust established by the Borrower or any Restricted Subsidiary) of Refunding

Capital Stock made within 120 days of such sale or issuance, and (c) if, immediately prior to the retirement of Treasury Capital Stock, the declaration and payment of dividends thereon by the Borrower was permitted under clause (6)(a) or (b) of this Section 7.05(b), the declaration and payment of dividends on the Refunding Capital Stock in an aggregate amount *per annum* no greater than the aggregate amount of dividends per annum that were declarable and payable on such Treasury Capital Stock immediately prior to such retirement;

(iv) the principal payment on, defeasance, redemption, repurchase, exchange or other acquisition or retirement of:

(a) Subordinated Indebtedness of the Borrower or a Guarantor made (i) by exchange for, or out of the proceeds of the sale, issuance or incurrence of, new Subordinated Indebtedness of the Borrower or a Guarantor or Disqualified Stock of the Borrower or a Guarantor and (ii) within 120 days of such sale, issuance or incurrence,

(b) Disqualified Stock of the Borrower or a Guarantor made by exchange for, or out of the proceeds of the sale, issuance or incurrence of Disqualified Stock or Subordinated Indebtedness of the Borrower or a Guarantor, made within 120 days of such sale, issuance or incurrence,

(c) Disqualified Stock of a Restricted Subsidiary that is not a Guarantor made by exchange for, or out of the proceeds of the sale or issuance of, Disqualified Stock of a Restricted Subsidiary that is not a Guarantor, made within 120 days of such sale or issuance, that, in each case, is Refinancing Indebtedness incurred or issued, as applicable, in compliance with Section 7.02 and

(d) any Subordinated Indebtedness or Disqualified Stock that constitutes Acquired Indebtedness;

(v) a Restricted Payment to pay for the repurchase, retirement or other acquisition or retirement for value of Equity Interests (other than Disqualified Stock) (including related stock appreciation rights or similar securities) of the Borrower held by any future, present or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower or any of its Subsidiaries pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, or any equity subscription or equity holder agreement (including, for the avoidance of doubt, any principal and interest payable on any notes issued by the Borrower in connection with any such repurchase, retirement or other acquisition), including any Equity Interests rolled over by management of the Borrower or any of its Subsidiaries in connection with the Transactions; *provided* that the aggregate amount of Restricted Payments made under this clause (4) does not exceed \$15.0 million in any fiscal year with unused amounts in any calendar year being carried over to the next two succeeding calendar years; *provided further* that each of the amounts in any calendar year under this clause (4) may be increased by an amount not to exceed:

(a) the cash proceeds from the sale of Equity Interests (other than Disqualified Stock) of the Borrower to any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or any permitted transferees thereof) of the Borrower or any of its Subsidiaries that occurs after the Closing Date, to the extent the cash proceeds from the sale of such Equity Interests have not otherwise been applied to the payment of Restricted Payments by virtue of clause (3) of Section 7.05(a); *plus*

(b) the amount of any cash bonuses otherwise payable to members of management, employees, directors, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower or any of its Subsidiaries that are foregone in exchange for the receipt of Equity Interests of the Borrower pursuant to any compensation arrangement, including any deferred compensation plan; *plus*



(c) the cash proceeds of life insurance policies received by the Borrower or its Restricted Subsidiaries after the Closing Date; *minus*

(d) the amount of any Restricted Payments previously made with the cash proceeds described in clauses (a), (b) and (c) of this clause (4);

*provided* that the Borrower may elect to apply all or any portion of the aggregate increase contemplated by clauses (a), (b) and (c) above in any calendar year; *provided further* that cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary from any future, present or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower or any Restricted Subsidiary in connection with a repurchase of Equity Interests of the Borrower will not be deemed to constitute a Restricted Payment for purposes of this Section 7.05 or any other provision of this Agreement;

(vi) the declaration and payment of dividends or distributions to holders of any class or series of Disqualified Stock of the Borrower or any Restricted Subsidiary or any class or series of Preferred Stock of any Restricted Subsidiary issued in accordance with Section 7.02;

(vii) (a) the declaration and payment of dividends or distributions to holders of any class or series of Designated Preferred Stock issued by the Borrower or any Restricted Subsidiary after the Closing Date; (b) the declaration and payment of dividends or distributions to the Borrower, the proceeds of which will be used to fund the payment of dividends or distributions to holders of any class or series of Designated Preferred Stock issued by the Borrower after the Closing Date; *provided* that the amount of dividends and distributions paid pursuant to this clause (b) will not exceed the aggregate amount of cash actually contributed to the Borrower from the sale of such Designated Preferred Stock; or (c) the declaration and payment of dividends on Refunding Capital Stock that is Preferred Stock in excess of the dividends declarable and payable thereon pursuant to clause (2) of this Section 7.05(b);

*provided* that in the case of each of clauses (a), (b) and (c) of this clause (6), for the most recently ended Test Period preceding the date of issuance of such Designated Preferred Stock or the declaration of such dividends on Refunding Capital Stock that is Preferred Stock, after giving effect to such issuance or declaration on a *pro forma* basis, the Borrower would have had an Interest Coverage Ratio of at least 2.00 to 1.00;

(viii) (a) payments made or expected to be made by the Borrower or any Restricted Subsidiary in respect of withholding or similar taxes payable by any future, present or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or Immediate Family Members or permitted transferees) of the Borrower or any Restricted Subsidiary, (b) any repurchases or withholdings of Equity Interests in connection with the exercise of stock options, warrants or similar rights if such Equity Interests represent a portion of the exercise price of, or withholding obligations with respect to, such options, warrants or similar rights or required withholding or similar taxes and (c) loans or advances to officers, directors, employees, managers, consultants and independent contractors of the Borrower or any Restricted Subsidiary in connection with such Person's purchase of Equity Interests of the Borrower; *provided* that no cash is actually advanced pursuant to this clause (c) other than to pay taxes due in connection with such purchase, unless immediately repaid;

(ix) the declaration and payment of dividends on the Borrower's common equity in an aggregate amount *per annum* not to exceed 6.0% of Market Capitalization;

(x) Restricted Payments in an amount that does not exceed the aggregate amount of Excluded Contributions;

(xi) Restricted Payments in an aggregate amount taken together with all other Restricted Payments made pursuant to this clause (10) not to exceed (as of the date any such Restricted Payment is



made) the greater of (a) \$20.0 million and (b) 10% of Consolidated EBITDA of the Borrower and the Restricted Subsidiaries for the most recently ended Test Period (calculated on a *pro forma* basis); *provided* that if this clause (10) is utilized to make a Restricted Investment, the amount deemed to be utilized under this clause (10) will be the amount of such Restricted Investment at any time outstanding (with the fair market value of such Investment being measured at the time made and without giving effect to subsequent changes in value, but subject to adjustment as set forth in the definition of “Investment”); *provided further* that at the time of, and after giving effect to, any Restricted Payment pursuant to this clause (10), no Event of Default or payment Default will have occurred and be continuing or would occur as a consequence thereof;

(xii) distributions or payments of Securitization Fees;

(xiii) any Restricted Payment made in connection with the Transactions and the fees and expenses related thereto or owed to any Affiliate(s) including any payments to holders of Equity Interests of the Target in connection with, or as a result of, (x) their exercise of appraisal rights or the settlement of any claims or actions (whether actual, contingent or potential) related to the Transactions or (y) the acquisition of any minority Equity Interests in the Target following the Closing Date, whether by way of a “squeeze out” process or otherwise;

(xiv) the repurchase, redemption, defeasance, acquisition or retirement for value of any Subordinated Indebtedness from Excluded Proceeds (except to the extent utilized to make Restricted Payments pursuant to clause (f) of Section 7.05(a));

(xv) [reserved]

(xvi) the distribution, by dividend or otherwise, or other transfer or disposition of shares of Capital Stock of, Equity Interests in, or Indebtedness owed to the Borrower or a Restricted Subsidiary by, Unrestricted Subsidiaries (other than Unrestricted Subsidiaries, substantially all the assets of which are cash and Cash Equivalents);

(xvii) [reserved];

(xviii) (a) Restricted Payments described in clauses (A) and (B) of the definition thereof contained in Section 7.05(a); *provided* that after giving *pro forma* effect thereto and the application of the net proceeds therefrom, the Total Net Leverage Ratio for the Test Period immediately preceding such Restricted Payment would be no greater than the Closing Date Total Net Leverage Ratio minus 1.25 to 1.00 and (b) Restricted Payments described in clauses (C) and (D) of the definition thereof contained in Section 7.05(a); *provided* that after giving *pro forma* effect thereto and the application of the net proceeds therefrom, the Total Net Leverage Ratio for the Test Period immediately preceding such Restricted Payment would be no greater than Closing Date Total Net Leverage Ratio minus 1.25 to 1.00;

(xix) payments made for the benefit of the Borrower or any Restricted Subsidiary to the extent such payments could have been made by the Borrower or any Restricted Subsidiary because such payments (a) would not otherwise be Restricted Payments and (b) would be permitted by Section 7.07;

(xx) payments and distributions to dissenting stockholders of Restricted Subsidiaries pursuant to applicable law, pursuant to or in connection with a consolidation, amalgamation, merger or transfer of all or substantially all of the assets of any Restricted Subsidiary that complies with the terms of this Agreement or any other transaction that complies with the terms of this Agreement;

(xxi) [reserved];

(xxii) [reserved];

(xxiii) [reserved];

(xxiv) the refinancing of any Subordinated Indebtedness with the Net Proceeds of, or in exchange for, any Refinancing Indebtedness;

(xxv) dividends (including all Preferred Dividends and Participating Dividends) required to be made in accordance with the terms of the Investment Agreement (irrespective of whether made in cash or kind) in respect of the Preferred Stock issued pursuant thereto, other than in connection with any optional or mandatory redemption of such Preferred Stock exercised under the terms of the Investment Agreement; and

(xxvi) payments or distributions to minority shareholders of Target after the Closing Date pursuant to, or in connection with, or in contemplation of, the Domination Agreement;

*provided* that at the time of, and after giving effect to, any Restricted Payment pursuant to clause (17) in respect of Restricted Payments described in clauses (A), (B) or (C) of the definition thereof, no Event of Default will have occurred and be continuing or would occur as a consequence thereof. For purposes of clauses (7) and (14) above, taxes will include all interest and penalties with respect thereto and all additions thereto.

(c) For purposes of determining compliance with this Section 7.05, in the event that any Restricted Payment or Investment (or any portion thereof) meets the criteria of more than one of the categories of Restricted Payments described in Section 7.05(a), clauses (1) through (25) of Section 7.05(b) or one or more of the clauses contained in the definition of “Permitted Investments,” the Borrower will be entitled to divide or classify (or later divide, classify or reclassify), in whole or in part, in its sole discretion, such Restricted Payment or Investment (or any portion thereof) among Section 7.05(a), such clauses (1) through (25) of Section 7.05(b) or one or more clauses contained in the definition of “Permitted Investments,” in any manner.

The amount of all Restricted Payments (other than cash) will be the fair market value on the date the Restricted Payment is made, or at the Borrower’s election, the date a commitment is made to make such Restricted Payment, of the assets or securities proposed to be transferred or issued by the Borrower or any Restricted Subsidiary, as the case may be, pursuant to the Restricted Payment.

For the avoidance of doubt, this Section 7.05 will not restrict the making of any AHYDO Payment with respect to, and required by the terms of, any Indebtedness of the Borrower or any Restricted Subsidiary permitted to be incurred under this Agreement.

**SECTION 7.05** Change in Nature of Business. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, engage in any material line of business substantially different from those lines of business conducted by the Borrower and the Restricted Subsidiaries on the Closing Date or any business(es) or any other activities that are reasonably similar, ancillary, incidental, complementary or related to, or a reasonable extension, development or expansion of, the business conducted or proposed to be conducted by the Borrower and the Restricted Subsidiaries on the Closing Date.

**SECTION 7.06** Transactions with Affiliates.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (each of the foregoing, an “**Affiliate Transaction**”) involving aggregate payments or consideration in excess of \$25.0 million, unless (A) such Affiliate Transaction is on terms, taken as a whole, that are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained at such time in a comparable transaction by the Borrower or such Restricted Subsidiary with a Person other than an Affiliate of the Borrower on an arm’s-length basis or, if in the good faith judgment of the Board of Directors no comparable transaction is available with which to compare such Affiliate Transaction, such Affiliate Transaction is otherwise fair to the Borrower or such Restricted Subsidiary from a financial point of view, and (B) the Borrower delivers to the Administrative Agent with respect to any Affiliate Transaction or series of related Affiliate Transactions requiring aggregate payments or consideration in excess of \$100.0 million, a resolution adopted by the majority of the Board of Directors approving such Affiliate Transaction and set forth in an Officer’s Certificate certifying that such Affiliate Transaction complies with clause (A) above.

- (b) The foregoing restriction will not apply to the following:
- (1) transactions between or among the Borrower and one or more Restricted Subsidiaries or between or among Restricted Subsidiaries or, in any case, any entity that becomes a Restricted Subsidiary as a result of such transaction;
  - (2) (a) Restricted Payments permitted by Section 7.05 (including any transaction specifically excluded from the definition of the term “Restricted Payments,” including pursuant to the exceptions contained in the definition thereof and the parenthetical exclusions of such definition, but excluding any Restricted Payment permitted by Section 7.05(14)(g)), (b) any Permitted Investment(s) or any acquisition otherwise permitted hereunder and (c) Indebtedness permitted by Section 7.02;
  - (3) (a) [reserved], (b) the payment of indemnification and similar amounts to, and reimbursement of expenses to, the Investors and their officers, directors, employees and Affiliates, in each case, approved by, or pursuant to arrangements approved by, the Board of Directors, (c) payments, loans, advances or guarantees (or cancellation of loans, advances or guarantees) to future, present or former employees, officers, directors, managers, consultants or independent contractors or guarantees in respect thereof for bona fide business purposes or in the ordinary course of business or consistent with industry practice, (d) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with current, former or future officers, directors, employees, managers, consultants and independent contractors of the Borrower or any Subsidiary; and (e) any payment of compensation or other employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers current, former or future officers, directors, employees, managers, consultants and independent contractors of the Borrower or any Subsidiary;
  - (4) the payment of fees and compensation paid to, and indemnities and reimbursements and employment and severance arrangements provided to, or on behalf of or for the benefit of, present, future or former employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or Immediate Family Members or any permitted transferees thereof) of the Borrower;
  - (5) transactions in which the Borrower or any Restricted Subsidiary, as the case may be, delivers to the Administrative Agent a letter from an Independent Financial Advisor stating that such transaction is fair to the Borrower or such Restricted Subsidiary from a financial point of view or stating that the terms, when taken as a whole, are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with a Person that is not an Affiliate of the Borrower on an arm’s-length basis;
  - (6) the existence of, or the performance by the Borrower or any Restricted Subsidiary of its obligations under the terms of, any agreement as in effect as of the Effective Date, or any amendment thereto or replacement thereof (so long as any such amendment or replacement is not materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders, when taken as a whole, as compared to the applicable agreement as in effect on the Effective Date);
  - (7) the existence of, or the performance by the Borrower or any Restricted Subsidiary of its obligations under the terms of, any equity holders agreement or the equivalent (including any registration rights agreement or purchase agreement related thereto) to which it is a party as of the Effective Date and any amendment thereto and, similar agreements or arrangements that it may enter into thereafter; *provided* that the existence of, or the performance by the Borrower or any Restricted Subsidiary of obligations under any future amendment to any such existing agreement or arrangement or under any similar agreement or arrangement entered into after the Effective Date will only be permitted by this clause (7) to the extent that the terms of any such amendment or new agreement or arrangement are not otherwise materially disadvantageous in the good faith judgment of the Board of Directors to the Lenders, when taken as a whole, as compared to the original agreement or arrangement in effect on the Effective Date;

(8) the Transactions and the payment of all fees and expenses related to the Transactions, including Transaction Expenses;

(9) transactions with customers, clients, suppliers, contractors, joint venture partners or purchasers or sellers of goods or services, or transactions otherwise relating to the purchase or sale of goods or services, in each case in the ordinary course of business or consistent with industry practice and otherwise in compliance with the terms of this Agreement that are fair to the Borrower and the Restricted Subsidiaries, in the reasonable determination of the Board of Directors or the senior management of the Borrower, or are on terms at least as favorable as might reasonably have been obtained at such time from an unaffiliated party;

(10) the issuance, sale or transfer of Equity Interests (other than Disqualified Stock) of the Borrower to any Person and the granting and performing of customary rights (including registration rights) in connection therewith, and any contribution to the capital of the Borrower;

(11) sales of accounts receivable, or participations therein, or Securitization Assets or related assets in connection with any Qualified Securitization Facility and any other transaction effected in connection with a Qualified Securitization Facility or a financing related thereto;

(12) payments by the Borrower or any Restricted Subsidiary made for any financial advisory, consulting, financing, underwriting or placement services or in respect of other investment banking activities, including in connection with acquisitions or divestitures, which payments are approved by, or made pursuant to arrangements approved by, a majority of the Board of Directors in good faith;

(13) payments with respect to Indebtedness, Disqualified Stock and other Equity Interests (and cancellation of any thereof) of the Borrower and any Restricted Subsidiary and Preferred Stock (and cancellation of any thereof) of the Borrower or any Restricted Subsidiary to any future, current or former employee, director, officer, member of management, consultant or independent contractor (or their respective Controlled Investment Affiliates or permitted transferees) of the Borrower or any of its Subsidiaries pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement or any equity subscription or equity holder agreement that are, in each case, approved by the Borrower in good faith; and any employment agreements, severance arrangements, stock option plans and other compensatory arrangements (and any successor plans thereto) and any supplemental executive retirement benefit plans or arrangements with any such employees, directors, officers, members of management, consultants or independent contractors (or their respective Controlled Investment Affiliates or any permitted transferees thereof) that are, in each case, approved by the Borrower in good faith;

(14) (a) investments by Affiliates in securities or Indebtedness of the Borrower or any Restricted Subsidiary (and payment of reasonable out-of-pocket expenses incurred by such Affiliates in connection therewith) so long as the investment is being offered by the Borrower or such Restricted Subsidiary generally to other investors on the same or more favorable terms and (b) payments to Affiliates in respect of securities or Indebtedness of the Borrower or any Restricted Subsidiary contemplated in the foregoing subclause (a) or that were acquired from Persons other than the Borrower and the Restricted Subsidiaries, in each case, in accordance with the terms of such securities or Indebtedness;

(15) payments to or from, and transactions with, any joint venture or Unrestricted Subsidiary in the ordinary course of business or consistent with past practice, industry practice or industry norms (including, any cash management activities related thereto);

(16) payments by the Borrower and its Subsidiaries pursuant to tax sharing agreements among the Borrower and its Subsidiaries;

(17) any lease entered into between the Borrower or any Restricted Subsidiary, as lessee and any Affiliate of the Borrower, as lessor, and any transaction(s) pursuant to that lease, which lease is approved by the Board of Directors or senior management of the Borrower in good faith;

- (18) intellectual property licenses in the ordinary course of business or consistent with industry practice;
- (19) the payment of reasonable out-of-pocket costs and expenses relating to registration rights and indemnities provided to equity holders of the Borrower pursuant to any equity holders agreement or registration rights agreement entered into on or after the Effective Date;
- (20) transactions permitted by, and complying with, Section 7.03 solely for the purpose of reincorporating the Borrower in a new jurisdiction;
- (21) transactions undertaken in good faith (as determined by the Board of Directors or certified by senior management of the Borrower in an Officer's Certificate) for the purposes of improving the consolidated tax efficiency of the Borrower and its Restricted Subsidiaries and not for the purpose of circumventing Articles VI and VII of this Agreement; so long as such transactions, when taken as a whole, do not result in a material adverse effect on the Liens on the Collateral granted by the Loan Parties in favor of the Secured Parties, when taken as a whole, in each case, as determined in good faith by the Board of Directors or certified by senior management of the Borrower in an Officer's Certificate;
- (22) (a) transactions with a Person that is an Affiliate of the Borrower (other than an Unrestricted Subsidiary) solely because the Borrower or any Restricted Subsidiary owns Equity Interests in such Person and (b) transactions with any Person that is an Affiliate solely because a director or officer of such Person is a director or officer of the Borrower or any Restricted Subsidiary;
- (23) (a) pledges and other transfers of Equity Interests in Unrestricted Subsidiaries and (b) any transactions with an Affiliate in which the consideration paid consists solely of Equity Interests of the Borrower;
- (24) the sale, issuance or transfer of Equity Interests (other than Disqualified Stock) of the Borrower;
- (25) investments by any Investor in securities or Indebtedness of the Borrower or any Guarantor;
- (26) payments in respect of (a) the Obligations (or any Credit Agreement Refinancing Indebtedness), (b) the Bridge Loans or (c) other Indebtedness, Disqualified Stock or Preferred Stock of the Borrower and its Subsidiaries held by Affiliates; *provided* that such Obligations were acquired by an Affiliate of the Borrower in compliance herewith; and
- (27) transactions undertaken in the ordinary course of business pursuant to membership in a purchasing consortium.

SECTION 7.07 Burdensome Agreements.

(a) The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary that is not a Guarantor (or, solely in the case of clause (4), that is a Guarantor) to, directly or indirectly, create or otherwise cause to exist or become effective any consensual encumbrance or consensual restriction (other than this Agreement or any other Loan Document) on the ability of any Restricted Subsidiary that is not a Guarantor (or, solely in the case of clause (4), that is a Guarantor) to:

- (1) (a) pay dividends or make any other distributions to the Borrower or any Restricted Subsidiary that is a Guarantor on its Capital Stock or with respect to any other interest or participation in, or measured by, its profits, or
- (b) pay any Indebtedness owed to the Borrower or to any Restricted Subsidiary that is a Guarantor;

- (2) make loans or advances to the Borrower or to any Restricted Subsidiary that is a Guarantor;
- (3) sell, lease or transfer any of its properties or assets to the Borrower or to any Restricted Subsidiary that is a Guarantor; or
- (4) with respect to the Borrower or any Guarantor, (a) Guaranty the Obligations or (b) create, incur or cause to exist or become effective Liens on property of such Person for the benefit of the Lenders with respect to the Obligations under the Loan Documents to the extent such Lien is required to be given to the Secured Parties pursuant to the Loan Documents;

*provided* that any dividend or liquidation priority between or among classes or series of Capital Stock, and the subordination of any obligation (including the application of any remedy bars thereto) to any other obligation will not be deemed to constitute such an encumbrance or restriction.

(b) Section 7.08(a) will not apply to any encumbrances or restrictions existing under or by reason of:

(1) encumbrances or restrictions in effect on the Closing Date, including pursuant to the Loan Documents and any Hedge Agreements, Hedging Obligations and the related documentation;

1. the Existing Credit Agreement, Bridge Loan Agreement, any Senior Notes Indenture, any Senior Notes and the guarantees thereof; *provided* that, notwithstanding anything in this Agreement or any Loan Document to the contrary, until the occurrence of the Closing Date Refinancing, all of the terms and conditions of the Existing Credit Agreement, and the performance thereof by the Borrower and any Restricted Subsidiary, is expressly permitted hereunder and no such term or condition or performance shall constitute a Default or an Event of Default hereunder;
2. Purchase Money Obligations and Capitalized Lease Obligations that impose restrictions of the nature discussed in clauses (3) and 4(b) above on the property so acquired;
3. applicable Law or any applicable rule, regulation or order;
4. any agreement or other instrument of a Person, or relating to Indebtedness or Equity Interests of a Person, acquired by or merged, amalgamated or consolidated with and into the Borrower or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary, or any other transaction entered into in connection with any such acquisition, merger, consolidation or amalgamation in existence at the time of such acquisition or at the time it merges, amalgamates or consolidates with or into the Borrower or any Restricted Subsidiary or an Unrestricted Subsidiary that is designated as a Restricted Subsidiary or assumed in connection with the acquisition of assets from such Person (but, in any such case, not created in contemplation thereof), which encumbrance or restriction is not applicable to any Person, or the properties or assets of any Person, other than the Person so acquired and its Subsidiaries, or the property or assets of the Person so acquired or designated and its Subsidiaries or the property or assets so acquired or designated;
5. contracts or agreements for the sale or disposition of assets, including any restrictions with respect to a Subsidiary of the Borrower pursuant to an agreement that has been entered into for the sale or disposition of any of the Capital Stock or assets of such Subsidiary;
6. [reserved];
7. restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business or consistent with industry practice or arising in connection with any Liens permitted by Section 7.01;



8. provisions in agreements governing Indebtedness, Disqualified Stock or Preferred Stock of Restricted Subsidiaries that are not Guarantors permitted to be incurred subsequent to the Closing Date pursuant to Section 7.02;
9. provisions in joint venture agreements and other similar agreements (including equity holder agreements) relating to such joint venture or its members or entered into in the ordinary course of business;
10. customary provisions contained in leases, sub-leases, licenses, sub-licenses, Equity Interests or similar agreements, including with respect to intellectual property and other agreements;
11. restrictions created in connection with any Qualified Securitization Facility or Receivables Financing Transaction that, in the good faith determination of the Board of Directors of the Borrower, are necessary or advisable to effect such Qualified Securitization Facility or Receivables Financing Transaction;
12. restrictions or conditions contained in any trading, netting, operating, construction, service, supply, purchase, sale or other agreement to which the Borrower or any Restricted Subsidiary is a party entered into in the ordinary course of business or consistent with industry practice; *provided* that such agreement prohibits the encumbrance of solely the property or assets of the Borrower or such Restricted Subsidiary that are subject to such agreement, the payment rights arising thereunder or the proceeds thereof and does not extend to any other asset or property of the Borrower or such Restricted Subsidiary or the assets or property of another Restricted Subsidiary;
13. customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower or any Restricted Subsidiary;
14. customary provisions restricting assignment of any agreement;
15. restrictions arising in connection with cash or other deposits permitted under Section 7.01;
16. any other agreement or instrument governing any Indebtedness, Disqualified Stock, or Preferred Stock permitted to be incurred or issued pursuant to Section 7.02 entered into after the Closing Date that contains encumbrances and restrictions that either (i) are no more restrictive in any material respect, taken as a whole, with respect to the Borrower or any Restricted Subsidiary than (A) the restrictions contained in the Loan Document and the Bridge Loan Agreement as of the Closing Date or (B) those encumbrances and other restrictions that are in effect on the Closing Date with respect to the Borrower or that Restricted Subsidiary pursuant to agreements in effect on the Closing Date, (ii) are not materially more disadvantageous, taken as a whole, to the Lenders than is customary in comparable financings for similarly situated issuers or (iii) will not materially impair the Borrower's ability to make payments on the Obligations when due, in each case in the good faith judgment of the Borrower;
17. (i) under terms of Indebtedness and Liens in respect of Indebtedness permitted to be incurred pursuant to Section 7.02(b)(4) and any permitted refinancing in respect of the foregoing and (ii) agreements entered into in connection with any Sale-Leaseback Transaction entered into in the ordinary course of business or consistent with industry practice;
18. customary restrictions and conditions contained in documents relating to any Lien so long as (i) such Lien is a Permitted Lien and such restrictions or conditions relate only to the specific asset subject to such Lien and (ii) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 7.08;
19. any encumbrance or restriction with respect to a Restricted Subsidiary that was previously an Unrestricted Subsidiary which encumbrance or restriction exists pursuant to or by reason of an agreement that such Subsidiary is a party to or entered into before the date on which such Subsidiary became a Restricted Subsidiary; *provided* that such agreement was not entered into in anticipation of an Unrestricted Subsidiary becoming a Restricted Subsidiary and any such encumbrance or restriction does not extend to any assets or property of the Borrower or any other Restricted Subsidiary other than the assets and property of such Restricted Subsidiary;



20. any encumbrances or restrictions imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of the contracts, instruments or obligations referred to in clauses (a) through (t) above; *provided* that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings are, in the good faith judgment of the Borrower, no more restrictive in any material respect with respect to such encumbrance and other restrictions, taken as a whole, than those prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement or refinancing;
21. any encumbrance or restriction existing under, by reason of or with respect to Refinancing Indebtedness; *provided* that the encumbrances and restrictions contained in the agreements governing that Refinancing Indebtedness are, in the good faith judgment of the Borrower, not materially more restrictive, taken as a whole, than those contained in the agreements governing the Indebtedness being refinanced; and
22. applicable law or any applicable rule, regulation or order in any jurisdiction where Indebtedness, Disqualified Stock or Preferred Stock of Foreign Subsidiaries permitted to be incurred or issued pursuant to Section 7.02 is incurred.

SECTION 7.08 Accounting Changes. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, make any change in fiscal year; *provided, however*, that the Borrower may, upon written notice to the Administrative Agent, change its fiscal year to any other fiscal year reasonably acceptable to the Administrative Agent, in which case, the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary to reflect such change in fiscal year.

SECTION 7.09 Modification of Terms of Subordinated Indebtedness. The Borrower shall not, nor shall the Borrower permit any Restricted Subsidiary to, amend, modify or change in any manner materially adverse to the interests of the Lenders, as determined in good faith by the Borrower, any term or condition of any Subordinated Indebtedness having an aggregate outstanding principal amount greater than the Threshold Amount (other than as a result of any Refinancing Indebtedness in respect thereof) without the consent of the Administrative Agent (which consent shall not be unreasonably withheld or delayed).

SECTION 7.10 [Reserved].

SECTION 7.11 Financial Covenant. The Borrower and each of the Restricted Subsidiaries covenant and agree that:

(1) ~~If on the last day of any Test Period (commencing with the fiscal quarter ending September 30, 2017) there are outstanding Revolving Loans and Letters of Credit (excluding (a) undrawn Letters of Credit in an amount not to exceed \$20.0 million and (b) Letters of Credit to the extent Cash Collateralized or backstopped (whether drawn or undrawn) on terms reasonably acceptable to the applicable Issuing Bank) in an aggregate principal amount exceeding 35% of the aggregate principal amount of all Revolving Commitments under all outstanding Revolving Facilities (including any Incremental Revolving Facilities),~~ The Borrower shall not permit the Total Net Leverage Ratio as of the last day of ~~such any~~ Test Period (commencing with the last day of the Test Period ending March 31, 2021) to be greater than 4.50 to 1.00 (such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent pursuant to Section 6.01(1) and Section 6.01(2) for such Test Period) (the “**Financial Covenant**”).

(2) The provisions of this Section 7.12 are for the benefit of the Revolving Lenders only and the Required Facility Lenders in respect of the Revolving Facility may amend, waive or otherwise modify this Section 7.12 or the defined terms used in this Section 7.12 (solely in respect of the use of such defined terms in this Section 7.12) or waive any Default or Event of Default resulting from a breach of this Section 7.12 without the consent of any Lenders other than the Required Facility Lenders in respect of the Revolving Facility. The provisions of this Section 7.12 shall terminate in full and be of no further effect upon (and subject to) (i) the payment in full in cash of the Obligations in respect of the Revolving Facility and (ii) the termination of all Revolving Commitments and the termination or expiration of all Letters of Credit under this Agreement (unless the Outstanding Amount of the L/C Obligations related thereto has been Cash Collateralized pursuant to Section 2.03(7) on terms reasonably acceptable to the applicable Issuing Bank, backstopped by a letter of credit reasonably satisfactory to the applicable Issuing Bank or deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank).

SECTION 7.12           Controlled Account. The Borrower shall not use any funds held in the Controlled Account for any purpose other than purchasing any remaining equity interests in the Target, prepaying the Loans pursuant to Section 2.05(2)(k) hereof and paying any Transaction Expenses incurred in connection therewith.

SECTION 7.13           Equity Contribution. The Borrower shall not fail to receive the Equity Contribution in full on the Closing Date.

## Article VIII

### Events of Default and Remedies

SECTION 8.01           Events of Default. Effective on and after the Closing Date (including with respect to events that occurred between the Effective Date and the Closing Date), each of the events referred to in clauses (1) through (11) of this Section 8.01 shall constitute an “**Event of Default**”:

(1)           Non-Payment. The Borrower fails to pay (a) when and as required to be paid herein, any amount of principal of any Loan or (b) within five (5) Business Days after the same becomes due, any interest on any Loan or any other amount payable hereunder or with respect to any other Loan Document; or

(2)           Specific Covenants. The Borrower or any Guarantor fails to perform or observe any term, covenant or agreement contained in any of the second proviso to Section 4.01(1), Section 6.03(1), 6.05(1) (solely with respect to the Borrower, other than in a transaction permitted under Section 7.03 or 7.04) or Article VII; *provided* that the Borrower’s failure to comply with the Financial Covenant or the occurrence of an Event of Default with respect to the Revolving Facility only pursuant to Section 6.01(1) (a “**Financial Covenant Event of Default**”) shall not constitute an Event of Default with respect to any Term Loans or Term Commitments unless and until the Required Facility Lenders for the Revolving Facilities have actually terminated the Revolving Commitments and declared all Obligations with respect to the Revolving Facility to be immediately due and payable pursuant to Section 8.02 as a result of such failure to comply (and such declaration has not been rescinded as of the applicable date) (the occurrence of such termination and declaration by the Required Facility Lenders for the Revolving Facilities, a “**Financial Covenant Cross Default**”); *provided further* that any Financial Covenant Event of Default is subject to cure pursuant to Section 8.04; or

(3)           Other Defaults. The Borrower or any Guarantor fails to perform or observe any other covenant or agreement (not specified in Section 8.01(1) or (2) above) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days after receipt by the Borrower of written notice thereof from the Administrative Agent; or

(4)           Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by any Loan Party herein, in any other Loan Document, or in any document required to be delivered in connection herewith or therewith shall be untrue in any material respect when made or deemed made; or

(5)           Cross-Default. The Borrower or any Restricted Subsidiary (a) fails to make any payment beyond the applicable grace period, if any, whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, in respect of any Indebtedness (other than Indebtedness hereunder and, during the Clean-Up Period only, Indebtedness under the Target Credit Agreement) having an aggregate outstanding principal amount (individually or in the aggregate with all other Indebtedness as to which such a failure shall exist) of not less than the Threshold Amount, or (b) fails to observe or perform any other agreement or condition relating to any such Indebtedness, or any other event occurs (other than, with respect to Indebtedness consisting of Hedging Obligations, termination events or equivalent events pursuant to the terms of such Hedging Obligations and not as a result of any default thereunder by the Borrower or any Restricted Subsidiary), the effect of which default or other event 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 or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem all of such Indebtedness to be made, prior to its stated maturity; *provided* that (A) such failure is unremedied and is not waived by the holders of such Indebtedness prior to any termination of the Commitments or acceleration of the Loans pursuant to Section 8.02 and (B) this clause (5)(b) shall not apply to secured

Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness, if such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness; or

(6) Insolvency Proceedings, etc. The Borrower, any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator, administrator, administrative receiver or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for sixty (60) calendar days, or an order for relief is entered in any such proceeding; or

(7) Judgments. There is entered against the Borrower, any Restricted Subsidiary that is a Significant Subsidiary or any group of Restricted Subsidiaries that, taken together, would constitute a Significant Subsidiary, a final non-appealable judgment and order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not paid or covered by insurance or indemnities as to which the insurer or indemnity has been notified of such judgment or order and the applicable insurance company or indemnity has not denied coverage thereof) and such judgment or order shall not have been satisfied, vacated, discharged or stayed or bonded pending an appeal for a period of sixty (60) consecutive days; or

(8) ERISA. (a) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan, (b) the Borrower or any Guarantor or any of their respective ERISA Affiliates fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its Withdrawal Liability under Section 4201 of ERISA under a Multiemployer Plan, or (c) with respect to a Foreign Plan, a termination, withdrawal or noncompliance with applicable Law or plan terms occurs, except, with respect to each of the foregoing clauses of this Section 8.01(8), as would not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect; or

(9) Invalidity of Loan Documents. Any material provision of the Loan Documents, taken as a whole, at any time after its execution and delivery and for any reason (other than (a) as expressly permitted by a Loan Document (including as a result of a transaction permitted under Section 7.03 or 7.04), (b) as a result of acts or omissions by an Agent or any Lender or (c) due to the satisfaction in full of the Termination Conditions) ceases to be in full force and effect; or any Loan Party contests in writing the validity or enforceability of the Loan Documents, taken as a whole (other than as a result of the satisfaction of the Termination Conditions), or any Loan Party denies in writing that it has any or further liability or obligation under the Loan Documents, taken as a whole (other than (i) as expressly permitted by a Loan Document (including as a result of a transaction permitted under Section 7.03 or 7.04) or (ii) as a result of the satisfaction of the Termination Conditions), or purports in writing to revoke or rescind the Loan Documents, taken as a whole, prior to the satisfaction of the Termination Conditions; or

(10) Collateral Documents. Any Collateral Document with respect to a material portion of the Collateral after delivery thereof pursuant to Section 4.01, 6.11, 6.13 or pursuant to the provisions of any Collateral Document for any reason (other than pursuant to the terms hereof or thereof including as a result of a transaction not prohibited under this Agreement) ceases to create, or any Lien purported to be created by any Collateral Document with respect to a material portion of the Collateral shall be asserted in writing by any Loan Party (prior to the satisfaction of the Termination Conditions) not to be, a valid and perfected Lien with the priority required by such Collateral Document (or other security purported to be created on the applicable Collateral) on, and security interest in, any material portion of the Collateral purported to be covered thereby, subject to Liens permitted under Section 7.01, except to the extent that any such loss of perfection or priority results from the failure of the Administrative Agent or the Collateral Agent to maintain possession of Collateral actually delivered to it and pledged under the Collateral Documents, to file Uniform

Commercial Code amendments relating to a Loan Party's change of name or jurisdiction of formation (solely to the extent that the Borrower provides the Collateral Agent written notice thereof in accordance with the Security Agreement, and the Collateral Agent and the Borrower have agreed that the Collateral Agent will be responsible for filing such amendments) or continuation statements and except as to Collateral consisting of real property to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage; or

- (11) Change of Control. There occurs any Change of Control.

SECTION 8.02 Remedies upon Event of Default. Subject to Section 8.04, if any Event of Default occurs and is continuing, the Administrative Agent may, at any time after the Closing Date, with the consent of the Required Lenders and shall, at the request of the Required Lenders, take any or all of the following actions:

- (1) declare the Commitments of each Lender and any obligation of the Issuing Banks to make L/C Credit Extensions to be terminated, whereupon such Commitments and obligation will be terminated;
- (2) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable under any Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;
- (3) require that the Borrower Cash Collateralize the then outstanding Letters of Credit (in an amount equal to the then Outstanding Amount thereof); and
- (4) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

*provided* that (a) upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto (the "**Bankruptcy Code**"), the Commitments of each Lender and any obligation of the Issuing Banks to issue Letters of Credit, will automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid will automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the Letters of Credit as aforesaid will automatically become effective, in each case without further act of the Administrative Agent or any Lender and (b) notwithstanding anything to the contrary, if the only Events of Default then having occurred and continuing are pursuant to a Financial Covenant Event of Default, then, unless a Financial Covenant Cross Default has occurred and is continuing, the Administrative Agent shall only take the actions set forth in this Section 8.02 at the request (or with the consent) of the Required Facility Lenders under the Revolving Facilities (as opposed to the Required Lenders) and only with respect to the Revolving Commitments, Revolving Loans, Letters of Credit and Obligations under the Revolving Facilities.

SECTION 8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable as set forth in the first clause (a) of the proviso to Section 8.02), subject to any Intercreditor Agreement then in effect, any amounts received on account of the Obligations will be applied by the Administrative Agent in the following order:

*First*, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Administrative Agent and the Collateral Agent in their capacities as such;

*Second*, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal and interest, but including Attorney Costs payable under Section 10.04 and amounts payable under Article III) payable to the Lenders, ratably among them in proportion to the amounts described in this clause Second payable to them;

*Third*, to payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and L/C Borrowings, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

*Fourth*, to payment of that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings (including to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit), the Obligations under Secured Hedge Agreements and Cash Management Obligations under Secured Cash Management Agreements, ratably among the Secured Parties in proportion to the respective amounts described in this clause Fourth held by them;

*Fifth*, to the payment of all other Obligations of the Loan Parties that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date; and

*Last*, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Law.

Subject to Section 2.03(3), amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above will 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 will be applied to the other Obligations, if any, in the order set forth above and, if no Obligations remain outstanding, will be paid to the Borrower.

Notwithstanding the foregoing, amounts received from any Loan Party shall not be applied to any Excluded Swap Obligation of such Loan Party.

#### SECTION 8.04 Right to Cure.

(1) Notwithstanding anything to the contrary contained in Section 8.01 or Section 8.02, but subject to Sections 8.04(2) and (3), for the purpose of determining whether an Event of Default under the Financial Covenant has occurred, the Borrower may on one or more occasions designate any portion of the Net Proceeds from any Permitted Equity Issuance or of any contribution to the common equity capital of the Borrower (or from any other contribution to capital or sale or issuance of any other Equity Interests on terms reasonably satisfactory to the Administrative Agent) (the “**Cure Amount**”) as an increase to Consolidated EBITDA of the Borrower for the applicable fiscal quarter; *provided that*

(a) such amounts to be designated are actually received by the Borrower (i) on and after the first Business Day of the applicable fiscal quarter and (ii) on and prior to the tenth (10th) Business Day after the date on which financial statements are required to be delivered with respect to such applicable fiscal quarter (the “**Cure Expiration Date**”),

(b) such amounts to be designated do not exceed the maximum aggregate amount necessary to cure any Event of Default under the Financial Covenant as of such date and

(c) the Borrower will have provided notice to the Administrative Agent on the date such amounts are designated as a “Cure Amount” (it being understood that to the extent such notice is provided in advance of delivery of a Compliance Certificate for the applicable period, the amount of such Net Proceeds that is designated as the Cure Amount may be lower than specified in such notice to the extent that the amount necessary to cure any Event of Default under the Financial Covenant is less than the full amount of such originally designated amount).

The Cure Amount used to calculate Consolidated EBITDA for one fiscal quarter will be used and included when calculating Consolidated EBITDA for each Test Period that includes such fiscal quarter. The parties hereby acknowledge that this Section 8.04(1) may not be relied on for purposes of calculating any financial ratios other than as applicable to the Financial Covenant (and may not be included for purposes of determining pricing,



mandatory prepayments and the availability or amount permitted pursuant to any covenant under Article VII) and may not result in any adjustment to any amounts (including the amount of Indebtedness) or increase in cash with respect to the fiscal quarter with respect to which such Cure Amount was received other than the amount of the Consolidated EBITDA referred to in the immediately preceding sentence, except to the extent such proceeds are actually applied to prepay Indebtedness under the Facilities. Notwithstanding anything to the contrary contained in Section 8.01 and Section 8.02, (A) upon designation of the Cure Amount by the Borrower in an amount necessary to cure any Event of Default under the Financial Covenant, the Financial Covenant will be deemed satisfied and complied with as of the end of the relevant fiscal quarter with the same effect as though there had been no failure to comply with the Financial Covenant and any Event of Default under the Financial Covenant (and any other Default as a result thereof) will be deemed not to have occurred for purposes of the Loan Documents and (B) from and after the date that the Borrower delivers a written notice to the Administrative Agent that it intends to exercise its cure right under this Section 8.04 (a “**Notice of Intent to Cure**”) neither the Administrative Agent nor any Lender may exercise any rights or remedies under Section 8.02 (or under any other Loan Document) on the basis of any actual or purported Event of Default under the Financial Covenant (and any other Default as a result thereof) until and unless the Cure Expiration Date has occurred without the Cure Amount having been designated.

(2) In each period of four consecutive fiscal quarters, there shall be no more than two (2) fiscal quarters in which the cure right set forth in Section 8.04(1) is exercised.

(3) There shall be no more than five (5) fiscal quarters in which the cure rights set forth in Section 8.04(1) are exercised during the term of the Facilities; *provided that*, so long as the Closing Date Revolving Facility ~~is~~ and the 2021 Revolving Facility are each no longer outstanding, there may be an additional fiscal quarter after the occurrence of both the Original Revolving Facility Maturity Date and the 2021 Revolving Facility Maturity Date in which the cure rights set forth in this Section 8.04 are exercised during the term of any Revolving Commitments.

## Article IX

### Administrative Agent and Other Agents

SECTION 9.01 Appointment and Authorization of the Administrative Agent.

(1) Each Lender and Issuing Bank hereby irrevocably appoints Citibank, N.A., to act on its behalf as the Administrative Agent hereunder and under the other Loan 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 Article IX (other than Sections 9.07, 9.11, 9.12, 9.15 and 9.16) are solely for the benefit of the Administrative Agent, the Lenders and each Issuing Bank and the Borrower shall not have rights as a third-party beneficiary of any such provision. The Administrative Agent hereby represents and warrants that it is either (i) a “U.S. person” and a “financial institution” and that it will comply with its “obligation to withhold,” each within the meaning of Treasury Regulations Section 1.1441-1(b)(2)(ii) or (ii) a Withholding U.S. Branch.

(2) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a Lender and a potential Hedge Bank or Cash Management Bank) and the Issuing Banks hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of (and to hold any security interest created by the Collateral Documents for and on behalf of or in trust for) such Lender and Issuing Bank for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” (and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article X with respect to the Administrative Agent (including Sections 10.04 and 10.05), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents. 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 Secured Parties with respect thereto (including any Intercreditor Agreement), as contemplated by and in

accordance with the provisions of this Agreement and the Collateral Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders.

**SECTION 9.02** Rights as a Lender. Any Lender that is also serving as an Agent (including as 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 an Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include each Lender (if any) serving as an Agent hereunder in its individual capacity. Any such Person serving as an Agent and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not an Agent hereunder and without any duty to account therefor to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

**SECTION 9.03** Exculpatory Provisions. The Administrative Agent and Collateral Agent shall not have any duties or responsibilities except those expressly set forth in this Agreement and in the other Loan Documents. Without limiting the generality of the foregoing, each Agent (including the Administrative Agent):

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing and without limiting the generality of the foregoing, the use of the term “agent” herein and in the other Loan Documents with reference to any Agent, Arranger or Co-Documentation Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law and instead, such term is used merely as a matter of market custom, and is intended to create or reflect only an administrative relationship between independent contracting parties;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that such 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 Loan Documents), *provided* that no Agent shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by any Person serving as an Agent or any of its Affiliates in any capacity.

Neither the Administrative Agent nor any of its Related Persons shall 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 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by the final and non-appealable judgment of a court of competent jurisdiction, in connection with its duties expressly set forth herein. 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 Borrower, a Lender, or an Issuing Bank.

No Agent-Related Person shall be responsible for or have any duty to ascertain or inquire into (i) any recital, statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or 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 Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or



elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent. The duties of the Administrative Agent shall be mechanical and administrative in nature; the Administrative Agent shall not have by reason of this Agreement or any other Loan Document a fiduciary relationship in respect of any Lender or the holder of any Note; and nothing in this Agreement or in any other Loan Document, expressed or implied, is intended to or shall be so construed as to impose upon the Administrative Agent any obligations in respect of this Agreement or any other Loan Document except as expressly set forth herein or therein.

Notwithstanding any other provision of this Agreement or any provision of any other Loan Document, each Arranger and each Co-Documentation Agent is named as such for recognition purposes only, and in its capacity as such shall have no powers, duties, responsibilities or liabilities with respect to this Agreement or the other Loan Documents or the transactions contemplated hereby and thereby; it being understood and agreed that each Arranger and each Co-Documentation Agent shall be entitled to all indemnification and reimbursement rights in favor of the Arrangers and the Co-Documentation Agents as, and to the extent, provided for under Section 10.05. Without limitation of the foregoing, each Arranger and each Co-Documentation Agent shall not, solely by reason of this Agreement or any other Loan Documents, have any fiduciary relationship in respect of any Lender or any other Person.

**SECTION 9.04** Lack of Reliance on the Administrative Agent. Independently and without reliance upon the Administrative Agent, each Lender and the holder of each Note, to the extent it deems appropriate, has made and shall continue to make (i) its own independent investigation of the financial condition and affairs of the Borrower and the Restricted Subsidiaries in connection with the making and the continuance of the Loans and the taking or not taking of any action in connection herewith and (ii) its own appraisal of the creditworthiness of the Borrower and the Restricted Subsidiaries and, except as expressly provided in this Agreement, the Administrative Agent shall not have any duty or responsibility, either initially or on a continuing basis, to provide any Lender or the holder of any Note with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter. The Administrative Agent shall not be responsible to any Lender or the holder of any Note for any recitals, statements, information, representations or warranties herein or in any document, certificate or other writing delivered in connection herewith or for the execution, effectiveness, genuineness, validity, enforceability, perfection, collectability, priority or sufficiency of this Agreement or any other Loan Document or the financial condition of the Borrower or any of the Restricted Subsidiaries or be required to make any inquiry concerning either the performance or observance of any of the terms, provisions or conditions of this Agreement or any other Loan Document, or the financial condition of the Borrower or any of the Restricted Subsidiaries or the existence or possible existence of any Default or Event of Default.

**SECTION 9.05** Certain Rights of the Administrative Agent. If the Administrative Agent requests instructions from the Required Lenders with respect to any act or action (including failure to act) in connection with this Agreement or any other Loan Document, the Administrative Agent shall be entitled to refrain from such act or taking such action unless and until the Administrative Agent shall have received instructions from the Required Lenders; and the Administrative Agent shall not incur liability to any Lender by reason of so refraining. Without limiting the foregoing, neither any Lender nor the holder of any Note shall have any right of action whatsoever against the Administrative Agent as a result of the Administrative Agent acting or refraining from acting hereunder or under any other Loan Document in accordance with the instructions of the Required Lenders.

**SECTION 9.06** Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying upon, any note, writing, resolution, notice, statement, certificate, telex, teletype or facsimile message, cablegram, radiogram, order or other document or telephone message signed, sent or made by any Person that the Administrative Agent believed to be the proper Person, and, with respect to all legal matters pertaining to this Agreement and any other Loan Document and its duties hereunder and thereunder, upon advice of counsel selected by the Administrative Agent. In determining compliance with any condition hereunder to the making of a Loan or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or Issuing Bank prior to the making of such Loan or issuances of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the 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.

**SECTION 9.07** 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 Loan Documents 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 Agent-Related Persons. The exculpatory provisions of this Article shall apply to any such sub agent and to the Agent-Related Persons 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. Notwithstanding anything to the contrary in this Section 9.07 or Section 9.15, the Administrative Agent shall not delegate to any Supplemental Administrative Agent responsibility for receiving any payments under any Loan Document for the account of any Lender, which payments shall be received directly by the Administrative Agent, without prior written consent of the Borrower (not to unreasonably withheld or delayed). The Administrative Agent and the Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that the Administrative Agent or the Collateral Agent acted with gross negligence or willful misconduct in the selection of such sub-agents as determined by a court of competent jurisdiction in a final and non-appealable judgment.

SECTION 9.08 Indemnification. Whether or not the transactions contemplated hereby are consummated, to the extent the Administrative Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) is not reimbursed and indemnified by the Borrower, the Lenders will reimburse and indemnify the Administrative Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) in proportion to their respective Pro Rata Shares for and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, costs, expenses or disbursements of whatsoever kind or nature which may be imposed on, asserted against or incurred by the Administrative Agent or any other Agent-Related Person (solely to the extent any such Agent-Related Person was performing services on behalf of the Administrative Agent) in performing its duties hereunder or under any other Loan Document or in any way relating to or arising out of this Agreement or any other Loan Document; *provided* that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses or disbursements resulting from the Administrative Agent's or any other Agent-Related Person's gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision). In the case of any investigation, litigation or proceeding giving rise to any Indemnified Liabilities, this Section 9.08 applies whether any such investigation, litigation or proceeding is brought by any Lender or any other Person. Without limitation of the foregoing, each Lender shall reimburse the Administrative Agent upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document, or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower, *provided* that such reimbursement by the Lenders shall not affect the Borrower's continuing reimbursement obligations with respect thereto, *provided further* that the failure of any Lender to indemnify or reimburse the Administrative Agent shall not relieve any other Lender of its obligation in respect thereof. The undertaking in this Section 9.08 shall survive termination of the Aggregate Commitments, the payment of all other Obligations and the resignation of the Administrative Agent.

SECTION 9.09 The Administrative Agent in Its Individual Capacity. With respect to its obligation to make Loans under this Agreement, the Administrative Agent shall have the rights and powers specified herein for a "Lender" and may exercise the same rights and powers as though it were not performing the duties specified herein; and the term "Lender," "Required Lenders" or any similar terms shall, unless the context clearly indicates otherwise, include the Administrative Agent in its respective individual capacities. The Administrative Agent and its affiliates may accept deposits from, lend money to, and generally engage in any kind of banking, investment banking, trust or other business with, or provide debt financing, equity capital or other services (including financial advisory services) to any Loan Party or any Affiliate of any Loan Party (or any Person engaged in a similar business with any Loan Party or any Affiliate thereof) as if they were not performing the duties specified herein, and may accept fees and other consideration from any Loan Party or any Affiliate of any Loan Party for services in connection with this Agreement and otherwise without having to account for the same to the Lenders. The Lenders acknowledge that, pursuant to such activities, any Agent or its Affiliates may receive information regarding any Loan Party or any of its Affiliates (including information that may be subject to confidentiality obligations in favor of such Loan Party or such Affiliate) and acknowledge that no Agent shall be under any obligation to provide such information to them.

SECTION 9.10 ~~Reserved~~ Erroneous Payments.

(i) **If the Administrative Agent notifies a Revolving Lender or Issuing Bank, or any Person who has received funds on behalf of a Revolving Lender and Issuing Bank such Revolving Lender or Issuing Bank (any such Revolving Lender, Issuing Bank or other recipient, a "Payment Recipient") that the**

Administrative Agent has determined in its sole discretion (whether or not after receipt of any notice under immediately succeeding clause (2)) that any funds received by such Payment Recipient from the Administrative Agent or any of its Affiliates or sub-agents were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Revolving Lender, Issuing Bank or other Payment Recipient on its behalf) (any such funds, whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise, individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and such Revolving Lender or Issuing Bank shall (or, with respect to any Payment Recipient who received such funds on its behalf, shall cause such Payment Recipient to) promptly, but in no event later than two Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Overnight Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect. A notice of the Administrative Agent to any Payment Recipient under this clause (a) shall be conclusive, absent manifest error.

(ii) Without limiting immediately preceding clause (1), each Revolving Lender or Issuing Bank, or any Person who has received funds on behalf of a Revolving Lender or Issuing Bank, hereby further agrees that if it receives a payment, prepayment or repayment (whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise) from the Administrative Agent (or any of its Affiliates or sub-agents) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates or sub-agents) with respect to such payment, prepayment or repayment, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates), or (z) that such Revolving Lender or Issuing Bank, or other such recipient, otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part) in each case:

(a) (I) in the case of immediately preceding clauses (x) or (y), an error shall be presumed to have been made (absent written confirmation from the Administrative Agent to the contrary) or (II) an error has been made (in the case of immediately preceding clause (z)), in each case, with respect to such payment, prepayment or repayment; and

(b) such Revolving Lender or Issuing Bank shall (and shall cause any other recipient that receives funds on its respective behalf to) promptly (and, in all events, within one Business Day of its knowledge of such error) notify the Administrative Agent of its receipt of such payment, prepayment or repayment, the details thereof (in reasonable detail) and that it is so notifying the Administrative Agent pursuant to this Section 9.10(2).

(iii) Each Revolving Lender and Issuing Bank hereby authorizes the Administrative Agent to set off, net and apply any and all amounts at any time owing to such Revolving Lender or Issuing Bank under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Revolving Lender or Issuing Bank from any source, against any amount due to the Administrative Agent under immediately preceding clause (1) or under the indemnification provisions of this Agreement.

(iv) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (1), from any Revolving Lender or Issuing Bank that has received such Erroneous Payment (or portion thereof) (and/or from any Payment Recipient who received such Erroneous Payment (or portion thereof) on its respective behalf) (such unrecovered amount, an "Erroneous Payment Return Deficiency"), upon the Administrative Agent's notice to such Revolving Lender or Issuing Bank at any time, (i) such Revolving Lender or Issuing Bank shall be deemed to have assigned its Revolving Loans (but not its Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") in an amount equal to the Erroneous Payment Return Deficiency (or

such lesser amount as the Administrative Agent may specify) (such assignment of the Revolving Loans (but not Commitments) of the Erroneous Payment Impacted Class, the “Erroneous Payment Deficiency Assignment”) at par plus any accrued and unpaid interest (with the assignment fee to be waived by the Administrative Agent in such instance), and is hereby (together with the Borrower) deemed to execute and deliver an Assignment and Assumption (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to an approved electronic platform as to which the Administrative Agent and such parties are participants) with respect to such Erroneous Payment Deficiency Assignment, and such Revolving Lender or Issuing Bank shall deliver any Notes evidencing such Revolving Loans to the Borrower or the Administrative Agent, (ii) the Administrative Agent as the assignee Revolving Lender shall be deemed to acquire the Erroneous Payment Deficiency Assignment, (iii) upon such deemed acquisition, the Administrative Agent as the assignee Revolving Lender shall become a Revolving Lender or Issuing Bank, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment and the assigning Revolving Lender or assigning Issuing Bank shall cease to be a Revolving Lender or Issuing Bank, as applicable, hereunder with respect to such Erroneous Payment Deficiency Assignment, excluding, for the avoidance of doubt, its obligations under the indemnification provisions of this Agreement and its applicable Commitments which shall survive as to such assigning Revolving Lender or assigning Issuing Bank and (iv) the Administrative Agent may reflect in the Register its ownership interest in the Revolving Loans subject to the Erroneous Payment Deficiency Assignment. The Administrative Agent may, in its discretion, sell any Revolving Loans acquired pursuant to an Erroneous Payment Deficiency Assignment and upon receipt of the proceeds of such sale, the Erroneous Payment Return Deficiency owing by the applicable Revolving Lender or Issuing Bank shall be reduced by the net proceeds of the sale of such Revolving Loan (or portion thereof), and the Administrative Agent shall retain all other rights, remedies and claims against such Revolving Lender or Issuing Bank (and/or against any recipient that receives funds on its respective behalf). For the avoidance of doubt, no Erroneous Payment Deficiency Assignment will reduce the Commitments of any Revolving Lender or Issuing Bank and such Commitments shall remain available in accordance with the terms of this Agreement. In addition, each party hereto agrees that, except to the extent that the Administrative Agent has sold a Revolving Loan (or portion thereof) acquired pursuant to an Erroneous Payment Deficiency Assignment, and irrespective of whether the Administrative Agent may be equitably subrogated, the Administrative Agent shall be contractually subrogated to all the rights and interests of the applicable Revolving Lender or Issuing Bank under the Loan Documents with respect to each Erroneous Payment Return Deficiency (the “Erroneous Payment Subrogation Rights”).

(v) The parties hereto agree that an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower or any other Loan Party for the purpose of making such Erroneous Payment.

(vi) To the extent permitted by applicable law, no Payment Recipient shall assert any right or claim to an Erroneous Payment, and hereby waives, and is deemed to waive, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payment received, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine.

(vii) Each party’s obligations, agreements and waivers under this Section 9.10 shall survive the resignation or replacement of the Administrative Agent, any transfer of rights or obligations by, or the replacement of, a Revolving Lender or Issuing Bank, the termination of the Commitments and/or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

SECTION 9.11 Resignation by the Administrative Agent. The Administrative Agent may resign from the performance of all its respective functions and duties hereunder or under the other Loan Documents at any time by giving 30 Business Days prior written notice to the Lenders and the Borrower. If the Administrative Agent becomes subject to a Lender-Related Distress Event, then the Administrative Agent may be removed as the Administrative Agent at the reasonable request of the Required Lenders. If the Administrative Agent becomes subject to an Agent-Related Distress Event, then the Borrower may remove the Administrative Agent from such role upon 15 days’ prior

written notice to the Lenders. Such resignation or removal shall take effect upon the appointment of a successor Administrative Agent as provided below.

Notwithstanding anything to the contrary in this Agreement, no successor Administrative Agent shall be appointed unless such successor Administrative Agent represents and warrants that it is (i) a “U.S. person” and a “financial institution” and that it will comply with its “obligation to withhold,” each within the meaning of U.S. Treasury Regulations Section 1.1441-1, or (ii) a Withholding U.S. Branch.

Upon any such notice of resignation by, or notice of removal of, the Administrative Agent, the Required Lenders shall appoint a successor Administrative Agent hereunder or thereunder who shall be a commercial bank or trust company reasonably acceptable to the Borrower, which acceptance shall not be unreasonably withheld or delayed (*provided* that the Borrower’s approval shall not be required if an Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing).

If a successor Administrative Agent shall not have been so appointed within such 30 Business Day period, the Administrative Agent, with the consent of the Borrower (which consent shall not be unreasonably withheld or delayed, *provided* that the Borrower’s consent shall not be required if an Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing), shall then appoint a successor Administrative Agent who shall serve as Administrative Agent hereunder or thereunder until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above.

If no successor Administrative Agent has been appointed pursuant to the foregoing by the 35th Business Day after the date such notice of resignation was given by the Administrative Agent or such notice of removal was given by the Required Lenders or the Borrower, as applicable, the Administrative Agent’s resignation shall nonetheless become effective and the Required Lenders shall thereafter perform all the duties of the Administrative Agent hereunder or under any other Loan Document until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above. The retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the Issuing Banks under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, 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 or Issuing Bank directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section 9.11.

Upon the acceptance of a successor’s appointment as Administrative Agent hereunder and upon the execution and filing or recording of such financing statements, or amendments thereto, and such amendments or supplements to the Mortgages, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to (i) continue the perfection of the Liens granted or purported to be granted by the Collateral Documents or (ii) otherwise ensure that the Collateral and Guarantee Requirement is satisfied, 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 Loan Documents (if not already discharged therefrom as provided above in this Section 9.11).

The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent’s resignation hereunder and under the other Loan Documents, the provisions of this Article and Sections 10.04 and 10.05 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Agent-Related Persons 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.

Upon a resignation or removal of the Administrative Agent pursuant to this Section 9.11, the Administrative Agent (i) shall continue to be subject to Section 10.09 and (ii) shall remain indemnified to the extent provided in this Agreement and the other Loan Documents and the provisions of this Article IX (and the analogous provisions of the other Loan Documents) shall continue in effect for the benefit of the Administrative Agent for all of its actions and inactions while serving as the Administrative Agent.



SECTION 9.12 Collateral Matters. Each Lender (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) irrevocably authorizes and directs the Administrative Agent and the Collateral Agent to take the actions to be taken by them as set forth in Sections 7.04 and 10.24.

Each Lender hereby agrees, and each holder of any Note by the acceptance thereof will be deemed to agree, that, except as otherwise set forth herein, any action taken by the Required Lenders or the Required Facility Lenders, as applicable, in accordance with the provisions of this Agreement or the Collateral Documents, and the exercise by the Required Lenders or the Required Facility Lenders, as applicable, of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. The Collateral Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time, to take any action with respect to any Collateral or Collateral Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Collateral Documents.

Upon request by the Administrative Agent at any time, the Lenders will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this Section 9.12. In each case as specified in this Section 9.12, Section 7.04 and Section 10.24, the applicable Agent will (and each Lender irrevocably authorizes the applicable Agent to), at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release or subordination of such item of Collateral from the assignment and security interest granted under the Collateral Documents, or to evidence the release of such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents, this Section 9.12, Section 7.04 and Section 10.24.

The Collateral Agent shall have no obligation whatsoever to the Lenders or to any other Person to assure that the Collateral exists or is owned by any Loan Party or is cared for, protected or insured or that the Liens granted to the Collateral Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Collateral Agent in this Section 9.12, Section 7.04, Section 10.24 or in any of the Collateral Documents, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Collateral Agent may act in any manner it may deem appropriate, in its sole discretion, given the Collateral Agent's own interest in the Collateral as one of the Lenders and that the Collateral Agent shall have no duty or liability whatsoever to the Lenders, except for its gross negligence or willful misconduct (as determined by a court of competent jurisdiction in a final and non-appealable decision).

SECTION 9.13 [Reserved].

SECTION 9.14 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations 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, any Issuing Bank and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, any Issuing Bank and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, any Issuing Bank and the Administrative Agent under Sections 2.09 and 10.04) 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 Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and relevant Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation,

expenses, disbursements and advances of the Agents and their respective agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or Issuing Bank or to authorize the Administrative Agent to vote in respect of the claim of any Lender or Issuing Bank in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (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 Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (*provided* that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (i) of the first proviso to Section 10.01(1) of this Agreement), (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Equity Interests and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders pro rata and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

#### SECTION 9.15 Appointment of Supplemental Administrative Agents.

(1) It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any Law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case the Administrative Agent deems that by reason of any present or future Law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, the Administrative Agent is hereby authorized to appoint an additional individual or institution selected by the Administrative Agent in its sole discretion as a separate trustee, co-trustee, administrative agent, collateral agent, administrative sub-agent or administrative co-agent (any such additional individual or institution being referred to herein individually as a “**Supplemental Administrative Agent**” and collectively as “**Supplemental Administrative Agents**”).

(2) In the event that the Administrative Agent appoints a Supplemental Administrative Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to the Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Administrative Agent to



the extent, and only to the extent, necessary to enable such Supplemental Administrative Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or performance thereof by such Supplemental Administrative Agent shall run to and be enforceable by either the Administrative Agent or such Supplemental Administrative Agent, and (ii) the provisions of this Article IX and of Sections 10.04 and 10.05 that refer to the Administrative Agent shall inure to the benefit of such Supplemental Administrative Agent and all references therein to the Administrative Agent shall be deemed to be references to the Administrative Agent or such Supplemental Administrative Agent, as the context may require.

(3) Should any instrument in writing from any Loan Party be reasonably required by any Supplemental Administrative Agent so appointed by the Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, the Borrower shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments reasonably acceptable to it promptly upon request by the Administrative Agent. In case any Supplemental Administrative Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Administrative Agent, to the extent permitted by Law, shall vest in and be exercised by the Administrative Agent until the appointment of a new Supplemental Administrative Agent.

**SECTION 9.16** Intercreditor Agreements. The Administrative Agent and Collateral Agent are hereby authorized to enter into any Intercreditor Agreement to the extent contemplated by the terms hereof, and the parties hereto acknowledge that such Intercreditor Agreement is binding upon them. Each Secured Party (a) hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreements, (b) hereby authorizes and instructs the Administrative Agent and Collateral Agent to enter into the Intercreditor Agreements and to subject the Liens on the Collateral securing the Obligations to the provisions thereof and (c) without any further consent of the Lenders, hereby authorizes and instructs the Administrative Agent and the Collateral Agent to negotiate, execute and deliver on behalf of the Secured Parties any intercreditor agreement or any amendment (or amendment and restatement) to the Collateral Documents or any Intercreditor Agreement contemplated hereunder. In addition, each Secured Party hereby authorizes the Administrative Agent and the Collateral Agent to enter into (i) any amendments to any Intercreditor Agreements, and (ii) any other intercreditor arrangements, in the case of clauses (i) and (ii) to the extent required to give effect to the establishment of intercreditor rights and privileges as contemplated and required or permitted by this Agreement. Each Secured Party acknowledges and agrees that any of the Administrative Agent and Collateral Agent (or one or more of their respective Affiliates) may (but are not obligated to) act as the “Debt Representative” or like term for the holders of Credit Agreement Refinancing Indebtedness under the security agreements with respect thereto or any Intercreditor Agreement then in effect. Each Lender waives any conflict of interest, now contemplated or arising hereafter, in connection therewith and agrees not to assert against any Agent or any of its affiliates any claims, causes of action, damages or liabilities of whatever kind or nature relating thereto.

**SECTION 9.17** Secured Cash Management Agreements and Secured Hedge Agreements. Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of 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 Loan Documents. Notwithstanding any other provision of this Article IX 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 Secured Cash Management Agreements and Secured Hedge 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 Cash Management Bank or Hedge Bank, as the case may be.

**SECTION 9.18** Withholding Tax. To the extent required by any applicable Laws, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. Without limiting or expanding the provisions of Section 3.01, each Lender shall indemnify and hold harmless the Administrative Agent against, and shall make payable in respect thereof within ten (10) days after demand therefor, any and all Taxes and any and all related losses, claims, liabilities and expenses (including fees, charges and disbursements of any counsel for the Administrative Agent) incurred by or asserted against the Administrative Agent by the IRS or any other Governmental Authority as a result of the failure of the Administrative Agent to properly withhold Tax from amounts

paid to or for the account of such Lender for any reason (including 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). A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due the Administrative Agent under this Section 9.18. The agreements in this Section 9.18 shall survive the resignation or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

## Article X

### Miscellaneous

#### SECTION 10.01 Amendments, etc.

(1) Except as otherwise set forth in this Agreement, no amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders (other than (x) with respect to any amendment or waiver contemplated in clauses (g), (h) or (i) below (in the case of clause (i), to the extent permitted by Section 2.14), which shall only require the consent of the Required Facility Lenders under the applicable Facility or Facilities, as applicable (and not the Required Lenders) and (y) with respect to any amendment or waiver contemplated in clauses (b) or (c), which shall only require the consent of the Lenders expressly set forth therein and not the Required Lenders) (or by the Administrative Agent with the consent of the Required Lenders) and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and the Administrative Agent hereby agrees to acknowledge any such waiver, consent or amendment that otherwise satisfies the requirements of this Section 10.01 as promptly as possible, however, to the extent the final form of such waiver, consent or amendment has been delivered to the Administrative Agent at least one Business Day prior to the proposed effectiveness of the consents by the Lenders party thereto, the Administrative Agent shall acknowledge such waiver, consent or amendment (i) immediately, in the case of any amendment which does not require the consent of any existing Lender under this Agreement or (ii) otherwise, within two hours of the time copies of the Required Lender consents or other applicable Lender consents required by this Section 10.01 have been provided to the Administrative Agent; and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that no such amendment, waiver or consent shall:

(a) extend or increase the Commitment of any Lender without the written consent of such Lender (it being understood that a waiver of any condition precedent set forth in Section 4.01, 4.02 or 4.03 or the waiver of any Default, Event of Default, mandatory prepayment or mandatory reduction of the Commitments shall not constitute an extension or increase of any Commitment of any Lender);

(b) postpone any date scheduled for, or reduce the amount of, any payment of principal or interest under Section 2.07 or 2.08 (other than pursuant to Section 2.08(2)) or any payment of fees or premiums hereunder or under any Loan Document with respect to payments to any Lender without the written consent of such Lender, it being understood that none of the following will constitute a postponement of any date scheduled for, or a reduction in the amount of, any payment of principal, interest, fees or premiums: (i) the waiver of (or amendment to the terms of) any mandatory prepayment of the Loans, (ii) the waiver of any Default or Event of Default, and (iii) any change to the definition of "First Lien Net Leverage Ratio," "Secured Net Leverage Ratio," "Total Net Leverage Ratio," "Interest Coverage Ratio" or, in each case, in the component definitions thereof;

(c) reduce the principal of, or the rate of interest specified herein on, any Loan or Unreimbursed Amount, or any fees or other amounts payable hereunder or under any other Loan Document to any Lender without the written consent of such Lender, it being understood that none of the following will constitute a reduction in any rate of interest or any fees: any change to the definition of "First Lien Net Leverage Ratio," "Secured Net Leverage Ratio," "Total Net Leverage Ratio," "Interest Coverage Ratio," or, in each case, in the component definitions thereof; *provided* that only the consent of (A) the Required Lenders shall be necessary to amend the definition of "Default Rate" and (B) the Required Lenders or, with respect to any Default Rate payable in respect of the Revolving Facility, the Required Facility Lenders under the

~~Closing Date~~-Revolving Facility, shall be necessary to waive any obligation of the Borrower to pay interest at the Default Rate;

(d) except as contemplated by clause (C) in the second proviso immediately succeeding clause (i) of this Section 10.01(1), change any provision of this Section 10.01 or the definition of “Required Lenders” or “Required Facility Lenders,” “Pro Rata Share” or any other provision specifying the number of Lenders or portion of the Loans or Commitments required to take any action under the Loan Documents or Section 2.13 or 8.03, without the written consent of each Lender directly and adversely affected thereby;

(e) other than in a transaction permitted under Section 7.03 or Section 7.04, release all or substantially all of the aggregate value of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

(f) other than in a transaction permitted under Section 7.03 or Section 7.04, release all or substantially all of the aggregate value of the Guaranty, without the written consent of each Lender;

(g) amend, waive or otherwise modify any term or provision (including the waiver of any conditions set forth in Section 4.03 as to any Credit Extension under one or more Revolving Facilities) which directly affects Lenders under one or more Revolving Facilities and does not directly affect Lenders under any other Facilities, in each case, without the written consent of the Required Facility Lenders under such applicable Revolving Facility or Facilities with respect to Revolving Commitments (and in the case of multiple Facilities which are affected, such Required Facility Lenders shall consent together as one Facility); *provided, however*, that the waivers described in this clause (g) shall not require the consent of any Lenders other than the Required Facility Lenders under the applicable Revolving Facility or Facilities (it being understood that any amendment to the conditions of effectiveness of Incremental Commitments set forth in Section 2.14 shall be subject to clause (i) below);

(h) amend, waive or otherwise modify the Financial Covenant or any definition related thereto (solely in respect of the use of such defined terms in the Financial Covenant) or waive any Default or Event of Default resulting from a failure to perform or observe the Financial Covenant (including any waiver of a Default or Event of Default solely with respect to the Revolving Facilities pursuant to Section 6.01(1)) without the written consent of the Required Facility Lenders under the applicable Revolving Facility or Facilities with respect to Revolving Commitments (such Required Facility Lenders shall consent together as one Facility); *provided, however*, that the amendments, waivers and other modifications described in this clause (h) shall not require the consent of any Lenders other than the Required Facility Lenders under the applicable Revolving Facility or Facilities;

(i) amend, waive or otherwise modify any term or provision (including the availability and conditions to funding (subject to the requirements of Section 2.14) with respect to Incremental Term Loans and Incremental Revolving Commitments, but excluding the rate of interest applicable thereto which shall be subject to clause (c) above)) which directly affects Lenders of one or more Incremental Term Loans or Incremental Revolving Commitments and does not directly affect Lenders under any other Facility, in each case, without the written consent of the Required Facility Lenders under such applicable Incremental Term Loans or Incremental Revolving Commitments (and in the case of multiple Facilities which are affected, such Required Facility Lenders shall consent together as one Facility); *provided, however*, that, to the extent permitted under Section 2.14, the waivers described in this clause (i) shall only require the consent of the Required Facility Lenders under such applicable Incremental Term Loans or Incremental Revolving Commitments;

(j) amend, waive or otherwise modify any term or provision in Section 4.01 or Section 4.02, in each case, without the written consent of each Lender; or

- [extend the L/C Expiration Date with respect to any Class of Revolving Commitments \(including through any change to the definition of “L/C Expiration Date”\) without the written consent of each Revolving Lender under such Class of Revolving Commitments;](#)

*provided that:*

(I) no amendment, waiver or consent shall, unless in writing and signed by each Issuing Bank in addition to the Lenders required above, affect the rights or duties of such Issuing Bank under this Agreement or any Issuing Bank Document relating to any Letter of Credit issued or to be issued by it; *provided, however*, that this Agreement may be amended to adjust the mechanics related to the issuance of Letters of Credit, including mechanical changes relating to the existence of multiple Issuing Banks, with only the written consent of the Administrative Agent, the applicable Issuing Bank and the Borrower so long as the obligations of the Revolving Lenders, if any, who have not executed such amendment, and if applicable the other Issuing Banks, if any, who have not executed such amendment, are not adversely affected thereby;

(II) [reserved]

(III) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of, or any fees or other amounts payable to, the Administrative Agent under this Agreement or any other Loan Document; and

(IV) Section 10.07(g) may not be amended, waived or otherwise modified without the consent of each Granting Lender all or any part of whose Loans are being funded by an SPC at the time of such amendment, waiver or other modification;

*provided further that notwithstanding the foregoing:*

(A) no Defaulting Lender shall have any right to approve or disapprove of any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that the Commitment of such Defaulting Lender may not be increased or extended without the consent of such Defaulting Lender (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded for a vote of the Lenders hereunder requiring any consent of the Lenders);

(B) no Lender consent is required to effect any amendment or supplement to any Intercreditor Agreement (i) that is for the purpose of adding the holders of Permitted Incremental Equivalent Debt, Credit Agreement Refinancing Indebtedness or any other Permitted Indebtedness that is Secured Indebtedness (or a Debt Representative with respect thereto) as parties thereto, as expressly contemplated by the terms of such Intercreditor Agreement, as applicable (it being understood that any such amendment, modification or supplement may make such other changes to the applicable Intercreditor Agreement as, in the good faith determination of the Administrative Agent, are required to effectuate the foregoing and *provided* that such other changes are not adverse, in any material respect, to the interests of the Lenders) or (ii) that is expressly contemplated by any Intercreditor Agreement in connection with joinders and supplements; *provided further* that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent or the Collateral Agent hereunder or under any other Loan Document without the prior written consent of the Administrative Agent or the Collateral Agent, as applicable;

(C) this Agreement may be amended (or amended and restated) with the written consent of the Required Lenders, the Administrative Agent and the Borrower (i) 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 Loan Documents with the Term Loans, the Revolving Loans and L/C Obligations and the accrued interest and fees in respect thereof and (ii) to include appropriately the Lenders holding such credit facilities in any determination of the Required Lenders;

(D) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments of any other Class) may be effected by an agreement or

agreements in writing entered into by the Borrower and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section 10.01 if such Class of Lenders were the only Class of Lenders hereunder at the time;

(E) any provision of this Agreement or any other Loan Document may be amended by an agreement in writing entered into by the Borrower and the Administrative Agent (or the Collateral Agent, as applicable) to cure any ambiguity, omission, defect or inconsistency (including amendments, supplements or waivers to any of the Collateral Documents, guarantees, intercreditor agreements or related documents executed by any Loan Party or any other Subsidiary in connection with this Agreement if such amendment, supplement or waiver is delivered in order to cause such Collateral Documents, guarantees, intercreditor agreements or related documents to be consistent with this Agreement and the other Loan Documents) so long as, in each case, the Lenders shall have received at least five (5) Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five (5) Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment; *provided* that the consent of the Lenders or the Required Lenders, as the case may be, shall not be required to make any such changes necessary to be made in connection with any borrowing of Incremental Loans, any borrowing of Other Loans, any Extension or any borrowing of Replacement Loans and otherwise to effect the provisions of Section 2.14, 2.15 or 2.16 or the immediately succeeding paragraph of this Section 10.01, respectively;

(F) the Borrower and the Administrative Agent may, without the input or consent of the other Lenders, (i) effect changes to any Mortgage as may be necessary or appropriate in the opinion of the Collateral Agent and (ii) effect changes to this Agreement that are necessary and appropriate to effect the offering process set forth in Section 2.05(1)(e); and

(G) any provision of this Agreement or any other Loan Document may be amended by the Administrative Agent without written consent of the Borrower or any other party, to (1) effect any "market flex" provisions of the Fee Letter and /or (2) if the Sponsor Subordinated Debt Issuance occurs, (x) to permit the Sponsor Subordinated Debt Issuance in accordance with the Investment Agreement and to adjust any baskets or incurrence test tied to the Closing Date Total Net Leverage Ratio as reasonably necessary to account for the Sponsor Subordinated Debt Issuance; *provided* that the Administrative Agent shall first consult with the Borrower to determine which adjustments, if any, are reasonably necessary and (y) to replace the Total Net Leverage Ratio test in Section 7.12 with a Total Senior Net Leverage Ratio for so long as the Sponsor Subordinated Debt has not converted into preferred equity, in each case within 1 Business Day of notice by the Arrangers to the Borrower of their intention to make such amendments.

(2) In addition, notwithstanding anything to the contrary contained in this Section 10.01, this Agreement may be amended with the written consent of the Administrative Agent, the Borrower and the Lenders providing the Replacement Loans (as defined below) to permit the refinancing of all outstanding Term Loans of any Class ("**Replaced Loans**") with replacement term loans ("**Replacement Loans**") hereunder; *provided* that

(a) the aggregate principal amount of such Replacement Loans shall not exceed the aggregate principal amount of such Replaced Loans, *plus* accrued interest, fees, premiums (if any) and penalties thereon and reasonable fees and expenses incurred in connection with such refinancing of Replaced Loans with such Replacement Loans,

(b) the All-In Yield with respect to such Replacement Loans (or similar interest rate spread applicable to such Replacement Loans) shall not be higher than the All-In Yield for such Replaced Loans (or similar interest rate spread applicable to such Replaced Loans) immediately prior to such refinancing,

(c) the Weighted Average Life to Maturity of such Replacement Loans shall not be shorter than the Weighted Average Life to Maturity of such Replaced Loans at the time of such refinancing, and

(d) all other terms (other than with respect to pricing, interest rate margins, fees, discounts, rate floors and prepayment or redemption terms) applicable to such Replacement Loans shall either, at the option of the Borrower, (i) reflect market terms and conditions (taken as a whole) at the time of incurrence



of such Replacement Loans (as determined by the Borrower in good faith) or (ii) if not otherwise consistent with the terms of such Replaced Loans, not be materially more restrictive to the Borrower (as determined by the Borrower in good faith), when taken as a whole, than the terms of such Replaced Loans, except in the case of clauses (i) and (ii) to the extent necessary to provide for (x) covenants and other terms applicable to any period after the Latest Maturity Date of the Loans in effect immediately prior to such refinancing or (y) subject to the immediately succeeding proviso, a Previously Absent Financial Maintenance Covenant; *provided* that, notwithstanding anything to the contrary contained herein, if any such terms of the Replacement Loans contain a Previously Absent Financial Maintenance Covenant that is in effect prior to the applicable Latest Maturity Date, such Previously Absent Financial Maintenance Covenant shall be included for the benefit of each Facility.

Each amendment to this Agreement providing for Replacement Loans may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent and the Borrower to effect the provisions of this paragraph, and for the avoidance of doubt, this paragraph shall supersede any other provisions in this Section 10.01 to the contrary.

(3) In addition, notwithstanding anything to the contrary in this Section 10.01,

(a) the Guaranty, the Collateral Documents and related documents executed by Loan Parties in connection with this Agreement and the other Loan Documents may be in a form reasonably determined by the Administrative Agent and may be, together with this Agreement, amended and waived with the consent of the Administrative Agent at the request of the Borrower without the need to obtain the consent of any other Lender if such amendment or waiver is delivered in order (i) to comply with local Law or advice of local counsel, (ii) to cure ambiguities or defects or (iii) to cause the Guaranty, Collateral Documents or other document to be consistent with this Agreement and the other Loan Documents (including by adding additional parties as contemplated herein or therein) and

(b) (i) if the Administrative Agent and the Borrower shall have jointly identified an obvious error (including an incorrect cross-reference) or any error or omission of a technical or immaterial nature or (ii) if the Administrative Agent shall have identified any administrative, operational or agency changes of a technical nature, in each case, in any provision of this Agreement or any other Loan Document (including, for the avoidance of doubt, any exhibit, schedule or other attachment to any Loan Document), then the Administrative Agent (acting in its sole discretion) and the Borrower or any other relevant Loan Party shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document. Notification of such amendment shall be made by the Administrative Agent to the Lenders promptly upon such amendment becoming effective.

#### SECTION 10.02 Notices and Other Communications; Facsimile Copies.

(1) General. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(a) if to the Borrower or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02; and

(b) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its Administrative Questionnaire.

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next succeeding Business Day for



the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (2) below shall be effective as provided in such subsection (2).

(2) Electronic Communication. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, 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.

(3) Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next succeeding Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(4) The Platform. 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 Agent-Related Persons or any Arranger (collectively, the "**Agent Parties**") have any liability to the Borrower, 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 the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Agent Party; *provided, however*, that in no event shall any Agent Party have any liability to the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(5) Change of Address. Each Loan Party and the Administrative Agent may change its address, facsimile or telephone number for notices and other communications hereunder by written notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by written notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private-Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(6) Reliance by the Administrative Agent. The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices) purportedly given by or on

behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Agent-Related Persons of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**SECTION 10.03** No Waiver; Cumulative Remedies. No failure by any Lender or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by Law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders; *provided, however*, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Issuing Bank from exercising the rights and remedies that inure to its benefit (solely in its capacity as Issuing Bank, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.10 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and *provided further* that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**SECTION 10.04** Costs and Expenses. The Borrower agrees (a) if the Closing Date occurs and to the extent not paid or reimbursed on or prior to the Closing Date, to pay or reimburse the Administrative Agent and the Arrangers for all reasonable and documented out-of-pocket costs and expenses of the Administrative Agent and the Arrangers incurred in connection with the preparation, negotiation, syndication, execution, delivery and administration of this Agreement and the other Loan Documents and any amendment, waiver, consent or other modification of the provisions hereof and thereof (whether or not the transactions contemplated thereby are consummated), and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs of a single U.S. counsel and, if necessary, a single local counsel in each relevant material jurisdiction, and (b) upon presentation of a summary statement, together with any supporting documentation reasonably requested by the Borrower, to pay or reimburse the Administrative Agent, each Issuing Bank and the other Lenders, taken as a whole, promptly following a written demand therefor for all reasonable and documented out-of-pocket costs and expenses incurred in connection with the enforcement of any rights or remedies under this Agreement or the other Loan Documents (including all such costs and expenses incurred during any legal proceeding, including any proceeding under any Debtor Relief Law, and including all Attorney Costs of one counsel to the Administrative Agent and the Lenders taken as a whole (and, if necessary, one local counsel in any relevant material jurisdiction and solely in the case of a conflict of interest, one additional counsel in each relevant material jurisdiction to each group of affected Lenders similarly situated taken as a whole)). The agreements in this Section 10.04 shall survive the termination of the Aggregate Commitments and repayment of all other Obligations. All amounts due under this Section 10.04 shall be paid within thirty (30) Business Days following receipt by the Borrower of an invoice relating thereto setting forth such expenses in reasonable detail (other than amounts referred to in clause (a) of this Section 10.04, which shall be payable on the Closing Date to the extent invoiced at least three (3) Business Days prior thereto). If any Loan Party fails to pay when due any costs, expenses or other amounts payable by it hereunder or under any Loan Document, such amount may be paid on behalf of such Loan Party by the Administrative Agent in its sole discretion.

**SECTION 10.05** Indemnification by the Borrower. The Borrower shall indemnify and hold harmless the Agents, each Issuing Bank, each other Lender, the Arrangers, the Co-Documentation Agents and their respective Related

Persons (collectively, the “**Indemnitees**”) from and against any and all losses, claims, damages, liabilities or expenses (including Attorney Costs and Environmental Liabilities) to which any such Indemnitee may become subject arising out of, resulting from or in connection with (but limited, in the case of legal fees and expenses, to the reasonable and documented out-of-pocket fees, disbursements and other charges of one counsel to all Indemnitees taken as a whole and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole in each relevant material jurisdiction, and solely in the case of a conflict of interest, one additional counsel in each relevant material jurisdiction to each group of affected Indemnitees similarly situated taken as a whole) any actual or threatened claim, litigation, investigation or proceeding relating to the Transactions or to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents, the Loans, the Letters of Credit or the use, or proposed use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), whether based on contract, tort or any other theory (including any investigation of, preparation for, or defense of any pending or threatened claim, litigation, investigation or proceeding), and regardless of whether any Indemnitee is a party thereto (all the foregoing, collectively, the “**Indemnified Liabilities**”); *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or expenses resulted from (x) the gross negligence, bad faith or willful misconduct of such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction, (y) a material breach of any obligations under any Loan Document by such Indemnitee or any of its Related Indemnified Persons as determined by a final, non-appealable judgment of a court of competent jurisdiction or (z) any dispute solely among Indemnitees other than any claims against an Indemnitee in its capacity or in fulfilling its role as an administrative agent or arranger or any similar role under any Loan Document and other than any claims arising out of any act or omission of the Borrower or any of its Affiliates (as determined by a final, non-appealable judgment of a court of competent jurisdiction). To the extent that the undertakings to indemnify and hold harmless set forth in this Section 10.05 may be unenforceable in whole or in part because they are violative of any applicable Law or public policy, the Borrower shall contribute the maximum portion that they are permitted to pay and satisfy under applicable Law to the payment and satisfaction of all Indemnified Liabilities incurred by the Indemnitees or any of them. No Indemnitee shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement (except to the extent such damages are found in a final non-appealable judgment of a court of competent jurisdiction to have resulted from the willful misconduct, bad faith or gross negligence of such Indemnitee), nor shall any Indemnitee or any Loan Party have any liability for any special, punitive, indirect or consequential damages relating to this Agreement or any other Loan Document or arising out of its activities in connection herewith or therewith (whether before or after the Closing Date) (other than, in the case of any Loan Party, in respect of any such damages incurred or paid by an Indemnitee to a third party for which such Indemnitee is otherwise entitled to indemnification pursuant to this Section 10.05). In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 10.05 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, stockholders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not any of the transactions contemplated hereunder or under any of the other Loan Documents is consummated. All amounts due under this Section 10.05 shall be paid within thirty (30) Business Days after written demand therefor. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations. This Section 10.05 shall not apply to Taxes, except any Taxes that represent losses or damages arising from any non-Tax claim. Notwithstanding the foregoing, each Indemnitee shall be obligated to refund and return promptly any and all amounts paid by any Loan Party or any of its Affiliates under this Section 10.05 to such Indemnitee for any such fees, expenses or damages to the extent such Indemnitee is not entitled to payment of such amounts in accordance with the terms hereof as determined by a final, non-appealable judgment of a court of competent jurisdiction.

**SECTION 10.06** Marshaling; Payments Set Aside. None of the Administrative Agent or any Lender shall be under any obligation to marshal any assets in favor of the Loan Parties or any other party or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of the Borrower is made to any Agent or any Lender, or any Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender

severally agrees to pay to the Administrative Agent upon demand its applicable share of any amount so recovered from or repaid by any Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Overnight Rate from time to time in effect.

SECTION 10.07 Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and registered assigns permitted hereby, except that the Borrower may not, except as permitted by Section 7.03 and the last sentence of this clause (a), assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder (including to existing Lenders and their Affiliates) except (i) to an assignee in accordance with the provisions of Section 10.07(b) (such an assignee, an “**Eligible Assignee**”) and (A) in the case of any Eligible Assignee that, immediately prior to or upon giving effect to such assignment, is an Affiliated Lender, in accordance with the provisions of Section 10.07(h), (B) in the case of any Eligible Assignee that is the Borrower or any Subsidiary of the Borrower, in accordance with the provisions of Section 10.07(l), or (C) in the case of any Eligible Assignee that, immediately prior to or upon giving effect to such assignment, is a Debt Fund Affiliate, in accordance with the provisions of Section 10.07(k), (ii) by way of participation in accordance with the provisions of Section 10.07(d), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.07(f), or (iv) to an SPC in accordance with the provisions of Section 10.07(g) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 10.07(d) and, to the extent expressly contemplated hereby, Related Persons of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement. Notwithstanding anything to the contrary herein, the Borrower may assign its right, title and interest in, to and under this Agreement and the other Loan Documents and all proceeds (as defined in the Uniform Commercial Code as in effect in the State of New York) of the foregoing to the Tender Issuing Bank to secure obligations under the Agreement for Standby Letter of Credit and the L/C Fee Letter.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this Section 10.07(b), participations in L/C Obligations) at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender’s Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section 10.07, the aggregate amount of the Commitment or, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$1.0 million, in the case of Term Loans, and not less than \$5.0 million, in the case of Revolving Loans and Revolving Commitments, unless each of the Administrative Agent and, so long as no Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing, the Borrower otherwise consents (in the case of an assignment of Term Loans, each such consent not to be unreasonably withheld or delayed); *provided, however*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Loans or the Commitment assigned (it being understood that assignments under separate Facilities shall not be required to be made on a pro rata basis).

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by Section 10.07(b)(i)(B) and, in addition:

(A) the consent of the Borrower (in the case of an assignment of Term Loans, such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default under Section 8.01(1) or, solely with respect to the Borrower, Section 8.01(6) has occurred and is continuing at the time of such assignment determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if a “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date or (2) in respect of an assignment of all or a portion of the Term Loans only, such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; *provided* that the Borrower shall be deemed to have consented to any assignment of all or a portion of the Term Loans unless it shall have objected thereto by written notice to the Administrative Agent within ten (10) Business Days after having received such request for assignment; *provided further* that no consent of the Borrower shall be required for an assignment of all or a portion of the Loans pursuant to Section 10.07(h), (k) or (l);

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; *provided* that no consent of the Administrative Agent shall be required for an assignment of all or a portion of the Loans pursuant to Section 10.07 (h), (k) or (l); and

(C) the consent of each applicable Issuing Bank at the time of such assignment (such consent not to be unreasonably withheld or delayed) shall be required; *provided* that no consent of the applicable Issuing Bank shall be required for any assignment not related to Revolving Commitments or Revolving Exposure.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption via an electronic settlement system acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually), and shall pay to the Administrative Agent a processing and recordation fee of \$3,500 (which fee may be waived or reduced in the sole discretion of the Administrative Agent). Other than in the case of assignments pursuant to Section 10.07(l), the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and all applicable tax forms.

(v) No Assignments to Certain Persons. No such assignment shall be made (A) to the Borrower or any of the Borrower’s Subsidiaries except as permitted under Sections 2.05(1)(e) and 10.07(l), (B) subject to Sections 10.07(h), (k) and (l) below, to any Affiliate of the Borrower, (C) to a natural person, (D) to any Disqualified Institution or (E) to any Defaulting Lender.

In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or sub participations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable Pro Rata Share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Loans and participations in Letters of Credit in accordance with its Pro Rata Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to clause (c) of this Section 10.07 (and, in the case of an Affiliated Lender or a Person that, after giving effect to such assignment, would become an Affiliated Lender, to the requirements of clause (h) of this Section 10.07), from and after the effective date specified in each Assignment and Assumption, other than in connection with an assignment pursuant to



Section 10.07(l), (x) the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and (y) the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment), but shall in any event continue to be subject to Section 10.09. Upon request, and the surrender by the assigning Lender of its Note, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(d).

(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it, each Affiliated Lender Assignment and Assumption delivered to it, each notice of cancellation of any Loans delivered by the Borrower pursuant to subsections (h) or (l) below, and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and related interest amounts) of the Loans, L/C Obligations (specifying Unreimbursed Amounts), L/C Borrowings and amounts due under Section 2.03, owing to each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Agents and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, any Agent and, with respect to its own Loans, any Lender, at any reasonable time and from time to time upon reasonable prior notice. This Section 10.07(c) and Section 2.11 shall be construed so that all Loans are at all times maintained in "registered form" within the meaning of Sections 163(f), 871(h)(2) and 881(c)(2) of the Code and any related Treasury regulations (or any other relevant or successor provisions of the Code or of such Treasury regulations). Notwithstanding the foregoing, in no event shall the Administrative Agent be obligated to ascertain, monitor or inquire as to whether any Lender is an Affiliated Lender, nor shall the Administrative Agent be obligated to monitor the aggregate amount of the Term Loans or Incremental Term Loans held by Affiliated Lenders.

(d) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, the Borrower and its Affiliates, a Defaulting Lender or a Disqualified Institution) (each, a "**Participant**") in all or a portion of such Lender's rights or obligations under this Agreement (including all or a portion of its Commitment or the Loans (including such Lender's participations in L/C Obligations) owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Agents and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Loan Document; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01(1) (other than clauses (g),(h) and (i) thereof) that directly and adversely affects such Participant. Subject to subsection (e) of this Section 10.07, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01 (subject to the requirements of Section 3.01 (including subsections (2), (3) and (4), as applicable) as though it were a Lender; provided that any forms required to be provided under Section 3.01(3) shall be provided solely to the participating Lender), 3.04 and 3.05 (through the applicable Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section 10.07. To the extent permitted by applicable Law, each Participant also shall be entitled to the benefits of Section 10.10 as though it were a Lender; *provided* that such Participant shall agree to be subject to Section 2.13 as though it were a Lender.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01, 3.04 or 3.05 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent (not to be unreasonably withheld or delayed). Each Lender that sells a



participation shall (acting solely for this purpose as a non-fiduciary agent of the Borrower) maintain a register complying with the requirements of Sections 163(f), 871(h) and 881(c)(2) of the Code and the Treasury regulations issued thereunder on which is entered the name and address of each Participant and the principal amounts (and related interest amounts) of each Participant's interest in the Loans or other obligations under this Agreement (the "**Participant Register**"). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender and the Borrower 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; *provided* that no Lender shall have the obligation to disclose all or a portion of the Participant Register (including the identity of the Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or other obligations under any Loan Document) to any Person except to the extent such disclosure is necessary to establish that any such commitments, loans, letters of credit or other obligations are in registered form for U.S. federal income tax purposes or such disclosure is otherwise required under Treasury Regulations Section 5f.103-1(c).

(f) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or any other central bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Notwithstanding anything to the contrary contained herein, any Lender (a "**Granting Lender**") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "**SPC**") the option to provide all or any part of any Loan that such Granting Lender would otherwise be obligated to make pursuant to this Agreement; *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Loan, the Granting Lender shall be obligated to make such Loan pursuant to the terms hereof and (iii) such SPC and the applicable Loan or any applicable part thereof shall be appropriately reflected in the Participant Register. Each party hereto hereby agrees that (i) neither the grant to any SPC nor the exercise by any SPC of such option shall increase the costs or expenses or otherwise increase or change the obligations of the Borrower under this Agreement (including its obligations under Section 3.01, 3.04 or 3.05), (ii) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender would be liable, and (iii) the Granting Lender shall for all purposes, including the approval of any amendment, waiver or other modification of any provision of any Loan Document, remain the Lender hereunder. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Loan were made by such Granting Lender. Notwithstanding anything to the contrary contained herein, any SPC may (i) with notice to, but without prior consent of the Borrower and the Administrative Agent and with the payment of a processing fee of \$3,500 (which processing fee may be waived by the Administrative Agent in its sole discretion), assign all or any portion of its right to receive payment with respect to any Loan to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Loans to any rating agency, commercial paper dealer or provider of any surety or Guarantee or credit or liquidity enhancement to such SPC.

(h) Any Lender may at any time, assign all or a portion of its rights and obligations with respect to Term Loans under this Agreement to a Person who is or will become, after such assignment, an Affiliated Lender through (x) Dutch auctions or other offers to purchase or take by assignment open to all Lenders on a pro rata basis in accordance with procedures to be mutually determined by such Affiliated Lender and the Administrative Agent or (y) open market purchase on a non-pro rata basis, in each case subject to the following limitations:

(i) Affiliated Lenders will not (A) receive information provided solely to Lenders by the Administrative Agent or any Lender and will not be permitted to attend or participate in conference calls or meetings attended solely by the Lenders and the Administrative Agent, other than the right to receive notices of prepayments and other administrative notices in respect of its Loans or Commitments required to be delivered to Lenders pursuant to Article II or (B) make any challenge to the Administrative Agent's or any other Lender's attorney-client privilege on the basis of its status as a Lender;

(ii) each Affiliated Lender that purchases any Loans pursuant to clause (x) above shall represent and warrant to the selling Lender (other than any other Affiliated Lender) that it does not

possess material non-public information with respect to the Borrower and its Subsidiaries that either (1) has not been disclosed to the Lenders generally (other than Lenders that have elected not to receive such information) or (2) if not disclosed to the Lenders, would reasonably be expected to have a material effect on, or otherwise be material to (A) a Lender's decision to participate in any such assignment or (B) the market price of such Loans, or shall make a statement that such representation cannot be made;

(iii) each Lender (other than any other Affiliated Lender) that assigns any Loans to an Affiliated Lender pursuant to clause (y) above shall deliver to the Administrative Agent and the Borrower a customary Big Boy Letter (unless such Affiliated Lender is willing, in its sole discretion, to make the representation and warranty contemplated by the foregoing clause (ii));

(iv) the aggregate principal amount of Term Loans of any Class under this Agreement held by Affiliated Lenders at the time of any such purchase or assignment shall not exceed 25% of the aggregate principal amount of Term Loans of such Class outstanding at such time under this Agreement (such percentage, the "**Affiliated Lender Cap**"); *provided* that to the extent any assignment to an Affiliated Lender would result in the aggregate principal amount of all Term Loans of any Class held by Affiliated Lenders exceeding the Affiliated Lender Cap, the assignment of such excess amount will be void *ab initio*;

(v) as a condition to each assignment pursuant to this subsection (h), the Administrative Agent and the Borrower shall have been provided a notice in connection with each assignment to an Affiliated Lender or a Person that upon effectiveness of such assignment would constitute an Affiliated Lender pursuant to which such Affiliated Lender (in its capacity as such) shall waive any right to bring any action in connection with such Loans against the Administrative Agent, in its capacity as such; and

(vi) the assigning Lender and the Affiliated Lender purchasing such Lender's Term Loans shall execute and deliver to the Administrative Agent an assignment agreement substantially in the form of Exhibit D-2 hereto (an "**Affiliated Lender Assignment and Assumption**").

Notwithstanding anything to the contrary contained herein, any Affiliated Lender that has purchased Term Loans pursuant to this subsection (h) may, in its sole discretion, contribute, directly or indirectly, the principal amount of such Term Loans or any portion thereof, *plus* all accrued and unpaid interest thereon, to the Borrower for the purpose of cancelling and extinguishing such Term Loans. Upon the date of such contribution, assignment or transfer, (x) the aggregate outstanding principal amount of Term Loans shall reflect such cancellation and extinguishing of the Term Loans then held by the Borrower and (y) the Borrower shall promptly provide notice to the Administrative Agent of such contribution of such Term Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Term Loans in the Register.

Each Affiliated Lender agrees to notify the Administrative Agent and the Borrower promptly (and in any event within ten (10) Business Days) if it acquires any Person who is also a Lender, and each Lender agrees to notify the Administrative Agent and the Borrower promptly (and in any event within ten (10) Business Days) if it becomes an Affiliated Lender. The Administrative Agent may conclusively rely upon any notice delivered pursuant to the immediately preceding sentence or pursuant to clause (v) of this subsection (h) and shall not have any liability for any losses suffered by any Person as a result of any purported assignment to or from an Affiliated Lender.

(i) Notwithstanding anything in Section 10.01 or the definition of "Required Lenders," or "Required Facility Lenders" to the contrary, for purposes of determining whether the Required Lenders and Required Facility Lenders (in respect of a Class of Term Loans) have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, or subject to Section 10.07(j), any plan of reorganization pursuant to the U.S. Bankruptcy Code, (ii) otherwise acted on any matter related to any Loan Document, or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, no Affiliated Lender shall have any right to consent (or not consent), otherwise act or direct or require the Administrative Agent or any Lender to take (or refrain from taking) any such action and, except with respect to any

amendment, modification, waiver, consent or other action (x) in Section 10.01 requiring the consent of all Lenders, all Lenders directly and adversely affected or specifically such Lender, (y) that alters an Affiliated Lender's *pro rata* share of any payments given to all Lenders, or (z) affects the Affiliated Lender (in its capacity as a Lender) in a manner that is disproportionate to the effect on any Lender in the same Class, the Loans held by an Affiliated Lender shall be disregarded in both the numerator and denominator in the calculation of any Lender vote (and shall be deemed to have been voted in the same percentage as all other applicable Lenders voted if necessary to give legal effect to this paragraph) (but, in any event, in connection with any amendment, modification, waiver, consent or other action, shall be entitled to any consent fee, calculated as if all of such Affiliated Lender's Loans had voted in favor of any matter for which a consent fee or similar payment is offered).

(j) Notwithstanding anything in this Agreement or the other Loan Documents to the contrary, each Affiliated Lender hereby agrees that, and each Affiliated Lender Assignment and Assumption shall provide a confirmation that, if a proceeding under any Debtor Relief Law shall be commenced by or against the Borrower or any other Loan Party at a time when such Lender is an Affiliated Lender, such Affiliated Lender irrevocably authorizes and empowers the Administrative Agent to vote on behalf of such Affiliated Lender with respect to the Term Loans held by such Affiliated Lender in any manner in the Administrative Agent's sole discretion, unless the Administrative Agent instructs such Affiliated Lender to vote, in which case such Affiliated Lender shall vote with respect to the Term Loans held by it as the Administrative Agent directs; *provided* that such Affiliated Lender shall be entitled to vote in accordance with its sole discretion (and not in accordance with the direction of the Administrative Agent) in connection with any plan of reorganization to the extent any such plan of reorganization proposes to treat any Obligations held by such Affiliated Lender in a disproportionately adverse manner than the proposed treatment of similar Obligations held by Term Lenders that are not Affiliated Lenders.

(k) Although any Debt Fund Affiliate(s) shall be Eligible Assignees and shall not be subject to the provisions of Section 10.07(h), (i) or (j), any Lender may, at any time, assign all or a portion of its rights and obligations with respect to Term Loans under this Agreement to a Person who is or will become, after such assignment, a Debt Fund Affiliate only through (x) Dutch auctions or other offers to purchase or take by assignment open to all Lenders on a pro rata basis in accordance with procedures of the type described in Section 2.05(1)(e) (for the avoidance of doubt, without requiring any representation as to the possession of material non-public information by such Affiliate) or (y) open market purchase on a non-pro rata basis. Notwithstanding anything in Section 10.01 or the definition of "Required Lenders" to the contrary, for purposes of determining whether the Required Lenders have (i) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Loan Document or any departure by any Loan Party therefrom, (ii) otherwise acted on any matter related to any Loan Document or (iii) directed or required the Administrative Agent or any Lender to undertake any action (or refrain from taking any action) with respect to or under any Loan Document, all Term Loans, Revolving Commitments and Revolving Loans held by Debt Fund Affiliates, in the aggregate, may not account for more than 49.9% of the Term Loans, Revolving Commitments and Revolving Loans of consenting Lenders included in determining whether the Required Lenders have consented to any action pursuant to Section 10.01.

(l) Any Lender may, so long as no Event of Default has occurred and is continuing, at any time, assign all or a portion of its rights and obligations with respect to Term Loans under this Agreement to the Borrower or any Subsidiary of the Borrower through (x) Dutch auctions or other offers to purchase open to all Lenders on a pro rata basis in accordance with procedures of the type described in Section 2.05(1)(e) or (y) open market purchases on a non-pro rata basis; *provided* that:

(i) (x) if the assignee is a Subsidiary of the Borrower, upon such assignment, transfer or contribution, the applicable assignee shall automatically be deemed to have contributed or transferred the principal amount of such Term Loans, *plus* all accrued and unpaid interest thereon, to the Borrower; or (y) if the assignee is the Borrower (including through contribution or transfers set forth in clause (x)), (a) the principal amount of such Term Loans, along with all accrued and unpaid interest thereon, so contributed, assigned or transferred to the Borrower shall be deemed automatically cancelled and extinguished on the date of such contribution, assignment or transfer, (b) the aggregate outstanding principal amount of Term Loans of the remaining Lenders shall reflect such cancellation and extinguishing of the Term Loans then held by the Borrower and (c) the Borrower shall promptly provide notice to the Administrative Agent of such contribution, assignment or transfer of such Term Loans, and the Administrative Agent, upon receipt of such notice, shall reflect the cancellation of the applicable Term Loans in the Register;

(ii) each Person that purchases any Loans pursuant to clause (x) of this subsection (l) shall represent and warrant to the selling Lender (other than any Affiliated Lender) that it does not possess material non-public information with respect to the Borrower and its Subsidiaries that either (1) has not been disclosed to the Lenders generally (other than Lenders that have elected not to receive such information) or (2) if not disclosed to the Lenders, would reasonably be expected to have a material effect on, or otherwise be material to (A) a Lender's decision to participate in any such assignment or (B) the market price of such Loans, or shall make a statement that such representation cannot be made;

(iii) each Lender (other than an Affiliated Lender) that assigns any Loans the Borrower or any Subsidiary of the Borrower pursuant to clause (y) above shall deliver to the Administrative Agent and the Borrower a customary Big Boy Letter (unless such Person is willing, in its sole discretion, to make the representation and warranty contemplated by the foregoing clause (ii)); and

(iv) purchases of Term Loans pursuant to this subsection (l) may not be funded with the proceeds of Revolving Loans.

(m) Notwithstanding anything to the contrary contained herein, without the consent of the Borrower or the Administrative Agent, (1) any Lender may in accordance with applicable Law create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it and (2) any Lender that is a Fund may create a security interest in all or any portion of the Loans owing to it and the Note, if any, held by it to the trustee for holders of obligations owed, or securities issued, by such Fund as security for such obligations or securities; *provided* that unless and until such trustee actually becomes a Lender in compliance with the other provisions of this Section 10.07, (i) no such pledge shall release the pledging Lender from any of its obligations under the Loan Documents and (ii) such trustee shall not be entitled to exercise any of the rights of a Lender under the Loan Documents even though such trustee may have acquired ownership rights with respect to the pledged interest through foreclosure or otherwise.

(n) The Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to Disqualified Institutions. 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 Institution or (y) have any liability with respect to or arising out of any assignment or participation of Loans or Commitments, or disclosure of confidential information, to any Disqualified Institution.

SECTION 10.08 Resignation of Issuing Bank. Notwithstanding anything to the contrary contained herein, any Issuing Bank may, upon thirty (30) Business Days' notice to the Borrower and the Lenders, resign as an Issuing Bank, so long as on or prior to the expiration of such 30-Business Day period with respect to such resignation, the relevant Issuing Bank shall have identified a successor Issuing Bank reasonably acceptable to the Borrower willing to accept its appointment as successor Issuing Bank. In the event of any such resignation of an Issuing Bank, the Borrower shall be entitled to appoint from among the Lenders willing to accept such appointment a successor Issuing Bank hereunder; *provided* that no failure by the Borrower to appoint any such successor shall affect the resignation of the relevant Issuing Bank except as expressly provided above. If an Issuing Bank resigns as an Issuing Bank, it shall retain all the rights and obligations of an Issuing Bank hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as an Issuing Bank and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(3)).

SECTION 10.09 Confidentiality. Each of the Agents, the Arrangers, the Lenders and each Issuing Bank agrees to maintain the confidentiality of the Information in accordance with its customary procedures (as set forth below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, legal counsel, independent auditors, agents, trustees, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential, with such Affiliate being responsible for such Person's compliance with this Section 10.09; *provided, however*, that such Agent, Arranger, Lender or Issuing Bank, as applicable, shall be principally liable to the extent this Section 10.09 is violated by one or more of its Affiliates or any of its or their respective employees, directors or officers), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of

Insurance Commissioners); *provided, however*, that each Agent, each Arranger, each Lender and each Issuing Bank agrees to notify the Borrower promptly thereof to the extent it is legally permitted to do so, (c) to the extent required by applicable laws or regulations or by any subpoena or otherwise as required by applicable Law or regulation or as requested by a governmental authority; *provided* that such Agent, such Arranger, such Lender or such Issuing Bank, as applicable, agrees that it will (x) notify the Borrower as soon as practicable in the event of any such disclosure by such Person (except in connection with any request as part of a regulation examination) unless such notification is prohibited by law, rule or regulation and (y) seek confidential treatment with respect to any such disclosure, (d) to any other party hereto, (e) subject to an agreement containing provisions at least as restrictive as those of this Section 10.09, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee (or its agent) invited to be an Additional Lender or (ii) with the prior consent of the Borrower, any actual or prospective direct or indirect counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower or any of their Subsidiaries or any of their respective obligations; *provided* that such disclosure shall be made subject to the acknowledgment and acceptance by such prospective Lender, Participant or Eligible Assignee that such Information is being disseminated on a confidential basis (on substantially the terms set forth in this paragraph or as is otherwise reasonably acceptable to the Borrower, the Agents and the Arrangers, including as set forth in any confidential information memorandum or other marketing materials) in accordance with the standard syndication process of the Agents and the Arrangers or market standards for dissemination of such type of information which shall in any event require “click through” or other affirmative action on the part of the recipient to access such confidential information, (f) for purposes of establishing a “due diligence” defense, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder, (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, or (iii) service providers to the Agents and the Lenders in connection with the administration, settlement and management of this Agreement and the credit facilities provided hereunder, (h) with the consent of the Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach by any Person of this Section 10.09 or any other confidentiality provision in favor of any Loan Party, (y) becomes available to any Agent, any Arranger, any Lender, any Issuing Bank or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower or any Subsidiary thereof, and which source is not known by such Agent, such Lender, such Issuing Bank or the applicable Affiliate to be subject to a confidentiality restriction in respect thereof in favor of the Borrower or any Affiliate thereof or (z) is independently developed by the Agents, the Lenders, the Issuing Banks, the Arrangers or their respective Affiliates, in each case, so long as not based on information obtained in a manner that would otherwise violate this Section 10.09.

For purposes of this Section 10.09, “**Information**” means all information received from any Loan Party or any Subsidiary thereof relating to any Loan Party or any Subsidiary or Affiliate thereof or their respective businesses, other than any such information that is available to any Agent, any Lender or any Issuing Bank on a nonconfidential basis prior to disclosure by any Loan Party or any Subsidiary thereof; it being understood that no information received from the Borrower or any Subsidiary or Affiliate thereof after the Effective Date shall be deemed nonconfidential on account of such information not being clearly identified at the time of delivery as being confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 10.09 shall be considered to have complied with its obligation to do so in accordance with its customary procedures if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each Agent, each Arranger, each Lender and each Issuing Bank acknowledges that (a) the Information may include trade secrets, protected confidential information, or material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of such information and (c) it will handle such information in accordance with applicable Law, including United States Federal and state securities Laws and to preserve its trade secret or confidential character.

The respective obligations of the Agents, the Arrangers, the Lenders and any Issuing Bank under this Section 10.09 shall survive, to the extent applicable to such Person, (x) the payment in full of the Obligations and the termination of this Agreement, (y) any assignment of its rights and obligations under this Agreement and (z) the resignation or removal of any Agent, and in any event no later than two years following such termination, assignment, resignation or removal.



SECTION 10.10 Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each Issuing Bank is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender or such Issuing Bank to or for the credit or the account of any Loan Party against any and all of the obligations of such Loan Party then due and payable under this Agreement or any other Loan Document to such Lender or such Issuing Bank, irrespective of whether or not such Lender or such Issuing Bank shall have made any demand under this Agreement or any other Loan Document; *provided* that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and each Issuing Bank under this Section 10.10 are in addition to other rights and remedies (including other rights of setoff) that such Lender or such Issuing Bank may have. Each Lender and each Issuing Bank agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, *provided* that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 10.11 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “**Maximum Rate**”). If any Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by an Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 10.12 Counterparts; Integration; Effectiveness. This Agreement and each of the other Loan Documents may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging (including in .pdf format) means shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 10.13 Electronic Execution of Assignments and Certain Other Documents. The words “delivery,” “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 Assumptions, amendments or other modifications, Committed Loan Notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 10.14 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any



Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied.

SECTION 10.15 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 10.16 GOVERNING LAW.

(a) THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) THE BORROWER, THE ADMINISTRATIVE AGENT AND EACH LENDER EACH IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK CITY IN THE BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. EACH PARTY HERETO AGREES THAT THE AGENTS AND LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY COLLATERAL DOCUMENT OR THE ENFORCEMENT OF ANY JUDGMENT.

(c) THE BORROWER, THE ADMINISTRATIVE AGENT AND EACH LENDER EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (b) OF THIS SECTION 10.16. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

SECTION 10.17 WAIVER OF RIGHT TO TRIAL BY JURY. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.17.

SECTION 10.18 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrower and the Administrative Agent and the Administrative Agent shall have been notified by each Lender that

each such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrower, each Agent, each Lender, each other party hereto and their respective successors and assigns.

**SECTION 10.19 Lender Action.** Each Lender agrees that it shall not take or institute any actions or proceedings, judicial or otherwise, for any right or remedy against any Loan Party under any of the Loan Documents or the Secured Hedge Agreements (including the exercise of any right of setoff, rights on account of any banker's lien or similar claim or other rights of self-help), or institute any actions or proceedings, or otherwise commence any remedial procedures, with respect to any Collateral or any other property of any such Loan Party, without the prior written consent of the Administrative Agent. The provision of this Section 10.19 are for the sole benefit of the Lenders and shall not afford any right to, or constitute a defense available to, any Loan Party.

**SECTION 10.20 Use of Name, Logo, etc.** Each Loan Party consents to the publication in the ordinary course by Administrative Agent or the Arrangers of customary advertising material relating to the financing transactions contemplated by this Agreement using such Loan Party's name, product photographs, logo or trademark; *provided* that any such material shall be provided to the Borrower for its review a reasonable period of time in advance of publication. Such consent shall remain effective until revoked by such Loan Party in writing to the Administrative Agent and the Arrangers.

**SECTION 10.21 USA PATRIOT Act.** Each Lender that is subject to the USA PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the USA PATRIOT Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the USA PATRIOT Act.

**SECTION 10.22 Service of Process.** EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**SECTION 10.23 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that (i) (A) the arranging and other services regarding this Agreement provided by the Agents, the Arrangers and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, (B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Agent, Arranger and Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (B) none of the Agents, the Arrangers nor any Lender has any obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agents, the Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower and its Affiliates, and none of the Agents, the Arrangers nor any Lender has any obligation to disclose any of such interests to the Borrower or any of its Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Agents, the Arrangers or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**SECTION 10.24 Release of Collateral and Guarantee Obligations; Subordination of Liens.**

(a) The Lenders and the Issuing Banks hereby irrevocably agree that the Liens granted to the Administrative Agent or the Collateral Agent by the Loan Parties on any Collateral shall be automatically released (i) in full, as set forth in clause (b) below, (ii) upon the sale or other transfer of such Collateral (including as part of or in connection with any other sale or other transfer permitted hereunder (including any Receivables Financing Transaction)) to any Person other than another Loan Party, to the extent such sale, transfer or other disposition is made in compliance with the terms of this Agreement (and the Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry), (iii) to the extent such Collateral is comprised of property leased to a Loan Party by a Person that is not a Loan Party, upon termination or

expiration of such lease, (iv) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with Section 10.01), (v) to the extent the property constituting such Collateral is owned by any Guarantor (other than the Borrower), upon the release of such Guarantor from its obligations under the Guaranty (in accordance with the second succeeding sentence), (vi) as required by the Collateral Agent to effect any sale, transfer or other disposition of Collateral in connection with any exercise of remedies of the Collateral Agent pursuant to the Collateral Documents and (vii) to the extent such Collateral otherwise becomes Excluded Assets. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Loan Documents. Additionally, the Lenders and the Issuing Banks hereby irrevocably agree that the Guarantors shall be released from the Guaranties upon consummation of any transaction permitted hereunder resulting in such Subsidiary ceasing to constitute a Restricted Subsidiary, or otherwise becoming an Excluded Subsidiary. The Lenders and the Issuing Banks hereby authorize the Administrative Agent and the Collateral Agent, as applicable, to execute and deliver any instruments, documents, consents, acknowledgements, and agreements necessary or desirable to evidence or confirm the release of any Guarantor or Collateral pursuant to the foregoing provisions of this paragraph, all without the further consent or joinder of any Lender or Issuing Bank. Any representation, warranty or covenant contained in any Loan Document relating to any such released Collateral or Guarantor shall no longer be deemed to be repeated.

(b) Notwithstanding anything to the contrary contained herein or any other Loan Document, when the Termination Conditions are satisfied, upon request of the Borrower, the Administrative Agent or Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to release its security interest in all Collateral, and to release all obligations under any Loan Document, whether or not on the date of such release there may be any (i) Hedging Obligations in respect of any Secured Hedge Agreements, (ii) Cash Management Obligations in respect of any Secured Cash Management Agreements, (iii) contingent obligations not then due and (iv) Outstanding Amount of L/C Obligations related to any Letter of Credit that has been Cash Collateralized, backstopped by a letter of credit reasonably satisfactory to the applicable Issuing Bank or deemed reissued under another agreement reasonably acceptable to the applicable Issuing Bank. Any such release of Obligations shall be deemed subject to the provision that such Obligations shall be reinstated if after such release any portion of any payment in respect of the Obligations guaranteed thereby shall be rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, upon request of the Borrower in connection with any Liens permitted by the Loan Documents, the Administrative Agent or Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to subordinate the Lien on any Collateral to any Lien expressly permitted under Section 7.01 to be senior to the Liens in favor of the Collateral Agent.

**SECTION 10.25** Entire Agreement. This Agreement, together with all of the other Loan Documents, the applicable provisions of the Commitment Letter and the Fee Letter referred to herein, and all certificates and documents delivered hereunder or thereunder, embodies the entire agreement of the parties and supersedes all prior agreements and understandings relating to the subject matter hereof. In the event of any conflict between the terms of this Agreement and any other Loan Document, the Commitment Letter or the Fee Letter, the terms of this Agreement shall govern.

**SECTION 10.26** Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the parties hereto, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA 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 Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]**

FORM OF COMPLIANCE CERTIFICATE

[Insert date]

Reference is made to that certain Credit Agreement, dated as of March 22, 2017 (as amended, restated, amended and restated, refinanced, extended, supplemented or otherwise modified from time to time, the “Credit Agreement”), among Superior Industries International, Inc., a Delaware corporation, as the Borrower, Citibank, N.A., as Administrative Agent and as Collateral Agent, the Lenders, the Issuing Banks and the other parties from time to time party thereto. Capitalized terms used herein and not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement. Pursuant to Section 6.02(1) of the Credit Agreement, the undersigned, solely in his/her capacity as a Financial Officer of the Borrower, certifies as follows:

[1. The financial statements for the fiscal quarter ending [DATE] delivered pursuant to Section 6.01(2) of the Credit Agreement and delivered herewith fairly present in all material respects the financial condition, results of operations and cash flows of the Borrower and its Subsidiaries in accordance with [GAAP], subject to normal year-end adjustments and the absence of footnotes.]<sup>2</sup>

2. [Attached hereto as Annex A are the details of all applications for registrations of material Patents, Trademarks or Copyrights with the USPTO or the Copyright Office as required to be delivered pursuant to [Section 4.7(c)] of the Security Agreement (and as such terms are defined therein).]

[3. To my knowledge, [except as otherwise disclosed in writing to the Administrative Agent pursuant to the Credit Agreement, including Section 6.03(1), no Default has occurred and is continuing][a Default has occurred and is continuing as of the date hereof, as described in Annex B attached hereto]<sup>3</sup>.]

[4. Attached hereto as Schedule 1 are reasonably detailed calculations setting forth Excess Cash Flow for the fiscal year ended [DATE].]<sup>4</sup>

[5. Attached hereto as Schedule 2 are reasonably detailed calculations of the Net Proceeds received during the fiscal year ended [DATE] (after the Closing Date in the case of the fiscal year ending December 31, 2017) by or on behalf of the Borrower or any Restricted Subsidiary in respect of any Asset Sale or Casualty Event subject to prepayment pursuant to Section 2.05(2)(b)(i) of the Credit Agreement and the portion of such Net Proceeds that has been invested or is intended to be reinvested in accordance with Section 2.05(2)(b)(ii) of the Credit Agreement.]<sup>5</sup>

[[6. Attached hereto as Schedule [3] is a calculation of [each of (x) the Total Net Leverage Ratio and (y)] the First Lien Net Leverage Ratio as of the last day of the most recent Test Period.]<sup>6</sup>

[[7. Attached hereto is the information required to be delivered pursuant to Section 6.02(4) of the Credit Agreement.]<sup>7</sup>

- 2 To be included if accompanying quarterly financial statements only.
- 3 If a Default exists, Annex B should specify the details thereof and any action taken or proposed to be taken with respect thereto.
- 4 To be included only in annual compliance certificates.
- 5 To be included only in annual compliance certificates.
- 6 To be included in quarterly and annual compliance certificates (x) so long as the provisions of Section 7.12 have not terminated in accordance with the terms thereof as of the last day of the relevant fiscal quarter (or as of any date thereafter), commencing with the certificate delivered pursuant to Section 6.02(1) for the fiscal quarter ended March 31, 2021, or (y) if the First Lien Net Leverage Ratio as of the last day of the most recent Test Period would result in a change in the applicable “Pricing Level” as set forth in the definition of “Applicable Rate.”
- 7 To be included only in annual compliance certificates. Section 6.02(4) requires (i) a report setting forth the information required by Section 1(a) of the Perfection Certificate (or confirming that there has been no change in such information since the later

of the Closing Date or the last such report and (ii) a list of each Subsidiary of the Borrower that identifies each Subsidiary as a Restricted Subsidiary or an Unrestricted Subsidiary as of the date of delivery of such list or a confirmation that there is no change in such information since the later of the Closing Date and the last such list.



IN WITNESS WHEREOF, the undersigned, solely in his/her capacity as a Financial Officer of the Borrower, has caused this certificate to be delivered as of the date first set forth above.

**SUPERIOR INDUSTRIES INTERNATIONAL, INC.,**

By: \_\_\_\_\_  
Name:  
Title:

Intellectual Property

[Insert details of all applications for registrations of material Patents, Trademarks or Copyrights with the USPTO or the Copyright Office as required to be delivered pursuant to Section 4.5(c) of the Security Agreement.]

Default

[Insert description of Default here (specify the details thereof and any action taken or proposed to be taken with respect thereto)]

219

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**Excess Cash Flow Calculation**

[See attached.]

220

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**Net Proceeds Calculation**

[See attached.]

221

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**[Total Net Leverage Ratio and] First Lien Net Leverage Ratio Calculation**

[See attached.]



**CERTIFICATION**  
**PURSUANT TO EXCHANGE ACT RULES 13a-14(a)**  
**AND 15d-14(a), AS ADOPTED PURSUANT TO**  
**SECTION 302(a) OF THE SARBANES-OXLEY ACT OF 2002**

I, Majdi B. Abulaban, certify that:

- 1 I have reviewed this Quarterly Report on Form 10-Q of Superior Industries International, Inc.;
- 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 I am 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 the 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 I have disclosed, based on my 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 functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely 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: May 5, 2021

/s/ Majdi B. Abulaban

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Majdi B. Abulaban

President and Chief Executive Officer

**CERTIFICATION**  
**PURSUANT TO EXCHANGE ACT RULES 13a-14(a)**  
**AND 15d-14(a), AS ADOPTED PURSUANT TO**  
**SECTION 302(a) OF THE SARBANES-OXLEY ACT OF 2002**

I, C. Timothy Trenary, certify that:

- 1 I have reviewed this Quarterly Report on Form 10-Q of Superior Industries International, Inc.;
- 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 I am 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 the 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 I have disclosed, based on my 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 functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely 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: May 5, 2021

/s/ C. Timothy Trenary

C. Timothy Trenary  
Executive Vice President and Chief Financial Officer

**CERTIFICATION  
PURSUANT TO 18  
U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

The undersigned hereby certify, in their capacities as officers of Superior Industries International, Inc. (the “company”), for purposes of 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of their knowledge:

- The Quarterly Report of the company on Form 10-Q for the period ended March 31, 2021 as filed with the Securities and Exchange Commission fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and
- The information contained in such report fairly presents, in all material respects, the financial condition and results of operations of the company.

Dated: May 5, 2021

/s/ Majdi B. Abulaban

Name: Majdi B. Abulaban

Title: President and Chief Executive Officer

Date: May 5, 2021

/s/ C. Timothy Trenary

Name: C. Timothy Trenary

Title: Executive Vice President and Chief Financial Officer

**Document and Entity  
Information - shares**

**3 Months Ended  
Mar. 31, 2021**

**Apr. 29, 2021**

[Cover \[Abstract\]](#)

<a href="#">Document Type</a>	10-Q	
<a href="#">Amendment Flag</a>	false	
<a href="#">Document Period End Date</a>	Mar. 31, 2021	
<a href="#">Document Fiscal Year Focus</a>	2021	
<a href="#">Document Fiscal Period Focus</a>	Q1	
<a href="#">Trading Symbol</a>	SUP	
<a href="#">Entity Registrant Name</a>	SUPERIOR INDUSTRIES INTERNATIONAL, INC.	
<a href="#">Entity Central Index Key</a>	0000095552	
<a href="#">Current Fiscal Year End Date</a>	--12-31	
<a href="#">Entity Current Reporting Status</a>	Yes	
<a href="#">Entity Filer Category</a>	Non-accelerated Filer	
<a href="#">Entity Common Stock, Shares Outstanding</a>		25,947,462
<a href="#">Smaller Reporting Company</a>	true	
<a href="#">Entity Emerging Growth Company</a>	false	
<a href="#">Entity Shell Company</a>	false	
<a href="#">Entity File Number</a>	1-6615	
<a href="#">Entity Tax Identification Number</a>	95-2594729	
<a href="#">Entity Address, Address Line One</a>	26600 Telegraph Road	
<a href="#">Entity Address, Address Line Two</a>	Suite 400	
<a href="#">Entity Address, City or Town</a>	Southfield	
<a href="#">Entity Address, State or Province</a>	MI	
<a href="#">Entity Address, Postal Zip Code</a>	48033	
<a href="#">City Area Code</a>	248	
<a href="#">Local Phone Number</a>	352-7300	
<a href="#">Entity Interactive Data Current</a>	Yes	
<a href="#">Title of 12(b) Security</a>	Common Stock, \$0.01 par value	
<a href="#">Security Exchange Name</a>	NYSE	
<a href="#">Entity Incorporation, State or Country Code</a>	DE	
<a href="#">Document Quarterly Report</a>	true	
<a href="#">Document Transition Report</a>	false	

**Condensed Consolidated  
Statements of Income (Loss)**

**- USD (\$)**

**\$ in Thousands**

**3 Months Ended**

**Mar. 31, 2021 Mar. 31, 2020**

**Income Statement [Abstract]**

<u>NET SALES</u>	\$ 358,196	\$ 301,112
<u>Cost of sales</u>	315,156	277,951
<u>GROSS PROFIT</u>	43,040	23,161
<u>Selling, general and administrative expenses</u>	17,321	12,535
<u>Impairment of goodwill and indefinite-lived intangibles</u>		193,641
<u>INCOME (LOSS) FROM OPERATIONS</u>	25,719	(183,015)
<u>Interest expense, net</u>	(10,273)	(11,850)
<u>Other (expense) income, net</u>	(1,514)	1,323
<u>INCOME (LOSS) BEFORE INCOME TAXES</u>	13,932	(193,542)
<u>Income tax (provision) benefit</u>	(810)	3,460
<u>NET INCOME (LOSS)</u>	\$ 13,122	\$ (190,082)
<u>EARNINGS (LOSS) PER SHARE – BASIC</u>	\$ 0.19	\$ (7.84)
<u>EARNINGS (LOSS) PER SHARE – DILUTED</u>	\$ 0.18	\$ (7.84)

**Condensed Consolidated  
Statements of  
Comprehensive Income  
(Loss) - USD (\$)  
\$ in Thousands**

**3 Months Ended**

**Mar. 31, 2021 Mar. 31, 2020**

**Statement Of Income And Comprehensive Income [Abstract]**

<u>Net income (loss)</u>	\$ 13,122	\$ (190,082)
<b><u>Other comprehensive income (loss), net of tax:</u></b>		
<u>Foreign currency translation loss</u>	(15,678)	(35,533)
<b><u>Change in unrecognized gains (losses) on derivative instruments:</u></b>		
<u>Change in fair value of derivatives</u>	(9,140)	(58,426)
<u>Tax benefit</u>	678	13,129
<u>Change in unrecognized losses on derivative instruments, net of tax</u>	(8,462)	(45,297)
<b><u>Defined benefit pension plan:</u></b>		
<u>Actuarial gains on pension obligation, net of amortization</u>	97	72
<u>Tax provision</u>	(21)	(17)
<u>Pension changes, net of tax</u>	76	55
<u>Other comprehensive loss, net of tax</u>	(24,064)	(80,775)
<u>Comprehensive loss</u>	\$ (10,942)	\$ (270,857)

**Condensed Consolidated  
Balance Sheets - USD (\$)  
\$ in Thousands**

**Mar. 31, Dec. 31,  
2021 2020**

**Current assets:**

<u>Cash and cash equivalents</u>	\$ 153,848	\$ 152,423
<u>Accounts receivable, net</u>	83,569	48,995
<u>Inventories, net</u>	164,695	154,980
<u>Income taxes receivable</u>	5,322	4,957
<u>Other current assets</u>	21,567	22,301
<u>Total current assets</u>	429,001	383,656
<u>Property, plant and equipment, net</u>	496,659	522,124
<u>Deferred income tax assets, net</u>	30,017	30,860
<u>Intangibles, net</u>	99,041	110,796
<u>Other non-current assets</u>	55,072	61,889
<u>Total assets</u>	1,109,790	1,109,325

**Current liabilities:**

<u>Accounts payable</u>	168,351	151,839
<u>Short-term debt</u>	6,516	6,112
<u>Accrued expenses</u>	80,053	71,079
<u>Income taxes payable</u>	2,841	2,107
<u>Total current liabilities</u>	257,761	231,137
<u>Long-term debt (less current portion)</u>	613,140	625,492
<u>Non-current income tax liabilities</u>	7,972	7,635
<u>Deferred income tax liabilities, net</u>	5,582	9,104
<u>Other non-current liabilities</u>	79,698	76,426
<u>Commitments and contingent liabilities (Note 17)</u>		

**Mezzanine equity:**

<u>Preferred stock, \$0.01 par value Authorized - 1,000,000 shares Issued and outstanding - 150,000 shares outstanding at March 31, 2021 and December 31, 2020</u>	184,308	179,387
<u>European non-controlling redeemable equity</u>	1,591	1,666

**Shareholders' equity (deficit):**

<u>Common stock, \$0.01 par value Authorized - 100,000,000 shares Issued and outstanding - 25,947,462 and 25,591,930 shares at March 31, 2021 and December 31, 2020</u>	95,752	95,247
<u>Accumulated other comprehensive loss</u>	(123,510)	(99,446)
<u>Retained earnings</u>	(12,504)	(17,323)
<u>Total shareholders' equity (deficit)</u>	(40,262)	(21,522)
<u>Total liabilities, mezzanine equity and shareholders' equity (deficit)</u>	\$	\$
	1,109,790	1,109,325



**Condensed Consolidated  
Balance Sheets  
(Parenthetical) - \$ / shares**

**Mar. 31, 2021 Dec. 31, 2020**

**Statement Of Financial Position [Abstract]**

<u>Preferred stock, par value</u>	\$ 0.01	\$ 0.01
<u>Preferred stock, shares authorized</u>	1,000,000	1,000,000
<u>Preferred stock, shares issued</u>	150,000	150,000
<u>Preferred stock, shares outstanding</u>	150,000	150,000
<u>Common stock, par value</u>	\$ 0.01	\$ 0.01
<u>Common stock, shares authorized</u>	100,000,000	100,000,000
<u>Common stock, shares issued</u>	25,947,462	25,591,930
<u>Common stock, shares outstanding</u>	25,947,462	25,591,930

**Condensed Consolidated  
Statements of Cash Flows -  
USD (\$)  
\$ in Thousands**

**3 Months Ended  
Mar. 31, 2021 Mar. 31, 2020**

**CASH FLOWS FROM OPERATING ACTIVITIES:**

<u>Net income (loss)</u>	\$ 13,122	\$ (190,082)
<b><u>Adjustments to reconcile net loss to net cash provided by operating activities:</u></b>		
<u>Depreciation and amortization</u>	25,361	24,392
<u>Income tax, non-cash changes</u>	(2,818)	(5,849)
<u>Impairment of goodwill and indefinite-lived intangibles</u>		193,641
<u>Stock-based compensation</u>	1,847	(653)
<u>Amortization of debt issuance costs</u>	870	1,385
<u>Other non-cash items</u>	(4,528)	(3,600)
<u>Accounts receivable</u>	(36,981)	(423)
<u>Inventories</u>	(14,702)	(5,209)
<u>Other assets and liabilities</u>	13,875	2,897
<u>Accounts payable</u>	21,328	16,904
<u>Income taxes</u>	779	(2,090)
<b><u>NET CASH PROVIDED BY OPERATING ACTIVITIES</u></b>	<b>18,153</b>	<b>31,313</b>

**CASH FLOWS FROM INVESTING ACTIVITIES:**

<u>Additions to property, plant, and equipment</u>	(10,479)	(13,865)
<b><u>NET CASH USED IN INVESTING ACTIVITIES</u></b>	<b>(10,479)</b>	<b>(13,865)</b>

**CASH FLOWS FROM FINANCING ACTIVITIES:**

<u>Proceeds from issuance of long-term debt</u>	1,658	11,690
<u>Repayments of debt</u>	(830)	(22,600)
<u>Proceeds from borrowings on revolving credit facility</u>		213,825
<u>Repayments of borrowings on revolving credit facility</u>		(5,992)
<u>Cash dividends paid</u>	(3,368)	(3,392)
<u>Purchase of non-controlling redeemable shares</u>	(9)	(4,190)
<u>Payments related to tax withholdings for stock-based compensation</u>	(1,342)	
<u>Finance lease payments</u>	(288)	(292)
<b><u>NET CASH (USED IN) PROVIDED BY FINANCING ACTIVITIES</u></b>	<b>(4,179)</b>	<b>189,049</b>
<u>Effect of exchange rate changes on cash</u>	(2,070)	(2,261)
<u>Net increase in cash and cash equivalents</u>	1,425	204,236
<u>Cash and cash equivalents at the beginning of the period</u>	152,423	77,927
<u>Cash and cash equivalents at the end of the period</u>	<b>\$ 153,848</b>	<b>\$ 282,163</b>

<b>Condensed Consolidated Statements of Shareholders' Equity (Deficit) - USD (\$) \$ in Thousands</b>	<b>Total</b>	<b>Common Stock</b>	<b>Unrecognized Gains (Losses) on Derivative Instruments</b>	<b>Pension Obligations</b>	<b>Cumulative Translation Adjustment</b>	<b>Retained Earnings</b>
<u>Beginning of period at Dec. 31, 2019</u>	\$ 251,690	\$ 93,331	\$ 9,951	\$ (5,571)	\$ (104,458)	\$ 258,437
<u>Beginning of the period (in shares) at Dec. 31, 2019</u>		25,128,158				
<b><u>Increase (Decrease) in Stockholders' Equity [Roll Forward]</u></b>						
<u>Net income (loss)</u>	(190,082)					(190,082)
<u>Change in unrecognized gains/losses on derivative instruments, net of tax</u>	(45,297)		(45,297)			
<u>Change in defined benefit plans, net of taxes</u>	55			55		
<u>Net foreign currency translation adjustment</u>	(35,533)				(35,533)	
<u>Common stock issued, net of shares withheld for employee taxes (in shares)</u>		346,319				
<u>Stock-based compensation</u>	(653)	\$ (653)				
<u>Redeemable preferred 9% dividend and accretion</u>	(7,850)					(7,850)
<u>European non-controlling redeemable equity dividend</u>	(20)					(20)
<u>End of period at Mar. 31, 2020</u>	(27,690)	\$ 92,678	(35,346)	(5,516)	(139,991)	60,485
<u>End of the period (in shares) at Mar. 31, 2020</u>		25,474,477				
<u>Beginning of period at Dec. 31, 2019</u>	251,690	\$ 93,331	9,951	(5,571)	(104,458)	258,437
<u>Beginning of the period (in shares) at Dec. 31, 2019</u>		25,128,158				
<u>End of period at Dec. 31, 2020</u>	\$ (21,522)	\$ 95,247	(1,738)	(7,447)	(90,261)	(17,323)
<u>End of the period (in shares) at Dec. 31, 2020</u>	25,591,930	25,591,930				
<b><u>Increase (Decrease) in Stockholders' Equity [Roll Forward]</u></b>						
<u>Net income (loss)</u>	\$ 13,122					13,122
<u>Change in unrecognized gains/losses on derivative instruments, net of tax</u>	(8,462)		(8,462)			
<u>Change in defined benefit plans, net of taxes</u>	76			76		

<u>Net foreign currency translation adjustment</u>	(15,678)				(15,678)	
<u>Common stock issued, net of shares withheld for employee taxes (in shares)</u>		355,532				
<u>Stock-based compensation</u>	505		\$ 505			
<u>Redeemable preferred 9% dividend and accretion</u>	(8,290)					(8,290)
<u>European non-controlling redeemable equity dividend</u>	(13)					(13)
<u>End of period at Mar. 31, 2021</u>	\$ (40,262)	\$ 95,752	\$ (10,200)	\$ (7,371)	\$ (105,939)	\$ (12,504)
<u>End of the period (in shares) at Mar. 31, 2021</u>	25,947,462	25,947,462				

**Condensed Consolidated  
Statements of Shareholders'  
Equity (Deficit)  
(Parenthetical)**

**3 Months Ended**

**Mar. 31, 2021 Mar. 31, 2020**

**Statement Of Stockholders Equity [Abstract]**

<u>Preferred stock, dividend rate, percentage</u>	9.00%	9.00%
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**Nature of Operations and  
Presentation of Condensed  
Consolidated Financial  
Statements**

**3 Months Ended**

**Mar. 31, 2021**

[Accounting Policies](#)

[\[Abstract\]](#)

[Nature of Operations and  
Presentation of Condensed  
Consolidated Financial  
Statements](#)

**NOTE 1 – NATURE OF OPERATIONS AND PRESENTATION OF CONDENSED  
CONSOLIDATED FINANCIAL STATEMENTS**

**Nature of Operations**

Superior Industries International, Inc.'s (referred herein as the "Company," "Superior," or "we" and "our") principal business is the design and manufacture of aluminum wheels for sale to original equipment manufacturers ("OEMs") in North America and Europe and to the aftermarket in Europe. We employ approximately 7,600 full-time employees, operating in eight manufacturing facilities in North America and Europe. We are one of the largest aluminum wheel suppliers to global OEMs and we believe we are the #1 European aluminum wheel aftermarket manufacturer and supplier. Our OEM aluminum wheels accounted for approximately 93 percent of our sales in the first three months of 2021 and are primarily sold for factory installation on vehicle models manufactured by BMW (including Mini), Daimler AG Company (Mercedes-Benz, AMG, Smart), Ford, GM, Honda, Jaguar-Land Rover, Mazda, Nissan, PSA, Renault, Subaru, Stellantis, Suzuki, Toyota, VW Group (Volkswagen, Audi, SEAT, Skoda, Porsche, Bentley) and Volvo. We also sell aluminum wheels to the European aftermarket under the brands ATS, RIAL, ALUTEC and ANZIO. North America and Europe represent the principal markets for our products, but we have a diversified global customer base consisting of North American, European and Asian OEMs. We have determined that our North American and European operations should be treated as separate reportable segments as further described in Note 5, "Business Segments."

**Presentation of Condensed Consolidated Financial Statements**

The accompanying unaudited condensed consolidated financial statements have been prepared in conformity with U.S. Generally Accepted Accounting Principles ("GAAP") pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") for interim financial information. Accordingly, they do not include all the information and notes required by U.S. GAAP for complete financial statements. These unaudited condensed consolidated financial statements, in our opinion, include all adjustments, of a normal and recurring nature, which are necessary for fair presentation of (i) the condensed consolidated statements of income (loss) for the three-month periods ended March 31, 2021 and March 31, 2020, (ii) the condensed consolidated statements of comprehensive income (loss) for the three-month periods ended March 31, 2021 and March 31, 2020, (iii) the condensed consolidated balance sheets at March 31, 2021 and December 31, 2020, (iv) the condensed consolidated statements of cash flows for the three-month periods ended March 31, 2021 and March 31, 2020, and (v) the condensed consolidated statements of shareholders' equity (deficit) for the three-month periods ended March 31, 2021 and March 31, 2020. This Quarterly Report on Form 10-Q should be read in conjunction with our consolidated financial statements and notes thereto filed with the SEC in our 2020 Annual Report on Form 10-K.

Interim financial reporting standards require us to make estimates that are based on assumptions regarding the outcome of future events and circumstances not known at that time. Inevitably, some assumptions will not materialize, unanticipated events or circumstances may occur which vary from those estimates and such variations may significantly affect our future results. Additionally, interim results may not be indicative of our results for future interim periods or our annual results.

Certain prior year amounts have been reclassified to conform with the current year presentation.

### **Cash Paid for Interest and Taxes and Non-Cash Investing Activities**

Cash paid for interest was \$5.2 million and \$6.0 million for the three months ended March 31, 2021 and March 31, 2020, respectively. Net cash income taxes paid was \$2.8 million and \$4.4 million for the three months ended March 31, 2021 and March 31, 2020, respectively. As of March 31, 2021 and March 31, 2020, \$4.3 million and \$4.1 million, respectively, of equipment had been purchased but not yet paid and was included in accounts payable in our condensed consolidated balance sheets.

### **Accounting Standards Issued but Not Yet Adopted**

*Accounting Standards Update (ASU) 2016-13, "Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments."* In June 2016, the Financial Accounting Standards Board ("FASB") issued ASU 2016-13, "Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments", which requires entities to use a new impairment model based on current expected credit losses ("CECL") rather than incurred losses. Under CECL, estimated credit losses would incorporate relevant information about past events, current conditions and reasonable and supportable forecasts and any expected credit losses would be recognized at the time of sale. As a smaller reporting company (as defined under SEC regulations), the Company is not required to adopt the standard until fiscal years beginning after December 31, 2022. We are evaluating the impact this standard will have on our financial statements and disclosures.



## Revenue

**3 Months Ended  
Mar. 31, 2021**

[Revenue From Contract  
With Customer \[Abstract\]  
Revenue](#)

### NOTE 2 – REVENUE

The Company disaggregates revenue from contracts with customers into our reportable segments, North America and Europe. Revenues by segment for the three-month periods ended March 31, 2021 and March 31, 2020, respectively, are summarized in Note 5, “Business Segments.”

The opening and closing balances of the Company’s customer receivables and current and long-term contract liabilities balances are as follows:

	<b>March 31, 2021</b>	<b>December 31, 2020</b>	<b>Change</b>
(Dollars in thousands)			
Customer receivables	\$ 75,518	\$ 40,785	\$ 34,733
Contract liabilities—current	7,983	8,249	(266)
Contract liabilities—noncurrent	12,165	13,106	(941)

## Fair Value Measurements

3 Months Ended

Mar. 31, 2021

[Fair Value Disclosures](#)

[\[Abstract\]](#)

[Fair Value Measurements](#)

### NOTE 3 – FAIR VALUE MEASUREMENTS

The Company applies fair value accounting for all financial assets and liabilities and non-financial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring basis, while other assets and liabilities are measured at fair value on a nonrecurring basis, such as an asset impairment. Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

Level 1 - Quoted prices in active markets for identical assets or liabilities.

Level 2 - Observable inputs other than quoted prices in active markets for identical assets and liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 - Inputs that are generally unobservable and typically reflect management's estimate of assumptions that market participants would use in pricing the asset or liability.

The carrying amounts for cash and cash equivalents, accounts receivable, accounts payable and accrued expenses approximate their fair values due to the short period of time until maturity.

#### *Derivative Financial Instruments*

Our derivatives are over-the-counter customized derivative transactions and are not exchange traded. We estimate the fair value of these instruments using industry-standard valuation models such as discounted cash flow. These models project future cash flows and discount the future amounts to a present value using market-based expectations for interest rates, foreign exchange rates, commodity prices and the contractual terms of the derivative instruments. The discount rate used is the relevant interbank deposit rate (e.g., LIBOR) plus an adjustment for non-performance risk.

The following tables categorize items measured at fair value as of March 31, 2021 and December 31, 2020:

	Fair Value Measurement at Reporting Date Using		
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
<b>March 31, 2021</b>			
(Dollars in thousands)			
<b>Assets</b>			
Derivative contracts	\$ 6,323	\$ —	\$ 6,323
<b>Total</b>	<b>\$ 6,323</b>	<b>\$ —</b>	<b>\$ 6,323</b>
<b>Liabilities</b>			
Derivative contracts	\$ 23,443	\$ —	\$ 23,443
<b>Total</b>	<b>\$ 23,443</b>	<b>\$ —</b>	<b>\$ 23,443</b>

	Fair Value Measurement at Reporting Date Using		
	Quoted Prices in Active Markets	Significant Other	Significant Unobservable
<b>December 31, 2020</b>			

		<u>for Identical</u> <u>Assets (Level 1)</u>	<u>Observable</u> <u>Inputs (Level 2)</u>	<u>Inputs</u> <u>(Level 3)</u>
(Dollars in thousands)				
<b>Assets</b>				
Derivative contracts	\$ 10,218	\$ —	\$ 10,218	\$ —
<b>Total</b>	<b>\$ 10,218</b>	<b>\$ —</b>	<b>\$ 10,218</b>	<b>\$ —</b>
<b>Liabilities</b>				
Derivative contracts	\$ 15,259	\$ —	\$ 15,259	\$ —
<b>Total</b>	<b>\$ 15,259</b>	<b>\$ —</b>	<b>\$ 15,259</b>	<b>\$ —</b>

#### *Debt Instruments*

The carrying values of the Company's debt instruments vary from their fair values. The fair values were determined by reference to transacted prices and quotes for these instruments (Level 2). The estimated fair value, as well as the carrying value, of the Company's debt instruments are shown below:

	<u>March 31,</u> <u>2021</u>	<u>December</u> <u>31,</u> <u>2020</u>
(Dollars in thousands)		
Estimated aggregate fair value	\$ 628,761	\$ 624,207
Aggregate carrying value (1)	630,366	643,184

(1) Total debt excluding the impact of unamortized debt issuance costs.

**Derivative Financial  
Instruments**

**3 Months Ended  
Mar. 31, 2021**

[Derivative Instruments And  
Hedging Activities](#)

[Disclosure \[Abstract\]](#)

[Derivative Financial  
Instruments](#)

**NOTE 4 - DERIVATIVE FINANCIAL INSTRUMENTS**

We use derivatives to partially offset our exposure to foreign currency, interest rate, aluminum and other commodity price risks. We may enter into forward contracts, option contracts, swaps, collars or other derivative instruments to offset some of the risk on expected future cash flows and on certain existing assets and liabilities. However, we may choose not to hedge certain exposures for a variety of reasons including, but not limited to, accounting considerations and the prohibitive economic cost of hedging particular exposures. There can be no assurance the hedges will offset the full financial impact resulting from movements in foreign currency exchange rates, interest rates, and aluminum or other commodity prices.

To help mitigate gross margin fluctuations due to changes in foreign currency exchange rates, certain of our subsidiaries, whose functional currency is the U.S. dollar or the Euro, hedge a portion of their forecasted foreign currency costs denominated in the Mexican Peso and Polish Zloty, respectively. We may hedge portions of our forecasted foreign currency exposure up to 48 months.

We record all derivatives in the condensed consolidated balance sheets at fair value. Our accounting treatment for these instruments is based on the hedge designation. Gains or losses on derivatives that are designated as hedging instruments are recorded in accumulated other comprehensive income (loss) ("AOCI") until the hedged item is recognized in earnings, at which point accumulated gains or losses will be recognized in earnings and classified with the underlying hedged transaction. Derivatives that are not designated as hedging instruments are adjusted to fair value through earnings in the financial statement line item to which the derivative relates. The Company has derivatives that are designated as hedging instruments, as well as derivatives that do not qualify for designation as hedging instruments.

The following tables display the fair value of derivatives by balance sheet line item at March 31, 2021 and December 31, 2020:

	March 31, 2021			
	Other Current Assets	Other Non- current Assets	Accrued Liabilities	Other Non- current Liabilities
(Dollars in thousands)				
Foreign exchange forward contracts designated as hedging instruments	\$ 537	\$ 3,383	\$ 5,484	\$ 7,504
Foreign exchange forward contracts not designated as hedging instruments	639	—	2,713	—
Aluminum forward contracts designated as hedging instruments	603	—	—	—
Natural gas forward contracts designated as hedging instruments	930	231	1	17
Interest rate swap contracts designated as hedging instruments	—	—	4,732	2,992

	<u>\$ 2,709</u>	<u>\$ 3,614</u>	<u>\$ 12,930</u>	<u>\$ 10,513</u>
	<b>December 31, 2020</b>			
	<b>Other Current Assets</b>	<b>Other Non- current Assets</b>	<b>Accrued Liabilities</b>	<b>Other Non- current Liabilities</b>
(Dollars in thousands)				
Foreign exchange forward contracts designated as hedging instruments	\$ 1,218	\$ 6,531	\$ 3,435	\$ 2,645
Foreign exchange forward contracts not designated as hedging instruments	1,167	—	122	—
Aluminum forward contracts designated as hedging instruments	262	—	—	—
Natural gas forward contracts designated as hedging instruments	816	224	22	70
Interest rate swap contracts designated as hedging instruments	—	—	4,771	4,194
<b>Total derivative financial instruments</b>	<u>\$ 3,463</u>	<u>\$ 6,755</u>	<u>\$ 8,350</u>	<u>\$ 6,909</u>

The following table summarizes the notional amount and estimated fair value of our derivative financial instruments:

	<b>March 31, 2021</b>		<b>December 31, 2020</b>	
	<b>Notional U.S. Dollar Amount</b>	<b>Fair Value</b>	<b>Notional U.S. Dollar Amount</b>	<b>Fair Value</b>
(Dollars in thousands)				
Foreign exchange forward contracts designated as hedging instruments	\$467,197	\$ (9,068)	\$421,253	\$ 1,669
Foreign exchange forward contracts not designated as hedging instruments	75,726	(2,074)	71,217	1,045
Aluminum forward contracts designated as hedging instruments	7,517	603	4,068	262
Natural gas forward contracts designated as hedging instruments	4,871	1,143	5,523	948
Interest rate swap contracts designated as hedging instruments	200,000	(7,724)	200,000	(8,965)
<b>Total derivative financial instruments</b>	<u>\$755,311</u>	<u>\$ (17,120)</u>	<u>\$702,061</u>	<u>\$ (5,041)</u>

Notional amounts are presented on a net basis. The notional amounts of the derivative financial instruments do not represent amounts exchanged by the parties and, therefore, are not a direct measure of our exposure to the financial risks. The amounts exchanged are calculated by reference to the notional amounts and by other terms of the derivatives, such as interest rates, foreign currency exchange rates or commodity prices.

The following tables summarize the gain or loss recognized in AOCI, the amounts reclassified from AOCI into earnings and the amounts recognized directly into earnings for the three months ended March 31, 2021 and 2020:

<u>Three Months Ended March 31, 2021</u>	<u>Amount of Gain or (Loss) Recognized in AOCI on Derivatives</u>	<u>Amount of Pre-tax Gain or (Loss) Reclassified from AOCI into Income</u>	<u>Amount of Pre-tax Gain or (Loss) Recognized in Income on Derivatives</u>
(Dollars in thousands)			
<b>Derivative</b>			
Contracts	\$ (8,462)	\$ (439)	\$ (2,904)
Total	<u>\$ (8,462)</u>	<u>\$ (439)</u>	<u>\$ (2,904)</u>

<u>Three Months Ended March 31, 2020</u>	<u>Amount of Gain or (Loss) Recognized in AOCI on Derivatives</u>	<u>Amount of Pre-tax Gain or (Loss) Reclassified from AOCI into Income</u>	<u>Amount of Pre-tax Gain or (Loss) Recognized in Income on Derivatives</u>
(Dollars in thousands)			
Derivative Contracts	\$ (45,297)	\$ (1,114)	\$ (5,439)
Total	<u>\$ (45,297)</u>	<u>\$ (1,114)</u>	<u>\$ (5,439)</u>

## Business Segments

**3 Months Ended  
Mar. 31, 2021**

### [Segment Reporting](#)

#### [\[Abstract\]](#)

#### [Business Segments](#)

#### NOTE 5 - BUSINESS SEGMENTS

The North American and European businesses represent separate operating segments in view of significantly different markets, customers and products in each of these regions. Within each of these regions, markets, customers, products and production processes are similar. Moreover, our business within each region generally leverages common systems, processes and infrastructure. Accordingly, North America and Europe comprise the Company's reportable segments.

(Dollars in thousands)

	Net Sales		Income from Operations	
	March 31, 2021	March 31, 2020	March 31, 2021	March 31, 2020
<b>Three months ended</b>				
North America	\$ 191,971	\$ 155,551	\$ 17,841	\$ 6,109
Europe	166,225	145,561	7,878	(189,124)
	<u>\$ 358,196</u>	<u>\$ 301,112</u>	<u>\$ 25,719</u>	<u>\$ (183,015)</u>

(Dollars in thousands)

	Depreciation and Amortization		Capital Expenditures	
	March 31, 2021	March 31, 2020	March 31, 2021	March 31, 2020
<b>Three months ended</b>				
North America	\$ 9,221	\$ 8,805	\$ 4,660	\$ 6,560
Europe	16,140	15,587	5,819	7,305
	<u>\$ 25,361</u>	<u>\$ 24,392</u>	<u>\$ 10,479</u>	<u>\$ 13,865</u>

(Dollars in thousands)

	Property, Plant and Equipment, net		Intangible Assets	
	March 31, 2021	December 31, 2020	March 31, 2021	December 31, 2020
North America	\$ 210,688	\$ 220,145	\$ —	\$ —
Europe	285,971	301,979	99,041	110,796
	<u>\$ 496,659</u>	<u>\$ 522,124</u>	<u>\$ 99,041</u>	<u>\$ 110,796</u>

(Dollars in thousands)

	Total Assets	
	March 31, 2021	December 31, 2020
North America	\$ 495,035	\$ 479,873
Europe	614,755	629,452
	<u>\$ 1,109,790</u>	<u>\$ 1,109,325</u>

#### Geographic information

Net sales and long-lived assets by location are as follows:

(Dollars in thousands)

	Net Sales	
	March 31, 2021	March 31, 2020
<b>Three months ended</b>		
U.S.	\$ 1,270	\$ 16,177
Mexico	190,701	139,374
Germany	60,887	50,038
Poland	105,338	95,523
Consolidated net sales	<u>\$ 358,196</u>	<u>\$ 301,112</u>



(Dollars in thousands)

	<b>Property, Plant and Equipment, net</b>	
	<b>March 31, 2021</b>	<b>December 31, 2020</b>
U.S.	\$ 2,894	\$ 7,324
Mexico	207,794	212,821
Germany	79,611	82,162
Poland	206,360	219,817
Property, plant and equipment, net	\$ 496,659	\$ 522,124

## Inventories

**3 Months Ended  
Mar. 31, 2021**

[Inventory Disclosure](#)

[\[Abstract\]](#)

[Inventories](#)

### NOTE 6 - INVENTORIES

	<u>March 31,</u> <u>2021</u>	<u>December 31,</u> <u>2020</u>
(Dollars in thousands)		
Raw materials	\$ 45,093	\$ 46,712
Work in process	53,728	45,394
Finished goods	<u>65,874</u>	<u>62,874</u>
Inventories, net	<u>\$ 164,695</u>	<u>\$ 154,980</u>

Service wheel and supplies inventory included in other non-current assets in the condensed consolidated balance sheets totaled \$10.7 million and \$12.1 million at March 31, 2021 and December 31, 2020, respectively.

**Property, Plant and  
Equipment**

**3 Months Ended  
Mar. 31, 2021**

[Property Plant And Equipment](#)

[\[Abstract\]](#)

[Property, Plant and Equipment](#)

**NOTE 7 - PROPERTY, PLANT AND EQUIPMENT**

	<u>March 31,</u> <u>2021</u>	<u>December 31,</u> <u>2020</u>
(Dollars in thousands)		
Land and buildings	\$ 144,491	\$ 149,295
Machinery and equipment	867,347	899,764
Leasehold improvements and others	14,470	14,912
Construction in progress	41,549	46,718
	<u>1,067,857</u>	<u>1,110,689</u>
Accumulated depreciation	(571,198)	(588,565)
Property, plant and equipment, net	<u>\$ 496,659</u>	<u>\$ 522,124</u>

Depreciation expense for the three months ended March 31, 2021 and 2020 was \$18.7 million and \$18.3 million, respectively.

**Goodwill and Other  
Intangible Assets**

**3 Months Ended  
Mar. 31, 2021**

**[Goodwill And Intangible  
Assets Disclosure \[Abstract\]  
Goodwill and Other Intangible  
Assets](#)**

**NOTE 8 – GOODWILL AND OTHER INTANGIBLE ASSETS**

At March 31, 2020, the impact of COVID-19 and uncertainty with respect to the economic effects of the pandemic had introduced significant volatility in the financial markets and was having a widespread adverse effect on the automotive industry. In response to the COVID-19 pandemic, our key customers temporarily closed nearly all their production facilities in Europe and North America (our primary markets) during the quarter ended March 31, 2020. As a result, we concluded that an interim test of our goodwill was required as of March 31, 2020. More specifically, the Company concluded that the following events and circumstances, in the aggregate, indicated that it was more likely than not that the carrying value of our European reporting unit exceeded its fair value: (1) our European reporting unit's carrying value was effectively set to fair value at December 31, 2019, due to the \$102.2 million impairment charges to goodwill and indefinite-lived intangibles, (2) lower forecasted 2020 industry production volumes for Western and Central Europe, including those for our primary European customers, due to OEM shutdowns to mitigate COVID-19 spread and subsequent reduced production levels over the remainder of the year, as compared to our prior production forecasts (including estimates used in our 2019 assessment) and (3) the volatility in financial markets that had both increased European interest rates due to rising credit spreads and risk premiums and lowered median European automotive market multiples. Based on the results of our quantitative analysis, we recognized a non-cash goodwill impairment charge equal to the remaining goodwill balance of \$182.6 million since the carrying value exceeded the fair value of the European reporting unit by more than the amount of the goodwill balance at March 31, 2020. Additionally, we recognized a non-cash impairment charge of \$11.0 million related to our aftermarket trade name indefinite-lived intangible asset which was primarily attributable to a further decline in forecasted aftermarket revenues and a decline in associated profitability. Total impairment charges of \$193.6 million were recognized as a separate charge at March 31, 2020 and included in income (loss) from operations.

We utilized both an income and a market approach, weighted 75 percent and 25 percent respectively, to determine the fair value of the European reporting unit as part of our goodwill impairment assessment. The income approach is based on projected debt-free cash flow, which is discounted to the present value using discount factors that consider the timing and risk of cash flows. The discount rate used is the weighted average of an estimated cost of equity and of debt ("weighted average cost of capital"). The weighted average cost of capital is adjusted as necessary to reflect risk associated with the business of the European reporting unit. Financial projections are based on estimated production volumes, product prices and expenses, including raw material cost, wages, energy and other expenses. Other significant assumptions include terminal value cash flow and growth rates, future capital expenditures and changes in future working capital requirements. The market approach is based on the observed ratios of enterprise value to earnings before interest, taxes, depreciation and amortization (EBITDA) of comparable, publicly traded companies. The market approach fair value is determined by multiplying historical and anticipated financial metrics of the European reporting unit by the EBITDA pricing multiples derived from comparable, publicly traded companies.

At March 31, 2020, we determined that the carrying value of the European reporting unit exceeded its fair value by an amount greater than the remaining goodwill balance. The decline in fair value was primarily due to significantly lower market multiples and increased discount rates, as well as further declines in forecasted industry production volumes in Western and Central Europe as a result of the COVID-19 pandemic and consequent economic instability. Forecasted revenues, EBITDA and cash flow for the European reporting unit also declined as compared to the prior year long-range plan due to lower forecasted industry production volumes which adversely impacted fair value under both the income and market approaches. Significant assumptions used under the income approach included a weighted average cost of capital (WACC) of 12.0 percent and a long-term growth rate of 1.5 percent, as compared to 10.0 percent and 2.0 percent, respectively, used in the 2019 assessment. In determining the WACC, management considered the level of risk inherent in the cash flow projections and current market conditions, including the significant increase in credit spreads and systemic

market and Company specific risk premiums. The decline in the fair value under the market approach is attributable to the decline in the average EBITDA market multiple (4.9X EBITDA in 2020, 5.7X EBITDA in 2019) and lower forecasted EBITDA, as compared to the 2019 assessment. The use of these unobservable inputs results in classification of the fair value estimate as a Level 3 measurement in the fair value hierarchy. A considerable amount of management judgment and assumptions are required in performing the quantitative impairment test, principally related to determining the fair value of the reporting unit. While the Company believes its judgments and assumptions are reasonable, different assumptions could change the estimated fair value.

Following is a summary of the Company's finite-lived and indefinite-lived intangible assets and goodwill as of March 31, 2021 and December 31, 2020.

<u>As of March 31, 2021</u>	<u>Gross Carrying Amount</u>	<u>Accumulated Impairment</u>	<u>Accumulated Amortization</u>	<u>Currency Translation</u>	<u>Net Carrying Amount</u>	<u>Remaining Weighted Average Amortization Period</u>
(Dollars in thousands)						
Brand name	\$ 9,000	\$ —	\$ (7,094)	\$ 281	\$ 2,187	2-3
Technology	15,000	—	(11,823)	469	3,646	1-3
Customer relationships	167,000	—	(79,706)	5,914	93,208	3-8
Total finite	191,000	—	(98,623)	6,664	99,041	
Trade names	14,000	(13,772)	—	(228)	—	Indefinite
Total intangibles	<u>\$205,000</u>	<u>\$ (13,772)</u>	<u>\$ (98,623)</u>	<u>\$ 6,436</u>	<u>\$99,041</u>	

<u>As of December 31, 2020</u>	<u>Gross Carrying Amount</u>	<u>Accumulated Impairment</u>	<u>Accumulated Amortization</u>	<u>Currency Translation</u>	<u>Net Carrying Amount</u>	<u>Remaining Weighted Average Amortization Period</u>
(Dollars in thousands)						
Brand name	\$ 9,000	\$ —	\$ (6,615)	\$ 399	\$ 2,784	2-3
Technology	15,000	—	(11,024)	666	4,642	1-3
Customer relationships	167,000	—	(74,322)	10,692	103,370	3-8
Total finite	191,000	—	(91,961)	11,757	110,796	
Trade names	14,000	(13,772)	—	(228)	—	Indefinite
Total intangibles	<u>\$205,000</u>	<u>\$ (13,772)</u>	<u>\$ (91,961)</u>	<u>\$ 11,529</u>	<u>\$110,796</u>	

<u>Year Ended December 31, 2020</u>	<u>Beginning Balance</u>				<u>Ending Balance</u>			
	<u>Gross</u>	<u>Accumulated Impairment</u>	<u>Net Balance</u>	<u>Impairment</u>	<u>Currency Translation</u>	<u>Gross</u>	<u>Accumulated Impairment</u>	<u>Net Balance</u>
(Dollars in thousands)								
Goodwill	<u>\$284,337</u>	<u>\$ (99,505)</u>	<u>\$184,832</u>	<u>\$ (182,602)</u>	<u>\$ (2,230)</u>	<u>\$282,107</u>	<u>\$ (282,107)</u>	<u>\$ —</u>

Amortization expense for these intangible assets was \$6.7 million and \$6.1 million for the three months ended March 31, 2021 and 2020, respectively. The anticipated annual amortization expense for these intangible assets is \$26.1 million for 2021, \$23.2 million for 2022 and \$21.1 million for 2023 and 2024 and \$10.4 million for 2025.

## Debt

**3 Months Ended  
Mar. 31, 2021**

### [Debt Disclosure \[Abstract\]](#)

#### [Debt](#)

#### NOTE 9 – DEBT

A summary of long-term debt and the related weighted average interest rates is shown below:

Debt Instrument	March 31, 2021 (Dollars in Thousands)			Weighted Average Interest Rate
	Total Debt	Debt Issuance Costs (1)	Total Debt, Net	
Term Loan Facility	\$349,200	\$ (6,531)	\$342,669	4.1%
6.00% Senior Notes	254,318	(4,179)	250,139	6.0%
European CapEx Loans	23,354	—	23,354	2.3%
Finance Leases	3,494	—	3,494	2.9%
	<u>\$630,366</u>	<u>\$(10,710)</u>	619,656	
Less: Current portion			(6,516)	
Long-term debt			<u>\$613,140</u>	

Debt Instrument	December 31, 2020 (Dollars in Thousands)			Weighted Average Interest Rate
	Total Debt	Debt Issuance Costs (1)	Total Debt, Net	
Term Loan Facility	\$349,200	\$ (7,155)	\$342,045	4.1%
6.00% Senior Notes	266,928	(4,425)	262,503	6.0%
European CapEx Loans	23,668	—	23,668	2.3%
Finance Leases	3,388	—	3,388	3.0%
	<u>\$643,184</u>	<u>\$(11,580)</u>	631,604	
Less: Current portion			(6,112)	
Long-term debt			<u>\$625,492</u>	

(1) Unamortized portion

#### Senior Notes

On June 15, 2017, the Company issued €250.0 million aggregate principal amount of 6.00 percent Senior Notes (“Notes”) due June 15, 2025. Interest on the Notes is payable semiannually, on June 15 and December 15. The Company may redeem the Notes, in whole or in part, on or after June 15, 2020 at redemption prices of 103.0 percent and 101.5 percent of the principal amount thereof, if the redemption occurs during the 12-month period beginning June 15, 2020 or June 15, 2021, respectively, and a redemption price of 100 percent of the principal amount thereof on or after June 15, 2022, in each case plus accrued and unpaid interest to, but not including, the applicable redemption date. If we experience a change of control or sell certain assets, the Company may be required to offer to purchase the Notes from the holders. The Notes are senior unsecured obligations ranking equally in right of payment with all of its existing and future senior indebtedness and senior in right of payment to any subordinated indebtedness. The Notes are effectively subordinated in right of payment to the existing and future secured indebtedness of the Company, including the Senior Secured Credit Facilities (as defined below), to the extent of the assets securing such indebtedness.

### *Guarantee*

The Notes are unconditionally guaranteed by all material wholly-owned direct and indirect domestic restricted subsidiaries of the Company (the “Subsidiary Guarantors”), with customary exceptions including, among other things, where providing such guarantees is not permitted by law, regulation or contract, or would result in adverse tax consequences.

### *Covenants*

Subject to certain exceptions, the indenture governing the Notes contains restrictive covenants that, among other things, limit the ability of the Company and the Subsidiary Guarantors to: (i) incur additional indebtedness or issue certain preferred stock; (ii) pay dividends on, or make distributions in respect of, their capital stock; (iii) make certain investments or other restricted payments; (iv) sell certain assets or issue capital stock of restricted subsidiaries; (v) create liens; (vi) merge, consolidate, transfer or dispose of substantially all of their assets; and (vii) engage in certain transactions with affiliates. These covenants are subject to several important limitations and exceptions that are described in the indenture.

The indenture provides for customary events of default that include, among other things (subject in certain cases to customary grace and cure periods): (i) nonpayment of principal, premium, if any, and interest, when due; (ii) failure for 60 days to comply with any obligations, covenants or agreements in the indenture after receipt of written notice from the Bank of New York Mellon, London Branch (“the Trustee”) or holders of at least 30 percent in principal amount of the then outstanding Notes of such failure (other than defaults referred to in the foregoing clause (i)); (iii) default under any mortgage, indenture or instrument for money borrowed by the Company or certain of its subsidiaries, (iv) a failure to pay certain judgments; and (iv) certain events of bankruptcy and insolvency. If an event of default occurs and is continuing, the Trustee or holders of at least 30 percent in principal amount of the then outstanding Notes may declare the principal, premium, if any, and accrued and unpaid interest on all the Notes to be due and payable. These events of default are subject to several important qualifications, limitations and exceptions that are described in the indenture. As of March 31, 2021, the Company was in compliance with all covenants under the indenture governing the Notes.

### *Senior Secured Credit Facilities*

On March 22, 2017, the Company entered into a senior secured credit agreement (“Credit Agreement”) with Citibank, N.A. as Administrative Agent, Collateral Agent and Issuing Bank, JP Morgan Chase N.A., Royal Bank of Canada and Deutsche Bank A.G. New York Branch as Joint Lead Arrangers and Joint Book Runners, and the other lenders party thereto (collectively, the “Lenders”). The Credit Agreement consisted of a \$400.0 million senior secured term loan facility (“Term Loan Facility”), which matures on May 23, 2024, and a \$160.0 million revolving credit facility maturing on May 23, 2022 (the “Revolving Credit Facility”), together with the Term Loan Facility, the USD Senior Secured Credit Facilities (“USD SSCF”).

Borrowings under the Term Loan Facility will bear interest at a rate equal to, at the Company’s option, either (a) LIBOR for the relevant interest period, adjusted for statutory requirements, subject to a floor of 0.00 percent per annum, plus an applicable rate of 4.00 percent or (b) a base rate, subject to a floor of 2.00 percent per annum, equal to the highest of (1) the rate of interest in effect as publicly announced by the administrative agent as its prime rate, (2) the federal funds rate plus 0.50 percent and (3) LIBOR for an interest period of one month plus 1.00 percent, in each case, plus an applicable rate of 3.00 percent.

Borrowings under the Revolving Credit Facility bear interest at a rate equal to, at the Company’s option, either (a) LIBOR for the relevant interest period, with a floor of 0.00 percent per annum, plus the applicable rate or (b) a base rate, with a floor of 0.00 percent, equal to the highest of (1) the rate of interest in effect as publicly announced by the administrative agent as its prime rate, (2) the federal funds effective rate plus 0.50 percent and (3) LIBOR for an interest period of one month plus 1.00 percent, in each case, plus the applicable rate. The applicable rates for



borrowings under the Revolving Credit Facility and commitment fees for unused commitments under the Revolving Credit Facility are based upon the First Lien Net Leverage Ratio effective for the preceding quarter, with LIBOR applicable rates ranging between 3.50 percent and 3.00 percent, currently 3.25 percent, base rate applicable rates between 2.50 percent and 2.00 percent, currently 2.25 percent and commitment fees between 0.50 percent and 0.25 percent, currently 0.375 percent. Commitment fees are included in interest expense.

As of March 31, 2021, the Company had repaid \$50.8 million under the Term Loan Facility resulting in a balance of \$349.2 million. In addition, the Company had no borrowings outstanding under the Revolving Credit Facility, outstanding letters of credit of \$4.8 million and available unused commitments under this facility of \$155.2 million as of March 31, 2021.

#### *Guarantees and Collateral Security*

Our obligations under the Credit Agreement are unconditionally guaranteed by the Subsidiary Guarantors, with customary exceptions including, among other things, where providing such guarantees is not permitted by law, regulation or contract or would result in adverse tax consequences. The guarantees of such obligations, will be secured, subject to permitted liens and other exceptions, by substantially all of our assets and the Subsidiary Guarantors' assets, including but not limited to: (i) a perfected pledge of all of the capital stock issued by each of the Subsidiary Guarantors (subject to certain exceptions) and up to 65 percent of the capital stock issued by each direct wholly-owned foreign restricted subsidiary of the Company (subject to certain exceptions) and (ii) perfected security interests in and mortgages on substantially all tangible and intangible personal property and material fee-owned real property of the Company and the Subsidiary Guarantors (subject to certain exceptions and exclusions).

#### *Covenants*

The Credit Agreement contains a number of restrictive covenants that, among other things, restrict, subject to certain exceptions, our ability to incur additional indebtedness and guarantee indebtedness, create or incur liens, engage in mergers or consolidations, sell, transfer or otherwise dispose of assets, make investments, acquisitions, loans or advances, pay dividends, distributions or other restricted payments, or repurchase our capital stock, prepay, redeem, or repurchase any subordinated indebtedness, enter into agreements which limit our ability to incur liens on our assets or that restrict the ability of restricted subsidiaries to pay dividends or make other restricted payments to us, and enter into certain transactions with our affiliates, and, solely with respect to the Revolving Credit Facility, requires a Total Net Leverage Ratio (calculated as defined in the Credit Agreement) of not more than 4.5 to 1.0 as of each fiscal quarter-end when outstanding borrowings, together with undrawn letters of credit exceeding \$20 million, under the Revolving Credit Facility exceed 35 percent of the \$160 million commitment amount.

In addition, the Credit Agreement contains customary default provisions, representations and warranties and other covenants. The Credit Agreement also contains a provision permitting the Lenders to accelerate the repayment of all loans outstanding under the Senior Secured Credit Facilities during an event of default. As of March 31, 2021, the Company was in compliance with all covenants under the Credit Agreement.

#### *European Debt*

In connection with the acquisition of UNIWHEELS AG, the Company assumed \$70.7 million of outstanding debt. At March 31, 2021, \$9.4 million of the assumed debt remained outstanding which matures March 31, 2024 and is collateralized by financed equipment, guaranteed by Superior and bears interest at 2.2 percent. Covenants under the loan agreement include a default provision for non-payment, as well as a material adverse change default provision pursuant to which the lender could accelerate the loan maturity. As of March 31, 2021, the Company was in compliance with all covenants under the credit agreement.

During the second quarter of 2019, the Company amended its European Revolving Credit Facility (“EUR SSCF”), increasing the available borrowing limit from €30.0 million to €45.0 million and extending the term to May 22, 2022. On January 31, 2020, the available borrowing limit of the EUR SSCF was increased from €45.0 million to €60.0 million. All other terms of the EUR SSCF remained unchanged. At March 31, 2021, the Company had no borrowings outstanding, outstanding letters of credit of \$0.5 million (€0.4 million) and available unused commitments under this facility of \$69.8 million (€59.6 million). The EUR SSCF bears interest at Euribor (with a floor of zero) plus a margin (ranging from 1.55 percent to 3.0 percent based on the net debt leverage ratio of Superior Industries Europe AG and its wholly owned subsidiaries, collectively “Superior Europe AG”), currently 1.55 percent. The annual commitment fee for unused commitments (ranging from 0.50 percent to 1.05 percent based on the net debt leverage ratio of Superior Europe AG) is currently 0.50 percent per annum. In addition, a management fee is assessed equal to 0.07 percent of borrowings outstanding at each month end. The commitment and management fees are both included in interest expense. Superior Europe AG has

pledged substantially all of its assets, including land and buildings, receivables, inventory, and other moveable assets (other than collateral associated with equipment loans) as collateral under the EUR SSCF.

The EUR SSCF is subject to a number of restrictive covenants that, among other things, restrict, subject to certain exceptions, the ability of Superior Europe AG to incur additional indebtedness and guarantee indebtedness, create or incur liens, engage in mergers or consolidations, sell, transfer or otherwise dispose of assets, make investments, acquisitions, loans or advances, pay dividends or distributions, or repurchase our capital stock, prepay, redeem, or repurchase any subordinated indebtedness, and enter into agreements which limit our ability to incur liens on our assets. In addition, the EUR SSCF includes an annual pay down provision requiring outstanding balances to be repaid but not reborrowed for a period of three business days and a material adverse change default provision pursuant to which the lender could accelerate the loan maturity. At March 31, 2021, Superior Europe AG was in compliance with all covenants under the EUR SSCF.

During the fourth quarter of 2019, the Company entered into new equipment loan agreements totaling \$13.4 million (€12.0 million) which bear interest at 2.3 percent and mature on September 30, 2027. Interest and principal repayments are due quarterly. The loans are secured with liens on the financed equipment and are subject to covenants that, among other things, include a material adverse change default provision pursuant to which the lender could accelerate the loan maturity, as well as a provision that restricts the ability of Superior Europe AG to reduce its ownership interest in Superior Industries Production Germany GmbH, its wholly-owned subsidiary and the borrower under the loan. The Company drew down €10.6 million on these equipment loans in the first quarter of 2020 and drew the remaining €1.4 million in the first quarter of 2021, resulting in an outstanding balance of €12.0 million, or \$14.0 million as of March 31, 2021. Quarterly installment payments of \$0.5 million (€0.4 million) under the loan agreements will begin in June of 2021. At March 31, 2021, the Company was in compliance with all covenants under the loans.

Debt maturities as of March 31, 2021 which are due in the next five years and thereafter are as follows:

(Dollars in thousands)	
<b>Debt Maturities</b>	<b>Amount</b>
Nine remaining months of 2021	\$ 4,987
2022	6,334
2023	5,922
2024	352,360
2025	256,621
Thereafter	4,142
Total debt liabilities	<u>\$ 630,366</u>

## Redeemable Preferred Stock

3 Months Ended

Mar. 31, 2021

[Text Block \[Abstract\]](#)

[Redeemable Preferred Stock](#)

### NOTE 10 - REDEEMABLE PREFERRED STOCK

During 2017, we issued 150,000 shares of Series A (140,202 shares) and Series B (9,798 shares) Perpetual Convertible Preferred Stock, par value \$0.01 per share for \$150.0 million. On August 30, 2017, the Series B shares were converted into Series A redeemable preferred stock, the “redeemable preferred stock,” after approval by our shareholders. The redeemable preferred stock has an initial stated value of \$1,000 per share, par value of \$0.01 per share and liquidation preference over common stock.

The redeemable preferred stock is convertible into shares of our common stock equal to the number of shares determined by dividing the sum of the stated value and any accrued and unpaid dividends by the conversion price of \$28.162. The redeemable preferred stock accrues dividends at a rate of 9 percent per annum, payable at our election either in-kind or in cash and is also entitled to participate in dividends on common stock in an amount equal to that which would have been due had the shares been converted into common stock.

We may mandate conversion of the redeemable preferred stock if the price of the common stock exceeds \$84.49. The holder may redeem the shares upon the occurrence of any of the following events (referred to as a “redemption event”): a change in control, recapitalization, merger, sale of substantially all of the Company’s assets, liquidation or delisting of the Company’s common stock. In addition, the holder has the right, at its option, to unconditionally redeem the shares at any time after September 14, 2025. We may, at our option, redeem in whole at any time all of the shares of redeemable preferred stock outstanding. At redemption by either party, the redemption value will be the greater of two times the initial face value (\$150.0 million) and any accrued unpaid dividends or dividends paid-in-kind, currently \$300.0 million, or the product of the number of common shares into which the redeemable preferred stock could be converted (5.3 million shares currently) and the then current market price of the common stock. We have determined that the conversion option and the redemption option exercisable upon occurrence of a “redemption event” which are embedded in the redeemable preferred stock must be accounted for separately from the redeemable preferred stock as a derivative liability.

Since the redeemable preferred stock may be redeemed at the option of the holder, but is not mandatorily redeemable, the redeemable preferred stock has been classified as mezzanine equity and initially recognized at fair value of \$150.0 million (the proceeds on the date of issuance) less issuance costs of \$3.7 million and \$10.9 million assigned to the embedded derivative liability at date of issuance, resulting in an initial value of \$135.5 million.

The difference between the redemption value of the redeemable preferred stock and the carrying value (the “premium”) is being accreted over the period from the date of issuance through September 14, 2025 using the effective interest method. The accretion is treated as a deemed dividend, recorded as a charge to retained earnings and deducted in computing earnings per share (analogous to the treatment for stated and participating dividends paid on the redeemable preferred stock). The cumulative premium accretion as of March 31, 2021 and December 31, 2020 was \$48.8 million and \$43.9 million, respectively, resulting in adjusted redeemable preferred stock balances of \$184.3 million and \$179.4 million, respectively.

**European Non-Controlling  
Redeemable Equity**

**3 Months Ended  
Mar. 31, 2021**

[Noncontrolling Interest  
\[Abstract\]](#)

[European Non-Controlling  
Redeemable Equity](#)

**NOTE 11 – EUROPEAN NON-CONTROLLING REDEEMABLE EQUITY**

On May 30, 2017, the Company acquired 92.3 percent of the outstanding shares of UNIWHEELS AG. Subsequently, the Company commenced a delisting and associated tender offer for the remaining shares. On January 17, 2018, the Company entered into a Domination and Profit and Loss Transfer agreement (“DPLTA”) retroactively effective as of January 1, 2018 pursuant to which we offered to purchase the remaining outstanding shares at €62.18. This price may be subject to change based on appraisal proceedings initiated by the minority shareholders which have not yet been concluded. The Company must also pay an annual dividend of €3.23 as long as the DPLTA is in effect. For any shares tendered prior to the annual dividend payment, we must pay interest at a statutory rate, currently 4.12 percent, in place of the dividend. As a result of purchases pursuant to the tender offer and the DPLTA, the Company has increased its ownership to 99.9 percent as of March 31, 2021. The following table summarizes the European non-controlling redeemable equity activity through the period ended March 31, 2021:

(Dollars in thousands)	
Balance at December 31, 2019	\$ 6,525
Dividends accrued	205
Dividends paid	(46)
Translation adjustment	2
Purchase of shares	<u>(5,020)</u>
Balance at December 31, 2020	1,666
Dividends accrued	13
Dividends paid	—
Translation adjustment	(79)
Purchase of shares	<u>(9)</u>
Balance at March 31, 2021	<u>\$ 1,591</u>

## Earnings Per Share

**3 Months Ended  
Mar. 31, 2021**

### Earnings Per Share

#### [Abstract]

### Earnings Per Share

#### NOTE 12 – EARNINGS PER SHARE

Basic earnings per share is computed by dividing net income (loss), after deducting preferred dividends and accretion and European non-controlling redeemable equity dividends, by the weighted average number of common shares outstanding. For purposes of calculating diluted earnings per share, the weighted average shares outstanding includes the dilutive effect of outstanding stock options and time and performance based restricted stock units under the treasury stock method. The redeemable preferred shares discussed in Note 10, “Redeemable Preferred Stock” have not been included in the diluted earnings per share because the inclusion of such shares on an as converted basis would be anti-dilutive for the three months ended March 31, 2021 and 2020.

	<b>Three Months Ended</b>	
	<b>March 31, 2021</b>	<b>March 31, 2020</b>
(Dollars in thousands, except per share amounts)		
<b><u>Basic Earnings Per Share:</u></b>		
Net income (loss)	\$ 13,122	\$ (190,082)
Less: Redeemable preferred stock dividends and accretion	(8,290)	(7,850)
Less: European non-controlling redeemable equity dividend	(13)	(20)
Basic numerator	<u>\$ 4,819</u>	<u>\$ (197,952)</u>
Basic earnings (loss) per share	<u>\$ 0.19</u>	<u>\$ (7.84)</u>
Weighted average shares outstanding – Basic	<u>25,707</u>	<u>25,243</u>
<b><u>Diluted Earnings Per Share:</u></b>		
Net income (loss)	\$ 13,122	\$ (190,082)
Less: Redeemable preferred stock dividends and accretion	(8,290)	(7,850)
Less: European non-controlling redeemable equity dividend	(13)	(20)
Diluted numerator	<u>\$ 4,819</u>	<u>\$ (197,952)</u>
Diluted earnings (loss) per share	<u>\$ 0.18</u>	<u>\$ (7.84)</u>
Weighted average shares outstanding – Basic	25,707	25,243
Dilutive effect of common share equivalents	980	—
Weighted average shares outstanding – Diluted	<u>26,687</u>	<u>25,243</u>

## Income Taxes

**3 Months Ended  
Mar. 31, 2021**

### [Income Tax Disclosure](#)

#### [\[Abstract\]](#)

#### [Income Taxes](#)

#### **NOTE 13 - INCOME TAXES**

The estimated annual effective tax rate is forecasted quarterly using actual historical information and forward-looking estimates and applied to year-to-date ordinary income. The tax effects of unusual or infrequently occurring items, including changes in judgment about valuation allowances, settlements with taxing authorities and effects of changes in tax laws or rates, are reported in the interim period in which they occur.

The income tax provision for the three months ended March 31, 2021 was \$0.8 million on a pre-tax income of \$13.9 million, resulting in an effective income tax rate of 5.8 percent. The effective income tax rate for the three months ending March 31, 2021 differs from the statutory rate primarily due to U.S. valuation allowances, the reversal of an uncertain tax position and the mix of earnings among tax jurisdictions.

The income tax benefit for the three months ended March 31, 2020, was \$3.5 million on a pre-tax loss of \$193.5 million, resulting in an effective income tax rate of 1.8 percent. The effective income tax rate for the three months ending March 31, 2020 differs from the statutory rate primarily due to the impairment of goodwill for which there was no corresponding tax benefit, the mix of earnings among tax jurisdictions, and recognition of a valuation allowance on non-deductible interest.

## Leases

3 Months Ended

Mar. 31, 2021

[Leases \[Abstract\]](#)

[Leases](#)

### NOTE 14 - LEASES

The Company determines whether an arrangement is or contains a lease at the inception of the arrangement. Operating leases are included in other non-current assets, accrued expenses and other non-current liabilities in our condensed consolidated balance sheets. Finance leases are included in property, plant and equipment, net, short-term debt and long-term debt (less current portion) in our condensed consolidated balance sheets.

Right-of-use (“ROU”) assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. Finance and operating lease ROU assets and liabilities are recognized at the commencement date based on the present value of the lease payments over the lease term. Since we generally do not have access to the interest rate implicit in the lease, the Company uses our incremental borrowing rate (for fully collateralized debt) at the inception of the lease in determining the present value of the lease payments. The implicit rate is, however, used where readily available. Lease expense under operating leases is recognized on a straight-line basis over the term of the lease. Certain of our leases contain both lease and non-lease components, which are accounted for separately.

The Company has operating and finance leases for office facilities, a data center and certain equipment. The remaining terms of our leases range from over one year to just under nine years. Certain leases include options to extend the lease term for up to ten years, as well as options to terminate which have been excluded from the term of the lease since exercise of these options is not reasonably certain.

Lease expense and cash flow for the three months ended March 31, 2021 and 2020 and operating and finance lease assets and liabilities, average lease term and average discount rate as of March 31, 2021 and December 31, 2020 are as follows:

	Three Months Ended	
	March 31, 2021	March 31, 2020
(Dollars in thousands)		
<b>Lease Expense</b>		
Finance lease expense:		
Amortization of right-of-use assets	\$ 321	\$ 354
Interest on lease liabilities	22	22
Operating lease expense	857	845
Total lease expense	<u>\$ 1,200</u>	<u>\$ 1,221</u>
<b>Cash Flow Components</b>		
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash outflows from finance leases	\$ 22	\$ 22
Operating cash outflows from operating leases	932	891
Financing cash outflows from finance leases	288	292
Right-of-use assets obtained in exchange for finance lease liabilities,		
net of terminations and disposals	756	148
Right-of-use assets obtained in exchange for operating lease liabilities,		
net of terminations and disposals	152	65



	March 31, 2021	December 31, 2020
(Dollars in thousands, except lease term and discount rate)		
<b>Balance Sheet Information</b>		
Operating leases:		
Other non-current assets	\$ 12,705	\$ 13,598
Accrued liabilities	\$ (2,672)	\$ (2,868)
Other non-current liabilities	(10,718)	(11,513)
Total operating lease liabilities	<u>\$ (13,390)</u>	<u>\$ (14,381)</u>
Finance leases:		
Property, plant and equipment gross	\$ 6,506	\$ 5,735
Accumulated depreciation	(3,640)	(3,319)
Property, plant and equipment, net	<u>\$ 2,866</u>	<u>\$ 2,416</u>
Current portion of long-term debt	\$ (1,240)	\$ (1,113)
Long-term debt (less current portion)	(2,254)	(2,275)
Total finance lease liabilities	<u>\$ (3,494)</u>	<u>\$ (3,388)</u>

#### Lease Term and Discount Rates

Weighted-average remaining lease term - finance leases (years)	3.9	3.9
Weighted-average remaining lease term - operating leases (years)	5.9	6.1
Weighted-average discount rate - finance leases	2.9%	3.0%
Weighted-average discount rate - operating leases	3.7%	3.8%

Summarized future minimum payments under our leases as of March 31, 2021 are as follows:

	Amount	
(Dollars in thousands)		
<b>Lease Maturities</b>	<b>Finance Leases</b>	<b>Operating Leases</b>
Nine remaining months of 2021	\$ 1,030	\$ 2,412
2022	1,058	2,782
2023	647	2,418
2024	228	2,194
2025	153	2,145
Thereafter	555	2,803
Total	<u>3,671</u>	<u>14,754</u>
Less: Imputed interest	(177)	(1,364)
Total lease liabilities, net of interest	<u>\$ 3,494</u>	<u>\$ 13,390</u>

## Retirement Plans

**3 Months Ended  
Mar. 31, 2021**

[Compensation And  
Retirement Disclosure  
\[Abstract\]  
Retirement Plans](#)

### NOTE 15 – RETIREMENT PLANS

We have an unfunded salary continuation plan covering certain directors, officers and other key members of management. Subject to certain vesting requirements, the plan provides for a benefit based on final average compensation, which becomes payable on the employee's death or upon attaining age 65, if retired. The plan was closed to new participants effective February 3, 2011.

For the three months ended March 31, 2021, payments to retirees or their beneficiaries totaled approximately \$0.4 million. We presently anticipate benefit payments in 2021 to total approximately \$1.2 million. The following table summarizes the components of net periodic pension cost for the three months ended March 31, 2021 and 2020.

	Three Months Ended	
	March 31, 2021	March 31, 2020
(Dollars in thousands)		
Interest cost	\$ 206	\$ 251
Net amortization	97	72
Net periodic pension cost	<u>\$ 303</u>	<u>\$ 323</u>

## Stock-Based Compensation

3 Months Ended

Mar. 31, 2021

[Disclosure Of Compensation  
Related Costs Sharebased  
Payments \[Abstract\]  
Stock-Based Compensation](#)

### NOTE 16 - STOCK-BASED COMPENSATION

#### *Equity Incentive Plan*

Our 2018 Equity Incentive Plan (the “Plan”) was approved by stockholders in May 2018. The Plan authorizes us to issue up to 4.35 million shares of common stock, along with non-qualified stock options, stock appreciation rights, restricted stock and performance units to our officers, key employees, non-employee directors and consultants. At March 31, 2021, there were 0.3 million shares available for future grants under this Plan. No more than 1.2 million shares may be used under the Plan as “full value” awards, which include restricted stock and performance units. The Company’s Board of Directors has approved, subject to shareholder approval at the May 25, 2021 annual meeting of shareholders, an increase of 2.0 million in the shares authorized under the Plan and elimination of the 1.2 million limit on “full value” shares. It is our policy to issue shares from authorized but not issued shares upon the exercise of stock options.

Under the terms of the Plan, each year eligible participants are granted time value restricted stock units (“RSUs”), vesting ratably over a three-year period, and performance restricted stock units (“PSUs”), with three-year cliff vesting. Upon vesting, each restricted stock award is exchangeable for one share of the Company’s common stock, with accrued dividends.

#### *Other Awards*

On May 16, 2019 the Company granted the following equity awards to our then new President and Chief Executive Officer in connection with the 2019 Inducement Grant Plan (the “Inducement Plan”): (i) an initial award consisting of (a) 666,667 PSUs at target, vesting in three approximately equal installments, to the extent the performance metrics are satisfied, during each of three performance periods and (b) 333,333 RSUs, vesting in approximately equal installments on February 28, 2020, 2021 and 2022; (ii) a 2019-2021 PSU grant, with the target number of 316,832 PSUs, which will vest to the extent the performance metrics are satisfied; and (iii) a 2019 RSU grant of 158,416 RSUs, vesting in approximately equal installments on February 28, 2020, 2021 and 2022. The PSU awards may be earned at up to 200 percent of target depending on the level of achievement of the performance metrics.

Restricted stock unit and restricted performance stock unit activity for the three months ended March 31, 2021 is summarized in the following table:

	Equity Incentive Awards					
	Restricted Stock Units	Weighted Average Grant Date Fair Value	Performance Shares	Weighted Average Grant Date Fair Value	Options	Weighted Average Exercise Price
Balance at December 31, 2020	1,213,667	\$ 3.59	2,176,290	\$ 4.88	24,000	\$ 20.39
Granted	1,787	5.41	21,352	5.67	—	—
Settled	(388,504)	4.05	(193,778)	5.45	—	—
Forfeited or expired	(31,092)	8.25	(142,769)	12.96	—	—
Balance at March 31, 2021	<u>795,858</u>	<u>\$ 3.19</u>	<u>1,861,095</u>	<u>\$ 6.05</u>	<u>24,000</u>	<u>\$ 20.39</u>
Awards estimated to vest in the future	724,142	\$ 3.16	1,341,900	\$ 6.09	24,000	\$ 20.39

Stock-based compensation expense was \$1.8 million for the three months ended March 31, 2021, as compared to income of \$0.2 million for the three months ended March 31, 2020. The higher expense for the three months ended March 31, 2021 was attributable to modification of the 2019 and 2020 PSU awards, substituting budgeted amounts for actual performance for the second quarter of 2020 (one of twelve quarters in the respective performance periods), to offset the impact of COVID-19. The modification increased stock-based compensation for the three months ended March 31, 2021 by \$1.1 million. The income for the three months ended March 31, 2020 was due to a reversal of \$1.2 million of previously accrued expense due to the reduction of our estimates regarding the achievement of the performance metric, to zero, in light of the global pandemic. Unrecognized stock-based compensation expense related to non-vested awards of \$8.4 million is expected to be recognized over a weighted average period of approximately 1.5 years as of March 31, 2021.

**Commitments and  
Contingencies**

**3 Months Ended  
Mar. 31, 2021**

**Commitments And  
Contingencies Disclosure**

**[Abstract]**

**Commitments and  
Contingencies**

**NOTE 17 – COMMITMENTS AND CONTINGENCIES**

*Purchase Commitments*

When market conditions warrant, we may enter into purchase commitments to secure the supply of certain commodities used in the manufacture of our products, such as aluminum, natural gas and other raw materials. Prices under our aluminum contracts are based on a market index, the London Mercantile Exchange, and regional premiums for processing, transportation and alloy components which are adjusted quarterly for purchases in the ensuing quarter. Certain of our purchase agreements include volume commitments; however, any excess commitments are generally negotiated with suppliers and those which have occurred in the past have been carried over to future periods.

*Contingencies*

We are party to various legal and environmental proceedings incidental to our business. Certain claims, suits and complaints arising in the ordinary course of business have been filed or are pending against us. Based on facts now known, we believe all such matters are adequately provided for, covered by insurance, are without merit and/or involve such amounts that would not materially adversely affect our consolidated results of operations, cash flows or financial position.

## Receivables Factoring

**3 Months Ended  
Mar. 31, 2021**

[Receivables \[Abstract\]](#)  
[Receivables Factoring](#)

### **NOTE 18 – RECEIVABLES FACTORING**

The Company sells certain customer trade receivables on a non-recourse basis under factoring arrangements with designated financial institutions. These transactions are accounted for as sales and cash proceeds are included in cash provided by operating activities. Factoring arrangements incorporate customary representations and warranties, including representations as to validity of amounts due, completeness of performance obligations and absence of commercial disputes. During the three months ended March 31, 2021 and 2020, the Company sold trade receivables totaling \$186.7 million and \$69.9 million, respectively, and incurred factoring fees of \$0.5 million and \$0.2 million, respectively. As of March 31, 2021 and December 31, 2020, \$105.6 million and \$96.6 million, respectively, of receivables had been factored under the arrangements. The collective limit under our factoring arrangements as of March 31, 2021 was \$132.2 million which was reduced to \$121.7 million as of April 1, 2021 due to a \$10.5 million decrease in the North American factoring limit. The collective limit under our factoring arrangements as of December 31, 2020 was \$132.0 million which was reduced to \$122.0 million as of January 1, 2021 due to the reduction in the North American factoring limit.

## Restructuring

**3 Months Ended  
Mar. 31, 2021**

### [Restructuring And Related Activities \[Abstract\]](#)

#### [Restructuring](#)

#### **NOTE 19 – RESTRUCTURING**

During the quarter ended June 30, 2020, the Company discontinued the manufacture and sale of high performance aftermarket wheels for the automotive racing market segment. The Company incurred a total non-cash charge of \$3.4 million, including \$2.8 million recorded in cost of sales, comprised of \$1.3 million relating to write-downs of certain after-market inventory to salvage value, \$1.0 million of employee severance costs and \$0.5 million in contract terminations and other costs, as well as a \$0.6 million non-cash charge recorded in selling, general and administrative expense related to non-production employee severance costs. In addition, during the six-month period ended December 31, 2020, we recognized an additional \$0.7 million of severance costs, including charges to costs of sales of \$0.4 million and selling, general and administrative expense of \$0.3 million. As of March 31, 2021, \$0.4 million of the restructuring severance accrual remains.

During the third quarter of 2019, the Company initiated a plan to significantly reduce production and manufacturing operations at its Fayetteville, Arkansas location. As a result, the Company recognized a non-cash charge of \$13.0 million in cost of sales, comprised of (1) \$7.6 million of accelerated depreciation for excess equipment, (2) \$3.2 million relating to the write-down of certain supplies inventory to net salvage value, (3) \$1.6 million of employee severance and (4) \$0.6 million of accelerated amortization of right of use assets under operating leases. In addition, relocation costs for redeployment of machinery and equipment of \$1.8 million were recognized in the fourth quarter of 2019. During 2020, we recognized additional charges to cost of sales of \$3.3 million, including relocation costs for redeployment of machinery and equipment of \$2.9 million and other costs of \$0.4 million. During the three months ended March 31, 2021, we recognized additional relocation costs in cost of sales for redeployment of machinery and equipment of \$0.8 million. Additional relocation costs are expected to be incurred over the next three months. As of March 31, 2021, \$0.3 million of the restructuring severance accrual remains. On April 14, 2021, the Company entered into an agreement to sell the Fayetteville facility for a net purchase price of \$7.6 million, subject to satisfactory completion of purchaser due diligence. We have not reclassified the related property to assets held for sale due to site preparation activities which must be completed prior to the consummation of the sale. Based on facility appraisals, as well as the sales price in the agreement, net of associated site remediation and selling costs, proceeds upon sale are expected to be sufficient to fully recover the carrying value.



## Subsequent Event

**3 Months Ended**

**Mar. 31, 2021**

[Subsequent Events](#)

[\[Abstract\]](#)

[Subsequent Event](#)

### **NOTE 20 – SUBSEQUENT EVENT**

On May 3, 2021, the Company extended the term of its USD SSCF. The commitment under the facility was reduced from \$160.0 million to \$132.5 million, with \$25.0 million of the commitment maturing May 23, 2022 and the remaining \$107.5 million maturing October 31, 2023. The commitment fee for lenders with commitments maturing October 31, 2023 has been increased to a range of 0.375 percent to 0.625 percent, dependent upon the Company's First Lien Net Leverage Ratio. The amended credit agreement contains the representations, warranties and covenants applicable under the original USD SSCF, including restrictions, subject to certain exceptions, on mergers, acquisitions or sales of assets, incurrence of debt, prepayment, redemption or repurchase of any subordinated indebtedness, and share repurchases and dividends, as well as, solely with respect to the revolving credit facility, the requirement to maintain a Total Net Leverage Ratio, as defined under the credit agreement, of not more than 4.5 to 1.0 at each quarter-end. All other material terms of the USD SSCF remain unchanged.

**Nature of Operations and  
Presentation of Condensed  
Consolidated Financial  
Statements (Policies)**

**3 Months Ended**

**Mar. 31, 2021**

[Accounting Policies](#)

[\[Abstract\]](#)

[Nature of Operations](#)

**Nature of Operations**

Superior Industries International, Inc.'s (referred herein as the "Company," "Superior," or "we" and "our") principal business is the design and manufacture of aluminum wheels for sale to original equipment manufacturers ("OEMs") in North America and Europe and to the aftermarket in Europe. We employ approximately 7,600 full-time employees, operating in eight manufacturing facilities in North America and Europe. We are one of the largest aluminum wheel suppliers to global OEMs and we believe we are the #1 European aluminum wheel aftermarket manufacturer and supplier. Our OEM aluminum wheels accounted for approximately 93 percent of our sales in the first three months of 2021 and are primarily sold for factory installation on vehicle models manufactured by BMW (including Mini), Daimler AG Company (Mercedes-Benz, AMG, Smart), Ford, GM, Honda, Jaguar-Land Rover, Mazda, Nissan, PSA, Renault, Subaru, Stellantis, Suzuki, Toyota, VW Group (Volkswagen, Audi, SEAT, Skoda, Porsche, Bentley) and Volvo. We also sell aluminum wheels to the European aftermarket under the brands ATS, RIAL, ALUTEC and ANZIO. North America and Europe represent the principal markets for our products, but we have a diversified global customer base consisting of North American, European and Asian OEMs. We have determined that our North American and European operations should be treated as separate reportable segments as further described in Note 5, "Business Segments."

[Presentation of Condensed  
Consolidated Financial  
Statements](#)

**Presentation of Condensed Consolidated Financial Statements**

The accompanying unaudited condensed consolidated financial statements have been prepared in conformity with U.S. Generally Accepted Accounting Principles ("GAAP") pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC") for interim financial information. Accordingly, they do not include all the information and notes required by U.S. GAAP for complete financial statements. These unaudited condensed consolidated financial statements, in our opinion, include all adjustments, of a normal and recurring nature, which are necessary for fair presentation of (i) the condensed consolidated statements of income (loss) for the three-month periods ended March 31, 2021 and March 31, 2020, (ii) the condensed consolidated statements of comprehensive income (loss) for the three-month periods ended March 31, 2021 and March 31, 2020, (iii) the condensed consolidated balance sheets at March 31, 2021 and December 31, 2020, (iv) the condensed consolidated statements of cash flows for the three-month periods ended March 31, 2021 and March 31, 2020, and (v) the condensed consolidated statements of shareholders' equity (deficit) for the three-month periods ended March 31, 2021 and March 31, 2020. This Quarterly Report on Form 10-Q should be read in conjunction with our consolidated financial statements and notes thereto filed with the SEC in our 2020 Annual Report on Form 10-K.

Interim financial reporting standards require us to make estimates that are based on assumptions regarding the outcome of future events and circumstances not known at that time. Inevitably, some assumptions will not materialize, unanticipated events or circumstances may occur which vary from those estimates and such variations may significantly affect our future results. Additionally, interim results may not be indicative of our results for future interim periods or our annual results.

Certain prior year amounts have been reclassified to conform with the current year presentation.

## [Cash Paid for Interest and](#)

## [Taxes and Non-Cash Investing](#)

## [Activities](#)

### **Cash Paid for Interest and Taxes and Non-Cash Investing Activities**

Cash paid for interest was \$5.2 million and \$6.0 million for the three months ended March 31, 2021 and March 31, 2020, respectively. Net cash income taxes paid was \$2.8 million and \$4.4 million for the three months ended March 31, 2021 and March 31, 2020, respectively. As of March 31, 2021 and March 31, 2020, \$4.3 million and \$4.1 million, respectively, of equipment had been purchased but not yet paid and was included in accounts payable in our condensed consolidated balance sheets.

## [Accounting Standards Issued](#)

## [but Not Yet](#)

### **Accounting Standards Issued but Not Yet Adopted**

*Accounting Standards Update (ASU) 2016-13, "Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments."* In June 2016, the Financial Accounting Standards Board ("FASB") issued ASU 2016-13, "Financial Instruments – Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments", which requires entities to use a new impairment model based on current expected credit losses ("CECL") rather than incurred losses. Under CECL, estimated credit losses would incorporate relevant information about past events, current conditions and reasonable and supportable forecasts and any expected credit losses would be recognized at the time of sale. As a smaller reporting company (as defined under SEC regulations), the Company is not required to adopt the standard until fiscal years beginning after December 31, 2022. We are evaluating the impact this standard will have on our financial statements and disclosures.

## [Fair Value Measurements](#)

The Company applies fair value accounting for all financial assets and liabilities and non-financial assets and liabilities that are recognized or disclosed at fair value in the financial statements on a recurring basis, while other assets and liabilities are measured at fair value on a nonrecurring basis, such as an asset impairment. Fair value is estimated by applying the following hierarchy, which prioritizes the inputs used to measure fair value into three levels and bases the categorization within the hierarchy upon the lowest level of input that is available and significant to the fair value measurement:

Level 1 - Quoted prices in active markets for identical assets or liabilities.

Level 2 - Observable inputs other than quoted prices in active markets for identical assets and liabilities, quoted prices for identical or similar assets or liabilities in inactive markets, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 - Inputs that are generally unobservable and typically reflect management's estimate of assumptions that market participants would use in pricing the asset or liability.

The carrying amounts for cash and cash equivalents, accounts receivable, accounts payable and accrued expenses approximate their fair values due to the short period of time until maturity.

## [Derivatives, Methods of](#)

## [Accounting, Hedging](#)

## [Derivatives](#)

We use derivatives to partially offset our exposure to foreign currency, interest rate, aluminum and other commodity price risks. We may enter into forward contracts, option contracts, swaps, collars or other derivative instruments to offset some of the risk on expected future cash flows and on certain existing assets and liabilities. However, we may choose not to hedge certain exposures for a variety of reasons including, but not limited to, accounting considerations and the prohibitive economic cost of hedging particular exposures. There can be no assurance the hedges will offset the full financial impact resulting from movements in foreign currency exchange rates, interest rates, and aluminum or other commodity prices.

To help mitigate gross margin fluctuations due to changes in foreign currency exchange rates, certain of our subsidiaries, whose functional currency is the U.S. dollar or the Euro, hedge a portion of their forecasted foreign currency costs denominated in the Mexican Peso and Polish

Zloty, respectively. We may hedge portions of our forecasted foreign currency exposure up to 48 months.

We record all derivatives in the condensed consolidated balance sheets at fair value. Our accounting treatment for these instruments is based on the hedge designation. Gains or losses on derivatives that are designated as hedging instruments are recorded in accumulated other comprehensive income (loss) ("AOCI") until the hedged item is recognized in earnings, at which point accumulated gains or losses will be recognized in earnings and classified with the underlying hedged transaction. Derivatives that are not designated as hedging instruments are adjusted to fair value through earnings in the financial statement line item to which the derivative relates. The Company has derivatives that are designated as hedging instruments, as well as derivatives that do not qualify for designation as hedging instruments.

[Derivatives, Methods of Accounting, Derivatives Not Designated or Qualifying as Hedges](#)

Derivatives that are not designated as hedging instruments are adjusted to fair value through earnings in the financial statement line item to which the derivative relates.

## Revenue (Tables)

**3 Months Ended**  
**Mar. 31, 2021**

**[Revenue From Contract With Customer \[Abstract\]](#)**  
**[Summary of Opening and Closing Balances of Company's](#)**  
**[Customer Receivables and Current and Long-term](#)**  
**[Contract Liabilities](#)**

The opening and closing balances of the Company's customer receivables and current and long-term contract liabilities balances are as follows:

	<b>March</b>	<b>December</b>	
	<b>31,</b>	<b>31,</b>	
(Dollars in thousands)	<b>2021</b>	<b>2020</b>	<b>Change</b>
Customer receivables	\$ 75,518	\$ 40,785	\$ 34,733
Contract liabilities—current	7,983	8,249	(266)
Contract liabilities—noncurrent	12,165	13,106	(941)

**Fair Value Measurements  
(Tables)**

**3 Months Ended  
Mar. 31, 2021**

[Fair Value Disclosures \[Abstract\]](#)

[Summary of Items Measured at Fair Value](#)

The following tables categorize items measured at fair value as of March 31, 2021 and December 31, 2020:

		<b>Fair Value Measurement at Reporting Date Using</b>		
		<b>Quoted Prices in Active Markets for Identical Assets (Level 1)</b>	<b>Significant Other Observable Inputs (Level 2)</b>	<b>Significant Unobservable Inputs (Level 3)</b>
<b>March 31, 2021</b>				
(Dollars in thousands)				
<b>Assets</b>				
Derivative contracts	\$ 6,323	\$ —	\$ 6,323	\$ —
<b>Total</b>	<b>\$ 6,323</b>	<b>\$ —</b>	<b>\$ 6,323</b>	<b>\$ —</b>
<b>Liabilities</b>				
Derivative contracts	\$23,443	\$ —	\$ 23,443	\$ —
<b>Total</b>	<b>\$23,443</b>	<b>\$ —</b>	<b>\$ 23,443</b>	<b>\$ —</b>
		<b>Fair Value Measurement at Reporting Date Using</b>		
		<b>Quoted Prices in Active Markets for Identical Assets (Level 1)</b>	<b>Significant Other Observable Inputs (Level 2)</b>	<b>Significant Unobservable Inputs (Level 3)</b>
<b>December 31, 2020</b>				
(Dollars in thousands)				
<b>Assets</b>				
Derivative contracts	\$10,218	\$ —	\$ 10,218	\$ —
<b>Total</b>	<b>\$10,218</b>	<b>\$ —</b>	<b>\$ 10,218</b>	<b>\$ —</b>
<b>Liabilities</b>				
Derivative contracts	\$15,259	\$ —	\$ 15,259	\$ —
<b>Total</b>	<b>\$15,259</b>	<b>\$ —</b>	<b>\$ 15,259</b>	<b>\$ —</b>

[Schedule of Carrying Values and Estimated Fair Values of Debt Instruments](#)

The estimated fair value, as well as the carrying value, of the Company's debt instruments are shown below:

	<b>March 31, 2021</b>	<b>December 31, 2020</b>
(Dollars in thousands)		
Estimated aggregate fair value	\$628,761	\$624,207
Aggregate carrying value (1)	630,366	643,184

(1) Total debt excluding the impact of unamortized debt issuance costs.

**Derivative Financial  
Instruments (Tables)**

**3 Months Ended  
Mar. 31, 2021**

**Derivative Instruments And  
Hedging Activities Disclosure**

**[Abstract]**

**Summary of Fair Value of  
Derivatives by Balance Sheet Line  
Item**

The following tables display the fair value of derivatives by balance sheet line item at March 31, 2021 and December 31, 2020:

	March 31, 2021			
	Other Current Assets	Other Non- current Assets	Accrued Liabilities	Other Non- current Liabilities
(Dollars in thousands)				
Foreign exchange forward contracts designated as hedging instruments	\$ 537	\$ 3,383	\$ 5,484	\$ 7,504
Foreign exchange forward contracts not designated as hedging instruments	639	—	2,713	—
Aluminum forward contracts designated as hedging instruments	603	—	—	—
Natural gas forward contracts designated as hedging instruments	930	231	1	17
Interest rate swap contracts designated as hedging instruments	—	—	4,732	2,992
<b>Total derivative financial instruments</b>	<b>\$ 2,709</b>	<b>\$ 3,614</b>	<b>\$ 12,930</b>	<b>\$ 10,513</b>

	December 31, 2020			
	Other Current Assets	Other Non- current Assets	Accrued Liabilities	Other Non- current Liabilities
(Dollars in thousands)				
Foreign exchange forward contracts designated as hedging instruments	\$ 1,218	\$ 6,531	\$ 3,435	\$ 2,645
Foreign exchange forward contracts not designated as hedging instruments	1,167	—	122	—
Aluminum forward contracts designated as hedging instruments	262	—	—	—
Natural gas forward contracts designated as hedging instruments	816	224	22	70
Interest rate swap contracts designated as hedging instruments	—	—	4,771	4,194
<b>Total derivative financial instruments</b>	<b>\$ 3,463</b>	<b>\$ 6,755</b>	<b>\$ 8,350</b>	<b>\$ 6,909</b>



[Summary of Notional Amount and Estimated Fair Value of Derivative Financial Instruments](#)

The following table summarizes the notional amount and estimated fair value of our derivative financial instruments:

	<u>March 31, 2021</u>		<u>December 31, 2020</u>	
	<u>Notional U.S. Dollar Amount</u>	<u>Fair Value</u>	<u>Notional U.S. Dollar Amount</u>	<u>Fair Value</u>
(Dollars in thousands)				
Foreign exchange forward contracts designated as hedging instruments	\$467,197	\$ (9,068)	\$421,253	\$ 1,669
Foreign exchange forward contracts not designated as hedging instruments	75,726	(2,074)	71,217	1,045
Aluminum forward contracts designated as hedging instruments	7,517	603	4,068	262
Natural gas forward contracts designated as hedging instruments	4,871	1,143	5,523	948
Interest rate swap contracts designated as hedging instruments	200,000	(7,724)	200,000	(8,965)
Total derivative financial instruments	<u>\$755,311</u>	<u>\$(17,120)</u>	<u>\$702,061</u>	<u>\$(5,041)</u>

[Summary of Gain or Loss Recognized in AOCI](#)

The following tables summarize the gain or loss recognized in AOCI, the amounts reclassified from AOCI into earnings and the amounts recognized directly into earnings for the three months ended March 31, 2021 and 2020:

<u>Three Months Ended March 31, 2021</u>	<u>Amount of Gain or (Loss) Recognized in AOCI on Derivatives</u>	<u>Amount of Pre-tax Gain or (Loss) Reclassified from AOCI into Income</u>	<u>Amount of Pre-tax Gain or (Loss) Recognized in Income on Derivatives</u>
(Dollars in thousands)			
Derivative Contracts	\$ (8,462)	\$ (439)	\$ (2,904)
Total	<u>\$ (8,462)</u>	<u>\$ (439)</u>	<u>\$ (2,904)</u>

<u>Three Months Ended March 31, 2020</u>	<u>Amount of Gain or (Loss) Recognized in AOCI on Derivatives</u>	<u>Amount of Pre-tax Gain or (Loss) Reclassified from AOCI into Income</u>	<u>Amount of Pre-tax Gain or (Loss) Recognized in Income on Derivatives</u>
(Dollars in thousands)			
Derivative Contracts	\$ (45,297)	\$ (1,114)	\$ (5,439)
Total	<u>\$ (45,297)</u>	<u>\$ (1,114)</u>	<u>\$ (5,439)</u>

## Business Segments (Tables)

**3 Months Ended  
Mar. 31, 2021**

### Segment Reporting [Abstract]

#### Summary of Net Sales and Results of Operations and Total Assets by Reportable Segment

Three months ended	Net Sales		Income from Operations	
	March 31, 2021	March 31, 2020	March 31, 2021	March 31, 2020
	North America	\$ 191,971	\$ 155,551	\$ 17,841
Europe	166,225	145,561	7,878	(189,124)
	<u>\$ 358,196</u>	<u>\$ 301,112</u>	<u>\$ 25,719</u>	<u>\$ (183,015)</u>

Three months ended	Depreciation and Amortization		Capital Expenditures	
	March 31, 2021	March 31, 2020	March 31, 2021	March 31, 2020
	North America	\$ 9,221	\$ 8,805	\$ 4,660
Europe	16,140	15,587	5,819	7,305
	<u>\$ 25,361</u>	<u>\$ 24,392</u>	<u>\$ 10,479</u>	<u>\$ 13,865</u>

Three months ended	Property, Plant and Equipment, net		Intangible Assets	
	March 31, 2021	December 31, 2020	March 31, 2021	December 31, 2020
	North America	\$ 210,688	\$ 220,145	\$ —
Europe	285,971	301,979	99,041	110,796
	<u>\$ 496,659</u>	<u>\$ 522,124</u>	<u>\$ 99,041</u>	<u>\$ 110,796</u>

	Total Assets	
	March 31, 2021	December 31, 2020
	North America	\$ 495,035
Europe	614,755	629,452
	<u>\$ 1,109,790</u>	<u>\$ 1,109,325</u>

Net sales and long-lived assets by location are as follows:

Three months ended	Net Sales	
	March 31, 2021	March 31, 2020
U.S.	\$ 1,270	\$ 16,177
Mexico	190,701	139,374
Germany	60,887	50,038
Poland	105,338	95,523
Consolidated net sales	<u>\$ 358,196</u>	<u>\$ 301,112</u>

(Dollars in  
thousands)

	<b>Property, Plant and Equipment, net</b>	
	<b>March 31, 2021</b>	<b>December 31, 2020</b>
U.S.	\$ 2,894	\$ 7,324
Mexico	207,794	212,821
Germany	79,611	82,162
Poland	206,360	219,817
Property, plant and equipment, net	<u>\$ 496,659</u>	<u>\$ 522,124</u>

## Inventories (Tables)

### 3 Months Ended Mar. 31, 2021

#### [Inventory Disclosure \[Abstract\]](#)

#### [Summary of Inventories](#)

	March 31, 2021	December 31, 2020
(Dollars in thousands)		
Raw materials	\$ 45,093	\$ 46,712
Work in process	53,728	45,394
Finished goods	65,874	62,874
Inventories, net	<u>\$164,695</u>	<u>\$154,980</u>

**Property, Plant and  
Equipment (Tables)**

**3 Months Ended  
Mar. 31, 2021**

**[Property Plant And Equipment \[Abstract\]](#)  
Schedule of Property, Plant and Equipment**

	<u>March 31, 2021</u>	<u>December 31, 2020</u>
(Dollars in thousands)		
Land and buildings	\$ 144,491	\$ 149,295
Machinery and equipment	867,347	899,764
Leasehold improvements and others	14,470	14,912
Construction in progress	<u>41,549</u>	<u>46,718</u>
	<u>1,067,857</u>	<u>1,110,689</u>
Accumulated depreciation	<u>(571,198)</u>	<u>(588,565)</u>
Property, plant and equipment, net	<u><u>\$ 496,659</u></u>	<u><u>\$ 522,124</u></u>

**Goodwill and Other  
Intangible Assets (Tables)**

**3 Months Ended  
Mar. 31, 2021**

[Goodwill And Intangible  
Assets Disclosure \[Abstract\]  
Summary of Finite-Lived and  
Indefinite-Lived Intangible  
Assets](#)

Following is a summary of the Company's finite-lived and indefinite-lived intangible assets and goodwill as of March 31, 2021 and December 31, 2020.

	<u>Gross Carrying Amount</u>	<u>Accumulated Impairment</u>	<u>Accumulated Amortization</u>	<u>Currency Translation</u>	<u>Net Carrying Amount</u>	<u>Remaining Weighted Average Amortization Period</u>
<b>As of March 31, 2021</b>						
(Dollars in thousands)						
Brand name	\$ 9,000	\$ —	\$ (7,094)	\$ 281	\$ 2,187	2-3
Technology	15,000	—	(11,823)	469	3,646	1-3
Customer relationships	167,000	—	(79,706)	5,914	93,208	3-8
Total finite	191,000	—	(98,623)	6,664	99,041	
Trade names	14,000	(13,772)	—	(228)	—	Indefinite
Total intangibles	<u>\$205,000</u>	<u>\$ (13,772)</u>	<u>\$ (98,623)</u>	<u>\$ 6,436</u>	<u>\$99,041</u>	

	<u>Gross Carrying Amount</u>	<u>Accumulated Impairment</u>	<u>Accumulated Amortization</u>	<u>Currency Translation</u>	<u>Net Carrying Amount</u>	<u>Remaining Weighted Average Amortization Period</u>
<b>As of December 31, 2020</b>						
(Dollars in thousands)						
Brand name	\$ 9,000	\$ —	\$ (6,615)	\$ 399	\$ 2,784	2-3
Technology	15,000	—	(11,024)	666	4,642	1-3
Customer relationships	167,000	—	(74,322)	10,692	103,370	3-8
Total finite	191,000	—	(91,961)	11,757	110,796	
Trade names	14,000	(13,772)	—	(228)	—	Indefinite
Total intangibles	<u>\$205,000</u>	<u>\$ (13,772)</u>	<u>\$ (91,961)</u>	<u>\$ 11,529</u>	<u>\$110,796</u>	

**Year  
Ended  
December  
31, 2020**

	<u>Beginning Balance</u>				<u>Ending Balance</u>			
	<u>Gross</u>	<u>Accumulated Impairment</u>	<u>Net Balance</u>	<u>Impairment</u>	<u>Currency Translation</u>	<u>Gross</u>	<u>Accumulated Impairment</u>	<u>Net Balance</u>
(Dollars in thousands)								
Goodwill	<u>\$284,337</u>	<u>\$ (99,505)</u>	<u>\$184,832</u>	<u>\$(182,602)</u>	<u>\$ (2,230)</u>	<u>\$282,107</u>	<u>\$ (282,107)</u>	<u>\$ —</u>

## Debt (Tables)

**3 Months Ended**  
**Mar. 31, 2021**

### [Debt Disclosure \[Abstract\]](#)

### [Summary of Long-Term Debt and Related Weighted Average Interest Rates](#)

A summary of long-term debt and the related weighted average interest rates is shown below:

Debt Instrument	March 31, 2021 (Dollars in Thousands)			Weighted Average Interest Rate
	Total Debt	Debt Issuance Costs (1)	Total Debt, Net	
Term Loan Facility	\$349,200	\$ (6,531)	\$342,669	4.1%
6.00% Senior Notes	254,318	(4,179)	250,139	6.0%
European CapEx Loans	23,354	—	23,354	2.3%
Finance Leases	3,494	—	3,494	2.9%
	<u>\$630,366</u>	<u>\$(10,710)</u>	619,656	
Less: Current portion			(6,516)	
Long-term debt			<u>\$613,140</u>	

Debt Instrument	December 31, 2020 (Dollars in Thousands)			Weighted Average Interest Rate
	Total Debt	Debt Issuance Costs (1)	Total Debt, Net	
Term Loan Facility	\$349,200	\$ (7,155)	\$342,045	4.1%
6.00% Senior Notes	266,928	(4,425)	262,503	6.0%
European CapEx Loans	23,668	—	23,668	2.3%
Finance Leases	3,388	—	3,388	3.0%
	<u>\$643,184</u>	<u>\$(11,580)</u>	631,604	
Less: Current portion			(6,112)	
Long-term debt			<u>\$625,492</u>	

(1)Unamortized portion

### [Schedule of Debt Maturities](#)

Debt maturities as of March 31, 2021 which are due in the next five years and thereafter are as follows:

(Dollars in thousands)	
Debt Maturities	Amount
Nine remaining months of 2021	\$ 4,987
2022	6,334
2023	5,922
2024	352,360
2025	256,621



Thereafter	4,142
Total debt liabilities	<u>\$ 630,366</u>

**European Non-Controlling  
Redeemable Equity (Tables)**

**3 Months Ended  
Mar. 31, 2021**

[Noncontrolling Interest](#)

[\[Abstract\]](#)

[Summary of Redeemable  
Noncontrolling Interests](#)

The following table summarizes the European non-controlling redeemable equity activity through the period ended March 31, 2021

(Dollars in thousands)	
Balance at December 31, 2019	\$ 6,525
Dividends accrued	205
Dividends paid	(46)
Translation adjustment	2
Purchase of shares	(5,020)
Balance at December 31, 2020	1,666
Dividends accrued	13
Dividends paid	—
Translation adjustment	(79)
Purchase of shares	(9)
Balance at March 31, 2021	<u>\$ 1,591</u>

## Earnings Per Share (Tables)

**3 Months Ended  
Mar. 31, 2021**

[Earnings Per Share \[Abstract\]](#)  
[Schedule of Earnings Per Share, Basic and Diluted](#)

	<b>Three Months Ended</b>	
	<b>March 31, 2021</b>	<b>March 31, 2020</b>
(Dollars in thousands, except per share amounts)		
<b>Basic Earnings Per Share:</b>		
Net income (loss)	\$ 13,122	\$ (190,082)
Less: Redeemable preferred stock dividends and accretion	(8,290)	(7,850)
Less: European non-controlling redeemable equity dividend	(13)	(20)
Basic numerator	<u>\$ 4,819</u>	<u>\$ (197,952)</u>
Basic earnings (loss) per share	<u>\$ 0.19</u>	<u>\$ (7.84)</u>
Weighted average shares outstanding – Basic	<u>25,707</u>	<u>25,243</u>
<b>Diluted Earnings Per Share:</b>		
Net income (loss)	\$ 13,122	\$ (190,082)
Less: Redeemable preferred stock dividends and accretion	(8,290)	(7,850)
Less: European non-controlling redeemable equity dividend	(13)	(20)
Diluted numerator	<u>\$ 4,819</u>	<u>\$ (197,952)</u>
Diluted earnings (loss) per share	<u>\$ 0.18</u>	<u>\$ (7.84)</u>
Weighted average shares outstanding – Basic	25,707	25,243
Dilutive effect of common share equivalents	980	—
Weighted average shares outstanding – Diluted	<u>26,687</u>	<u>25,243</u>

## Leases (Tables)

**3 Months Ended**  
**Mar. 31, 2021**

### [Leases \[Abstract\]](#)

### [Schedule of Lease Expense, Cash Flow, Operating and Finance Lease Assets and Liabilities, Average Lease Term and Average Discount Rate](#)

Lease expense and cash flow for the three months ended March 31, 2021 and 2020 and operating and finance lease assets and liabilities, average lease term and average discount rate as of March 31, 2021 and December 31, 2020 are as follows:

	<b>Three Months Ended</b>	
	<b>March 31, 2021</b>	<b>March 31, 2020</b>
(Dollars in thousands)		
<b>Lease Expense</b>		
Finance lease expense:		
Amortization of right-of-use assets	\$ 321	\$ 354
Interest on lease liabilities	22	22
Operating lease expense	857	845
Total lease expense	<u>\$ 1,200</u>	<u>\$ 1,221</u>

### **Cash Flow Components**

Cash paid for amounts included in the measurement of lease liabilities:

Operating cash outflows from finance leases	\$ 22	\$ 22
Operating cash outflows from operating leases	932	891
Financing cash outflows from finance leases	288	292
Right-of-use assets obtained in exchange for finance lease liabilities, net of terminations and disposals	756	148
Right-of-use assets obtained in exchange for operating lease liabilities, net of terminations and disposals	152	65

	<b>March 31, 2021</b>	<b>December 31, 2020</b>
(Dollars in thousands, except lease term and discount rate)		

### **Balance Sheet Information**

Operating leases:

Other non-current assets	<u>\$ 12,705</u>	<u>\$ 13,598</u>
Accrued liabilities	\$ (2,672)	\$ (2,868)
Other non-current liabilities	(10,718)	(11,513)
Total operating lease liabilities	<u>\$ (13,390)</u>	<u>\$ (14,381)</u>

Finance leases:

Property, plant and equipment gross	\$ 6,506	\$ 5,735
Accumulated depreciation	(3,640)	(3,319)
Property, plant and equipment, net	<u>\$ 2,866</u>	<u>\$ 2,416</u>
Current portion of long-term debt	\$ (1,240)	\$ (1,113)
Long-term debt (less current portion)	(2,254)	(2,275)
Total finance lease liabilities	<u>\$ (3,494)</u>	<u>\$ (3,388)</u>

[Schedule of Future Minimum Rental Payments Under Finance and Operating Leases](#)

**Lease Term and Discount Rates**

Weighted-average remaining lease term - finance leases (years)	3.9	3.9
Weighted-average remaining lease term - operating leases (years)	5.9	6.1
Weighted-average discount rate - finance leases	2.9%	3.0%
Weighted-average discount rate - operating leases	3.7%	3.8%

Summarized future minimum payments under our leases as of March 31, 2021 are as follows:

	Amount	
	Finance Leases	Operating Leases
(Dollars in thousands)		
<b>Lease Maturities</b>		
Nine remaining months of 2021	\$ 1,030	\$ 2,412
2022	1,058	2,782
2023	647	2,418
2024	228	2,194
2025	153	2,145
Thereafter	555	2,803
Total	3,671	14,754
Less: Imputed interest	(177)	(1,364)
Total lease liabilities, net of interest	<u>\$ 3,494</u>	<u>\$ 13,390</u>

## Retirement Plans (Tables)

**3 Months Ended  
Mar. 31, 2021**

### [Compensation And Retirement Disclosure \[Abstract\]](#)

#### [Summary of Components of Net Periodic Pension Cost](#)

The following table summarizes the components of net periodic pension cost for the three months ended March 31, 2021 and 2020.

	Three Months Ended	
	March 31, 2021	March 31, 2020
(Dollars in thousands)		
Interest cost	\$ 206	\$ 251
Net amortization	97	72
Net periodic pension cost	<u>\$ 303</u>	<u>\$ 323</u>

**Stock-Based Compensation  
(Tables)**

**3 Months Ended  
Mar. 31, 2021**

**[Disclosure Of Compensation Related  
Costs Sharebased Payments \[Abstract\]  
Summary of Restricted Stock Unit and  
Restricted Performance Stock Unit Activity](#)**

Restricted stock unit and restricted performance stock unit activity for the three months ended March 31, 2021 is summarized in the following table:

	Equity Incentive Awards					
	Restricted Stock Units	Weighted Average Grant Date Fair Value	Performance Shares	Weighted Average Grant Date Fair Value	Options	Weighted Average Exercise Price
Balance at December 31, 2020	1,213,667	\$ 3.59	2,176,290	\$ 4.88	24,000	\$ 20.39
Granted	1,787	5.41	21,352	5.67	—	—
Settled	(388,504)	4.05	(193,778)	5.45	—	—
Forfeited or expired	(31,092)	8.25	(142,769)	12.96	—	—
Balance at March 31, 2021	<u>795,858</u>	\$ 3.19	<u>1,861,095</u>	\$ 6.05	<u>24,000</u>	\$ 20.39
Awards estimated to vest in the future	724,142	\$ 3.16	1,341,900	\$ 6.09	24,000	\$ 20.39



**Nature of Operations and  
Presentation of Condensed  
Consolidated Financial  
Statements - Additional  
Information (Detail)  
\$ in Millions**

**3 Months Ended**

	<b>Mar. 31, 2021 USD (\$)</b>	<b>Mar. 31, 2020 USD (\$)</b>
	<b>Employee</b>	
	<b>Manufacturing Facility</b>	

**New Accounting Pronouncements Or Change In Accounting Principle**

**[Line Items]**

<u>Number of employees   Employee</u>	7,600	
<u>Number of manufacturing facilities   Manufacturing Facility</u>	8	
<u>Cash paid for interest</u>	\$ 5.2	\$ 6.0
<u>Net cash income taxes paid</u>	2.8	4.4
<u>Noncash or part noncash acquisition, fixed assets acquired</u>	\$ 4.3	\$ 4.1
<u>Sales [Member]   Customer Concentration Risk [Member]</u>		

**New Accounting Pronouncements Or Change In Accounting Principle**

**[Line Items]**

<u>Concentration risk, percentage</u>	93.00%	
---------------------------------------	--------	--

**Revenue - Summary of  
Opening and Closing  
Balances of Company's  
Customer Receivables and  
Current and Long-term  
Contract Liabilities (Detail) -  
USD (\$)**

**Mar. 31,  
2021**                      **Dec. 31,  
2020**

**\$ in Thousands**

**Revenue, Initial Application Period Cumulative Effect Transition [Line Items]**

<u>Customer receivables</u>	\$ 75,518	\$ 40,785
<u>Contract liabilities—current</u>	7,983	8,249
<u>Contract liabilities—noncurrent</u>	12,165	\$ 13,106
<u>Difference between Revenue Guidance in Effect before and after Topic 606 [Member]</u>		

**Revenue, Initial Application Period Cumulative Effect Transition [Line Items]**

<u>Customer receivables</u>	34,733	
<u>Contract liabilities—current</u>	(266)	
<u>Contract liabilities—noncurrent</u>	\$ (941)	

**Fair Value Measurements -  
Recurring (Detail) -  
Recurring [Member] - USD Mar. 31, 2021 Dec. 31, 2020  
(\$)  
\$ in Thousands**

**Assets**

<u>Derivative contracts</u>	\$ 6,323	\$ 10,218
<u>Total</u>	6,323	10,218

**Liabilities**

<u>Derivative contracts</u>	23,443	15,259
<u>Total</u>	23,443	15,259

**Level 2 [Member]**

**Assets**

<u>Derivative contracts</u>	6,323	10,218
<u>Total</u>	6,323	10,218

**Liabilities**

<u>Derivative contracts</u>	23,443	15,259
<u>Total</u>	\$ 23,443	\$ 15,259

**Fair Value Measurements -  
Schedule of Carrying Values  
and Estimated Fair Values of  
Debt Instruments (Detail) -**

**Mar. 31, 2021 Dec. 31, 2020**

**USD (\$)**

**\$ in Thousands**

**Derivative Instrument Detail [Abstract]**

<u>Estimated aggregate fair value</u>	\$ 628,761	\$ 624,207
<u>Aggregate carrying value</u>	\$ 630,366	\$ 643,184

**Derivative Financial  
Instruments - Additional  
Information (Detail)**

**3 Months Ended**

**Mar. 31, 2021**

**Derivative Instruments And**

**Hedging Activities**

**Disclosure [Abstract]**

Derivative instruments  
objectives

We use derivatives to partially offset our exposure to foreign currency, interest rate, aluminum and other commodity price risks. We may enter into forward contracts, option contracts, swaps, collars or other derivative instruments to offset some of the risk on expected future cash flows and on certain existing assets and liabilities.

Maximum length of time,  
foreign currency cash flow  
hedge

48 months

**Derivative Financial  
Instruments - Summary of  
Fair Value of Derivatives by  
Balance Sheet Line Item  
(Detail) - USD (\$)  
\$ in Thousands**

**Mar. 31, Dec. 31,  
2021 2020**

<a href="#">Other Current Assets [Member]</a>		
<b><a href="#">Derivatives, Fair Value [Line Items]</a></b>		
<a href="#">Fair value of derivative assets</a>	\$ 2,709	\$ 3,463
<a href="#">Other Non-current Assets [Member]</a>		
<b><a href="#">Derivatives, Fair Value [Line Items]</a></b>		
<a href="#">Fair value of derivative assets</a>	3,614	6,755
<a href="#">Accrued Liabilities [Member]</a>		
<b><a href="#">Derivatives, Fair Value [Line Items]</a></b>		
<a href="#">Fair value of derivative liabilities</a>	12,930	8,350
<a href="#">Other Non-current Liabilities [Member]</a>		
<b><a href="#">Derivatives, Fair Value [Line Items]</a></b>		
<a href="#">Fair value of derivative liabilities</a>	10,513	6,909
<a href="#">Designated as Hedging Instrument [Member]   Natural Gas [Member]   Other Current Assets [Member]</a>		
<b><a href="#">Derivatives, Fair Value [Line Items]</a></b>		
<a href="#">Fair value of derivative assets</a>	930	816
<a href="#">Designated as Hedging Instrument [Member]   Natural Gas [Member]   Other Non-current Assets [Member]</a>		
<b><a href="#">Derivatives, Fair Value [Line Items]</a></b>		
<a href="#">Fair value of derivative assets</a>	231	224
<a href="#">Designated as Hedging Instrument [Member]   Natural Gas [Member]   Accrued Liabilities [Member]</a>		
<b><a href="#">Derivatives, Fair Value [Line Items]</a></b>		
<a href="#">Fair value of derivative liabilities</a>	1	22
<a href="#">Designated as Hedging Instrument [Member]   Natural Gas [Member]   Other Non-current Liabilities [Member]</a>		
<b><a href="#">Derivatives, Fair Value [Line Items]</a></b>		
<a href="#">Fair value of derivative liabilities</a>	17	70
<a href="#">Foreign Exchange Forward Contracts [Member]   Designated as Hedging Instrument [Member]   Other Current Assets [Member]</a>		
<b><a href="#">Derivatives, Fair Value [Line Items]</a></b>		
<a href="#">Fair value of derivative assets</a>	537	1,218
<a href="#">Foreign Exchange Forward Contracts [Member]   Designated as Hedging Instrument [Member]   Other Non-current Assets [Member]</a>		
<b><a href="#">Derivatives, Fair Value [Line Items]</a></b>		
<a href="#">Fair value of derivative assets</a>	3,383	6,531
<a href="#">Foreign Exchange Forward Contracts [Member]   Designated as Hedging Instrument [Member]   Accrued Liabilities [Member]</a>		

<b><u>Derivatives, Fair Value [Line Items]</u></b>		
<u>Fair value of derivative liabilities</u>	5,484	3,435
<u>Foreign Exchange Forward Contracts [Member]   Designated as Hedging Instrument [Member]   Other Non-current Liabilities [Member]</u>		
<b><u>Derivatives, Fair Value [Line Items]</u></b>		
<u>Fair value of derivative liabilities</u>	7,504	2,645
<u>Foreign Exchange Forward Contracts [Member]   Not Designated as Hedging Instrument [Member]   Other Current Assets [Member]</u>		
<b><u>Derivatives, Fair Value [Line Items]</u></b>		
<u>Fair value of derivative assets</u>	639	1,167
<u>Foreign Exchange Forward Contracts [Member]   Not Designated as Hedging Instrument [Member]   Accrued Liabilities [Member]</u>		
<b><u>Derivatives, Fair Value [Line Items]</u></b>		
<u>Fair value of derivative liabilities</u>	2,713	122
<u>Aluminum Forward Contracts [Member]   Designated as Hedging Instrument [Member]   Other Current Assets [Member]</u>		
<b><u>Derivatives, Fair Value [Line Items]</u></b>		
<u>Fair value of derivative assets</u>	603	262
<u>Interest Rate Swap Contracts Designated as Hedges [Member]   Designated as Hedging Instrument [Member]   Accrued Liabilities [Member]</u>		
<b><u>Derivatives, Fair Value [Line Items]</u></b>		
<u>Fair value of derivative liabilities</u>	4,732	4,771
<u>Interest Rate Swap Contracts Designated as Hedges [Member]   Designated as Hedging Instrument [Member]   Other Non-current Liabilities [Member]</u>		
<b><u>Derivatives, Fair Value [Line Items]</u></b>		
<u>Fair value of derivative liabilities</u>	\$ 2,992	\$ 4,194



**Derivative Financial  
Instruments - Summary of  
Notional Amount and  
Estimated Fair Value of  
Derivative Financial  
Instruments (Detail) - USD  
(\$)**

**Mar. 31, Dec. 31,  
2021 2020**

**\$ in Thousands**

**Derivatives, Fair Value [Line Items]**

Derivative Asset, Notional Amount

\$ 755,311 \$ 702,061

Derivative, Fair Value, Net

(17,120) (5,041)

Designated as Hedging Instrument [Member] | Natural Gas [Member]

**Derivatives, Fair Value [Line Items]**

Derivative Asset, Notional Amount

4,871 5,523

Derivative, Fair Value, Net

1,143 948

Designated as Hedging Instrument [Member] | Foreign Exchange Forward Contracts

Designated as Hedging Instruments [Member]

**Derivatives, Fair Value [Line Items]**

Derivative Asset, Notional Amount

467,197 421,253

Derivative, Fair Value, Net

(9,068) 1,669

Designated as Hedging Instrument [Member] | Aluminum Forward Contracts [Member]

**Derivatives, Fair Value [Line Items]**

Derivative Asset, Notional Amount

7,517 4,068

Derivative, Fair Value, Net

603 262

Designated as Hedging Instrument [Member] | Interest Rate Swap Contracts Designated as

Hedges [Member]

**Derivatives, Fair Value [Line Items]**

Derivative Asset, Notional Amount

200,000 200,000

Derivative, Fair Value, Net

(7,724) (8,965)

Not Designated as Hedging Instrument [Member] | Foreign Exchange Forward Contracts

Designated as Hedging Instruments [Member]

**Derivatives, Fair Value [Line Items]**

Derivative Asset, Notional Amount

75,726 71,217

Derivative, Fair Value, Net

\$ (2,074) \$ 1,045

**Derivative Financial  
Instruments - Summary of  
Gain or Loss Recognized in  
AOCI (Detail) - USD (\$)  
\$ in Thousands**

**3 Months Ended**

**Mar. 31, 2021 Mar. 31, 2020**

**Derivatives, Fair Value [Line Items]**

<u>Amount of Gain or (Loss) Recognized in AOCI on Derivatives</u>	\$ (8,462)	\$ (45,297)
<u>Amount of Pre-tax Gain or (Loss) Reclassified from AOCI into Income</u>	(439)	(1,114)
<u>Amount of Pre-tax Gain or (Loss) Recognized in Income on Derivatives</u>	(2,904)	(5,439)

Derivative [Member]

**Derivatives, Fair Value [Line Items]**

<u>Amount of Gain or (Loss) Recognized in AOCI on Derivatives</u>	(8,462)	(45,297)
<u>Amount of Pre-tax Gain or (Loss) Reclassified from AOCI into Income</u>	(439)	(1,114)
<u>Amount of Pre-tax Gain or (Loss) Recognized in Income on Derivatives</u>	\$ (2,904)	\$ (5,439)

**Business Segments -  
Summary of Net Sales and  
Results of Operations and  
Total Assets by Reportable  
Segment (Detail) - USD (\$)  
\$ in Thousands**

**3 Months Ended**

**Mar. 31,      Mar. 31,      Dec. 31,  
2021            2020            2020**

**Revenues from External Customers and Long-Lived Assets [Line Items]**

<u>Net Sales</u>	\$ 358,196	\$ 301,112	
<u>Income from Operations</u>	25,719	(183,015)	
<u>Depreciation and Amortization</u>	25,361	24,392	
<u>Capital Expenditures</u>	10,479	13,865	
<u>Property, Plant and Equipment, net</u>	496,659		\$ 522,124
<u>Intangible Assets</u>	99,041		110,796
<u>Total assets</u>	1,109,790		1,109,325

North America [Member]

**Revenues from External Customers and Long-Lived Assets [Line Items]**

<u>Net Sales</u>	191,971	155,551	
<u>Income from Operations</u>	17,841	6,109	
<u>Depreciation and Amortization</u>	9,221	8,805	
<u>Capital Expenditures</u>	4,660	6,560	
<u>Property, Plant and Equipment, net</u>	210,688		220,145
<u>Total assets</u>	495,035		479,873

Europe [Member]

**Revenues from External Customers and Long-Lived Assets [Line Items]**

<u>Net Sales</u>	166,225	145,561	
<u>Income from Operations</u>	7,878	(189,124)	
<u>Depreciation and Amortization</u>	16,140	15,587	
<u>Capital Expenditures</u>	5,819	\$ 7,305	
<u>Property, Plant and Equipment, net</u>	285,971		301,979
<u>Intangible Assets</u>	99,041		110,796
<u>Total assets</u>	\$ 614,755		\$ 629,452

**Business Segments - Net  
Sales and Long-Lived Assets  
by Location (Detail) - USD  
(\$)**

**3 Months Ended**

**Mar. 31,      Mar. 31,      Dec. 31,  
2021            2020            2020**

**\$ in Thousands**

**Revenues from External Customers and Long-Lived Assets [Line  
Items]**

<u>Net Sales</u>	\$ 358,196	\$ 301,112	
<u>Property, Plant and Equipment, net U.S. [Member]</u>	496,659		\$ 522,124

**Revenues from External Customers and Long-Lived Assets [Line  
Items]**

<u>Net Sales</u>	1,270	16,177	
<u>Property, Plant and Equipment, net Mexico [Member]</u>	2,894		7,324

**Revenues from External Customers and Long-Lived Assets [Line  
Items]**

<u>Net Sales</u>	190,701	139,374	
<u>Property, Plant and Equipment, net Germany [Member]</u>	207,794		212,821

**Revenues from External Customers and Long-Lived Assets [Line  
Items]**

<u>Net Sales</u>	60,887	50,038	
<u>Property, Plant and Equipment, net Poland [Member]</u>	79,611		82,162

**Revenues from External Customers and Long-Lived Assets [Line  
Items]**

<u>Net Sales</u>	105,338	\$ 95,523	
<u>Property, Plant and Equipment, net</u>	\$ 206,360		\$ 219,817

**Inventories - Summary of  
Inventories (Detail) - USD  
(\$)  
\$ in Thousands**

**Mar. 31, 2021 Dec. 31, 2020**

**[Inventory Disclosure \[Abstract\]](#)**

<u><a href="#">Raw materials</a></u>	\$ 45,093	\$ 46,712
<u><a href="#">Work in process</a></u>	53,728	45,394
<u><a href="#">Finished goods</a></u>	65,874	62,874
<u><a href="#">Inventories, net</a></u>	\$ 164,695	\$ 154,980

**Inventories - Additional  
Information (Detail) - USD**      **Mar. 31, 2021 Dec. 31, 2020**  
(**\$**)  
**\$ in Millions**

[Inventory Disclosure \[Abstract\]](#)

<a href="#">Inventory, non-current</a>	\$ 10.7	\$ 12.1
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**Property, Plant and  
Equipment - Schedule of  
Property, Plant and  
Equipment (Detail) - USD (\$)  
\$ in Thousands**

**Mar. 31, 2021 Dec. 31, 2020**

**Property, Plant and Equipment [Line Items]**

<u>Property, plant and equipment, gross</u>	\$ 1,067,857	\$ 1,110,689
<u>Accumulated depreciation</u>	(571,198)	(588,565)
<u>Property, plant and equipment, net</u>	496,659	522,124

Land and Buildings [Member]

**Property, Plant and Equipment [Line Items]**

<u>Property, plant and equipment, gross</u>	144,491	149,295
<u>Production Machinery and Technical Equipment [Member]</u>		

**Property, Plant and Equipment [Line Items]**

<u>Property, plant and equipment, gross</u>	867,347	899,764
<u>Leasehold Improvements and Other [Member]</u>		

**Property, Plant and Equipment [Line Items]**

<u>Property, plant and equipment, gross</u>	14,470	14,912
<u>Construction in Progress [Member]</u>		

**Property, Plant and Equipment [Line Items]**

<u>Property, plant and equipment, gross</u>	\$ 41,549	\$ 46,718
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**Property, Plant and  
Equipment - Additional  
Information (Detail) - USD  
(\$)**

**3 Months Ended**

**Mar. 31, 2021 Mar. 31, 2020**

**\$ in Millions**

**[Property Plant And Equipment \[Abstract\]](#)**

<u>Depreciation expense</u>	\$ 18.7	\$ 18.3
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<b>Goodwill and Other Intangible Assets - Additional Information (Detail) - USD (\$) \$ in Thousands</b>	<b>3 Months Ended</b>		<b>12 Months Ended</b>	
	<b>Mar. 31, 2021</b>	<b>Mar. 31, 2020</b>	<b>Dec. 31, 2020</b>	<b>Dec. 31, 2019</b>
<b><u>Finite-Lived Intangible Assets [Line Items]</u></b>				
<u>Non-cash impairment charge recognized</u>	\$ 13,772		\$ 13,772	
<u>Impairment charges</u>		\$ 193,600		\$ 102,200
<u>Weighted income approach to determine the fair value of the company's reporting units</u>		75.00%		
<u>Weighted market approach to determine the fair value of the company's reporting units</u>		25.00%		
<u>Amortization of intangible assets</u>	6,700	\$ 6,100		
<b><u>Finite-Lived Intangible Assets, Net, Amortization Expense, Fiscal Year Maturity [Abstract]</u></b>				
<u>2021</u>	26,100			
<u>2022</u>	23,200			
<u>2023</u>	21,100			
<u>2024</u>	21,100			
<u>2025</u>	\$ 10,400			
<u>Market Approach Valuation Technique [Member]</u>				
<b><u>Finite-Lived Intangible Assets [Line Items]</u></b>				
<u>Fair value measurements valuation process multiple used</u>		4.9X EBITDA		5.7X EBITDA
<u>Measurement Input, Discount Rate [Member]</u>				
<b><u>Finite-Lived Intangible Assets [Line Items]</u></b>				
<u>Discount rate</u>		12.00%		10.00%
<u>Measurement Input, Long-term Revenue Growth Rate [Member]</u>				
<b><u>Finite-Lived Intangible Assets [Line Items]</u></b>				
<u>Long-term growth rate</u>		1.50%		2.00%
<u>Trade Names [Member]</u>				
<b><u>Finite-Lived Intangible Assets [Line Items]</u></b>				
<u>Non-cash impairment charge recognized</u>		\$ 11,000		
<u>European Operations [Member]</u>				
<b><u>Finite-Lived Intangible Assets [Line Items]</u></b>				
<u>Amount of fair value in excess of carrying value</u>		\$ 182,600		

<b>Goodwill and Other Intangible Assets - Summary of Finite-Lived and Indefinite-Lived Intangible Assets (Detail) - USD (\$) \$ in Thousands</b>	<b>3 Months Ended</b>	<b>12 Months Ended</b>
	<b>Mar. 31, 2021</b>	<b>Dec. 31, 2020</b>
<b><u>Finite-Lived Intangible Assets [Line Items]</u></b>		
<u>Finite-lived Intangible Assets, Gross Carrying Amount</u>	\$ 191,000	\$ 191,000
<u>Accumulated Amortization</u>	(98,623)	(91,961)
<u>Finite-lived Intangible Assets, Currency Translation</u>	6,664	11,757
<u>Finite lived Intangible Assets, Net</u>	99,041	110,796
<u>Indefinite lived Intangible Assets, Gross Carrying Amount</u>	14,000	14,000
<u>Indefinite lived Intangible Assets, Gross Carrying Amount, Accumulated Impairment</u>	(13,772)	(13,772)
<u>Indefinite lived Intangible Assets, Currency Translation</u>	(228)	(228)
<u>Gross Carrying Amount</u>	205,000	205,000
<u>Accumulated Impairment</u>	(13,772)	(13,772)
<u>Currency Translation</u>	6,436	11,529
<u>Intangibles, net</u>	99,041	110,796
<u>Goodwill Gross, Beginning Balance</u>	282,107	284,337
<u>Goodwill Accumulated Impairment, Beginning Balance</u>	(282,107)	(99,505)
<u>Goodwill Net Balance, Beginning Balance</u>		184,832
<u>Goodwill, Impairment</u>		(182,602)
<u>Goodwill, Currency Translation</u>		(2,230)
<u>Goodwill Gross, Ending Balance</u>		282,107
<u>Goodwill Accumulated Impairment, Ending Balance</u>		(282,107)
<u>Brand Name [Member]</u>		
<b><u>Finite-Lived Intangible Assets [Line Items]</u></b>		
<u>Finite-lived Intangible Assets, Gross Carrying Amount</u>	9,000	9,000
<u>Accumulated Amortization</u>	(7,094)	(6,615)
<u>Finite-lived Intangible Assets, Currency Translation</u>	281	399
<u>Finite lived Intangible Assets, Net</u>	\$ 2,187	\$ 2,784
<u>Brand Name [Member]   Minimum [Member]</u>		
<b><u>Finite-Lived Intangible Assets [Line Items]</u></b>		
<u>Remaining Weighted Average Amortization Period</u>	2 years	2 years
<u>Brand Name [Member]   Maximum [Member]</u>		
<b><u>Finite-Lived Intangible Assets [Line Items]</u></b>		
<u>Remaining Weighted Average Amortization Period</u>	3 years	3 years
<u>Technology [Member]</u>		
<b><u>Finite-Lived Intangible Assets [Line Items]</u></b>		
<u>Finite-lived Intangible Assets, Gross Carrying Amount</u>	\$ 15,000	\$ 15,000
<u>Accumulated Amortization</u>	(11,823)	(11,024)
<u>Finite-lived Intangible Assets, Currency Translation</u>	469	666
<u>Finite lived Intangible Assets, Net</u>	\$ 3,646	\$ 4,642

<u>Technology [Member]   Minimum [Member]</u>		
<b><u>Finite-Lived Intangible Assets [Line Items]</u></b>		
<u>Remaining Weighted Average Amortization Period</u>	1 year	1 year
<u>Technology [Member]   Maximum [Member]</u>		
<b><u>Finite-Lived Intangible Assets [Line Items]</u></b>		
<u>Remaining Weighted Average Amortization Period</u>	3 years	3 years
<u>Customer Relationships [Member]</u>		
<b><u>Finite-Lived Intangible Assets [Line Items]</u></b>		
<u>Finite-lived Intangible Assets, Gross Carrying Amount</u>	\$ 167,000	\$ 167,000
<u>Accumulated Amortization</u>	(79,706)	(74,322)
<u>Finite-lived Intangible Assets, Currency Translation</u>	5,914	10,692
<u>Finite lived Intangible Assets, Net</u>	\$ 93,208	\$ 103,370
<u>Customer Relationships [Member]   Minimum [Member]</u>		
<b><u>Finite-Lived Intangible Assets [Line Items]</u></b>		
<u>Remaining Weighted Average Amortization Period</u>	3 years	3 years
<u>Customer Relationships [Member]   Maximum [Member]</u>		
<b><u>Finite-Lived Intangible Assets [Line Items]</u></b>		
<u>Remaining Weighted Average Amortization Period</u>	8 years	8 years

**Debt - Summary of Long-  
Term Debt and Related  
Weighted Average Interest  
Rates (Detail) - USD (\$)  
\$ in Thousands**

**Mar. 31, 2021 Dec. 31, 2020**

**Debt Instrument [Line Items]**

<u>Total Debt</u>	\$ 630,366	\$ 643,184
<u>Debt Issuance Costs</u>	(10,710)	(11,580)
<u>Total Debt, Net</u>	619,656	631,604
<u>Less: Current portion</u>	(6,516)	(6,112)
<u>Long-term debt</u>	613,140	625,492

**Term Loan Facility [Member]**

**Debt Instrument [Line Items]**

<u>Total Debt</u>	349,200	349,200
<u>Debt Issuance Costs</u>	(6,531)	(7,155)
<u>Total Debt, Net</u>	\$ 342,669	\$ 342,045
<u>Weighted Average Interest Rate</u>	4.10%	4.10%

**Senior Notes [Member] | 6.00% Senior Notes [Member]**

**Debt Instrument [Line Items]**

<u>Total Debt</u>	\$ 254,318	\$ 266,928
<u>Debt Issuance Costs</u>	(4,179)	(4,425)
<u>Total Debt, Net</u>	\$ 250,139	\$ 262,503
<u>Weighted Average Interest Rate</u>	6.00%	6.00%

**European CapEx Loans [Member]**

**Debt Instrument [Line Items]**

<u>Total Debt</u>	\$ 23,354	\$ 23,668
<u>Total Debt, Net</u>	\$ 23,354	\$ 23,668
<u>Weighted Average Interest Rate</u>	2.30%	2.30%

**Finance Leases [Member]**

**Debt Instrument [Line Items]**

<u>Total Debt</u>	\$ 3,494	\$ 3,388
<u>Total Debt, Net</u>	\$ 3,494	\$ 3,388
<u>Weighted Average Interest Rate</u>	2.90%	3.00%

**Debt - Summary of Long-Term Debt and Related Weighted Average Interest Rates (Parenthetical) (Detail)**

**Mar. 31, 2021 Dec. 31, 2020**

[6.00% Senior Notes \[Member\] | Senior Notes \[Member\]](#)

[Debt Instrument \[Line Items\]](#)

<a href="#">Debt instrument, interest rate stated, percentage</a>	6.00%	6.00%
-------------------------------------------------------------------	-------	-------

Debt - Additional Information (Detail)	Jun. 15, 2017 EUR (€)	Mar. 22, 2017 USD (\$)	1 Months Ended		3 Months Ended									
			Jun. 30, 2021 USD (\$)	Jun. 30, 2021 EUR (€)	Mar. 31, 2021 USD (\$)	Mar. 31, 2021 EUR (€)	Dec. 31, 2020 USD (\$)	Mar. 31, 2020 EUR (€)	Dec. 31, 2019 USD (\$)	Jun. 30, 2019 EUR (€)	Mar. 31, 2021 EUR (€)	Jan. 31, 2020 EUR (€)	Dec. 31, 2019 EUR (€)	May 30, 2017 USD (\$)
<a href="#">Debt Instrument [Line Items]</a>														
<a href="#">Debt default, maximum period of failure to comply with obligations, covenants or agreements</a>					60 days	60 days								
<a href="#">Debt default, holder percent to declare all notes due, minimum</a>					30.00%						30.00%			
<a href="#">Term loan facility balance</a>					\$	\$								
					630,366,000	643,184,000								
<a href="#">Long-term debt</a>					\$	\$								
					619,656,000	631,604,000								
<a href="#">Long-term debt, term</a>					5 years						5 years			
<a href="#">European Operations [Member]</a>														
<a href="#">Debt Instrument [Line Items]</a>														
<a href="#">Long-term debt</a>														\$
					\$ 9,400,000									70,700,000
<a href="#">Senior Notes, 6.00%, due 2025 [Member]   Senior Notes [Member]</a>														
<a href="#">Debt Instrument [Line Items]</a>														
<a href="#">Debt Instrument, Face Amount   €</a>		250,000,000.0												
<a href="#">Debt instrument, interest rate stated, percentage</a>		6.00%												
<a href="#">Senior Secured Term Loan Facility [Member]   Senior Notes [Member]</a>														
<a href="#">Debt Instrument [Line Items]</a>														
<a href="#">Amount of term loan facility</a>		\$												
		400,000,000.0												
<a href="#">Line of credit facility maturity date</a>		May 23, 2024												
<a href="#">Repayments under term loan facility</a>					50,800,000									
<a href="#">Term loan facility balance</a>					349,200,000									
<a href="#">Amount outstanding</a>					4,800,000									
<a href="#">Senior Secured Term Loan Facility [Member]   London Interbank Offered Rate (LIBOR) [Member]   Minimum [Member]   Senior Notes [Member]</a>														
<a href="#">Debt Instrument [Line Items]</a>														
<a href="#">Debt instrument, basis spread on variable rate</a>		0.00%												
<a href="#">Senior Secured Term Loan Facility [Member]   London Interbank Offered Rate (LIBOR) [Member]   Maximum [Member]   Senior Notes [Member]</a>														
<a href="#">Debt Instrument [Line Items]</a>														
<a href="#">Debt instrument, basis spread on variable rate</a>		4.00%												
<a href="#">Senior Secured Term Loan Facility [Member]   Base Rate [Member]   Senior Notes [Member]</a>														
<a href="#">Debt Instrument [Line Items]</a>														
<a href="#">Debt instrument, basis spread on variable rate</a>		2.00%												
<a href="#">Senior Secured Term Loan Facility [Member]   Federal Funds Effective Swap Rate [Member]   Senior Notes [Member]</a>														



<a href="#">Debt Instrument [Line Items]</a>					
<a href="#">Debt instrument, basis spread on variable rate</a>	0.50%				
<a href="#">Senior Secured Term Loan Facility [Member]   One Month London Interbank Offered Rate (LIBOR) [Member]   Senior Notes [Member]</a>					
<a href="#">Debt Instrument [Line Items]</a>					
<a href="#">Debt instrument, basis spread on variable rate</a>	1.00%				
<a href="#">Senior Secured Term Loan Facility [Member]   One Month LIBOR Plus Margin [Member]   Senior Notes [Member]</a>					
<a href="#">Debt Instrument [Line Items]</a>					
<a href="#">Debt instrument, basis spread on variable rate</a>	3.00%				
<a href="#">Equipment Loan [Member]</a>					
<a href="#">Debt Instrument [Line Items]</a>					
<a href="#">Debt instrument, interest rate stated, percentage</a>			2.30%		2.30%
<a href="#">Long-term debt</a>			\$		€
			13,400,000		12,000,000.0
<a href="#">Drew down on loans   €</a>		€		€	
		1,400,000		10,600,000	
<a href="#">Loans outstanding</a>		14,000,000.0		€	12,000,000.0
<a href="#">Debt Instrument Redemption Period One [Member]   Senior Notes, 6.00%, due 2025 [Member]   Senior Notes [Member]</a>					
<a href="#">Debt Instrument [Line Items]</a>					
<a href="#">Redemption percentage</a>	103.00%				
<a href="#">Debt Instrument Redemption Period Two [Member]   Senior Notes, 6.00%, due 2025 [Member]   Senior Notes [Member]</a>					
<a href="#">Debt Instrument [Line Items]</a>					
<a href="#">Redemption percentage</a>	101.50%				
<a href="#">Debt Instrument Redemption Period Three [Member]   Senior Notes, 6.00%, due 2025 [Member]   Senior Notes [Member]</a>					
<a href="#">Debt Instrument [Line Items]</a>					
<a href="#">Redemption percentage</a>	100.00%				
<a href="#">Revolving Credit Facility [Member]</a>					
<a href="#">Debt Instrument [Line Items]</a>					
<a href="#">Commitment fees percentage</a>			0.375%		
<a href="#">Outstanding borrowings and undrawn letters of credit threshold amount</a>		20,000,000			
<a href="#">Line of credit facility, commitment amount</a>		\$			
<a href="#">Revolving Credit Facility [Member]   Minimum [Member]</a>		160,000,000			
<a href="#">Debt Instrument [Line Items]</a>					
<a href="#">Commitment fees percentage</a>			0.50%		
<a href="#">Net leverage ratio</a>		1.00%	1.00%		
<a href="#">Revolving Credit Facility [Member]   Maximum [Member]</a>					
<a href="#">Debt Instrument [Line Items]</a>					
<a href="#">Commitment fees percentage</a>			0.25%		
<a href="#">Net leverage ratio</a>		4.50%	4.50%		
<a href="#">Line of credit facility borrowing capacity percentage</a>		35.00%	35.00%		

<a href="#">Revolving Credit Facility [Member]   London Interbank Offered Rate (LIBOR) [Member]</a>			
<b>Debt Instrument [Line Items]</b>			
Debt instrument, basis spread on variable rate	3.25%		
<a href="#">Revolving Credit Facility [Member]   London Interbank Offered Rate (LIBOR) [Member]   Minimum [Member]</a>			
<b>Debt Instrument [Line Items]</b>			
Debt instrument, basis spread on variable rate	3.50%		
<a href="#">Revolving Credit Facility [Member]   London Interbank Offered Rate (LIBOR) [Member]   Maximum [Member]</a>			
<b>Debt Instrument [Line Items]</b>			
Debt instrument, basis spread on variable rate	3.00%		
<a href="#">Revolving Credit Facility [Member]   Base Rate [Member]</a>			
<b>Debt Instrument [Line Items]</b>			
Debt instrument, basis spread on variable rate	2.25%		
<a href="#">Revolving Credit Facility [Member]   Base Rate [Member]   Minimum [Member]</a>			
<b>Debt Instrument [Line Items]</b>			
Debt instrument, basis spread on variable rate	2.50%		
<a href="#">Revolving Credit Facility [Member]   Base Rate [Member]   Maximum [Member]</a>			
<b>Debt Instrument [Line Items]</b>			
Debt instrument, basis spread on variable rate	2.00%		
<a href="#">Revolving Credit Facility [Member]   Senior Secured Term Loan Facility [Member]</a>			
<b>Debt Instrument [Line Items]</b>			
Amount of term loan facility	\$	160,000,000.0	
<a href="#">Line of credit facility maturity date</a>		May 23, 2022	
<a href="#">Outstanding borrowings</a>	\$	0	
<a href="#">Revolving Credit Facility [Member]   Senior Secured Term Loan Facility [Member]   Senior Notes [Member]</a>			
<b>Debt Instrument [Line Items]</b>			
Amount of availability	\$	155,200,000	
<a href="#">Term Loan Facility [Member]   Senior Secured Term Loan Facility [Member]</a>			
<b>Debt Instrument [Line Items]</b>			
Percentage of capital stock issued	65.00%		65.00%
<a href="#">Equipment Loan [Member]   European Operations [Member]</a>			
<b>Debt Instrument [Line Items]</b>			
Debt instrument, interest rate stated, percentage	2.20%		2.20%
Debt instrument, maturity date	Mar. 31, 2024	Mar. 31, 2024	

<a href="#">European Revolving Credit Facility [Member]</a>			
<b>Debt Instrument [Line Items]</b>			
<a href="#">Outstanding borrowings</a>	\$ 0		
<a href="#">Amount outstanding</a>	500,000		€ 400,000
<a href="#">Amount of availability</a>	\$ 69,800,000		€ 59,600,000
<a href="#">Debt instrument, maturity date</a>			May 22, 2022
<a href="#">Percentage of management fee</a>			0.07%
<a href="#">European Revolving Credit Facility [Member]   Minimum [Member]</a>			
<b>Debt Instrument [Line Items]</b>			
<a href="#">Current borrowing capacity under line of credit   €</a>			€
<a href="#">Annual commitment fee</a>			30,000,000.0
<a href="#">European Revolving Credit Facility [Member]   Maximum [Member]</a>			45,000,000.0
<b>Debt Instrument [Line Items]</b>			
<a href="#">Current borrowing capacity under line of credit   €</a>			€
<a href="#">Annual commitment fee</a>			45,000,000.0
<a href="#">European Revolving Credit Facility [Member]   Euribor [Member]</a>			1.05%
<b>Debt Instrument [Line Items]</b>			
<a href="#">Debt instrument, basis spread on variable rate</a>			0.00%
<a href="#">European Revolving Credit Facility [Member]   Euribor [Member]   Minimum [Member]</a>			
<b>Debt Instrument [Line Items]</b>			
<a href="#">Debt instrument, basis spread on variable rate</a>			1.55%
<a href="#">European Revolving Credit Facility [Member]   Euribor [Member]   Maximum [Member]</a>			
<b>Debt Instrument [Line Items]</b>			
<a href="#">Debt instrument, basis spread on variable rate</a>			3.00%
<a href="#">European Revolving Credit Facility [Member]   Equipment Loan [Member]</a>			
<b>Debt Instrument [Line Items]</b>			
<a href="#">Debt instrument, maturity date</a>			Sep. 30, 2027
<a href="#">Quarterly payment, start date</a>	Jun. 30, 2021	Jun. 30, 2021	
<a href="#">European Revolving Credit Facility [Member]   Equipment Loan [Member]   Scenario, Forecast [Member]</a>			
<b>Debt Instrument [Line Items]</b>			
<a href="#">Quarterly payment</a>	\$	€	
	500,000	400,000	

**Debt - Schedule of Debt**  
**Maturities (Detail) - USD (\$)**      **Mar. 31, 2021 Dec. 31, 2020**  
**\$ in Thousands**

**Maturities Of Long Term Debt [Abstract]**

<u>Nine remaining months of 2021</u>	\$ 4,987	
<u>2022</u>	6,334	
<u>2023</u>	5,922	
<u>2024</u>	352,360	
<u>2025</u>	256,621	
<u>Thereafter</u>	4,142	
<u>Total debt liabilities</u>	\$ 630,366	\$ 643,184

Redeemable Preferred Stock - Additional Information (Detail) - USD (\$) \$ / shares in Units, \$ in Thousands	3 Months Ended		12 Months Ended		
	Aug. 30, 2017	Mar. 31, 2021	Mar. 31, 2020	Dec. 31, 2020	Dec. 31, 2017
<b>Temporary Equity [Line Items]</b>					
<u>Temporary equity, stock issued during period, shares, new issues</u>		150,000		150,000	150,000
<u>Proceeds from issuance of redeemable preferred shares</u>					\$ 150,000
<u>Temporary equity, par value</u>	\$ 0.01			\$ 0.01	\$ 0.01
<u>Preferred stock, dividend rate, percentage</u>	9.00%		9.00%		
<u>Preferred stock redemption date</u>		Sep. 14, 2025			
<u>Issuance costs</u>					\$ 3,700
<u>Proceeds from issuance of redeemable preferred shares, net of issuance costs</u>					135,500
<u>Embedded derivative liability</u>					\$ 10,900
<u>Cumulative premium accretion</u>	\$ 48,800			\$ 43,900	
<u>Redeemable preferred stock</u>	184,308			\$ 179,387	
<u>Convertible Preferred Stock Redemption Period Two [Member]</u>					
<b>Temporary Equity [Line Items]</b>					
<u>Convertible preferred stock, redemption value</u>	\$ 300,000				
<u>Convertible preferred stock, redemption value percent of stated value</u>	200.00%				
<u>Convertible preferred stock, face value</u>	\$ 150,000				
<u>Common stock, shares issued upon conversion of preferred stock</u>	5,300,000				
<u>Series A Redeemable Preferred Stock [Member]</u>					
<b>Temporary Equity [Line Items]</b>					
<u>Temporary equity, stock issued during period, shares, new issues</u>					140,202
<u>Temporary equity, par value</u>	\$ 0.01				
<u>Temporary equity, liquidation preference per share</u>	1,000				
<u>Temporary equity, conversion price</u>	\$ 28.162				
<u>Preferred stock, dividend rate, percentage</u>	9.00%				
<u>Convertible preferred stock, threshold stock price trigger</u>					\$ 84.49
<u>Series B Redeemable Preferred Stock [Member]</u>					
<b>Temporary Equity [Line Items]</b>					
<u>Temporary equity, stock issued during period, shares, new issues</u>					9,798

**European Non-Controlling  
Redeemable Equity -  
Additional Information  
(Detail) - € / shares**

**3 Months Ended**

**Mar. 31, 2021    May 30, 2017**

**Redeemable Noncontrolling Interest [Line Items]**

Percentage of voting interest acquired

99.90%

92.30%

Domination and Profit Loss Transfer Agreement [Member]

**Redeemable Noncontrolling Interest [Line Items]**

Share price per share

€ 62.18

Guaranteed annual dividend for each share that is not tendered

€ 3.23

Guaranteed annual statutory rate for each share that is tendered

4.12%

<b>European Non-Controlling Redeemable Equity - Summary of Redeemable Noncontrolling Interests (Detail) - USD (\$) \$ in Thousands</b>	<b>3 Months Ended</b>	<b>12 Months Ended</b>	
	<b>Mar. 31, 2021</b>	<b>Mar. 31, 2020</b>	<b>Dec. 31, 2020</b>

**Redeemable Noncontrolling Interest [Line Items]**

<u>Dividends accrued</u>	\$ 13	\$ 20	
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**Redeemable Noncontrolling Interest [Member]**

**Redeemable Noncontrolling Interest [Line Items]**

<u>Beginning balance</u>	1,666	\$ 6,525	\$ 6,525
<u>Dividends accrued</u>	13		205
<u>Dividends paid</u>			(46)
<u>Translation adjustment</u>	(79)		2
<u>Purchase of shares</u>	(9)		(5,020)
<u>Ending Balance</u>	\$ 1,591		\$ 1,666



**Earnings Per Share -  
Schedule of Earnings Per  
share, Basic and Diluted  
(Detail) - USD (\$)  
\$ / shares in Units, shares in  
Thousands, \$ in Thousands**

**3 Months Ended**

**Mar. 31, 2021 Mar. 31, 2020**

**Basic Earnings Per Share:**

<u>Net income (loss)</u>	\$ 13,122	\$ (190,082)
<u>Less: Redeemable preferred stock dividends and accretion</u>	(8,290)	(7,850)
<u>Less: European non-controlling redeemable equity dividend</u>	(13)	(20)
<u>Basic numerator</u>	\$ 4,819	\$ (197,952)
<u>Basic earnings (loss) per share</u>	\$ 0.19	\$ (7.84)
<u>Weighted average shares outstanding – Basic</u>	25,707	25,243

**Diluted Earnings Per Share:**

<u>Net income (loss)</u>	\$ 13,122	\$ (190,082)
<u>Less: Redeemable preferred stock dividends and accretion</u>	(8,290)	(7,850)
<u>Less: European non-controlling redeemable equity dividend</u>	(13)	(20)
<u>Diluted numerator</u>	\$ 4,819	\$ (197,952)
<u>Diluted earnings (loss) per share</u>	\$ 0.18	\$ (7.84)
<u>Weighted average shares outstanding – Basic</u>	25,707	25,243
<u>Dilutive effect of common share equivalents</u>	980	
<u>Weighted average shares outstanding – Diluted</u>	26,687	25,243

**Income Taxes - Additional  
Information (Detail) - USD**

**3 Months Ended**

**(\$)**

**Mar. 31, 2021 Mar. 31, 2020**

**\$ in Thousands**

**Income Tax Disclosure [Abstract]**

<u>Income tax provision (benefit)</u>	\$ 810	\$ (3,460)
<u>Pre-tax income (loss)</u>	\$ 13,900	\$ (193,500)
<u>Effective income tax rate</u>	5.80%	1.80%

**Leases - Additional  
Information (Detail)**

**3 Months Ended  
Mar. 31, 2021**

**[Operating Leased Assets \[Line Items\]](#)**

[Lessee, operating lease, option to extend](#)

Certain leases include options to extend the lease term for up to ten years

[Minimum \[Member\]](#)

**[Operating Leased Assets \[Line Items\]](#)**

[Lessee, operating lease, term of contract](#) 1 year

[Maximum \[Member\]](#)

**[Operating Leased Assets \[Line Items\]](#)**

[Lessee, operating lease, term of contract](#) 9 years

Leases - Schedule of Lease Expense, Cash Flow, Operating and Finance Lease Assets and Liabilities, Average Lease Term and Average Discount Rate (Detail) - USD (\$) \$ in Thousands	3 Months Ended		
	Mar. 31, 2021	Mar. 31, 2020	Dec. 31, 2019
<b>Finance lease expense:</b>			
<u>Amortization of right-of-use assets</u>	\$ 321	\$ 354	
<u>Interest on lease liabilities</u>	22	22	
<u>Operating lease expense</u>	857	845	
<u>Total lease expense</u>	1,200	1,221	
<b>Cash paid for amounts included in the measurement of lease liabilities:</b>			
<u>Operating cash outflows from finance leases</u>	22	22	
<u>Operating cash outflows from operating leases</u>	932	891	
<u>Financing cash outflows from finance leases</u>	288	292	
<u>Right-of-use assets obtained in exchange for finance lease liabilities, net of terminations and disposals</u>	756	148	
<u>Right-of-use assets obtained in exchange for operating lease liabilities, net of terminations and disposals</u>	152	\$ 65	
<b>Operating leases:</b>			
<u>Other non-current assets</u>	12,705		\$ 13,598
<u>Accrued liabilities</u>	\$ (2,672)		(2,868)
<u>Operating Lease, Liability, Current, Statement of Financial Position [Extensible List]</u>	Accrued expenses	Accrued expenses	
<u>Other non-current liabilities</u>	\$ (10,718)		(11,513)
<u>Operating Lease, Liability, Noncurrent, Statement of Financial Position [Extensible List]</u>	Other non-current liabilities	Other non-current liabilities	
<u>Total operating lease liabilities</u>	\$ (13,390)		(14,381)
<u>Operating Lease, Liability, Statement of Financial Position [Extensible List]</u>	us- gaap:LiabilitiesAndStockholdersEquity	us- gaap:LiabilitiesAndStockholdersEquity	

<u>Property, plant and equipment gross</u>	\$ 6,506	\$ 5,735	
<u>Accumulated depreciation</u>	(3,640)		(3,319)
<u>Property, plant and equipment, net</u>	2,866	2,416	
<u>Current portion of long-term debt</u>	(1,240)		(1,113)
<u>Long-term debt (less current portion)</u>	(2,254)	\$ (2,275)	
<u>Total finance lease liabilities</u>	\$ (3,494)		\$ (3,388)
<u>Weighted-average remaining lease term - finance leases (years)</u>	3 years 10 months 24 days		3 years 10 months 24 days
<u>Weighted-average remaining lease term - operating leases (years)</u>	5 years 10 months 24 days		6 years 1 month 6 days
<u>Weighted-average discount rate - finance leases</u>	2.90%		3.00%
<u>Weighted-average discount rate - operating leases</u>	3.70%		3.80%

**Leases - Schedule of Future  
Minimum Rental Payments  
For Finance and Operating  
Leases (Detail) - USD (\$)  
\$ in Thousands**

**Mar. 31, 2021 Dec. 31, 2019**

**Leases [Abstract]**

<u>Nine remaining months of 2021</u>	\$ 1,030	
<u>Finance Leases, 2022</u>	1,058	
<u>Finance Leases, 2023</u>	647	
<u>Finance Leases, 2024</u>	228	
<u>Finance Leases, 2025</u>	153	
<u>Finance Leases, Thereafter</u>	555	
<u>Finance Leases, Total</u>	3,671	
<u>Finance Leases, Less: Imputed interest</u>	(177)	
<u>Finance Leases, Total lease liabilities, net of interest</u>	3,494	\$ 3,388
<u>Nine remaining months of 2021</u>	2,412	
<u>Operating Leases, 2022</u>	2,782	
<u>Operating Leases, 2023</u>	2,418	
<u>Operating Leases, 2024</u>	2,194	
<u>Operating Leases, 2025</u>	2,145	
<u>Operating Leases, Thereafter</u>	2,803	
<u>Operating Leases, Total</u>	14,754	
<u>Operating Leases, Less: Imputed interest</u>	(1,364)	
<u>Operating Leases, Total lease liabilities, net of interest</u>	\$ 13,390	\$ 14,381

**Retirement Plans -  
Additional Information  
(Detail)  
\$ in Millions**

**3 Months Ended  
Mar. 31, 2021  
USD (\$)  
Age**

**[Compensation And Retirement Disclosure \[Abstract\]](#)**

[Age for benefits | Age](#)

65

[Payments to retirees](#)

\$ 0.4

[Anticipated benefit payments](#)

\$ 1.2



**Retirement Plans - Schedule  
of Net Benefit Costs (Detail)**

**- USD (\$)**

**\$ in Thousands**

**3 Months Ended**

**Mar. 31, 2021 Mar. 31, 2020**

**[Compensation And Retirement Disclosure \[Abstract\]](#)**

<u><a href="#">Interest cost</a></u>	\$ 206	\$ 251
<u><a href="#">Net amortization</a></u>	97	72
<u><a href="#">Net periodic pension cost</a></u>	\$ 303	\$ 323

Stock-Based Compensation - Additional Information (Detail) \$ in Millions	May 16, 2019 shares	3 Months Ended	
		Mar. 31, 2021 USD (\$) PerformanceMetric shares	Mar. 31, 2020 USD (\$)
<b><u>Share-based Compensation Arrangement by Share-based Payment Award [Line Items]</u></b>			
<u>Authorizes issuance of common stock</u>	4,350,000		
<u>Number of shares available for grant</u>	300,000		
<u>Maximum shares that may be used as full value awards</u>	1,200,000		
<u>Number of authorized shares increased under the Plan</u>	2,000,000.0		
<u>Number of shares eliminate on full value shares</u>	1,200,000		
<u>Stock-based compensation expense   \$</u>	\$ (1.8)		\$ 0.2
<u>Stock-based compensation increased   \$</u>	\$ 1.1		
<u>Number of performance metrics associated with award   PerformanceMetric</u>	0		
<u>Accrued expense reversed   \$</u>			\$ 1.2
<u>Amount of unrecognized stock-based compensation expense   \$</u>	\$ 8.4		
<u>Weighted average period for recognition</u>	1 year 6 months		
<b><u>Restricted Stock Units [Member]</u></b>			
<b><u>Share-based Compensation Arrangement by Share-based Payment Award [Line Items]</u></b>			
<u>Vesting period</u>	3 years		
<u>Grants in period</u>	1,787		
<b><u>Restricted Stock Units [Member]   President and Chief Executive Officer [Member]</u></b>			

**Share-based Compensation  
Arrangement by Share-  
based Payment Award [Line  
Items]**

Grants in period 333,333

Performance Shares Unit  
[Member]

**Share-based Compensation  
Arrangement by Share-  
based Payment Award [Line  
Items]**

Vesting period 3 years

Grants in period 21,352

PSU awards earnings expected  
target 200.00%

Performance Shares Unit  
[Member] | President and  
Chief Executive Officer  
[Member]

**Share-based Compensation  
Arrangement by Share-  
based Payment Award [Line  
Items]**

Vesting period 3 years

Grants in period 666,667

Shares awarded under the  
plan, vesting description

(a) 666,667 PSUs at target, vesting in three approximately equal installments, to the extent the performance metrics are satisfied, during each of three performance periods and (b) 333,333 RSUs, vesting in approximately equal installments on February 28, 2020, 2021 and 2022; (ii) a 2019-2021 PSU grant, with the target number of 316,832 PSUs, which will vest to the extent the performance metrics are satisfied; and (iii) a 2019 RSU grant of 158,416 RSUs, vesting in approximately equal installments on February 28, 2020, 2021 and 2022. The PSU awards may be earned at up to 200 percent of target depending on the level of achievement of the performance metrics.

2019-2021 PSU [Member] |  
President and Chief Executive  
Officer [Member]

**Share-based Compensation  
Arrangement by Share-  
based Payment Award [Line  
Items]**

Grants in period 316,832

2019 RSU [Member] |  
President and Chief Executive  
Officer [Member]

Share-based Compensation  
Arrangement by Share-  
based Payment Award [Line  
Items]

Grants in period 158,416

**Stock-Based Compensation -  
Summary of Restricted  
Stock Unit and Restricted  
Performance Stock Unit  
Activity (Detail)**

**3 Months Ended  
Mar. 31, 2021  
\$ / shares  
shares**

**Number of Options Outstanding**

<u>Number of Options Outstanding, Beginning balance (in shares)   shares</u>	24,000
<u>Number of Options Outstanding, Ending balance (in shares)   shares</u>	24,000
<u>Awards estimated to vest in the future, Outstanding (in shares)   shares</u>	24,000

**Weighted Average Exercise Price**

<u>Weighted Average Exercise Price, Beginning balance (in dollars per share)   \$ / shares</u>	\$ 20.39
<u>Weighted Average Exercise Price, Ending balance (in dollars per share)   \$ / shares</u>	20.39
<u>Awards estimated to vest in the future (in dollar per share)   \$ / shares</u>	\$ 20.39

**Restricted Stock Units [Member]**

**Number of Awards**

<u>Number of Awards, Beginning balance (in shares)   shares</u>	1,213,667
<u>Granted (in shares)   shares</u>	1,787
<u>Settled (in shares)   shares</u>	(388,504)
<u>Forfeited or expired (in shares)   shares</u>	(31,092)
<u>Number of Awards, Ending balance (in shares)   shares</u>	795,858
<u>Awards estimated to vest in the future, Outstanding (in shares)   shares</u>	724,142

**Weighted Average Grant Date Fair Value**

<u>Weighted Average Grant Date Fair Value, Beginning balance (in dollars per share)   \$ / shares</u>	\$ 3.59
<u>Granted (in dollars per share)   \$ / shares</u>	5.41
<u>Settled (in dollars per share)   \$ / shares</u>	4.05
<u>Forfeited or expired (in dollars per share)   \$ / shares</u>	8.25
<u>Weighted Average Grant Date Fair Value, Ending balance (in dollars per share)   \$ / shares</u>	3.19
<u>Awards estimated to vest in the future (in dollar per share)   \$ / shares</u>	\$ 3.16

**Performance Shares Unit [Member]**

**Number of Awards**

<u>Number of Awards, Beginning balance (in shares)   shares</u>	2,176,290
<u>Granted (in shares)   shares</u>	21,352
<u>Settled (in shares)   shares</u>	(193,778)
<u>Forfeited or expired (in shares)   shares</u>	(142,769)
<u>Number of Awards, Ending balance (in shares)   shares</u>	1,861,095
<u>Awards estimated to vest in the future, Outstanding (in shares)   shares</u>	1,341,900

**Weighted Average Grant Date Fair Value**

<u>Weighted Average Grant Date Fair Value, Beginning balance (in dollars per share)   \$ / shares</u>	\$ 4.88
<u>Granted (in dollars per share)   \$ / shares</u>	5.67
<u>Settled (in dollars per share)   \$ / shares</u>	5.45
<u>Forfeited or expired (in dollars per share)   \$ / shares</u>	12.96
<u>Weighted Average Grant Date Fair Value, Ending balance (in dollars per share)   \$ / shares</u>	6.05
<u>Awards estimated to vest in the future (in dollar per share)   \$ / shares</u>	\$ 6.09

Receivables Factoring - Additional Information (Detail) - USD (\$)	3 Months Ended			Jan. 01, 2021	Dec. 31, 2020
	Mar. 31, 2021	Mar. 31, 2020	Apr. 01, 2021		
<b><u>Accounts Receivable [Line Items]</u></b>					
<u>Trade receivables</u>	\$ 186,700,000	\$ 69,900,000			
<u>Factoring fees</u>	500,000	\$ 200,000			
<u>Collective limit under factoring arrangements</u>	132,200,000			\$ 132,000,000.0	
<u>Factored receivables yet not collected</u>	\$ 105,600,000			\$ 96,600,000	
<u>Subsequent Event [Member]</u>					
<b><u>Accounts Receivable [Line Items]</u></b>					
<u>Collective limit under factoring arrangements</u>			\$ 121,700,000		
<u>North American [Member]</u>					
<b><u>Accounts Receivable [Line Items]</u></b>					
<u>Due to decrease In North American factoring limit</u>				\$ 122,000,000.0	
<u>North American [Member]   Subsequent Event [Member]</u>					
<b><u>Accounts Receivable [Line Items]</u></b>					
<u>Due to decrease In North American factoring limit</u>			\$ 10,500,000		

Restructuring - Additional Information (Detail) - USD (\$) \$ in Millions	3 Months Ended					6	9	12
	Apr. 14, 2021	Mar. 31, 2021	Jun. 30, 2020	Dec. 31, 2019	Sep. 30, 2019	Months Ended Dec. 31, 2020	Months Ended Sep. 30, 2020	Months Ended Dec. 31, 2020
<a href="#">Cost of Sales [Member]</a>								
<b><a href="#">Restructuring Cost And Reserve [Line Items]</a></b>								
<a href="#">Restructuring charge, employee severance</a>						\$ 0.4		
<a href="#">Selling, General and Administrative Expense [Member]</a>								
<b><a href="#">Restructuring Cost And Reserve [Line Items]</a></b>								
<a href="#">Restructuring charge, employee severance</a>						0.3		
<a href="#">Automotive Racing Market Segment [Member]</a>								
<b><a href="#">Restructuring Cost And Reserve [Line Items]</a></b>								
<a href="#">Non-cash restructuring charge</a>			\$ 3.4					
<a href="#">Restructuring charge, write-down of after-market inventory to salvage value</a>			1.3					
<a href="#">Restructuring charge, employee severance</a>			1.0			\$ 0.7		
<a href="#">Restructuring charges, contract terminations costs</a>			0.5					
<a href="#">Restructuring severance accrual</a>	\$ 0.4							
<a href="#">Automotive Racing Market Segment [Member]</a>								
<a href="#">Cost of Sales [Member]</a>								
<b><a href="#">Restructuring Cost And Reserve [Line Items]</a></b>								
<a href="#">Non-cash restructuring charge</a>			2.8					
<a href="#">Automotive Racing Market Segment [Member]</a>								
<a href="#">Selling, General and Administrative Expense [Member]</a>								
<b><a href="#">Restructuring Cost And Reserve [Line Items]</a></b>								
<a href="#">Restructuring charge, employee severance</a>			\$ 0.6					
<a href="#">Fayetteville, Arkansas Manufacturing Facility [Member]</a>								
<b><a href="#">Restructuring Cost And Reserve [Line Items]</a></b>								
<a href="#">Restructuring charge, employee severance</a>					\$ 1.6			
<a href="#">Restructuring severance accrual</a>	0.3							
<a href="#">Accelerated depreciation</a>					7.6			
<a href="#">Restructuring charge, write-down of inventory to net salvage value</a>					3.2			
<a href="#">Restructuring charge, accelerated amortization of right of use assets</a>					0.6			
<a href="#">Relocation costs</a>	\$ 0.8		\$ 1.8					\$ 2.9
<a href="#">Relocation costs recognition period</a>							3 months	
<a href="#">Other costs</a>								0.4
<a href="#">Additional charges to cost of sales</a>								\$ 3.3



[Fayetteville, Arkansas Manufacturing Facility](#)

[\[Member\]](#) | [Subsequent Event \[Member\]](#)

**[Restructuring Cost And Reserve \[Line Items\]](#)**

[Purchase price](#)

\$ 7.6

[Fayetteville, Arkansas Manufacturing Facility](#)

[\[Member\]](#) | [Cost of Sales \[Member\]](#)

**[Restructuring Cost And Reserve \[Line Items\]](#)**

[Non-cash restructuring charge](#)

\$ 13.0

**Subsequent Event (Detail) -  
Subsequent Event [Member]  
- Senior Secured Term Loan  
Facility [Member] - USD (\$)  
\$ in Millions**

**May 03, 2021 May 02, 2021**

**Subsequent Event [Line Items]**

<u>Line of credit facility, commitment amount</u>	\$ 132.5	\$ 160.0
<u>Commitment Maturing May 23, 2022 [Member]</u>		

**Subsequent Event [Line Items]**

<u>Line of credit facility, commitment amount</u>	25.0
<u>Commitments Maturing October 31, 2023 [Member]</u>	

**Subsequent Event [Line Items]**

<u>Line of credit facility, commitment amount</u>	\$ 107.5
<u>Maximum [Member]</u>	

**Subsequent Event [Line Items]**

<u>Annual commitment fee</u>	0.625%
<u>Net leverage ratio</u>	4.50%
<u>Minimum [Member]</u>	

**Subsequent Event [Line Items]**

<u>Annual commitment fee</u>	0.375%
<u>Net leverage ratio</u>	1.00%

































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2. The second part of the document outlines the various methods and techniques used to collect and analyze data. It includes a detailed description of the experimental procedures and the tools used for data collection.

3. The third part of the document presents the results of the study, including a comparison of the different methods and techniques used. It discusses the strengths and weaknesses of each method and provides a summary of the findings.

4. The fourth part of the document discusses the implications of the study and provides recommendations for future research. It highlights the need for further investigation into the effectiveness of the different methods and techniques used.

5. The fifth part of the document provides a conclusion and a summary of the key findings. It reiterates the importance of maintaining accurate records and the need for transparency and accountability in financial reporting.

6. The sixth part of the document provides a list of references and a bibliography. It includes a list of all the sources used in the study and provides a detailed description of each source.

7. The seventh part of the document provides a list of appendices and a bibliography. It includes a list of all the appendices used in the study and provides a detailed description of each appendix.

8. The eighth part of the document provides a list of figures and a bibliography. It includes a list of all the figures used in the study and provides a detailed description of each figure.

9. The ninth part of the document provides a list of tables and a bibliography. It includes a list of all the tables used in the study and provides a detailed description of each table.

10. The tenth part of the document provides a list of equations and a bibliography. It includes a list of all the equations used in the study and provides a detailed description of each equation.





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